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# *The Strange Death of Liberal International Theory*

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## **Abstract**

*This article contends that the move to recast liberal international relations theory in positivist terms has undermined its status as a political theory, and that attempts to use such a theory as the basis of a liberal international legal theory undermine its proponents' capacity to reason normatively about international change, a crucial quality of a mature international legal theory. Politics, it will be argued, lies at the intersection of instrumental and ethical deliberation and action, an intersection that actors are drawn towards by the imperatives of practical, collective action. The 'New Liberalism' in international relations abandons the political in two ways: it expels normative reflection and argument from the realm of legitimate social scientific enquiry; and it embraces a rationalist conception of agency that reduces all political action to strategic interaction. This 'positive' theory lacks the philosophical resources to inform the articulation of a mature liberal international legal theory, a theory that coherently mediates between the pragmatics of social and political circumstance, the practice of rule interpretation, and the prescription of new norms.*

## **1 Introduction**

International Relations is a field born of anxiety. When constituted after the traumas of the First World War, those who united under its disciplinary banner struggled to reconcile the dual imperatives of understanding the basic dynamics of international politics while simultaneously seeking to reform the international system — it was a field situated at the interstices of the empirical and the normative. E.H. Carr called for a science of international politics that blended realism and utopianism, and his liberal nemesis, Norman Angell, championed rational empiricism and a moral foreign policy grounded in the general interest. Their writings marked out the poles of an emergent field in which the *political* loomed large, in which the anxieties of seeking to reconcile the *is* and the *ought* were the accepted life-blood of international inquiry, a discomfort made necessary by the imperatives of practical political change.

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Since the Second World War, however, international relations theorists have struggled to escape these anxieties. Following Waltz, neorealists have sought comfort in the pursuit of a parsimonious explanatory theory of international relations, ostensibly stripped of all normative commitments. For such scholars, liberalism was considered the antithesis of all that was desirable in an international theory, fundamentally flawed by a lurking normativity. It is only in the last five years that liberal theorists have sought to ‘catch up’ with their neorealist counterparts, with Andrew Moravcsik, in particular, ‘reformulating liberal international relations (IR) theory in a nonideological and nonutopian form appropriate to empirical social science’. This development is important not only for the field of international relations, but also for the discipline of international law. For it is Moravcsik’s ‘positive’ liberalism that provides the theoretical foundations for Anne-Marie Slaughter’s new liberal theory of international law.

This article contends that the move to recast liberal international theory in positivist terms has undermined its status as a *political* theory. Politics, it will be argued, lies at the intersection of instrumental and ethical deliberation and action, an intersection that actors are drawn towards by the imperatives of practical, collective action. The ‘new liberalism’ abandons the political in two ways: it expels normative reflection and argument from the realm of legitimate social scientific inquiry; and it embraces a rationalist conception of human agency that reduces all political action to strategic interaction. Much could be written about the implications of this for international relations theory. My concern here, however, is with the impact on international legal theory. By constructing such a theory on the basis of Moravcsik’s liberal international relations theory, Slaughter impedes her capacity for normative reasoning about international legal change, a crucial dimension of a mature international legal theory.

This argument is developed in five stages. I begin in Part 2 with a discussion of the idea of the ‘political’ in which I seek to move beyond the prevailing emphasis on strategic action towards a more communicative conception. Then, in Part 3, I highlight the prominence of such a conception of the political in the classical international theories of the early twentieth century. This is followed in Part 4 by an examination of the retreat from the political evident first in neorealism and most recently in the ‘new liberalism’. Building upon these foundations, Part 5 explains the problems that the new liberalism in international relations theory poses for the development of international legal theory, focusing particularly on Slaughter’s writings. The final section, Part 6, suggests more fruitful strategies of dialogue between international relations and international law, strategies that seek to rediscover the interstices between the political and the legal.

## 2 Recovering the Political

For members of a subfield of political science, international relations scholars spend surprisingly little time discussing the concept of the politics. While canonical figures

such as Carr and Hans Morgenthau saw defining politics as a necessary prelude to theorizing about international relations, more recently scholars have been content to treat the nature of politics as an undefined given. Political relations between states or other actors are frequently cast as fundamentally different from other social, economic, legal or moral relations, but what makes these relations so distinctive is seldom explained. Central yet amorphous, politics most often appears as a struggle for material power, rational utility maximization, formal relations between duly constituted 'political' actors, or all three mixed into an inconsistent and frequently contradictory conceptual cocktail. Politics, it seems, is a classical example of the inverse relationship that commonly exists between a concept's disciplinary centrality and its theoretical clarity.

In an effort to recover the concept of politics for international theory, it is useful to revisit one of the canonical works in the field — Thucydides' *History of the Peloponnesian War*. The *History* is punctuated by a series of debates, speeches and dialogues, each of which highlights the essence of political deliberation and, in turn, the basis of political action. In the Mytilenian Debate, for example, the Athenians argued about how to punish the Mytilenians, who had revolted against Athenian rule and aligned with Sparta. Calling for the harshest of retributions, Cleon told the Athenians:

What you do not realize is that your empire is a tyranny exercised over subjects who do not like it and who are always plotting against you; you will never make them obey you by injuring your own interests in order to do them a favour. . . To feel pity, to be carried away by the pleasure of a clever argument, to listen to claims of decency are three things that are entirely against the interests of an imperial power.<sup>1</sup>

In contrast, Diodotus encouraged his fellow citizens to be lenient:

[W]e should recognize that the proper basis of our security is in good administration rather than the fear of legal penalties. . . [T]he right way to deal with free people is this — not to inflict tremendous punishments on them after they have revolted, but to take tremendous care of them before this point is reached, to prevent them even contemplating the idea of revolt.<sup>2</sup>

Fortunately, Diodotus prevails and the Mytilenians are spared. But what is it that makes this debate recognizably 'political'? The key is that it is neither wholly instrumental — concerned solely with how the Athenians can realize a set of predefined interests — nor wholly moral — focused only on which good is to be achieved. As Ronald Beiner so cogently argues, politics is distinctive 'because it combines moral and instrumental considerations in a form of deliberation that is neither strictly instrumental nor strictly moral'.<sup>3</sup>

The nature of politics can be further clarified by considering four questions. Who am I? (who are we?); what do I want? (what do we want?); how do I get what I want? (how do we get what we want?); and what resources do I need to get what I want?

<sup>1</sup> Thucydides, *History of the Peloponnesian War* (Penguin ed., 1972), Book III.37, 213.

<sup>2</sup> *Ibid.*, Book III.46, 221.

<sup>3</sup> Ronald Beiner, *Political Judgment* (1983) 151.

