

TOWARD A PRAGMATIC MORAL THEORY OF STATE SOVEREIGNTY

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It is frequently noted that the prerogatives of sovereign states—in particular, the right of nonintervention—often shield human rights violators behind national borders and obstruct efforts to protect individuals from systematic rights violations. One response to this problem is to defend a right of armed humanitarian intervention.¹ But such a right comes with its own set of significant problems. States might be tempted to co-opt a right of intervention to use as a cover to pursue ‘neoimperialist’ interests.² More generally, resort to force is never an appealing option and the numerous negative consequences of armed intervention make it an unlikely means to improving our social reality.³ Consequently, we should exhaust all alternate options for protecting human rights before committing ourselves to a policy of armed intervention. My preferred way out is to look for institutional solutions that both preempt the need for armed intervention (by addressing the underlying problems that make massive human rights violations more likely, e.g., economic underdevelopment, low democratization, and heavy dependence on resource exports) and are capable of halting rights violations in progress with minimal use of force.⁴ A promising option here is to look for ways to reform the institution of state sovereignty. What we need is a sovereignty institution that makes sovereign statehood safer for individuals’ human rights.

Several theorists have proposed ways to reform the institution of sovereignty to facilitate the improvement of human rights protection. Prominent among these are proposals to rethink who should be the primary holders of sovereignty (including sovereignty-sharing arrangements)⁵ and theories providing reasons for limiting sovereigns’ claims to

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- 1 See, e.g., Shue 2004; Tesón 2005; and Wheeler 2000.
- 2 Cf. Byers and Chesterman 2003
- 3 Cf. Miller 2003; and Welsh 2004b.
- 4 Cf. Pogge 2001; and Tan 2006.
- 5 See Pogge 2002; Keohane 2003; Krasner 2004; and Krasner 2005.

unconditional internal autonomy.⁶ Perhaps the most promising option among those available is Allen Buchanan's proposal of a 'normativized account of recognitional legitimacy'; that is, a plan to include explicitly moral criteria among the conditions states must meet to gain recognition as sovereign.⁷ However, while theoretically creative and normatively incisive, Buchanan's account suffers from a major shortcoming, even on its own terms: it's not realistic enough to provide a practicable strategy for making sovereignty safer for human rights. Thus, although Buchanan's emphasis on reforming the practice of recognition may have pointed us in a promising direction, we must ultimately look elsewhere for practical guidance.

This paper begins to lay the groundwork for the task of constructing a moral theory of sovereignty that is practical enough to ground a viable strategy for making sovereignty safer for human rights. The paper is divided into five sections. Sections 1 and 2 consider the role of non-ideal theorizing in political philosophy, while section 3 delineates the conditions a theory must meet if it is to provide practical guidance for political reform. Section 4 outlines Buchanan's account of recognitional legitimacy and then shows that it violates several conditions laid out in section 3. Section 5 provides a preliminary framework for positive theorizing about sovereignty by outlining some of the important considerations such theorizing must take into account if it is to ground a viable plan for reforming the sovereignty institution. My general conclusion is that practical moral theorizing about sovereignty is limited to proposing ways to reform the sovereignty institution that restructure political relationships so that the interests of political leaders become aligned with the protection of individuals' human rights.

1. A TAXONOMY OF MORAL THEORIZING

To begin specifying what sort of theory of sovereignty I aim to push for, it will be useful to distinguish between ideal and non-ideal moral theorizing. Conventionally, an *ideal* theory specifies a just state of affairs under the assumption that all the relevant agents fully comply with the demands posited by the theory. A *non-ideal* theory specifies which steps we should take to bring about a more just state of affairs under the assumption that we can, at best, expect only partial compliance from the relevant agents.⁸

David Estlund offers a way to distinguish moral theories along two different dimensions: whether or not the theory's demands are possible to meet, and the probability that

6 Wheeler 2000; Shue 2004; and Tesón 2005.

7 Buchanan 2004, chs. 5 and 6

8 Cf. Rawls 1971, 8–9, 215–217

its demands will be met.⁹ At the two extremes of the spectrum are utopianism and complacent realism. According to Estlund, a *utopian* theory posits moral standards that are impossible for humans to meet (and thus certain to be unrealized); whereas *complacent realism* posits moral standards that are already widely met (and thus trivially possible). Neither of these extremes is worth further consideration. Between the extremes are aspirational and concessive theories.¹⁰ An *aspirational* theory proposes moral objectives that are merely possible, that is, they are possible to meet but we have good reason to think they are unlikely to be realized. A *concessive* theory proposes moral objectives that are possible to meet and we have no good reason to think they won't be realized; in other words, it posits objectives that are likely to be realized.

How does Estlund's classification align with the conventional ideal/non-ideal distinction? It is tempting to think that the aspirational/concessive distinction maps neatly on to the ideal/non-ideal distinction. The thought here might be that objectives whose realization assumes full compliance are merely possibly met (since full compliance isn't likely to be forthcoming), whereas objectives that assume only partial compliance will probably be met (since we can count on partial compliance). But this isn't quite right. The fact that a moral objective can be achieved under conditions of partial compliance doesn't necessarily increase the probability that it will be realized. Shifting from the assumption of full compliance to partial compliance only results in proposing objectives that are less difficult to achieve. But, as Estlund notes, probability doesn't track difficulty.¹¹ For example, it would not be difficult for any member of the Michigan philosophy faculty to stand up on a seminar table and do the moonwalk, but the probability that this will happen is close to nil. So the two distinctions track different things. Estlund's distinction tracks the probability that realizable objectives will actually be achieved, whereas the conventional distinction tracks the extent of compliance assumed by the proposed objectives. Hence, ideal and non-ideal theories can be further classified into aspirational and concessive types. (The resulting two-dimensional classification is summarized in table 1.) An *ideal aspirational* theory proposes objectives that are merely possible to achieve but only under the assumption that all relevant agents meet the theory's demands. Rawls's justice as fairness is such a theory.¹² A *non-ideal aspirational* theory proposes objectives that could be met even if some agents violate the theory's demands but unlikely to be met even under

9 Estlund 2008, ch. 14

10 Estlund actually introduces these two intermediate options as 'hopeless realism' and 'hopeful realism' respectively. But the terms 'aspirational' and 'concessive'—terms Estlund later introduces—cause less confusion; so to avoid label proliferation, I'll use the latter two throughout.

11 Estlund 2008, 265

12 Rawls 1971

	Aspirational	Concessive
Ideal	Proposes objectives that are merely possible to achieve but only assuming full compliance	Proposes objectives that are likely to be achieved with full compliance
Non-ideal	Proposes objectives that are merely possible to achieve assuming only partial compliance	Proposes objectives that are likely to be achieved given only partial compliance

Table 1. Types of moral theory

this assumption. For example, numerous theorists argue that it's possible to eradicate global absolute poverty without much sacrifice, and that this could be accomplished even under conditions of partial compliance.¹³ But I think it's uncontroversially the case that achieving this goal remains highly improbable. An *ideal concessive* theory proposes objectives that are likely to meet with general compliance and thus likely to be realized.¹⁴ A *non-ideal concessive* theory proposes objectives that will probably be realized even if some agents are likely to violate the theory's demands.

2. NON-IDEAL ASPIRATIONS AND PRAGMATIC CONCESSIONS

Much has been made of the need for non-ideal theorizing in global justice debates during recent years, and rightly so. There is a great need for non-ideal theory if we are interested in actually making progress on the moral issues we find most compelling, since full compliance isn't likely to be forthcoming. For example, the issue picked up here is how to make sovereignty safer for individuals' basic human rights, where making progress on human rights protection is the issue of concern. If we wish to make genuine, stable

¹³ See, e.g., [Sachs 2005](#)

¹⁴ As stated, Morgenthau's argument that heads of state have an overriding moral obligation to pursue the national interest might fit this bill; see [Morgenthau \(1952\)](#) But there's something weird about calling theories of this sort 'ideal'. (Indeed, this description of an ideal concessive theory is akin to Estlund's definition of complacent realism.) The term 'ideal' in the present context usually connotes 'ideally just', which Morgenthau's theory is certainly not. If what we need here is an example of an ideally *just* concessive theory, then I confess I can't think of one. In any case, I'm fine to leave this an empty set and move on. As will become apparent, it's the distinction between non-ideal aspirational theories and non-ideal concessive theories that I find interesting and useful.

progress on the human rights issue, we need to take full account of the conditions under which such progress must be made.

