

State Civil Disobedience and international society

Ronnie Hjorth*

Professor of Political Science, Swedish Defence University

Abstract

This article examines the concept of State Civil Disobedience (SCD) in the context of international society. It is argued that SCD is problematic for several reasons. First, that SCD is extremely difficult to practice in an association such as international society, relying, as it does, a great deal on the policies and powers of a few dominating actors; second, that the unequal status of states makes SCD mainly an instrument of the strong, hence undermining not only the idea of civil disobedience as the strategy of the weak but also questioning the role of SCD within an international society based on the formal equality of states. It is concluded that the practice of SCD in international society requires an invigoration of international society as a moral association. A more practical alternative, it is argued, is to conceive of a limited concept of SCD confined largely to non-violent means and preferably practiced in order to resist legal anomalies.

Keywords

State Civil Disobedience; International Society; The English School; International Political Theory; Normative International Relations Theory

Introduction

This article deals with the problem of disobedience among states in international relations. More precisely it examines the preconditions for a practice of civil disobedience, mentioned in literature as State Civil Disobedience (SCD).¹ The international society tradition pictures states as acting in a normative and institutional context. As Hedley Bull famously argued, states ‘form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions’.² According to general political theory, civil disobedience necessitates a society with institutions and moral standards against which acts of disobedience can be evaluated. The point of civil disobedience is to bring about moral improvement of institutions in cases where there is no judicial redress. This article examines the conditions for states to practice civil disobedience in international society, focusing on the justification and legitimisation of such action. The international society framework is central to SCD because civil disobedience cannot be practiced in a normative vacuum but necessitates some degree of shared rules, norms, and institutions. Civil disobedience is controversial. It is a potential threat to social order but is also possibly a vitalising element.³

* Correspondence to: Ronnie Hjorth, Swedish Defence University, Drottning Kristinas väg 37, Box 27805, 115 19 Stockholm, Sweden. Author’s email: ronnie.hjorth@fhs.se

¹ Antonio Franceschet, ‘Theorizing State Civil Disobedience in international politics’, *Journal of International Political Theory*, 11:2 (2015), pp. 239–56.

² Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), p. 13.

³ Jennet Kirkpatrick, *Uncivil Disobedience: Studies in Violence and Democratic Politics* (Princeton: Princeton University Press, 2008).

Accordingly, the consequences of SCD can be both negative, posing a threat to the security of states and peoples as well as have positive consequences when contributing to improving the rules and institutions of international society for good of peoples and communities.

It is shown that when applying the notion of civil disobedience to international society a number of critical issues arise, not only about the justification and legitimacy of disobedience, but also about conceptions of international society more generally. First, the practice of legitimate disobedience in any association puts strains to bear on the rules of conduct that make up the association and this makes SCD difficult to practice in an association such as international society, relying as it does, a great deal on the policies and powers of a few dominating actors. Second, it is argued that the unequal power of states make SCD not so much an instrument of the weak but perhaps mainly an instrument of the strong, hence undermining not only the idea of civil disobedience as the strategy for the weak but also questioning the use of such a practice in an international society based on the formal equality of all states. This leads on to the conclusion that an effective practice of SCD would require a strengthening of international society as a moral association, that is, developing the set of moral norms shared by all states and functioning as a yardstick against which to evaluate disobedient acts. A more practical alternative, it is argued, is to conceive of a limited concept of SCD confined to non-violent means and preferably practiced in order to resist legal anomalies. The contention is that even if civil disobedience always is controversial and sometimes difficult to handle, it is nevertheless a sign of maturity in an open society to tolerate such action. The question is if international society such as it exists today is enough mature and open enough to cope with SCD.