(what resources do we need to get what we want?).<sup>4</sup> I term the first of these questions, the identity question; the second, the purposive question; the third, the strategic-instrumental question; and the fourth, the material-instrumental question. Purely instrumental deliberation is concerned solely with the last two questions, and takes the first two as fixed and given. Purely moral deliberation concentrates on the second question (assuming answers to the first question, and largely ignoring the third and fourth). Political deliberation confronts all four questions simultaneously, bringing considerations of identity, morality and pragmatics into an often uncomfortable dialogue.<sup>5</sup> This is precisely what makes Thucydides' *History* such a classic work of international political theory. It is not just that it is an attempt to identify the 'real reason' for a major war, it is that its most important moments — the Debate at Sparta, Pericles' Funeral Oration, the Mytilenian Debate and the Melian Dialogue — so skilfully illuminate the way in which the political resides at the interstices of the instrumental and the moral.<sup>6</sup>

Thinking about politics in this way explains the 'political charge' that attends central issues in contemporary international relations. Take the recent crisis in Kosovo, for example. The strategic-instrumental question — how do I (we) get what I (we) want? — and the material-instrumental question — what resources do I (we) need to get what I (we) want? — beg a series of deeper identity and purposive questions which constitute the political heart of the conflict. For the 'international community', the Serbs and the Kosovars, the salient issues concerned 'who we are?' and 'what do we want?' The debates surrounding these questions, and the resulting answers, split NATO from the UN, constituted Serb and Kosovar nationalisms, and provided the discursive structure in which secondary instrumental questions were addressed. If the answers to these deeper identity and purposive questions had been settled, and if the answers relevant groups arrived at had been mutually compatible, the political essence of this particular Balkans issue would have dissolved. The same can be said of issues ranging from the intervention in East Timor and debates about the treatment of refugees in Australia to the expansion of the European Union and the development of the World Trade Organization — in all of these cases the political resides at the juncture of the normative and the instrumental, where identities and purposes, goals and strategies, and techniques and resources are intermingled and contested.

As we shall see in the following sections, there has been a shift away from the orientation of classical international theories, which confronted the political in all of its above complexities, towards 'neo-theories' of both realist and liberal varieties, which have reduced international relations to instrumental rationality, effectively abandoning political inquiry, and forgone normative argument, abrogating political

<sup>4</sup> This is an elaboration of three questions identified by Beiner, in which I have divided his third question into strategic and material variants. See *ibid.*, at 146.

<sup>5</sup> *Ibid.*, at 144–152.

<sup>6</sup> For a more detailed discussion, see Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (1999) 41–62.

engagement. If we return to the four questions posed above, the abandonment of political inquiry is evident in the tendency of neorealism, neoliberalism and Moravcsik's new liberalism to view the political only in terms of strategic-instrumental and material-instrumental deliberation and action. This is compounded by the retreat from political engagement, a consequence of the neglect of identity and purposive questions that attends the quest for non-ideological and non-utopian social scientific theory.

### 3 Classical International Theory and the Anxieties of Politics

For a field so long dominated by realist scepticism, it is curious that the constitution of the discipline of international relations may reasonably be described as the last of the great enlightenment intellectual projects. The self-confidence of European civilization and the nineteenth century faith in reason and progress were shaken to the core by the senseless violence and devastation of the First World War. Yet one of the responses to this crisis was the establishment of a new academic discipline, one charged with understanding the dynamics of international politics with a view to changing them. Nowhere was this better expressed than in the Trust Deeds of the first Chair in International Politics, the Woodrow Wilson Chair at Aberystwyth. The Deeds define International Politics as 'Political Science in its application to International Relations with special reference to the best means of promoting peace between nations'. At its birth, therefore, the modern discipline of international relations was envisaged as both an explanatory project and a normative one — analysis was to be alloyed to ethics. This conjoining of scientific inquiry with normative reasoning was driven by the imperatives of practical political engagement, imperatives fuelled by the spectre of European conflagration.

Nowhere is this understanding of the purpose of international relations more clearly articulated than in Carr's celebrated work, *The Twenty Years' Crisis*. Until recently, Carr's thought has been squeezed into the Spartan mould of realist scepticism and materialism, a strategy that sadly still finds expression.<sup>7</sup> The poverty of such an interpretation has been highlighted by a wealth of new work on Carr's thought, work that stresses the complexity of his ideas about the nature of international relations as a political science and about the essence of politics as a field of human action.<sup>8</sup>

Carr is traditionally understood to have called for a science of international politics, a science purged of the utopianism of Wilsonian internationalism. His contempt for

<sup>7</sup> See Legro and Moravcsik, 'Is Anybody Still a Realist?', 24 *International Security* (1999) 5–55. In this article, Carr is associated with Morgenthau and Waltz as an archetypal realist, a scholar who articulated the core ideas of realism as a scientific paradigm. Curiously, though the writings of Morgenthau and Waltz are cited in support of this claim, no references are provided to Carr's many works.

<sup>8</sup> See, for example, Charles Jones, *E.H. Carr and International Relations: A Duty to Lie* (1998); Tim Dunne, *Inventing International Society* (1998); and Linklater, 'The Transformation of Political Community: E.H. Carr, Critical Theory and International Relations', 22 *Review of International Studies* (1997) 321–338.

the supposed naivety of interwar idealism is well documented, as is his critique of the Wilsonian project. Neither critique, however, led him to a position of unalloyed realism. *The Twenty Years' Crisis* calls for a discipline situated at the intersection of realism and utopianism. 'Political science', Carr insists, 'is the science not only of what is, but of what ought to be.'<sup>9</sup> While the physical sciences might plausibly seek to separate the analysis of facts from the purpose of study, the human sciences cannot. 'The purpose is not, as in the physical sciences, irrelevant to the investigation and separable from it: it is itself one of the facts.'<sup>10</sup> Carr upholds this as a general epistemological truth, and he argues that international relations will never be a 'mature' science until it recognizes the need to bring the empirical and the normative into dialogue. 'Mature thought', he writes, 'combines purpose with observation and analysis. Utopia and reality are thus the two facets of political science. Sound political thought and sound political life will be found only where both have their place.'<sup>11</sup>

This vision of international relations as a discipline reflects Carr's understanding of politics itself. Carr devotes an entire chapter of *The Twenty Years' Crisis* to 'The Nature of Politics', and although he is often placed in the same realist category as Morgenthau, his conception of politics has little in common with simplistic notions of a 'struggle for power'. Competition for power is certainly an important part of politics, as is gain-seeking behaviour, but so too is moral deliberation and action. Carr insists that 'Politics cannot be divorced from power. But the *homo politicus* who pursues nothing but power is as unreal a myth as the *homo economicus* who pursues nothing but gain. Political action must be based on a coordination of morality and power'.<sup>12</sup> So not only should international relations as a political science concern itself with both empirical analysis and normative reflection, its subject matter — political relations among sovereign states — lies at the intersection of the material, manifest primarily in the struggle for power, and the moral, which concerns the purposes of political action. Carr's vision is of a discipline that is thus doubly political: by embracing both analysis and ethical reflection it is itself an act of politics, and by excavating the relationship between reality and utopia it probes to the heart of the political in international relations.

