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GERRY SIMPSON
GREAT POWERS AND OUTLAW STATE:
UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER,
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*Mikael F. Nabati**

Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order is best summarized by the author himself as “an analysis of how the international sovereignty order works.”¹ One of the central issues of the book, the international legal order, is described as a product of the interaction between three languages: the language of sovereign equality, the language of Great Power “prerogatives”, and the language of anti-pluralism.

Simpson describes and analyzes this interaction through various historical periods. After a brief introduction outlining the structure of the book, Part Two defines the various meanings of sovereign equality and the notion of legalized hierarchy. Part Three discusses the relationship between sovereign equality and legalized hegemony through four constitutional moments of the international legal system. These moments are: the first recognition of legalized hegemony at the 1815 Congress of Vienna; the two Hague Peace Conferences of 1899 and 1907; the 1945 San Francisco Conference, which “reconciled the requirements of the Great Powers for legalized hegemony and the demands of the middle and smaller powers for some form of sovereign equality”² and; the 1999 Kosovo intervention, which introduced a new norm of great power interventionism and management. Kosovo was also significant in that it facilitated the shift from a charter-based hegemony to regional hegemony.

Part Four examines anti-pluralism, the second form of legalized hierarchy. The section is organized around three periods: 1815-1839, when the international legal order was divided between a European-centred Family of Nations and the non-European zone of semi-sovereign, unequal or uncivilized states; the 1945 San Francisco Conference, where “a new standard of civilization based on democratic governance was rejected in favour of a pluralist approach to membership [in the international society]”³ and; the late 20th century, which marks a revival of liberal anti-pluralism, as evidenced by the European Union attitude towards Turkey or the Security Council enforcement actions against Iraq, Haiti and Sierra Leone. Part Five concludes with an analysis of the 2001 intervention in Afghanistan, which exemplifies new developments in the treatment of outlaw regimes according to Simpson. Finally, a bibliography lists more than 400 publications relevant to the study of great powers and outlaw states.

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¹ Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004) at 17.

² *Ibid.* at 165.

³ *Ibid.* at 274.

In *Great Powers*, Simpson challenges the doctrine of sovereign equality – the idea that international law is a system where all states are equal and possess equal rights and duties in the international order. The doctrine of sovereign equality, he argues, is not irrelevant. Rather, it is incomplete to the extent that it fails to explain the presence of legal distinctions that operate within the international community. In this light, the orthodox conception of international law as a “language of equality” must be reformulated to account for the existence of hierarchical and hegemonic tendencies within international society.

Simpson's central thesis is that “the international legal order is an anarchical system with constitutional pretensions to egalitarianism but one in which legal hierarchies are present, if muted.”⁴ Accordingly, he argues that the tensions, struggles and dialectic between equality and inequality have constituted the very essence of international law since at least 1815. Although states are formally equal, he identifies two forms of legalized hierarchies: great power prerogatives (or legalized hegemony) and outlawry (or anti-pluralism).

Legalized hegemony is

the existence within an international society of a powerful elite of states whose superior status is recognized by minor powers as a political fact giving rise to the existence of certain constitutional privileges, rights and duties and whose relations with each other are defined by adherence to a rough principle of sovereign equality.⁵

These great powers see themselves as acting in the shadow of international law, on behalf of a community of interests or even humanity itself; not due to narrow self-interest. Accordingly, small or middle powers defer to great powers with respect to both the creation and the application of international law.

Anti-pluralism is “the practice of making legal distinctions between states on the basis of external behaviour or internal characteristics.”⁶ Whereas pluralism organizes international society according to principles of state equality and diversity, anti-pluralism “denies certain states the right to participate fully in international legal life because of some moral or political incapacity such as lack of civilization, absence of democracy or aggressive tendencies.”⁷ Anti-pluralist theory divides international society between two groups of states: law-abiding, civilized, democratic states and delinquent, rogue, uncivilized, outlaw states.

The history of the international legal order, according to Simpson, illustrates the continuing tension that exists between notions of legalized hegemony, anti-pluralism and sovereign equality. The co-existence of the pluralist/egalitarian and the anti-pluralist/hegemonic aspects of the international system constitute juridical sovereignty: “a sovereignty regime in which the rights and duties of states can vary.”⁸

⁴ *Ibid.* at 67.

⁵ *Ibid.* at 68.

⁶ *Ibid.* at xii.

⁷ *Ibid.* at 232.

⁸ *Ibid.* at 321.

In view of these tensions, Simpson's conclusion that the international legal order is composed of unequal sovereigns, and his book's central issue - international law's attempt to reconcile the imperatives of hegemony with the demands of equality - are highly relevant in understanding the contemporary practice of states. For example, the division between outlaw states and great powers is reflected in the current US "war on terrorism" and its accompanying "axis of evil" rhetoric. For Simpson, the 2003 Iraq War perfectly illustrates war by a great power against an outlaw state. Similarly, the notion of an elite group of nations acting in concert through legalized hegemony can be illustrated by the 1999 NATO intervention in Kosovo. More generally, the emergence within the international community of doctrines on the use of force, such as humanitarian intervention or anticipatory self-defense, as well as the development of an international criminal law, all signal a challenge to pluralist and egalitarian conceptions of international society.

In analyzing the interplay between the three languages of equality, legalized hegemony and anti-pluralism, Simpson adopts an interdisciplinary perspective that blends international law, international relations and the philosophy of law. As noted by James Crawford in his foreword, Simpson's methodology may be characterized as a "descriptive sociology of the international legal system."⁹ Simpson is not concerned with "whether the legalized hegemony of the great powers has had good consequences for the international order (producing stability, for example) or whether some states *ought to be* treated as outlaws."¹⁰ Rather, "[t]his book ... is about the operation of norms in history or through history."¹¹

⁹ *Ibid.* at vii.

¹⁰ *Ibid.* at 17.

¹¹ *Ibid.* at 230.