This isn't to say that ideal theorizing has no place in debates about global justice. It's only to say that the sort of moral theory one chooses to defend must depend upon one's objectives. Typically, theorists have reserved ideal theory for the task of specifying the states of affairs to which we should aspire, while employing non-ideal theory to specify how we should proceed amidst the injustice of our world given the fact of partial compliance. But given the two-dimensional classification specified in §1, this isn't quite right. Instead, if one's aim is to specify a state of affairs to which we can and should aspire, one should defend an aspirational moral theory. Whether one defends an ideal or non-ideal aspirational theory will depend on one's assumptions about the possibility of full compliance. One important limitation of aspirational theorizing, as Estlund notes, is its inability to propose specific prescriptions for institutional reform.¹⁵ Thus, if one's aim is to propose practicable institutional reforms meant to bring about definite (if incremental) moral progress, then one should defend a concessive moral theory. Whether one defends an ideal or non-ideal concessive theory will depend on whether one thinks full compliance is an important restriction on the demands we can reasonably impose.

I want to suggest that many theories that claim to be non-ideal retain an aspirational character and are thus more accurately described as non-ideally aspirational.¹⁶ In other words, many so-called non-ideal theories propose objectives that at most assume partial compliance but fail to consider whether these objectives are likely to be met, even under partial compliance. Unfortunately, this compromises their ability to propose practicable strategies for bringing institutions in line with the demands of justice.

This is a natural oversight. Practical strategies for institutional reform require the proposed objectives to be not only *realizable* but *likely to be realized*, otherwise the proposal is unlikely to bring about any noteworthy reform. Non-ideal theorists rightly assume that full compliance is unlikely and accordingly argue for institutional objectives that assume only partial compliance, which are easier to realize. But to infer that such objectives are likely to be realized is to succumb to the confusion noted earlier. Institutional reforms that are less difficult to achieve are not thereby more likely to be realized. Thus, although extant non-ideal theories rightly limit their sights on objectives to which there are possible routes from our current reality (which includes the highly salient fact of partial compliance), they often fail to take note of which routes are actually open to reaching those objectives. In other words, their proposed institutional reforms are *theoretically*

¹⁵ Estlund 2008, 270–271

¹⁶ I think so-called ideal theories are actually ideally aspirational.

compatible with our current reality, but not necessarily *practicable*. This failure diminishes a non-ideal theory's ability to provide practical guidance for achieving reasonable institutional objectives. And insofar as our primary concern is the actual establishment of just institutions, this is a significant shortcoming.

To illustrate what I've just said: Say I'm planning a vacation and have determined that airfares are too expensive to fly anywhere. Among the destinations that are reasonably reachable from Ann Arbor by car, I determine that Chicago is the most desirable. (I don't like driving much, so my 'radius of reasonable reachability' is quite limited). Upon querying Google Maps, I find out that the most direct route takes me along the I-94. Now suppose I'm told that the I-94 is currently closed between Kalamazoo, MI and Gary, IN. My actual travel plans must reflect this fact. Although in principle taking the I-94 remains a possible route by which one could get from Ann Arbor to Chicago (after all, I can see on a map that Chicago and Ann Arbor are linked by the I-94), if I actually want to get to Chicago, I'll have to take an alternate, more indirect route. To persist in travelling down the I-94 would be futile.

Similarly, while non-ideal aspirational theories of global justice may not instruct us to pursue unreachable moral goals, they are liable to propose paths to reachable destinations that go through stops along a merely possible route from our current reality (i.e., they tell us to take the I-94). But these theories fail to account for the places where their proposed route might be closed off to us given conditions on the ground and, thus, propose potentially futile travel plans. They fail to read the construction reports concerning the chosen route and are thereby likely to encounter insurmountable obstacles. To avoid such obstacles, a non-ideal concessive theory of global justice, after determining which moral destinations are reachable, must find out which routes to these destinations remain open to us given conditions on the ground, pick out the one that incurs the least moral cost (all else being equal), and then map out that route.¹⁷

The important distinction for the rest of the paper is that between non-ideal aspirational moral theories and non-ideal concessive, or as I will call them, pragmatic moral theories. To summarize: A *non-ideal aspirational* theory is one that acknowledges the real ways in which our current reality, specifically the fact of partial compliance, constrains the achievement of moral goals and thus specifies reasonable 'second-best' moral goals given

¹⁷ Perhaps an additional important point here, highlighted by [Coram \(1996\)](#), is the following: In addition to proposing reforms that are unlikely to be realized, standard non-ideal theories might also be guilty of proposing institutions that approximate ideal institutions as closely as the fact of partial compliance permits. But the pursuit of just outcomes in non-ideal conditions might require—perhaps is likely to require—institutions that substantially diverge from the ideal. See [Coram \(1996\)](#) for some examples.

those constraints. However, although compatible in principle with our current reality (i.e., a moral map shows a path from our starting point to the destination), these goals are often inaccessible by the proposed route due to conditions on the ground. A *pragmatic* theory is one that not only sets out reasonable moral goals given the constraints of partial compliance, but relentlessly examines the potential routes by which these goals are likely to be reached and maps out the open route(s) that incurs the least moral cost, other things being equal.

3. CONSTRAINTS ON PRAGMATIC THEORIZING

So what are the characteristics of a pragmatic moral theory? How is a pragmatic theory constrained? I think any account of pragmatic theorizing must include at least the following five criteria.

3.1. *The Political Accessibility Condition*

A pragmatic theory of justice must propose reforms that are *politically accessible*. ‘Accessible’ refers to a reform that is not only ‘compatible with human psychology, human capacities generally, the laws of nature, and the natural resources available to human beings’, but also lays along a ‘practicable route’ from our current reality to the reformed state of affairs.¹⁸ A *politically accessible* reform is one that can be successfully undertaken given the incentives of the relevant political actors and the constraints to action presented by the structure of their interactions. That is, the proposed reform must be both *incentive-compatible* and *structure-sensitive*—it must take into account both the prevalent interests of political actors and the structure of their interactions with each other.

It’s worth noting at this point that the Political Accessibility Condition precludes moral theorizing that relies on virtuous conduct by political leaders as a catalyst for achieving the specified moral goal. Although political leaders often exhibit some concern for acting morally, they are not ultimately motivated by moral considerations. Rather, political leaders are fundamentally motivated by their own political survival, a fact which doesn’t seem likely to change.¹⁹ Of course, no particular sort of behaviour follows from this motivation; one need not be thoroughly Machiavellian just because one is fundamentally concerned with one’s own political survival. The important point is that, however a

¹⁸ Buchanan 2004, 61

¹⁹ See Bueno de Mesquita et al. 2003, ch. 1

political leader behaves, his or her behaviour—including public-spirited behaviour—will be ultimately motivated by survival concerns rather than moral concerns. This means that a political leader will act morally if doing so is in his or her survival interests, but not otherwise.²⁰ Thus, a proposal that predominantly demands that political leaders act more virtuously will result in abysmal failure. Accordingly, a pragmatic theory prescribes *structural* reforms, i.e., proposals to restructure international political interactions so that political leaders will be led by their fundamental interest in their own survival to bring about a more just state of affairs. The most obvious sort of structural reform is to design institutions to adequately deal with particular global moral issues. But even here we must be careful to be pragmatic in our theorizing. The proposed institutional reform must itself be incentive-compatible and structure-sensitive. That is, it must be in the interests of political leaders to bring about such reforms and within their capability to bring them about given the collective action problems they face.

3.2. *The Robustness Condition*

A pragmatic theory must propose institutional reforms that will be robust under conditions of partial compliance. The proposed institutional reforms must be likely to be achieved and reforms that are fragile under conditions of partial compliance are unlikely to be stably realized. Institutions that yield tenuous cooperation at best and are likely to collapse under the weight of occasional defection by individual members will be little better at getting us closer to achieving our moral goals than inaccessible institutions. Thus, the goal of a pragmatic theory of sovereignty must be to discover a sovereignty institution that is likely to retain regulative force despite occasional defection from individual members.

3.3. *The Effectiveness Condition*

If implemented, a pragmatic theory's proposed reforms must be effective in bringing about the desired moral outcome. This point is likely to be obvious, but it's worth making explicit. The Effectiveness Condition would rule out proposing, for example, human

²⁰ Perhaps this claim should be moderated a little, to say that political leaders can sometimes act for moral reasons, but their capacity to do so is significantly limited by their interest in survival. Consequently, moral motivations are liable to be overcome by survival interests if the two conflict too often. Note that even the most altruistic political leader will be motivated to insure her own survival, since her ability to bring about the moral reform in which she is interested is significantly enhanced by remaining in office.

rights treaties whose monitoring and/or enforcement provisions are largely ineffective for altering states' human rights performance.²¹

The conjunction of the Effectiveness Condition with the Political Accessibility and Robustness Conditions is likely to be problematic. Especially with regard to states' human rights performance, state leaders ostensibly have little incentive to establish institutions that effectively alter their behaviour. Treaties that offer them the 'expressive benefit' of accession without requiring actual changes that could compromise the achievement of competing policy objectives are much more in line with state leaders' incentives. And even if some had incentive to establish effectively binding human rights institutions, the fact of partial compliance could make these institutions fragile in the face of defection. Consequently, pragmatic theorists might often face a dilemma between proposing reforms that are accessible and robust and proposing reforms that are effective. Should this dilemma cause pragmatic theorists to despair? I think not. Pragmatic theorizing might be able to overcome this challenge by employing different time horizons to meet these conflicting conditions. For example, it might be the case that a reform that is accessible and robust in the short term won't also be effective in the short term; but it could be effective in the long run because the implementation of reforms that are accessible and robust now might have unanticipated effects that are morally consequential later on.²² Thus, pragmatic theorists will need to be extremely contextually sensitive, to discern the right balance between accessibility, robustness, and effectiveness.