In the conventional genealogy of international relations theory, the first great debate pits Carr, the sceptical realist stripped of all of the complexities noted above, against the naive liberal internationalists of the interwar period, of whom Norman Angell is the most notorious. This interpretation is fuelled by Carr himself, who explicitly set out in *The Twenty Years' Crisis* to demolish the 'pure aspiration' of Angell and others. Yet, just as the characterization of Carr as an unalloyed realist is misleading, so too is the depiction of Angell and other liberal internationalists as ungrounded utopians. Though important differences distinguish Carr's thought from that of his liberal protagonists, the liberal vision of the discipline of international

<sup>9</sup> E.H. Carr, *The Twenty Years' Crisis: 1919–1939* (2nd ed., 1946) 5.

<sup>10</sup> *Ibid.*, at 4.

<sup>11</sup> *Ibid.*, at 10.

<sup>12</sup> *Ibid.*, at 97.

relations and the underlying conception of politics shares much in common with Carr's.

Contrary to the common interpretation, Angell did not believe in the power of the ideal over the real.<sup>13</sup> The central theme of his writings is a call for greater consistency between ideas and facts, which he believed had become dangerously attenuated. His life's work, and the basic aim of *The Great Illusion*, was to demonstrate that the conventional wisdom of the time, which saw national wealth accumulation as a zero-sum game and military conquest as the principal means of enriching the state, as fundamentally incompatible with the realities of a modern, interdependent world economy. Prevailing ideas encouraged war as a path to national aggrandizement, whereas international economic realities made such strategies futile and self-destructive. Angell never articulated a systematic vision of international relations as a political science, but his work amounts to a passionate call for the 'rational' study of world politics, in which the normative goal of national and international peace and security is pursued in a manner consistent with economic realities. This approach was also evident in his attitude towards national defence and peace, where he advocated a balance between the pragmatism of the 'practical man' and the ethics of the 'pacifist'. He argues thus:

It seems fatally easy to secure either one of two kinds of action: that of the 'practical man' who limits his energies to securing a policy which will perfect the machinery of war, and disregard anything else; or that of the pacifist, who, persuaded of the brutality or immortality of war, just leaves it at that, implying that national defence is of no concern of his. What is needed is the type of activity which will include both halves of the problem. . . To concentrate on either half to the exclusion of the other half is to render the whole problem insoluble.<sup>14</sup>

Like his understanding of international relations as a scholarly endeavour, Angell's conception of politics is less systematic and accessible than Carr's. The key to understanding his conception is the importance he ascribes to the constitutive and strategic importance of ideas in shaping policy-relevant behaviour. In contrast to contemporary liberal rationalists, from Keohane to Moravcsik, Angell stresses the importance of principled and causal beliefs in the definition of national interests. Beliefs, well founded or not, provide people with the answers to the question 'what do we want?' Such beliefs can be changed, through public learning and debate, hence Angell's life-long commitment to educating the 'public mind'. Ideas also enter the equation at the level of strategic thought — 'how do we get what we want?' The truism of the time, that the best way to enrich the state was through warfare, was for Angell nothing other than an idea, no more or less fixed than any other belief. Implied throughout his work is the notion that politics resides at the controversial junctures between rival ideas of the national good, and between competing purposive and instrumental ideas and the factual bases of the international political economy. Debate about what constitutes the morally correct end and strategy, and about the

<sup>13</sup> On Angell's thought, see David Long and Peter Wilson (eds), *Thinkers of the Twenty Years' Crisis* (1995); and J.D.B. Miller, *Norman Angell and the Futility of War* (1986).

<sup>14</sup> Norman Angell, *The Great Illusion* 1933 (1933) 327–328.

relationship between this and empirical realities, is the essence of politics, and this is the terrain in which Angell himself engaged. Unlike Carr, who posited an enduring dialectical relationship between utopianism and realism, for Angell the relationship between the two was mediated by a perpetual contest between reason and unreason. If the former prevailed, there was some hope of a reconciliation between morality, defined as the well-being of all, and reality, which in his favoured area was the incompatibility of warfare and such well-being.<sup>15</sup>

It is clear from the preceding discussion that classical international theorists, of both realist and liberal persuasions, located the fledgling discipline of international relations at the most difficult of junctures, at the interstices of empirical analysis and ethical reasoning. This location was justified because of the dual nature of international relations as a *political* science: it was political in the sense that it was expected to help provide solutions to the pressing political dilemmas of the day, dilemmas in which the is and the ought were inextricably intertwined; and in the sense that the analysis of international politics demanded an appreciation of the relationship between brute material facts and debate about the good. The intellectual and practical difficulties of locating the new discipline at such a juncture were fully apparent to both Carr and Angell. If Carr is a realist in any genuine sense of the word, it is because he rejects the comfort of expelling either power or morality from politics or political science. 'We have now therefore to analyze the part played in international politics by these two cardinal factors: power and morality.'<sup>16</sup> Angell had greater faith in the capacity of reason to reconcile the real and the right, but the emphasis he placed on the battle between rationality and irrationality left him far closer to Carr than either would have admitted. As J.D.B. Miller observes, Angell is best characterized not as a utopian but as a 'scholar-activist — the person who passionately desires a particular goal (in this case, peace) but finds the way to the goal difficult and sometimes unacceptable in human terms in spite of intellectual conviction'.<sup>17</sup>

#### 4 The Abandonment of the Political

If the first quarter of the twentieth century saw world war and the birth of a new academic discipline charged with facilitating peace, the dawn of the twenty-first century sees widespread arguments about 'the obsolescence of major war' and a discipline of international relations that has largely abandoned politics. This is most clearly apparent as one approaches the theoretical heart of the discipline, particularly in the American mainstream. 'Explaining' international relations has supplanted the normative objective of 'Peace' as the discipline's *raison d'être*, effectively delinking the study of the real from the ideal. In tandem with this, the nature of politics has been

<sup>15</sup> *Ibid.*; and Norman Angell, *The Foundations of International Polity* (1914).

<sup>16</sup> Carr, *supra* note 9, at 101.