To begin with some of the key ideas and theories of SCD will be reviewed followed by a discussion of the relation between SCD and order in international society. In the terminology of the English School this sections relates both 'pluralist' worries that SCD might jeopardise international order as well as 'solidarist' concerns about promoting human rights by means of exceptional actions. Next, SCD is considered in relation to the relative standing of states, focusing on status and competing 'strategic narratives' of International Relations. It is shown that the conditions for performing and accepting SCD among states are unequal, rendering SCD difficult to legitimise, particularly when there are strong competing 'strategic narratives'. The final section deals with the type of reform that may be required in order to make SCD a working practice within international society. This article does not deal at any length with the issue of disobedience among non-state actors but as other than states have rights and duties in relation to international society the practice on non-state civil disobedience should be explored as well.

State Civil Disobedience (SCD)

Disobedience among states involves a range of different actions, such as the violation of rules, the refusal to comply with international commitments, unlawful warfare, intervention, and so on. While each act will have to be analysed separately taking into account the circumstances in each case, there is nevertheless a wide variety of actions that could possibly count as acts of disobedience. The more general problem is how to distinguish the legitimate from the illegitimate, the justified from the unjustified. States seek to justify their conduct in such a way that unlawful acts are viewed as legitimate conduct; sometimes this is successful, at other times it is not. One example is the NATO bombing of Kosovo in 1999, which was later widely regarded as illegal but legitimate. The practice of intervention and the responsibility to protect in the case of Libya and Syria are more contested, while the Russian annexation of Crimea in March 2014 was rejected by a vast majority of the

United Nations (UN) General Assembly.⁴ Disobedience can of course involve other actions than interventions, such as non-compliance with UN Security Council Resolutions.⁵ Another example is the European refugee crisis in 2015 involving disobedient actions due to several states neglecting to follow the established rules. Hence, while there is not difficult to find examples of disobedience in the relations of states it remains a puzzle how practices of disobedience can be justified and legitimised.

The problem of disobedience in world politics is sometimes formulated in terms of ‘exceptionalism’ inspired by the writings of Carl Schmitt, that is, as political discretion and as a proof of factual sovereignty.⁶ This has been a central theme in much of the writing on US unilateralism in the post-Cold War era and particularly in relation to the war against terrorism.⁷ Alternatively, disobedience is viewed as a consequence of a perceived paradox within international society between obeying rules of conduct and occasional violations of particular rules for the preservation of a more fundamental order.⁸ These accounts of disobedience overlook the ethical point of view inherent in the conception of international society and, for that reason, fail to theorise a concept of legitimate and just disobedience for international society.⁹ The approach examined here involves the scaling-up of the principle of civil disobedience from the level of individuals in society to the level of states in international society. This puts an emphasis on the international society’s capacity to accommodate disobedient action as well as state’s abilities to conduct disobedience responsibly, not only taking into account of state interests but also acting out of respect for the values and principles of international society.

While international order, like any social order, necessitates the general obedience of the actors towards the rules and institutions sustaining the order, there are sometimes situations where particular rules and institutions can be justly ignored. One could say that they are then overridden by concerns or principles of higher importance. Hence, states should have a right to disobey international rules and institutions if such an act can be justified in a way that overrides the considerations upon which the rules and institutions in question are based. This is a necessary but not a sufficient claim. To begin with, such a claim will have to involve two elements: justification and legitimacy. Justification refers to the normative propositions offering arguments to support a concept or practice while legitimacy refers to general accounts of practices in relation to international society. It is important to note that SCD like any account of civil disobedience is not a way to justify law-breaking in general but only law-breaking that aims at the moral improvement of society.

⁴ Anne-Marie Slaughter, ‘Security, solidarity and sovereignty: the grand themes of UN reform’, *The American Journal of International Law*, 74 (2005), pp. 2961–70; Justin Morris, ‘Libya and Syria: R2P and the spectre of the swinging pendulum’, *International Affairs*, 89:5 (2013), pp. 1265–83; UN General Assembly A/68/262 (27 March 2014).

⁵ Antonios Txanakopoulos, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (Oxford: Oxford University Press, 2011).

⁶ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Cambridge, MA: MIT Press, 1985).