3.4. *The Moral Progress Condition*

Any pragmatic moral theory must motivate specifically *moral* progress, that is, progress toward the realization of our *fundamental* moral aspirations, such as the establishment of just institutions and respect for individual human rights. Again, this point is likely obvious, but the point can't be overstated. Just because current conditions constrain the specific demands a pragmatic theory can reasonably impose, it does not thereby resign itself to proposing ways to improve non-moral values (such as economic efficiency or the global balance of power)²³ at the expense of fundamental moral values when current

21 Evidence suggests that this has been the case with numerous extant human rights treaties up until the present (although some theorists are hopeful that this is gradually changing). See, e.g., Hathaway 2002; Hathaway 2007; and Hafner-Burton 2005.

22 Hathaway (2002) makes this point about some human rights treaties, arguing that human rights treaties were often signed by rights-violators because they were perceived to be inconsequential (and so accessible in the short term), but that their gradual entrenchment has raised behavioural expectations that could become genuinely constraining (thus, effective in the long term).

23 Or if one prefers, indirect or merely instrumental moral values.

conditions make progress on the latter seem a dim possibility. Of course, it's possible (perhaps probable) that the only means available to make (initial) moral progress may be to directly pursue non-moral progress. But in such a case, moral progress remains the ultimate goal. And if progress on moral values is accompanied by non-moral progress, so much the better. The key point here is that the proposed reform must move us in the right direction *from a moral standpoint*.

3.5. *The Provisionality Condition*

The Provisionality Condition derives from Kant's distinction, in *Toward Perpetual Peace*, between strict right and permissive right:

Although the laws cited above are objectively, that is, in the intention of the rule, *laws of prohibition* only (*leges prohibitivæ*), nevertheless some of them are of the *strict* kind (*leges strictæ*), holding without regard for differing circumstances, that insist on his putting a stop to an abuse *at once* . . . , but others . . . are laws that, taking into consideration the circumstances in which they are to be *applied*, *subjectively* widen his authorization (*leges latae*) and contain permissions, not to make exceptions to the rule of right, but to *postpone* putting these laws into effect, without however losing sight of the end; he must not postpone to a nonexistent date. . . he is permitted only to delay doing so, *lest implementing the law prematurely counteract its very purpose*.²⁴

Here, Kant distinguishes between those principles that place immediate and universal moral constraints on political action ('strict right') and those that have justice as their ultimate aim, but are nonetheless sensitive to the particular circumstances in which justice is pursued ('permissive right'). The aim of the principles of permissive right is to insure that the pursuit of justice is not hindered by the strict application of the principles of justice themselves by proposing intermediate political reforms that, if undertaken, do not close off the possibility of future moral progress. In the words of Elisabeth Ellis, 'Kant's principle of provisional right recommends that existing institutions be judged according to whether they are *consistent with the continued possibility of progress*, rather than by direct comparison with some set of ideal norms.'²⁵

²⁴ Kant 1795, 8:347, final emphasis added. Reference is to the volume and page of the *Akademie* edition of Kant's works.

²⁵ Ellis 2005, 9, emphasis added. Ellis's discussion, particularly chs. 3 and 4, provides an excellent analysis of the importance of provisional right in Kant's politics.

'Provisionality' here shouldn't be taken as synonymous with my use of 'pragmatic'.²⁶ That is, the Provisionality Condition doesn't simply state that a theory ought to propose reforms that meet the first four conditions. Rather, it places an additional constraint on the task of finding such reforms: it requires that a pragmatic theory propose robust, politically accessible, and effective moral reforms *that leave open the possibility of continued moral progress in the future*. This is an important constraint, as short-sighted theorists are liable to propose reforms whose implementation may bring short-term moral gains, but whose long-term effect is to lower the ceiling of moral possibility, leading to a plateau or possibly even regress. Indeed, there will likely be cases where the Provisionality Condition supports a policy that would be otherwise morally unacceptable if it weren't for the fact that failure to implement the policy would likely inhibit future progress. For example, in light of the contemptible history of the Ba'ath party in Iraq, numerous moral considerations might have recommended 'de-Ba'athification'—viz., abolishing the Ba'ath party from Iraqi society, banning party members from the new government, and disbanding the Iraqi army—in May 2003. But, with the benefit of hindsight, we can now see that, while it may have generated short-term gains, the policy of de-Ba'athification has created significant obstacles to long-term moral and political progress in Iraq. Given sufficient foresight, the Provisionality Condition might have advised against de-Ba'athification despite its obvious moral drawbacks.²⁷ The importance of the Provisionality Condition, then, is to limit our reform proposals to those that are likely to bring about *continued* progress.

The demand to seek long-term over short-term progress will be controversial, perhaps obviously wrong to some. Why should individuals who are suffering *now* have to make sacrifices for the sake of improving the lives of future individuals? My brief response is that pragmatic theorizing primarily focuses on proposing institutional reforms and that the task of institutional design requires that we take the long view. Institutions are persistent entities that profoundly and pervasively influence the trajectory of individuals' lives. Once entrenched, they are incredibly difficult to alter. Given these facts, it would be irresponsible to design institutions whose long-term effects predictably close off the possibility of future moral progress. This isn't to say that we should ignore the present suffering of individuals. All the Provisionality Condition requires is that pragmatic theorizing prioritize the long-term moral consequences of institutions over their short-term consequences when the two predictably diverge. Nevertheless, there are likely many ways to go about alleviating the effects of present injustice that are compatible with this requirement and we can reasonably demand that such actions be undertaken.

26 As, I think, Ellis's use of 'provisional theory' is intended to be; see Ellis (2004).

27 Thanks to Mika Lavaque-Manty for this example.

To summarize: A pragmatic moral theory must meet (at least) the following five conditions:

- (1) It must propose reforms that are compatible with political actors' incentives and sensitive to the structure of political relationships. (The Political Accessibility Condition)
- (2) It must propose reforms that are robust under conditions of partial compliance. (The Robustness Condition)
- (3) It must propose reforms that are effective in bringing about the desired moral outcome. (The Effectiveness Condition)
- (4) It must propose reforms that make clear *moral* progress. (The Moral Progress Condition)
- (5) It must propose reforms that leave open the possibility of continued moral progress in the future. (The Provisionality Condition)

I should be careful to emphasize that the five conditions delineated here do not apply to moral theorizing generally, but are specific to theories that aim to serve the very specific purpose of proposing institutional reforms that are likely to bring about moral progress under conditions of partial compliance. Moral theorizing that serves other purposes is likely to be constrained by other considerations.

4. BUCHANAN'S NORMATIVIZED ACCOUNT OF RECOGNITIONAL LEGITIMACY

Among the proposals for making sovereignty safer for human rights, Allen Buchanan's account of recognitional legitimacy deserves special attention. One reason for this is that it seeks to improve human rights protection without immediately resorting to some form of intervention.²⁸ Another reason is that Buchanan self-consciously aims to provide practicable guidance for reforming the sovereignty institution. Thus, it is worth examining whether he succeeds.