<sup>17</sup> J.D.B. Miller, 'Norman Angell and Rationality in International Relations', in Long and Wilson, *supra* note 13, at 118.

redefined to encompass only strategic-instrumental and material-instrumental reasoning and action. Where politics for classical theorists lay between the instrumental and the moral, it is now defined solely in terms of the former and against the latter. The net result is a discipline that has exchanged the comfort of pure explanatory theory for political engagement, and the analysis of instrumentally rational behaviour for the study of politics.

The move towards a purely explanatory theory of international relations found early, if less than fully consistent, expression in Morgenthau's *Politics Among Nations*. While Morgenthau shared Carr's interest in probing the nature of the political, his understanding of both political science and politics differed markedly. The 'science of international politics' did not lie at the interstices of realism and utopianism, but in the realm of realism alone. Its dual purposes were 'to detect and understand the forces that determine political relations among nations, and to comprehend the ways in which those forces act upon each other and upon international political relations and institutions'.<sup>18</sup> This containment of international political science within the bounds of explanatory theory was reflected in Morgenthau's quarantining of politics itself. Unlike Carr and Angell, who understood politics to encompass both the instrumental and the normative, Morgenthau upheld the 'autonomy of the political sphere', separate from the economic, legal, moral and religious spheres. He admitted that 'Real man is a composite of "economic man", "political man", "moral man", "religious man", etc.', but he treated these as distinct 'facets' of human nature and action, each demanding their own 'standards of thought'.<sup>19</sup> Politics, he argued, was that facet concerned with the competition for power: the 'concept of interest defined as power imposes intellectual discipline upon the observer, infuses rational order into the subject matter of politics, and thus makes the theoretical understanding of politics possible'.<sup>20</sup>

The consistency of Morgenthau's adherence to these views of the science of international politics and its subject domain was undermined by his classical sensitivity to the subtleties and vicissitudes of human practices, particularly in the international realm.<sup>21</sup> Kenneth Waltz's influential 'neorealist reformulation of realist international theory' exhibits no such sensitivity. Drawing on economic theory, particularly the theory of the firm, Waltz sets out to formulate a parsimonious, deductive theory of international politics. 'Theory', he declares, 'is fundamental to science',<sup>22</sup> and it is in his vision of international theory that we find articulated his understanding of international political science. International theory is not only presented in purely explanatory terms, but Waltz sees such theory as narrowly

<sup>18</sup> Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (6th ed., 1985) 18.

<sup>19</sup> *Ibid.*, at 13–16.

<sup>20</sup> *Ibid.*, at 5.

<sup>21</sup> This point has been made before frequently. See, in particular, Ashley, 'Political Realism and Human Interests', 25 *International Studies Quarterly* (1981) 204–236; and, more recently, Kratochwil, 'The Embarrassment of Changes: Neorealism as the Science of Realpolitik Without Politics', 33 *Review of International Studies* (1989) 235–254.

<sup>22</sup> Kenneth Waltz, *Theory of International Politics* (1979), preface.

concerned with the identification and explanation of law-like regularities, on the basis of which empirically testable hypotheses can be generated. Since moral, legal and religious arguments cannot be subsumed within such a conception of theory, they by definition fall outside the domain of the science of international politics, and it is worth noting that they, and the issues and phenomena to which they relate, warrant no mention in *Theory of International Politics*. This rarefied conception of international political science is reflected in, and informed by, Waltz's restricted view of political deliberation and action. Waltz holds that the anarchical nature of the international system — its lack of a central authority with effective sanctioning powers — gives states a powerful survival motive, which they can only guarantee through self-help and the maximizing of their relative material power. By the logic of this schema, politics is reduced to the struggle for power, though for Waltz this is a structural imperative whereas for Morgenthau it was a reflection of human nature.

Interestingly, the greatest impact of Waltz's ideas has come not from the substantive realist theory he advances — though its influence has by no means been insignificant — but from the model of international theory he upholds and the effect this has on prevailing understandings of politics. Within the American mainstream, the neo-positivist criteria Waltz champions have become the litmus test of legitimate theoretical inquiry, and by extension legitimate scholarly endeavour within the discipline of international relations. In responding to the challenge laid down by Waltz's resurgent realism, scholars such as Robert Keohane abandoned their prior calls for a non-state-centric theory<sup>23</sup> and accepted two features of the Waltzian paradigm: the Lakatosian model of neo-positivist theory construction, and the idea of the state as the principal actor in international relations. Keohane's 'neoliberal institutionalist' theory challenges neorealism by demonstrating that states, as rational utility maximizers, frequently cooperate with one another through the construction of international institutions that lower transaction costs, increase information, and reduce cheating.<sup>24</sup> Nothing in this challenge, however, questions the neo-positivist conception of legitimate theory and scholarship; in fact, Keohane has become a more vigorous defender of this model than Waltz. While stressing the contributions offered by 'reflectivist' critics of the American mainstream, he famously implored these critics to develop their own 'research program', based on theories with *a priori* content, that could generate empirically testable hypotheses.<sup>25</sup>

The embrace of the neo-positivist conception of theory, and the resulting vision of international political science, leads Keohane to a radically circumscribed understanding of the political, just as it did Waltz. Constructing theory along these lines is impossible without parsimonious assumptions about political deliberation and action, and where Waltz casts politics as the struggle for relative power, Keohane defines it as rational utility maximization. Careful to differentiate his approach from more extreme

<sup>23</sup> Robert O. Keohane and Joseph S. Nye (eds), *Transnational Relations and World Politics* (1972).

<sup>24</sup> For a good survey of the debate between neo-realists and neo-liberals, including all of the key articles, see David Baldwin (ed.), *Neorealism and Neoliberalism: The Contemporary Debate* (1993).

<sup>25</sup> Robert O. Keohane, *International Institutions and State Power* (1989) 174.

versions of rational choice theory, and concerned to work out from choice-theoretic assumptions to investigate bounded rationality, changes in preferences, and empathetic understanding, Keohane nevertheless characterizes politics as a strategic game, a game in which 'actors in world politics tend to respond rationally to constraints and incentives' and changes 'in the characteristics of the international system will alter the opportunity costs to actors of various courses of action'.<sup>26</sup> This conception of politics informs all of Keohane's analyses of international regimes, of which he is rightly considered a pioneer. But on the rare occasion when he addresses the definition of politics explicitly, the boundaries between his position and Waltz's blurs, with him identifying politics in any situation where one actor exerts power over another. The neatest way to reconcile these ideas, and a way that pays no insult to Keohane's framework, is to say in that in his work politics is characterized as a strategic game between rational egoists in which the competition for, and exercise of, power in an ever present strategic technique and resource.