Buchanan starts by defending a justice-based conception of political legitimacy and then applies this conception to the practice of recognizing states as sovereign in an

²⁸ Keohane and Krasner's sovereignty-sharing proposals (see footnote 5 on p. 1) place some domestic authority in the hands of external entities such as the UN and regional bodies. Other proposals argue that the internal autonomy of sovereigns ought to be conditional on their capacity to protect human rights; thus, human rights violations are sufficient to justify intervention.

attempt to make the sovereignty institution more amenable to the protection of human rights. For him, '[a]n entity has political legitimacy if and only if it is morally justified in exercising political power', where 'the exercise of political power may be defined as the (credible) attempt to achieve supremacy in the making, application, and enforcement of laws within a jurisdiction.'²⁹ Buchanan's thesis is that a state only has political legitimacy if it meets a minimum threshold of justice, which he understands as the protection of basic human rights, including at least the following: a right not to be unjustly killed; rights against slavery, involuntary servitude, and forced occupations; a right against religious oppression; and a right to material subsistence.³⁰ Importantly, Buchanan rejects the consent view of legitimacy. Instead, he argues that, since the moral purpose of conferring political power upon an entity is to achieve justice and that concentrating political power in an authority's hands is necessary to secure basic human rights, an agent is justified in wielding political power if it does a reasonably good job of realizing justice through processes that are reasonably just.³¹ To square this account of legitimacy with the fundamental equality of persons, Buchanan argues that minimal democracy is a requirement of political legitimacy where feasible (i.e., without jeopardizing basic human rights). This is because democracy enables everyone to participate as equals in a process that chooses who is to wield political power, which justifies the inequality of political power.³²

Once he's set out his account of political legitimacy, Buchanan applies it to the international practice of recognizing *new* states as sovereign entities. Buchanan's proposal is to reform what Daniel Philpott calls 'the second face of authority', that is, the criteria that a polity must meet to attain recognitional legitimacy as a sovereign state and thereby acquire the prerogatives of sovereign statehood.³³ The traditional account of recognitional legitimacy is summarized by 'the principle of effectivity', which includes the following conditions: (1) a permanent population; (2) a defined territory; (3) a functional government able to exercise control over its territory; and (4) the capacity to enter into relations with other nations on its own account.³⁴ Buchanan's problem with the traditional

29 Buchanan 2004, 233. My discussion of Buchanan's view draws primarily from chs. 5 and 6 of *Justice, Legitimacy, and Self-Determination*, but I'll note other places where he offers a discussion that is particularly relevant to the point at hand.

30 See Buchanan 1999a, 53.

31 Buchanan (2004, 247). See also Buchanan (1999b).

32 Buchanan 2004, 249–258.

33 On the three faces of authority, see Philpott (2001, 15–21). Briefly, the three faces of authority correspond to the following three questions: (1) What are the polities in a given international society? (2) What conditions must be met to become one of these polities? (3) What are the essential prerogatives of these polities?

34 See Buchanan 2004, 264. There is a fifth condition—which says that a state must not come about by

account is its lack of moral content. But, as he notes, the decision to recognize a state as sovereign has profound moral implications: ‘Entities recognized as legitimate states are legally entitled to support for their territorial integrity and to noninterference in their internal affairs, and ought to be allowed to participate (in theory as equals) in the basic processes of international law.’³⁵ These powers give a state profound influence on the life chances of the individuals within its borders. Indeed, it is the recognition as sovereign of human rights-violating states that underscores the question with which this paper began: given the undesirability of resorting to armed intervention, how do we improve the protection of human rights in cases where their violation occurs within a sovereign territory and is often at the hands of officials of sovereign states? Since recognitional legitimacy has such profound moral implications, Buchanan argues that recognitional decisions should be made a matter of international *law* rather than a matter of international *politics*. In other words, the decision to recognize an entity as a sovereign state must not be left open to political judgement by sovereign state leaders; instead, the criteria for recognition must be formally codified and recognitional decisions made ‘a matter of legal obligation. . . [associated with] significant penalties on states that grant recognition when it is not warranted.’³⁶

Buchanan’s proposal is to reform the practice of recognition by making it explicitly normative. On his view, a recognitionally legitimate state must meet four criteria:

- (1) *Internal Justice Condition*: the state must protect (or must not violate) the basic human rights of its citizens.
- (2) *External Justice Condition*: the state must not violate the basic human rights of citizens of other states.
- (3) *Nonusurpation Condition*: the state must not come about by usurping a legitimate state.
- (4) *Minimal Democracy Condition*: the state must be minimally democratic.³⁷

Each and every state that meets these conditions must be granted recognitional legitimacy; no state that fails to meet these conditions should be recognized.

usurping a legitimate state—that could arguably be included in the conventional account, but it’s status isn’t clear. In any case, Buchanan later explicitly adopts this condition as the ‘Nonusurpation Condition’.

³⁵ Buchanan 2004, 266.

³⁶ Buchanan 2004, 273.

³⁷ On the first two, see pp. 269–272; on the third, see p. 275f; on the fourth, see 278f.

Each of these conditions is given a teleological justification: insofar as justice and peace are goals of the international system, a recognitional practice that employs these four conditions will promote justice and peace.³⁸ (1) and (2) are also given a rights-based justification: an entity that violates basic human rights is not justified in wielding coercive power; conferring recognitional legitimacy on a state enables it to wield coercive power without external interference; conferring this ability on a state that violates the basic human rights of its citizens thus enables the entity to wield coercive power illegitimately and makes those who recognize the state accomplices in injustice.³⁹

Although Buchanan aims to offer a moral theory of recognitional legitimacy, he is careful to note that its moral aims are minimal. He resists the temptation to make the criteria for recognition ‘so stringent as to imply that even the most admirable existing states are illegitimate.’ The proposal’s aim is to provide ‘effective incentives for improving state behavior’, and ‘the prospect of gaining the benefits of recognition can only act as an effective lever for reform if conditions for being rewarded with recognition are not so demanding as to appear unattainable or not worth the cost.’⁴⁰ Accordingly, Buchanan’s theory is non-ideal in the sense described in §2—it proposes a reform to the international practice of recognition that is compatible in principle with the fact of partial compliance. His non-ideal credentials are bolstered by the fact that his proposal’s application is restricted to ‘the practice of recognizing *new* entities that claim the status of legitimate state’, recognizing that no existing states would go in for having their status as sovereign stripped from them.⁴¹ The question now is whether Buchanan’s theory is realistic enough to be practicable. To answer this question, we must assess how well the theory does at meeting the criteria specified in §3.

4.1. *The Impracticality of Buchanan’s View*

Buchanan’s view seems to meet the Moral Progress Condition. The moral criteria he delineates would be welcome constraints on the practice of recognition from a moral point of view. By denying the rights of sovereignty to human rights-violating states, we strip state leaders of their ability to use sovereignty as a shield from punitive action. Also, the desirability of sovereignty and its perceived importance for political survival could give state leaders great incentive to insure that their state meets the conditions

38 Buchanan (2004, 271). Buchanan offers reasons for thinking that justice and peace are goals of the international system in Buchanan (1999a, §5).

39 Buchanan 2004, 270.

40 Buchanan 2004, 268–269.

41 Buchanan 2004, 260.

of recognition. Finally, by making recognition a legal rather than political matter, the proposal insures that politicians can't use recognition to serve political interests that undermine the protection of human rights.

Unfortunately, Buchanan's view violates at least three other criteria for a pragmatic moral theory. First, it is politically inaccessible. It's true that some recent work has suggested that the traditional 'Westphalian' model of sovereignty is being overtaken by a new model that includes respect for human rights as a condition of sovereignty.⁴² But such an evolution isn't enough to establish the accessibility of Buchanan's proposal.

Effective international institutions (i.e., institutions that increase the likelihood of achieving some policy objective) emerge from individual state leaders' need to coordinate policies to deal with the global challenges their states face, such as security, trade, energy, etc. Their function is to help reduce the transaction and information costs associated with cooperation, as well as enable state leaders to make credible commitments in bargaining. But joining institutions is costly; membership requires state leaders to compromise on some of their policy objectives. Thus, state leaders will be willing to commit their states to institutional membership when cooperation enables them to achieve goals they couldn't reach by unilateral action. Given the motivational primacy of state leaders' survival interest, we can infer that the policy goals state leaders seek to achieve are largely defined by the policy preferences of their supporters. Thus, state leaders will only commit their states to institutions that enhance their ability to satisfy their supporters' policy preferences and thereby increase their chances of survival.⁴³

42 [International Committee on Intervention and State Sovereignty \(2001\)](#) serves as the best example of official support for the institutionalization of such a model. Several post-Cold War interventions supported by the UN Security Council for 'humanitarian' reasons (e.g., Bosnia, Sierra Leone, Kosovo, and East Timor) seem to suggest that the right of nonintervention can't be used to shield a state in cases of massive human rights abuses; see [Talentino \(2005\)](#) and [Barkin \(1998\)](#). However, the view that the sovereignty norm has evolved to include human rights as a condition is hardly the consensus. [Krasner \(1995\)](#) and [Krasner \(1999\)](#) argue that breaches of the Westphalian rules, particularly that of nonintervention, have always occurred and, thus, don't in themselves signal any change in the prevailing sovereignty norm. [Thomson \(1995\)](#) argues that claims concerning the evolution of sovereignty are suspect because there is no adequate empirically testable conception of sovereignty. Thus, claims about changes in the sovereignty institution are empirically suspect.