In the past five years, the paradigmatic hegemony of neorealism and neoliberal institutionalism has been challenged from a variety of quarters.<sup>27</sup> My concern here is with that laid down by Moravcsik in his ambitious attempt to articulate a new liberal theory of international politics. Debate within the discipline of international relations has been impoverished, Moravcsik claims, by the failure of liberals to articulate liberal theory as a positive social scientific paradigm. This failure has not only privileged neorealism, rational institutionalism, and constructivism through 'omitted variable bias', it has also 'permitted critics to caricature liberal theory as a normative, even utopian, ideology'.<sup>28</sup> As we have seen, in the American mainstream such caricaturing places a theory outside the bounds of legitimate international political science, and Moravcsik's strategy has been to accept, and thus reinforce, these criteria and to disarm the critics by reformulating liberal international relations theory 'in a nonideological and nonutopian form appropriate to empirical social science'.<sup>29</sup> Just as Morgenthau abandoned Carr's vision of a science of international politics that brings together the explanatory and the normative, now Moravcsik abandons the classical understanding of liberal theory as both descriptive and prescriptive.

From an explanatory standpoint, the new liberal theory advanced by Moravcsik contains much that is innovative and insightful. The theory rests on three core assumptions. The first holds that the 'fundamental actors in international politics are individuals and private groups, who are on the average rational and risk-averse and who organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and variations in societal

<sup>26</sup> *Ibid.*, at 104.

<sup>27</sup> For an account of the challenges presented by postmodernism, critical theory, and, most recently, constructivism, see Price and Reus-Smit, 'Dangerous Liaisons? Critical International Theory and Constructivism', 4 *European Journal of International Relations* (1998) 259–294.

<sup>28</sup> Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics', 51 *International Organization* (1997) 514.

<sup>29</sup> *Ibid.*, at 513.

influence'.<sup>30</sup> The second proposes that '[s]tates (or other political institutions) represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics'.<sup>31</sup> The third and final assumption contends that the 'configuration of interdependent state preferences determines state behavior'.<sup>32</sup> Overall, the theory begins with purposive individuals, imagines the state as a representative institution open to capture by domestic interest groups, and understands the international system as structured by the interdependent preferences of states so constituted. As Moravcsik rightly notes, his three core assumptions are 'relatively thin and content-free', and he goes on to identify three 'variants' of liberal theory: ideational liberalism, commercial liberalism, and republican liberalism'.<sup>33</sup>

Although Moravcsik is at pains to differentiate his liberal theory from the rival paradigms of neorealism and institutionalism (and perhaps even constructivism), his underlying conception of politics differs little from Keohane's. We have seen that political deliberation, broadly conceived, should be seen as integrating four types of questions: identity (who am I/we?), purposive (what do I/we want?), strategic-instrumental (how do I/we get what I/we want?), and material-instrumental (what do I/we need to get what I/we want?). For Moravcsik, however, the first two sorts of deliberation reside in a pre-political realm, with only the third and perhaps fourth types constituting admissible political deliberation. He argues thus:

Liberal theory rests on a 'bottom-up' view of politics in which *the demands of individuals and societal groups are treated as analytically prior to politics. . . Socially differentiated individuals define their material and ideational interests independently of politics and then advance those interests through political exchange and collective action.*<sup>34</sup>

It is interesting to note, therefore, that, while Moravcsik titles his paradigm-defining article as 'Taking Preferences Seriously', his new liberal theory of international politics provides only a thin account of preferences: the ideational and material preferences of individuals, which are the bedrock of his liberal understanding of the world, are forged in a pre-political realm, and thus fall outside of the explanatory purview of his theory. It is only when we come to the secondary tier of preferences — the state preferences derived from ascendant individual or group preferences — that his theory comes close to taking preferences seriously.

Of the authors canvassed above, all are explicitly committed to formulating scientific theories of international politics. And, while their specific realist, institutionalist or liberal propositions about international life differ, they share fundamental epistemological and ontological commitments. Unlike their counterparts from the interwar period, Morgenthau, Waltz, Keohane and Moravcsik all see international political science as a narrowly defined explanatory project, one quarantined from the

<sup>30</sup> *Ibid.*, at 516.

<sup>31</sup> *Ibid.*, at 518.

<sup>32</sup> *Ibid.*, at 520.

<sup>33</sup> *Ibid.*, at 524.

<sup>34</sup> *Ibid.*, at 517 (emphasis added).

type of normative reflection now associated with political philosophy. Furthermore, although they are all ostensibly committed to developing theories of international politics, their understandings of politics are thin in comparison to those of Carr, Angell and others. Much could be said about the political, sociological and heuristic implications of these epistemological and ontological tendencies for the discipline of international relations. The remainder of this paper is concerned, however, with the implications of using these theoretical commitments as foundations for the development of international legal theory.

## 5 The Normative Limits of Liberal International Legal Theory

The retreat into pure explanatory theory undertaken by post-1945 international relations theorists is not easily followed by their counterparts in international law. At the very core of international law as a disciplinary project is a powerful, and virtually ineradicable, normative impulse. International law, as a system of norms, rules and decision-making procedures, is both a set of facts to be described and explained and the evolving embodiment of a system of prescriptions about right and wrong individual and group conduct. The indeterminacy of international law, so defined, places a premium on interpretation, and one of the principal roles of international lawyers, *qua* publicists, is to describe and explain the nature of the international legal system and the content of its norms. Whenever international lawyers engage in such interpretation, they are engaged in normative theorizing, as they are giving the prevailing regime of prescriptions a distinctive meaning and content. More than this, the dual identity of international lawyers both as academic observers of international law as an institution and as agents in the construction and evolution of that institution leads them beyond the attenuated normative theorizing of rule interpretation to the more explicit normative enterprise of rule formulation and advocacy.

International legal theorizing thus involves a distinctive form of practical reasoning, a form of reasoning that mediates between the pragmatics of social and political context, the interpretation of existing rules and norms, and the formulation of new prescriptions. To focus solely on pragmatics would reduce international law to sociology or political science, to focus on prescription alone would reduce it to moral philosophy, and the interpretation of prevailing rules inexorably draws the scholar towards both pragmatics and prescription. This form of practical reasoning — this art of mediation — is inherently difficult and uncomfortable, pulling the international legal theorist, as Martti Koskenniemi famously observed, between the poles of utopia and apologia.<sup>35</sup> Difficult and uncomfortable as it is, though, it is the pursuit of this distinctive form of practical reasoning that provides the lifeblood of international law, its disciplinary rationale, and its special contribution to international order.

<sup>35</sup> Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (1989).