43 For a similarly functional story about the emergence of international institutions, see [Keohane \(1984\)](#). One major difference between Keohane's explanation and the one given here is that Keohane speaks in terms of state interests, whereas I speak in terms of state *leaders'* interests. Why the shift, when speaking in terms of state interests is the convention? I have two reasons. First, I'm not sure what it would mean for a collective body to have interests independent of its members' interests. On my view, the state has an interest in, e.g., security only if some relevant segment of its membership have an interest in security. The question, then, is which members' interests are embodied as 'the state's interests'. More often than not, the relevant members are the ruling élite. In general, it is élites who are ultimately responsible for making and implementing policy

Given this story about the emergence of international institutions, we must ask ourselves whether Buchanan's proposed institutional reform (1) achieves a policy objective state leaders might have but are unable to achieve unilaterally, and (2) increases state leaders' chances of survival. (1) requires that individual state leaders take the protection of human rights in other states as a foreign policy objective. This seems plausible on its face, since 160 countries are party to the International Covenant on Civil and Political Rights, and 159 are party to the International Covenant on Economic, Social, and Cultural Rights, both of which are legally binding. However, the question must be whether state leaders take the protection of human rights in other states as a foreign policy objective *that overrides competing policy objectives*. This seems less plausible given even a cursory

decisions, and these are rarely submitted to a collective decision procedure that includes any significant segment of the state's population. This is especially the case when it comes to foreign policy decisions, including decisions to establish and join international institutions, which are notoriously shrouded from public scrutiny. (For evidence of this point with regard to trade policy, see [Kono 2006](#)) So it seems that state interests are more accurately described as the embodiment of state leaders' interests. Even in democracies, where domestic mechanisms exist to hold state leaders accountable to ordinary citizens, we can intelligibly talk about foreign policy decisions reflecting the interests of state leaders, since it is their fundamental interest in political survival that motivates them to choose policies that align with the expressed interest of the voters keeping them in power. For example, elites' decision to sign the Rome Treaty establishing the International Criminal Court may align with a prevailing interest among citizens to join the ICC. But, ultimately, the interests of ordinary citizens only figure into the explanation of this decision indirectly, through state leaders' fundamental interest in implementing policies that will retain support among those who are responsible for keeping them in office. Accordingly, elites will decide to join the ICC only if doing so is sufficiently important for maintaining the support needed to stay in office. When ICC membership isn't a 'deal-breaker' between politicians and their supporters, state leaders can withhold membership despite citizens' preference to join.

This connection between citizens' policy preferences, leaders' survival interests, and policy decisions brings me to my second reason for talking in terms of state leaders' interests: talking in these terms remedies a weakness in Keohane's theory that he himself identifies—viz., a failure to account for the importance of variations in domestic politics in shaping the emergence of international institutions (see the 2005 preface to [Keohane 1984](#), xiii). A theory that grounds policy decisions upon state leaders' survival interests—such as Bueno de Mesquita et al.'s (2003) 'selectorate theory'—can link up to Keohane's explanation for the emergence of international institutions with variations in domestic politics by showing how the structure of domestic selection institutions and the policy preferences of political supporters affects leaders' policy decisions. But leaders' survival interest remains a crucial piece of the explanation since it is this fundamental interest that makes them responsive to the policy preferences of their supporters. I'm not aware of any work that attempts to use the selectorate theory to explain (in greater detail) the emergence of institutions. But [Bueno de Mesquita and Downs \(2006\)](#) and [Bueno de Mesquita and Smith \(2007\)](#) offer it as a compelling explanation of intervention and foreign aid policy formation, so there does seem to be a *prima facie* case for using the theory to explain the emergence of international institutions.

Consequently, for the remainder of the paper, I'll talk in terms of state leaders' interests. Any mention of state interests should be read as shorthand for state leaders' interests.

examination of the historical record. For example, US foreign policy history is checkered with support for rights-abusing dictators who were otherwise amenable to US foreign policy objectives, as well as operations to overthrow democratically-elected governments who were deemed hostile to US interests.⁴⁴ In addition, rights-abusing states with great natural resource wealth continue to find support despite their human rights record, such as China's (among others') continued support for the Burmese military junta and the Sudanese government.

In addition, there seems to be little reason to think that Buchanan's proposal is likely to increase state leaders' chances of political survival. Indeed, there are good reasons to think that it is likely to *decrease* their survival chances. First, rights-abusing states have little incentive to sign on to reforms that will effectively prevent them from recognizing new rights-violating states. To comply with the norm would only draw greater public attention to their own rights-violating practices and endanger any perceived legitimacy they will have attained. Although the new norm isn't supposed to threaten a rights-violator's *legal* status, they will certainly fear that the new norm could arouse domestic opposition that would be sufficient to drastically limit their ability to achieve their objectives. And given that some of the most internationally influential states are among the worst rights-abusers or most prominent supporters of rights-abusers (most notably, China and Russia), Buchanan's proposal is likely to meet stiff resistance among this crowd.

Second, many states that are relatively rights-respecting at home support rights-violating states abroad for a variety of reasons. Prominent among these reasons is the gains accrued from cooperation with such states. For example, 41% of China's merchandise exports go to the US and EU, while Australia, Canada, and the US all count China as both a top-5 source of imports and a top-5 destination for exports.⁴⁵ In addition, many states with significant natural resource wealth turn out to be authoritarian, rights-abusing regimes.⁴⁶ This means that otherwise rights-respecting states must cooperate with rights-abusing states to meet their substantial natural resource needs.⁴⁷ Given that similar benefits would accrue to states who cooperate with future rights-abusing

44 Examples of the former include Fulgencio Batista, Joseph Mobutu, Pol Pot, and Sadaam Hussein (before the late-1980s). Examples of the latter include Iran in 1953, Guatemala in 1954, Democratic Republic of Congo in 1960, and Nicaragua during the 1980s.

45 See country trade profiles for Australia, Canada, China, and the US, found in the WTO's Statistics Database, <http://stat.wto.org/Home/WSDBHome.aspx?Language=>.

46 The literature on the so-called 'resource curse' is abundant. See, for example, Ross (1999); Ross (2001); Wantchekon (2002); Jensen and Wantchekon (2004).

47 Perhaps most important among these is the need for oil. Roughly 36% of the world's oil is produced by unquestionable human rights abusers (Saudi Arabia, Russia, Iran, and China), and of the other top-15 producers, Amnesty International reported serious human rights concerns in seven of them (US, Mexico, Venezuela, Kuwait, UAE, Nigeria, and Iraq). Oil data from 'Rank Order – Oil Production', *The CIA World*

regimes seeking recognition, state leaders have little incentive to withhold recognition. Were they to withhold recognition from these new rights-abusing regimes, they would forego the substantial gains from cooperating with them and severely hamper their ability to maintain support by satisfying the policy preferences of their supporters. Thus, the survival interests of politicians in rights-respecting states motivate them to recognize rights-abusers as full members of the international community.

Finally, state leaders will resist any proposal that requires them to give up discretionary control over the recognition of states, as Buchanan's does. Given that recognitional legitimacy confers upon a regime important capabilities, such as the ability to negotiate treaties on its own account and receive loans from global financial institutions such as the IMF and World Bank, the ability to extend and withhold recognition is an important bargaining chip state leaders use to extract policy concessions. This bargaining chip is an important tool for state leaders to gain the strategic advantages needed to satisfy their supporters' policy preferences and retain their support. For example, US recognition of the communist People's Republic of China and withdrawal of recognition from the nationalist Republic of China was motivated by Cold War strategic considerations, enabling the US to capitalize on Communist China's split with the Soviet Union and gain an advantage vis-à-vis their Cold War foe.⁴⁸ Russian and Chinese decisions to withhold recognition from Kosovo after its unilateral declaration of independence also seem to be motivated by strategic concerns: Russia wants to defend the claims of its ally, Serbia, and China has an interest in renouncing any precedent of unilateral secession given its territorial and constitutional disputes with Taiwan and Tibet. Without discretionary control over recognition decisions, political leaders lose an important strategic tool.

Given that human rights often take a backseat to competing policy objectives and that tying sovereign recognition to human rights protection likely decreases the survival chances of state leaders, Buchanan's proposed reform is politically inaccessible. State leaders have little incentive to establish such an institution. But the problems don't end there. Buchanan's account also runs afoul of the Robustness Condition, and perhaps the Provisionality Condition as well. Regarding the Robustness Condition, a recognitional practice that ties sovereignty to human rights protection couldn't be sustained under conditions of partial compliance. We already know that the many existing rights-violating states are almost certain to defect. But even if they weren't, the gains to be had from defection are too great to pass up. Any state who withholds recognition from a rights-abusing

Factbook, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2173rank.html>. Human rights information from *Amnesty International* (2008).