Any attempt to construct a theory of international law upon the foundations of a positive international relations theory that explicitly eschews normative reflection will, by definition, lack the theoretical resources needed for practical legal reasoning in the international realm. The dangers of this are clearly apparent in Slaughter's otherwise insightful attempt to construct a new liberal theory of international law.<sup>36</sup>

Classical international law, Slaughter rightly points out, was based on certain realist assumptions about the nature of international relations, principally the idea of states as unitary, identical actors with given sets of stable preferences. International law, she claims, now rests on shaky ontological foundations because these realist assumptions no longer hold true — the institutional structures of states are often fragmented, states vary from liberal democracies to dictatorships, and common state preferences cannot be assumed. The time has come, therefore, to rethink the ontological foundations of international law and to revise it accordingly. To this end, Slaughter sets out to 'transpose' Moravcsik's liberal theory from international relations to international law, arguing that the 'bottom up' perspective offered by Moravcsik more accurately represents the contemporary state of international relations.

Building on Moravcsik's three core assumptions — the primacy of individuals and private groups; states as representatives of ascendant groups, whose preferences define state preferences; and interdependent state preferences shape state behaviour — Slaughter proposes a three-tiered conception of international law. It is important to note, however, that her departure from the idea of the state as a unitary actor is more radical than Moravcsik's. Where he simply emphasizes the primacy of individuals and private groups, the most prominent of which shape state preferences, Slaughter disaggregates the state itself, stressing the transnational linkages between the executive, legislative, administrative and judicial parts of different states. Her three tiers of international law thus consist of the following: the voluntary law of individuals and groups in transnational society; the law of transnational governmental institutions; and the law of interstate relations.<sup>37</sup> The influence of liberal thought on Slaughter's theory does not stop at the schematic level, though. Because liberal theory stresses the primacy of individuals and private groups in shaping political and legal outcomes, the traditional ordering of international law, which privileges the international public law of interstate relations, is turned on its head, with law that directly regulates individuals and groups (the first two tiers) taking precedence. Furthermore, within international public law, law that most directly affects individual–state relations is given priority, thus placing human rights law at the 'core' of international law.<sup>38</sup>

The explanatory merits of Slaughter's new liberal theory are apparent in her

<sup>36</sup> Her liberal theory is set out most clearly in Slaughter, 'International Law in a World of Liberal States', 6 *European Journal of International Law* (1995); and Slaughter, 'A Liberal Theory of International Law' (unpublished manuscript, 2000).

<sup>37</sup> Slaughter, 'International Law in a World of Liberal States', *supra* note 36, at 12–23.

<sup>38</sup> Slaughter, 'A Liberal Theory of International Law', *supra* note 36, at 12–16.

instructive research on the European Court of Justice,<sup>39</sup> but while it may make good political science, what are its merits as an international legal theory? As argued above, international legal theorists cannot easily retreat into pure explanatory theory, as their counterparts in political science have. International law has an inherent normative impulse, and Slaughter has not escaped this impulse any more than any other international legal theorist. In each of the major expositions of her theory, she moves from the articulation of a descriptive or explanatory framework to draw out certain normative implications of that framework. As she explicitly states: 'If these hypotheses hold, the next step will be to develop a corresponding set of norms within each category.'<sup>40</sup> The problem is that the positive international political science on which her explanatory theory is based gives her no philosophical resources to make these normative moves successfully. As a consequence, she inadvertently makes the classic mistake of confusing *is* with *ought*, advancing a number of normative prescriptions that simply do not follow logically from her empirical claims.

This is best highlighted by considering how she deals with three issues: the concept of international order, the '*grundnorm*' of sovereignty, and the sanctity of liberal states. On the first of these, Slaughter moves away from the conventional definition of international law in terms of its subject or source to define it instead in terms of its 'purpose and effect'. Of course, purpose and effect are not the same things — the first involves objectives, which are always normative, whether they concern stability or justice; and the second is empirical. She argues that the 'purpose and effect' of international law must be 'in conformity with a particular body of international relations theory',<sup>41</sup> presumably Moravcsik's positive liberal theory. Yet we have already seen that, as a positive theory, liberal international relations theory cannot tell us about the purpose of international law. The problems this causes Slaughter are clearly apparent when she states that the purpose of international law ought to be the preservation of international order, of which her conception is entirely normative. 'International order', she writes, 'does not simply mean peace and stability; it includes social and political justice, a measure of prosperity, and preservation of our environment.'<sup>42</sup> While these principles of international order are entirely laudable, they are not necessarily compatible with one another, as the long-standing debate between realists and cosmopolitanists testifies, and their justification cannot be derived from positive liberal international relations theory, even if some of them might be deducible from liberal political philosophy. To justify such a conception of international order, on which she wishes to base her very definition of international law, Slaughter would have to reach outside of liberal international relations theory to a set of as yet unidentified and unengaged philosophical arguments.

The same sort of problem arises when Slaughter turns her attention to the concept

<sup>39</sup> See Mattli and Slaughter, 'Law and Politics in the European Union: A Reply to Garrett', 19 *International Organization* (1995) 183–190; and Mattli and Slaughter, 'Revisiting the European Court of Justice', 52 *International Organization* (1998) 177–210.

<sup>40</sup> Slaughter, 'International Law in a World of Liberal States', *supra* note 36, at 11.

<sup>41</sup> *Ibid.*

<sup>42</sup> Slaughter, 'A Liberal Theory of International Law', *supra* note 36, at 4.

of sovereignty. As we have seen, one of the principal innovations of her liberal theory of international law is the disaggregation of the state into its component legislative, executive, administrative and judicial parts, and the positing of a complex of transnational connections between these component parts in different states. Quite rightly, she asks: 'If the State is disaggregated as a positive matter, can sovereignty continue to attach to a unitary State as a normative principle designed to constitute the State as a unitary entity?'<sup>43</sup> In answering this question, she introduces Daniel Deudney's concept of negarchy, the idea that liberal states form a transnational polity in which there is an 'arrangement of institutions necessary to prevent simultaneously the emergence of hierarchy and anarchy'.<sup>44</sup> Within liberal states, this principle entails 'the limitation of State power by establishing multiple institutions designed to both overlap and complement one another', and in the transnational polity of liberal states Slaughter believes that it requires 'the vigorous interaction of the governmental institutions of participating States with one another in as many combinations as possible'.<sup>45</sup> Having already made the move from describing the disaggregated world of liberal states to the promotion of a negarchic transnational institutional structure, Slaughter takes her normative theorizing one step further to conclude that 'the task is then to redefine sovereignty to conform to the ordering principle of negarchy'.<sup>46</sup> This would entail, first, a principle of non-interference in the legislative, executive and judicial functions of liberal states, and, secondly, protection of 'the interaction of these disaggregated State institutions with one another as centers of authority in a transnational polity'.<sup>47</sup>

As Slaughter clearly understands, the proposition that liberal states are institutionally disaggregated and transnationally permeated and connected is an empirical claim, whereas the idea that sovereignty should be revised to conform to this negarchic structure is a normative one. The derivation of the latter from the former is perhaps the clearest case of conflating *is* with *ought* to be found in her work. One can imagine two sets of alternative normative arguments, both of which Slaughter fails to confront. It is possible to acknowledge the current disaggregation of the state, but to see this as a bad thing that conventional ideas of sovereignty must be bolstered against. The ultranationalists on the margins of most liberal states uphold versions of this argument. In contrast, it is possible to argue that the values of international order championed by Slaughter herself — namely, the preservation of peace, promotion of social and political justice, the cultivation of prosperity and the preservation of the environment — are poorly served by redefining sovereignty to normatively and legally sanctify the negarchic structure of the liberal transnational polity. Theories of the liberal peace have at best proven empirically dubious, the domestic and international human rights record of the United States, as the archetypal liberal state,

<sup>43</sup> Slaughter, 'International Law in a World of Liberal States', *supra* note 36, at 26.

<sup>44</sup> Deudney, 'The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-Union, Circa 1787–1861', 49 *International Organization* (1995) 208.

<sup>45</sup> Slaughter, 'International Law in a World of Liberal States', *supra* note 36, at 27.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, at 27.

is less edifying than the rhetoric suggests, the gulf between rich and poor in the major liberal states continues to grow, and the willingness of the G7 states to take effective measures to prevent global warming is far from encouraging. The step that Slaughter so easily takes from the empirical claims of liberal theory to normative prescriptions about sovereignty turn out to be but one possible line of empirical and philosophical argument, and there is nothing in her theoretical repertoire to convince us why this line is to be preferred over others.

The domestic, transnational and international institutional characteristics and tendencies of liberal states form the bedrock of Slaughter's theory of international law, yet she steadfastly denies that her theory is 'automatically privileging "liberal states" over "nonliberal" states', and she insists that it 'does not endorse any general set of normative prescriptions; positive Liberal IR theories can be adduced on both sides of virtually any current legal debate'.<sup>48</sup> The problems with this response are clear. First, despite her protestations, her theory does in fact privilege liberal states; it does so ontologically, by using the institutions and political tendencies of liberal states as the empirical reference point, and it does so normatively, by deducing, however problematically, a concept of sovereignty that protects such institutions and tendencies. Secondly, her normative prescription of a negarchic conception of sovereignty belies her claim that liberal theory 'does not endorse any general set of normative prescriptions'. And, finally, the claim that 'Liberal IR theories can be adduced on both sides of any current legal debate' misses the point. To the extent that legal debate is confined to questions of how international and transnational legal institutions work, it may or may not be true that liberal international relations theories can be invoked on either side. But to the extent that legal debate ventures into the realms of norm interpretation and formulation, these theories will be quite insufficient. When positive international relations theory is used uncritically to spawn normative prescriptions for the global order, the institutional structures and processes it emphasizes shift from being empirical facts to political values. But in the absence of the type of philosophical reasoning explicitly excluded from the purview of positive theory, these values lack any foundation other than assertion.

## 6 The Art of Bridge-building

In recent years there have been sustained calls for new bridges to be built between the disciplines of international relations and international law, calls that have come from both sides of the disciplinary divide. Kenneth Abbott made an early plea for a dialogue based on the insights of regime theory, arguing that it could provide international lawyers with a rigorous, non-idealistic response to sceptics of international law, a functional explanation of the role of rules in international life, and greater insights

<sup>48</sup> Slaughter, 'A Liberal Theory of International Law', *supra* note 36, at 22.

into the conditions governing the ‘creation and supply’ of such rules.<sup>49</sup> Slaughter first called for a rapprochement based on the application of liberal international relations theory to international law in 1993, well before Moravcsik’s fully fledged articulation of such a theory had been published.<sup>50</sup> Keohane sought to modify the ‘instrumentalist optic’ of regime theory by integrating insights from the ‘normative optic’ employed by international legal scholars, though his strategy of incorporation remained distinctly rationalist.<sup>51</sup> Most recently, Slaughter, Tulumello and Wood have identified three areas of common interest to the two disciplines: international governance, social construction through shared norms, and liberal agency. They then proceeded to outline a common research agenda focused on ‘regime design, process design, discourse of the basis of shared norms, transformation of the constitutive structures of international affairs, government networks and embedded liberalism’.<sup>52</sup>

Remaining true to her original vision, and working within the subfield of liberal agency theory that she, Tulumello and Wood outlined, Slaughter has done more to construct the foundational piers of new bridges between international relations and international law than perhaps any other scholar. Her strategy, however, has been to work out from a particular model of political science and conception of politics, and to treat legal institutions, processes and norms as empirical data to be explained. Because this model and conception are proudly positive and explicitly eschew normative reflection, Slaughter lacks the philosophical resources to reason normatively, yet her identity as an international lawyer, and the logic of her home discipline, draw her inexorably into such reasoning. The result is a liberal international legal theory that makes good political science, at least from the perspective of the American mainstream, but normatively weak international legal theory. In the end, this amounts not to bridge-building but to an attempt to draw international law across the river on to the turf of American political science, in the process losing much of what is distinctive and important about international legal theory.

A potentially more fruitful approach to bridge-building would begin with a systematic reflection on, and reconsideration of, the nature of the political and the legal and on the nature of the two disciplines as scholarly enterprises, for it is here that genuine points of convergence exist. As we have seen, there are good reasons to believe that politics is more than instrumental and strategic action, that it also involves prior and more fundamental concerns about individual and group identities and about individual and collective purposes. Politics thus resides at the intersection of self-interest and power, on the one hand, and morality and ethics, on the other.

<sup>49</sup> Abbott, ‘Modern International Relations Theory: A Prospectus for International Lawyers’, 14 *Yale Journal of International Law* (1989) 335–411, at 404–411.

<sup>50</sup> Slaughter Burley, ‘International Law and International Relations Theory’, 87 *American Journal of International Law* (1993) 205–239.

<sup>51</sup> Keohane, ‘International Relations and International Law: Two Optics’, 38 *Harvard International Law Journal* (1997) 487–502.

<sup>52</sup> Slaughter, Tulumello and Wood, ‘International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship’, 92 *American Journal of International Law* (1998) 367–397, at 369.