⁴⁸ Thanks to Elizabeth Anderson for bringing this example to my attention.

state would forego the immense benefits of cooperation with such states already mentioned above. Perhaps more importantly, recognizing a new state can give the recognizing state important influence in the new state and surrounding region. Since many of the current independence movements (candidates for future recognition) are in strategically important locations, such as the Balkans, Middle East, and Central Asia, quickly extending recognition to a new country can give the recognizing state a foothold in an area of strategic importance. Recognizing a new state that secedes from a rival state can also give the recognizing state important advantages. But it's not just these potential advantages that make defection tempting. It's the fact that others are likely to defect and thereby obtain the strategic advantages for themselves to the detriment of the complying state. This puts the complying state at a greater disadvantage than would have been the case had everyone complied and given up the advantages of recognizing the new state. Thus, we see that states face a Prisoner's Dilemma when it comes to recognizing rights-violating states. Buchanan's proposal is insensitive to these structural considerations and thus does nothing to restructure the situation, leaving state leaders in a situation where defection is sure to happen. Consequently, since we can't expect the proposed reform to stand up under conditions of partial compliance, the proposal is useless as a means to alter state behaviour and get us any closer to making sovereignty safe for human rights.

Finally, Buchanan's view potentially fails to meet the Provisionality Condition. Recognizing new states confers upon them status as full members of the international community. Once this status is attained, state leaders are able to negotiate treaties and join international institutions, which constrain their policy options. In seeking cooperation with other states, state leaders become accountable for their actions to those with whom they cooperate. Failing to play by the rules means forfeiting the benefits of cooperation. This situation gives states with strong bargaining positions considerable influence over the conduct of state leaders seeking their cooperation. If the political survival of powerful states' leaders depends upon delivering the public good of human rights protection abroad to their supporters, then powerful states will be able to use treaties and international institutions as levers to improve the conduct of rights-violating states.

A situation where the survival of powerful state leaders depends upon delivering social justice appears to be emerging. Some of the more powerful states, such as the United States and Western European countries, have become increasingly subject to public pressure to deliver on social justice issues, such as poverty and disease reduction, fair trade, climate change, and human rights.⁴⁹ These countries largely set the agenda for institutions such as the IMF, World Bank, and WTO. Accordingly, when a state seeks a loan from

49 See [Keck and Sikkink 1998](#)

the IMF or World Bank, or seeks to join the WTO, they become subject to the influence of states whose leaders' survival is increasingly dependent on improving human rights protection. Although conferring recognition upon rights-violators is morally unsavoury, it has the effect of bringing them into international society and making their conduct subject to certain constraints that may have been absent had rights-violators remained outsiders.⁵⁰ Were we to adopt Buchanan's proposal to universally withhold recognition from rights-violating entities seeking recognition, we would forego the capacity to use international institutions to influence their behaviour, perhaps closing off the possibility of future progress on human rights. Thus, while sub-optimal from a normative point of view, recognizing rights-violating entities can sometimes be a provisional step in the right direction.

At this point, one might object that states such as the US and EU countries don't use their influence to improve the lives of individuals abroad; indeed, they use their influence to advance their own interests often to the detriment of individuals abroad. For example, some will point to the fact that the US uses its influence at the IMF and World Bank to make loans conditional upon their preferred liberal economic policies, which includes (among other things) eliminating agricultural subsidies abroad while retaining its own, thereby harming farmers in developing countries.⁵¹ There's no denying that the powerful countries primarily use their influence to pursue the interests of their most influential interest groups. Indeed, throughout my argument, I take this as a fundamental premise. Where I depart from the objection is in thinking that elite interests in influential countries can sometimes align with improving human rights protection abroad and, further, that the area of overlap can increase as democratic leaders become increasingly accountable for the consequences of their policies abroad. The security and economic interests of state leaders give them an interest in stability in areas of strategic importance, and it is perhaps the most powerful countries wherein this interest is greatest, since their capacity to influence depends upon the existence of stable polities governed by rational actors.⁵² Human rights atrocities are inherently destabilizing and threaten the interests of powerful actors directly, like when civil conflict cuts off access to important natural resources such as oil, or indirectly, like when human rights atrocities foment rebellion and civil conflict, as well as precipitate refugee crises, all of which are destabilizing and threaten the rule of a government amenable to the interests of elites in powerful states. Thus, the leaders of

50 Thanks to Elizabeth Anderson for drawing my attention to this point.

51 See, e.g., [Oxfam America 2003](#)

52 This point is perhaps best shown by the inability of powerful states to exert influence over 'basketcase' states, such as Somalia and Taliban-ruled Afghanistan.

powerful states have an interest in minimizing the number and scope of human rights atrocities abroad as a means to protecting their security and economic interests, but only when the former threaten the latter. When this fails to be the case, we should expect powerful states to impose their preferred policies upon weaker countries, even when these are likely to harm individuals in other countries. This seems to explain why the US can insist that Mexico drop its subsidies to corn farmers while retaining their own (and thereby ruin Mexican corn farmers),⁵³ and yet cut all trade and impose sanctions on, and then intervene in an important oil-producer like Iraq. In the former case, although human rights abuses are ‘widespread and in some states systematic’,⁵⁴ the Mexican government is strong enough to control its population and thereby protect US interests in the region. However, in the latter case, Saddam Hussein’s government grew increasingly hostile to US objectives in the region. The fact that he had incited and participated in massive human rights atrocities against Iraqi Kurds was at best of secondary interest to US leaders. Thus, while punishing Hussein had the effect of halting rights-violations against Kurds, the effectiveness of any humanitarian motivation in bringing about US actions toward Iraq is probably best explained by its alignment with the security and economic interests of US élites. The difference between the two cases is that these interests were compatible with halting human rights violations in Iraq but orthogonal to the interests of Mexican farmers.

A second objection to my claim that recognizing rights-violating polities can sometimes be an appropriate provisional step in the direction of making progress on human rights comes from Buchanan. He claims that the desirability of recognition gives states enough incentive to comply with the conditions of recognitional legitimacy, thus making the practice of recognition the lever that states can use to improve the conduct of rights-violating polities. I don’t deny that the practice of recognition could provide such leverage. Indeed, this is why I only said that recognizing rights-violators can *sometimes* be an appropriate provisional step. Whether extending or withholding recognition is the right move will depend on the context. But I do have concerns about how well (or how often) Buchanan’s proposal can meet the Provisionality Condition. The main problem I see is the fact that rights-violating polities who have enough to offer to potential allies will always be able to find support from powerful rights-violating states, such as China and Russia. Take China’s continued support for Sudan as an example. While Sudan has become a pariah among Western states, China continues to take advantage of the economic opportunities vacated by Western states, including investment in Sudan’s oil

53 See Oxfam America 2003

54 Amnesty International 2008, 204.

industry and arm sales to the Sudanese government.⁵⁵ Thus, while status as a full member of the international community is certainly a big carrot for a newly-independent polity, cooperation with states who defect from Buchanan's standard for recognition will often provide enough support to permit the continuation of rights-violating policies if doing so is less costly to the new polity's leaders than meeting the conditions of full recognition.

5. OUTLINE FOR A PRAGMATIC THEORY OF SOVEREIGNTY

Buchanan's view, while initially promising, fails to be realistic enough to provide practical guidance. So what does a pragmatic theory of sovereignty look like? Unfortunately, I'm unable to propose a positive pragmatic theory of sovereignty that makes sovereignty safer for human rights. In lieu of a positive theory, I can begin to outline some of the important ways in which theorizing about sovereignty is constrained by two of the five conditions delineated above, which can serve as a guiding framework for future work on a positive theory. To briefly foreshadow what follows, I will argue that a pragmatic moral theory of sovereignty is limited to proposing ways to reform the structure of political relationships (e.g., those between citizens and their leaders or those between state leaders) so that the survival interests of political leaders become increasingly aligned with the protection of individuals' human rights.

An important implication of the Political Accessibility Condition for a pragmatic theory of sovereignty is that it limits our theorizing to options found within the framework of a system of sovereign states. This is because the institution of sovereignty protects the survival interests of leaders in important ways. Consider some of the important ways in which sovereignty protects leaders' survival interests. As Bueno de Mesquita et al. note, a state leader's survival can be threatened in three ways: domestic challenges to their leadership (e.g., electoral competition or leadership challenges within party ranks); revolutionary challenges to individual leaders and/or the type of regime over which a leader presides (e.g., coup attempts and civil rebellion and war); and external challenges from foreign opposition (e.g., armed intervention, international war).⁵⁶ The institution of state sovereignty clearly enhances a state leader's ability to confront at least two of these

⁵⁵ Indeed, this example provides further support for my earlier claim that cooperation rather than exclusion can be a catalyst for moral progress. Through cooperative relationships, the West has been able to pressure China to shift its policy of blocking UN Security Council resolutions against Sudan and begin applying modest pressure on Sudan to permit a UN peacekeeping force in the country. As China begins to apply pressure on the Sudanese government to take steps to bringing the rights violations and civil war to an end, the threat of losing Chinese business might be enough to get the Sudanese government to take steps in the right direction.