Classical international relations scholars not only recognized this about the nature of politics, they crafted a discipline that was itself engaged in politics — international political science was not only an explanatory enterprise, it was a normative one, as only through the dialogue of explanation and ethics could the discipline realize its commitment to practical international change. There are signs that scholars of diverse theoretical commitments may now be willing to push the discipline back towards such a self-understanding. Not only have critical theorists called for a blending of sociological, normative and praxeological inquiry,<sup>53</sup> but in a new departure Keohane has challenged political scientists to help design a new generation of global institutions that enable ‘the world to have . . . “a new birth of freedom”’, a project that ‘requires both normative and positive analysis’.<sup>54</sup>

Just as politics straddles ‘reality’ and ‘morality’, so too does law. As Jürgen Habermas observes, the individual encounters law both as a system of social facts — sanctionable rules and impartial procedures — and as a normative system, a body of rules that command legitimacy.<sup>55</sup> Domestic and international, compliance with the law never rests solely, or even principally, on coercion; actors feel obliged to obey the law, and their sense of obligation ultimately rests on the moral standing of the law. This admixture of ‘facticity and validity’ is reflected in the nature of international law as a discipline. As argued above, international law is more than an explanatory project, more than the simple exposition of institutional architectures, processes and rules. To begin with, such exposition is necessarily a normative enterprise, as the description of authoritative institutions and norms lends them meaning and thus value. The normativity of international law is even more pronounced, though, when it comes to rule formulation and advocacy. Here international legal theorists are engaged in a process of mediating between the pragmatic assessment of social and political reality, the interpretation of existing rules, and the articulation of new norms.

If we understand the nature of politics and law, as well as the disciplines of international relations and international law, in this manner, we see that they converge around a particular type of reason — practical reason. As forms of deliberation and modes of social action, politics and law do not just involve the strategic interaction of rational egoists and the formulation and maintenance of narrowly utilitarian regulations, they are socially constitutive, in the sense that mediates between individual and group self-interest and utility, on the one hand, and ethical conceptions of what is right and good, on the other. In so doing, they jointly construct the political and legal institutional bases of social order. We often forget that the disciplines of international relations and international law arose as formal intellectual sites for the pursuit of such reason, and were thus integral to, not separate from, how late modern society confronted the crisis of social order that attended the twentieth century. To be sure, the foci of each discipline differed, even if they

<sup>53</sup> A. Linklater, *The Transformation of Political Community* (1998).

<sup>54</sup> Keohane, ‘Governance in a Partially Globalized World’ (address to the American Political Science Association Annual Convention, 31 August 2000), [www.apsanet.org/mtgs/keohane.cf](http://www.apsanet.org/mtgs/keohane.cf).

<sup>55</sup> Jürgen Habermas, *Between Facts and Norms* (1996).

overlapped, with international relations primarily concerned with identifying the emergent potentialities for minimizing conflict, facilitating cooperation, and promoting global justice, and international law focused on the institutional embedding of legitimate standards of state conduct, individual conduct and state–society relations.

Systematically exploring this zone of convergence represents fertile terrain for dialogue between the two disciplines. Specifying what this might mean in terms of a fully fledged research agenda is beyond the scope of this article, but the following questions might usefully orient the pursuit of such an agenda. By what standards are we to judge the realization of peace and stability, the value of international cooperation, and the nature of global justice? What are the practical opportunities for, and constraints upon, minimizing domestic and international conflict, facilitating international cooperation, and promoting social and economic justice? What is the relationship between the ethics of peace, the values of cooperation, and the nature of justice, on the one hand, and international law, on the other? And how can law mediate between the practicalities of global political circumstances and the ethics of peace, cooperation and justice? Not only do these questions place the forms of practical reason that first animated the two disciplines back on centre stage, but they are questions of central importance to the promotion of meaningful international order.

## 7 Conclusion

In 1935 George Dangerfield published his classic work on the decline of the UK Liberal Party, *The Strange Death of Liberal England*. He wrote:

Liberalism in its Victorian plenitude had been an easy burden to bear, for it contained — and who could doubt it — a various and valuable collection of gold, stocks, Bibles, progressive thoughts, and decent inhibitions. . . . But somehow or other, as the century turned, the burden of Liberalism grew more and more irksome; it began to give out a dismal, rattling sound; it was just as if some unfortunate miracle had been performed upon its contents, turning them into nothing more than bits of old iron, fragments of intimate crockery, and other relics of a domestic past.<sup>56</sup>

Something similar has occurred to liberal international theory, first in international relations, and by extension in international law. Not that the ‘new liberalism’ is without analytical or explanatory merit, far from it. Rather, the impulse to follow neorealism and institutionalism into the realm of purely positive theory has ‘performed some unfortunate miracle upon its contents’. In its classical guise, liberal international political theory was a political theory in the full sense of the word — it was both explanatory and normative; it contained an account of the nature of international politics as well as a normative philosophy, however problematically formulated these might have been. The pursuit of a ‘non-ideological’ and ‘non-utopian’ liberal international theory has sapped liberalism of its characteristic identity and essence. Interestingly, though not surprisingly, both Moravcsik and Slaughter

<sup>56</sup> George Dangerfield, *The Strange Death of Liberal England* (1961) 20.

seem ready to abandon the label 'liberal' if pushed — calling it 'societal', 'social purpose', 'state-society', or 'preference-based' theory would, they argue, leave their theory 'intact'.<sup>57</sup>

As we have seen, this article has not been primarily concerned with the implications of this 'positive' turn in liberal theory for international relations. Instead, it has focused on the effect of that theory's transposition into international legal theory. Positive international relations theory lacks the philosophical resources to inform the articulation of a mature liberal theory of international law, a theory that coherently mediates between the pragmatics of social and political circumstance, the practice of rule interpretation, and the prescription of new norms. Applying such a standard to liberal international theory is justified by Slaughter's work itself, which explicitly seeks to make the transition from descriptive and explanatory theory to normative theorizing. When she makes that transition — when she defines international order in normative terms, makes prescriptions for the revision of sovereignty, or privileges the experiences of liberal states — the logic of her arguments begins to wane, as the empirical propositions of liberal international relations theory cannot alone inform such prescriptions. This has implications not only for the 'new liberalism' in international studies, but also for how we go about building bridges between international relations and international law. Ridding international political science of its normative dimension and then using it as the basis for a theory of international law not only banishes international relations from the realm of practical reason, but also international law. An alternative strategy is to reassert the centrality of practical reason to both disciplines, and to forge a common research agenda across the different expressions and foci of such reason. If this is not compelling on purely intellectual grounds, the multiple challenges of reducing state and interstate conflict, enhancing social and economic justice, and transforming the relationship between humans and nature ought to recommend it.

<sup>57</sup> Moravcsik, 'Taking Preferences Seriously', *supra* note 28, at 548. Slaughter writes that the 'theory is ultimately less important than the theory itself'. See Slaughter, 'A Liberal Theory of International Law', *supra* note 36, at 2.