⁵⁶ Bueno de Mesquita et al. 2003, 23

sorts of threats. The external, or ‘Westphalian’ aspect of sovereignty grants a state the right of nonintervention and the corollary right of self-defence when intervention occurs.⁵⁷ Thus, a state leader is justified under international law and traditional just war theory in taking military action to protect his survival when external challenges arise. Domestic sovereignty grants a state the right to exercise effective control over the population within its territory, as well as the right to take the steps necessary to maintain territorial integrity. Thus, a leader is justified in using force to rebuff illegitimate attempts to depose him, as well as to stamp out attempts to break up the territory over which he rules.

Sovereignty also serves other important interests that are directly tied to the survival of state leaders. It is often argued that states’ rights as sovereigns are important for establishing the rule of law internationally. International legal sovereignty—i.e., recognition by other states as being juridically independent—confers international legitimacy upon a state and grants its leaders access to the process of shaping international law. This ability to enter into treaties with other states and shape the establishment of international institutions greatly increases a leader’s policy options and grants him legal standing to press for agreements that will benefit his supporters. This is perhaps especially important for protecting against domestic challenges to survival as the lives of ordinary citizens are increasingly affected by international arrangements. Without the opportunity to influence the establishment of international agreements in a way that at least mitigates the negative consequences of globalization, state leaders would likely have short political lifespans. Further, the norm of sovereign equality codified in Art. 2(1) of the UN Charter provides the élite in weak states with legal protection from the meddling of powerful states. This is important because of concerns, especially prevalent among leaders of foreign colonies, about neoimperialism.⁵⁸ Although in practice this norm is often violated, its codification provides a ground for leaders in weak states to publicly censure powerful states who meddle in their domestic affairs and call for support from more powerful allies. It also gives them a legitimate grievance around which domestic political support can be built. Finally, sovereignty legally restricts the ability of states to use force to serve their interests. This, again, is especially important for the survival of leaders in the majority of current

57 Krasner offers a useful distinction between different kinds of sovereignty: international legal sovereignty, external, or ‘Westphalian’ sovereignty, domestic sovereignty, and interdependence sovereignty. See [Krasner \(1999, 3–4\)](#). I’m not sure whether these are best viewed as distinct kinds of sovereignty, or as distinct aspects or features of a single institution of sovereignty. Keohane, for example, treats Krasner’s four kinds of sovereignty as four aspects of a unified conception of sovereignty. See [Keohane \(2003\)](#). Since I’m interested in discussing what appears to be a single institution of sovereignty with several distinct features, I’ll follow Keohane in treating Krasner’s four kinds as four aspects of a single kind.

58 [Welsh 2004b](#)

states, for whom international war would almost certainly result in job loss.

The institution of sovereignty is also perceived to have important normative value because of its close association with a right of self-determination. As Walzer put it, a state's rights to territorial integrity and political sovereignty derive from its citizens' right to 'choose their form of government and shape the policies that shape their lives.'⁵⁹ On this view, it is the moral process of individuals who share a collective life coming together to form a state that justifies a state's claim to sovereignty. Hence, sovereign statehood is perceived to have the function of protecting the integrity of communal life. Even if political leaders fail to grant self-determination claims any independent *normative* value, they likely recognize that ordinary citizens often value self-determination and therefore place great *political* value on a right of self-determination. This is to say that, to the extent that their survival depends on the support of those who value self-determination, leaders will almost certainly value sovereignty as a means to advance their supporters' desire to be self-determining.

Notice that political leaders' lack of willingness to establish institutions that potentially jeopardize their state's claim to sovereignty doesn't depend on whether sovereignty is in fact necessary to protect their survival interests in the ways mentioned here. All that matters is that they *perceive* sovereignty as an institution that serves their survival interests no less effectively than any of the alternatives. Given the foregoing, a pragmatic proposal for making sovereignty safer for human rights is limited to reforms that are compatible with and accessible from the institution of sovereignty currently in operation, since the current institution ostensibly serves and protects the survival interests of the actors who shape the constitution of international institutions. This rules out theories that reconceptualize sovereignty in radically new ways, since such theories are most probably politically inaccessible.⁶⁰

59 Walzer 2000, 53f. Note that this claim only makes sense in cases where ordinary citizens can plausibly be said to influence policy decisions

60 One example of such a theory is Pogge (2002). Pogge proposes that sovereignty be 'vertically dispersed' among 'nested territorial units' rather than residing entirely with the state, which seems to anticipate developments in the EU. But it's not clear to me that developments in the EU are actually vertically dispersing sovereignty more than they are reassigning sovereignty to a new entity on certain issues. The case of human rights protection might be an especially hard one when it comes to thinking about vertical dispersals of sovereignty. That unit which is able to impose an oppressive policy upon a population is (ostensibly) sovereign with respect to that population. A local unit that seeks to protect the human rights of its constituents but is unable to do so vis-à-vis a larger unit is not sovereign on that issue. If a larger unit is unable to stem the tide of abuse perpetuated by a local unit, it is the local unit that is sovereign rather than the former. Unfortunately, Pogge's discussion is rather sparse on the details of how a just balance of sovereignty might actually look and thus suggests little about how to overcome this obstacle.

Given that state leaders are unlikely to radically reform the current sovereignty institution, and given the reality of partial compliance, a pragmatic theory of sovereignty must seek the conditions under which state leaders are compelled to limit their own predatory behaviour and respect their citizens' human rights. There is ample evidence to suggest that this occurs when the following two general conditions hold: (1) state leaders are dependent upon citizens to pursue their objectives, and (2) citizens have credible exit threats. In particular, two theoretical frameworks highlight the importance of these conditions in limiting state predation.

Clark, Golder, and Golder present a game-theoretic reformulation of Hirschman's *Exit, Voice, and Loyalty* argument and then apply that model to the analysis of democratic transitions.⁶¹ The model offers two key insights. First, when state leaders depend upon their citizens and those citizens have credible exit threats, they must respond positively to its citizens' demands (whatever their content). In this case, state leaders value the loyalty of citizens more than they value any prize that can be had by preying upon them. Second, state leaders that do not depend upon citizens will never respond to citizens' demands, whether those citizens have credible exit threats or not. This is because autonomous state leaders place a higher value on the gains from preying upon citizens than on their loyalty.

Bueno de Mesquita et al. add support to these findings. Their 'selectorate theory' shows that political actors whose political survival depends on the support of a large segment of their domestic population are more likely to choose policies that improve the well-being of the average citizen, including the protection of human rights. However, when their political survival is insured by support from a small group of cronies, they are free to pursue policies that maximize their own personal gain and the gain of their cronies, often to the detriment of the average citizen's well-being.⁶²

Combining these insights, we arrive at the following conclusion concerning human rights and sovereignty: *Human rights will be best protected within a system of sovereign states when state leaders are forced to respond positively to citizens' demand for human rights protection. This will be the case when state leaders depend upon the support of large segments of their domestic populations for their political survival. Citizens' ability to affect*

61 Clark, Golder, and Golder (2007). Throughout the paper, the authors cite numerous empirical studies that ostensibly confirm the compatibility of the EVL framework with observations concerning the relationship between economic development and democratization, natural resource wealth and authoritarianism, foreign aid contributions and lack of democratization, and economic inequality and democracy. For Hirschman's original argument, see Hirschman (1970).

62 Bueno de Mesquita et al. (2003). Chs. 2 and 3 provide the details of the theory; the rest of the book empirically tests and confirms many of the theory's predictions concerning various issues such as regime change, economic growth, and international peace and conflict.

their leaders' survival prospects are increased when they possess credible exit threats. This conclusion doesn't yet entail any specific policy recommendations. For example, it leaves open whether or not armed intervention is able to bring about the conditions necessary to induce positive response to citizens' demands. Whether any specific policy option is able to bring about the right conditions will depend on additional empirical work. Nevertheless, this conclusion places a significant constraint on pragmatic theorizing about sovereignty and human rights: it limits the available range of reform proposals to those that are able to induce the conditions under which state leaders' survival interests force them to respond positively to citizens' demands for human rights protection.

A further important insight that is shared by these theoretical frameworks is that the protection of human rights is a structural matter; that is, whether or not state leaders undertake to protect human rights depends upon the structure of the relationship between state leaders and citizens. Thus, a pragmatic theory of sovereignty is limited in another way: it must propose reforms that are targeted at restructuring the balance of power between state leaders and citizens. This lends additional support to the idea (introduced in §3.1) that a pragmatic theory must concern itself primarily with principles for reforming institutions rather than principles meant to guide the conduct of individual actors.

6. CONCLUDING REMARKS

This paper has taken on three tasks: delineating the conditions a theory must meet to be pragmatic enough to propose practicable institutional reforms; evaluating Buchanan's normativized theory of recognitional legitimacy with respect to these criteria; and providing a framework for constructing a positive pragmatic theory of sovereignty. But much work is left to be done, in particular, the task of constructing a positive pragmatic moral theory of sovereignty. A note of encouragement to those who take up this task: pragmatic theorizing requires close interaction with political science, perhaps much closer than has customarily been the case in political philosophy. Pragmatic theorizing requires relentlessly scouring the empirical data to determine which avenues to moral progress are indeed open. What works in theory may not work in practice. Since pragmatic theorizing is primarily interested in bringing about actual moral progress, it must ultimately concern itself with what will likely work in practice.

REFERENCES

- AMNESTY INTERNATIONAL, 2008. *Report 08: The State of the World's Human Rights*. London: Amnesty International. URL: <http://thereport.amnesty.org/eng/Homepage> (accessed on 07/24/2008).
- BARKIN, J. SAMUEL. 1998. 'The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms'. *Millennium: Journal of International Studies* 27 (2): 229–252.
- BUCHANAN, ALLEN. 1999b. 'The Internal Legitimacy of Humanitarian Intervention'. *The Journal of Political Philosophy* 7 (1): 71–87.
- 1999a. 'Recognitional Legitimacy and the State System'. *Philosophy & Public Affairs* 28 (1): 46–78.
- 2004. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. New York: Oxford University Press.
- BUENO DE MESQUITA, BRUCE and GEORGE W. DOWNS. 2006. 'Intervention and Democracy'. *International Organization* 60: 627–649.
- BUENO DE MESQUITA, BRUCE and ALASTAIR SMITH. 2007. 'Foreign Aid and Policy Concessions'. *Journal of Conflict Resolution* 51 (2): 251–284.
- BUENO DE MESQUITA, BRUCE et al. 2003. *The Logic of Political Survival*. Cambridge, MA: MIT Press.
- BYERS, MICHAEL and SIMON CHESTERMAN. 2003. 'Changing the Rules About Rules? Unilateral Humanitarian Intervention and The Future of International Law'. In *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Ed. by Jeffrey L. Holzgrefe and Robert O. Keohane. Cambridge: Cambridge University Press.
- CLARK, WILLIAM R., MATT GOLDER, and SONA GOLDER. 2007. 'The Balance of Power Between Citizens and the State: Democratization and the Resource Curse'. Unpublished manuscript. URL: <http://homepages.nyu.edu/%7Emrg217/evl.pdf> (accessed on 07/24/2008).
- CORAM, BRUCE TALBOT. 1996. 'Second Best Theories and the Implications for Institutional Design'. In *The Theory of Institutional Design*. Ed. by Robert E. Goodin. New York: Cambridge University Press.
- ELLIS, ELISABETH. 2004. 'Provisionalism in the Study of Politics'. In *Problems and Methods in the Study of Politics*. Ed. by Ian Shapiro, Rogers M. Smith, and Tarek E. Masoud. Cambridge: Cambridge University Press. 350–376.
- 2005. *Kant's Politics: Provisional Theory for an Uncertain World*. New Haven and London: Yale University Press.

- ESTLUND, DAVID. 2008. *Democratic Authority*. Princeton and Oxford: Princeton University Press.
- HAFNER-BURTON, EMILIE. 2005. 'Right or Robust? The Sensitive Nature of Repression to Globalization'. *Journal of Peace Research* 42: 679–698.
- HATHAWAY, OONA A. 2002. 'Do Human Rights Treaties Make a Difference?' *Yale Law Journal* 111 (8): 1935–2042.
- 2007. 'Why Do Countries Commit to Human Rights Treaties?' *Journal of Conflict Resolution* 51: 588–621.
- HIRSCHMAN, ALBERT O. 1970. *Exit, Voice, and Loyalty: Responses to Declines in Firms, Organizations, and States*. Cambridge, MA: Harvard University Press.
- HOLZGREFE, JEFFREY L. and ROBERT O. KEOHANE, eds. 2003. *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Cambridge: Cambridge University Press.
- INTERNATIONAL COMMITTEE ON INTERVENTION AND STATE SOVEREIGNTY, 2001. *The Responsibility to Protect*. Ottawa: International Development Research Centre.
- JENSEN, NATHAN and LEONARD WANTCHEKON. 2004. 'Resource Wealth and Political Regimes in Africa'. *Comparative Political Studies* 37 (7): 816–841.
- KANT, IMMANUEL. 1795. *Toward Perpetual Peace*. In *Practical Philosophy*. Ed. and trans. by Mary J. McGregor. The Cambridge Edition of the Works of Immanuel Kant. Cambridge: Cambridge University Press, 1996. 311–352.
- KECK, MARGARET E. and KATHRYN SIKKINK. 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.
- KEOHANE, ROBERT O. 2003. 'Political Authority After Intervention: Gradations in Sovereignty'. In *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Ed. by Jeffrey L. Holzgrefe and Robert O. Keohane. Cambridge: Cambridge University Press.
- 1984. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton and Oxford: Princeton University Press, 2005.
- KONO, DANIEL Y. 2006. 'Optimal Obfuscation: Democracy and Trade Policy Transparency'. *American Political Science Review* 100 (3): 369–384.
- KRASNER, STEPHEN D. 1995. 'Compromising Westphalia'. *International Security* 20 (3): 115–151.
- 1999. *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press.
- 2004. 'Sharing Sovereignty: New Institutions for Collapsed and Failing States'. *International Security* 29 (2): 85–120.
- 2005. 'The Case for Shared Sovereignty'. *Journal of Democracy* 16 (1): 69–83.

- MILLER, RICHARD W. 2003. 'Respectable Oppressors, Hypocritical Liberators: Morality, Intervention, and Reality'. In *Ethics and Foreign Intervention*. Ed. by Deen K. Chatterjee and Don E. Scheid. Cambridge: Cambridge University Press.
- MORGANTHAU, HANS. 1952. *In Defense of the National Interest*. New York: Alfred A. Knopf.
- OXFAM AMERICA, 2003. *Dumping Without Borders*. URL: http://www.oxfamamerica.org/newsandpublications/publications/briefing_papers/art5912.html/OA-Dumping_Without_Borders.pdf (accessed on 07/28/2008).
- PHILPOTT, DANIEL. 2001. *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*. Princeton: Princeton University Press.
- POGGE, THOMAS W. 2001. 'Pre-empting Humanitarian Interventions'. In *Freedom, Power, and Morality: Essays for Felix Oppenheim*. Ed. by Ian Carter and Mario Ricciardi. London: Palgrave. 153–170.
- 2002. 'Cosmopolitanism and Sovereignty'. In *World Poverty and Human Rights*. Malden, MA: Polity Press. Originally published in *Ethics* 103(1) (1992): 48–75.
- 'Rank Order – Oil Production', *The CIA World Factbook*. URL: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2173rank.html> (accessed on 07/25/2008).
- RAWLS, JOHN. 1971. *A Theory of Justice*. 2nd ed. Cambridge, MA: Harvard University Press, 1999.
- ROSS, MICHAEL L. 1999. 'The Political Economy of the Resource Curse'. *World Politics* 51: 297–322.
- 2001. 'Does Oil Hinder Democracy?' *World Politics* 53: 325–361.
- SACHS, JEFFREY. 2005. *The End of Poverty: Economic Possibility for Our Time*. New York: Penguin.
- SHUE, HENRY. 2004. 'Limiting Sovereignty'. In *Humanitarian Intervention and International Relations*. Ed. by Jennifer M. Welsh. New York: Oxford University Press.
- TALENTINO, ANDREA KATHRYN. 2005. *Military Intervention After The Cold War: The Evolution of Theory and Practice*. Athens, OH: Ohio University Press.
- TAN, KOK-CHOR. 2006. 'The Duty to Protect'. In *Humanitarian Intervention*. Ed. by Terry Nardin and Melissa S. Williams. NOMOS XLVII. New York and London: New York University Press.
- TESÓN, FERNANDO R. 2005. *Humanitarian Intervention*. 3rd ed. Ardsley, NY: Transnational.
- THOMSON, JANICE E. 1995. 'State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research'. *International Studies Quarterly* 39 (2): 213–233.

- WALZER, MICHAEL. 2000. *Just and Unjust Wars: A Moral Argument With Historical Illustrations*. 3rd ed. New York: Basic Books.
- WANTCHEKON, LEONARD. 2002. 'Why do Resource Abundant Countries Have Authoritarian Governments?' *Journal of African Finance and Economic Development* 5 (2): 57–77.
- WELSH, JENNIFER M., ed. 2004a. *Humanitarian Intervention and International Relations*. New York: Oxford University Press.
- 2004b. 'Taking Consequences Seriously: Objections to Humanitarian Intervention'. In *Humanitarian Intervention and International Relations*. Ed. by Jennifer M. Welsh. New York: Oxford University Press.
- WHEELER, NICHOLAS J. 2000. *Saving Strangers: Humanitarian Intervention in International Society*. New York: Oxford University Press.