⁷ Jef Huysmans, ‘Minding exceptions: the politics of insecurity and liberal democracy’, *Contemporary Political Theory*, 3:3 (2004), pp. 321–41; Rens Van Munster, ‘The war on terrorism: When the exception becomes the rule’, *International Journal of Semiotics and Law*, 17 (2004), pp. 141–53.

⁸ Bull, *Anarchical Society*, p. 8; Fredrick G. Whelan, ‘Legal positivism and international society’, in David R. Mapel and Terry Nardin (eds), *International Society: Diverse Ethical Approaches* (Princeton: Princeton University Press, 1998), p. 43.

⁹ Ronnie Hjorth, ‘Hedley Bull’s paradox of the balance of power: a philosophical inquiry’, *Review of International Studies*, 33 (2007), pp. 597–613; Ronnie Hjorth, ‘The poverty of exceptionalism in international theory’, *Journal of International Political Theory*, 10:2 (2014a), pp. 169–87.

In order to be legitimate such improvement must be related to established norms and rules or to principles of justice that are easy to defend and accept. As argued by Christian Reus-Smit, ‘no action can be coherently described as legitimate if it is not socially recognized as such’.¹⁰ Hence, justification falls mainly into the area of normative theory and legitimacy in the realm of the empirical. For that reason the two dimensions have to be kept analytically separated. And there is of course the possibility that what is considered legitimate is difficult to justify and *vice versa*. Moreover, civil disobedience is a strategy to be employed if there is no redress. For example, SCD should be considered only if there is no legal way (judicial redress) to achieve what is desired.

The application of civil disobedience to International Relations theory has not been much developed in literature until recently and not in a way that has addressed international society theory. Robert Goodin (2005) portrays SCD as analogous to civil disobedience among individuals in a political community applying some well-known criteria of civil disobedience on international relations. These are: (i) to break the law openly and publicly; (ii) to accept the legal consequences of the action; and (iii) to be prepared to accept the same rules as any other state.¹¹ Robert Hoag (2007) looks at SCD as a way to justify humanitarian military interventions. Contrary to much of the civil disobedience literature he claims that SCD often necessitates violent means.¹² Allen Buchanan (2001) concentrates more generally on the possibility to justify illegal interventions aiming at moral improvement of the international legal system. He formulates a set of normative guidelines against which to measure attempts at illegal legal reform. In short, he argues that the inferior nature of international law – particularly the failure to live up to the rule of law – makes room for illegal reform, for instance in order to improve the rule of law:

... other things being equal, illegal acts are more readily justified if they have a reasonable prospect of contributing toward (a) bringing the system significantly closer to the ideal of the rule of law in its most fundamental elements, (b) rectifying the most serious substantive injustices supported by the system, or (c) ameliorating defects in the system that impugn its legitimacy.¹³

Buchanan rejects the arguments that occasional violations of international law are bound to lead to chaos and disorder in international relations because international law is not ‘a seamless web’, that is, violations of particular injunctions of international law do not ruin the system of laws as a whole.¹⁴

Antonio Franceshet (2015) has criticised these attempts to theorise SCD. He argues that this literature vindicates an elitist conception of disobedience when considering only the actions of strong states because it is only strong states that obtain the ‘constituent’ power necessary to effectively carry out political action of this sort. Franceshet claims that such a conception of civil disobedience misses the point that civil disobedience is a strategy mainly for the weak. He argues: ‘Politically, civil disobedience is a key way for relatively weak agents to challenge the injustices inflicted

¹⁰ Christian Reus-Smit, ‘International crisis of legitimacy’, *International Politics*, 44 (2007), pp. 157–74.

¹¹ Robert Goodin, ‘Toward an international rule of law: Distinguishing international law-breakers from would-be law-makers’, *The Journal of Ethics*, 9:1/2 (2005), pp. 225–46.

¹² Robert W. Hoag, ‘Violent civil disobedience: Defending human rights, rethinking Just War’, in M. W. Brough, J. W. Lango, and H. van der Linden (eds), *Rethinking the Just War Tradition* (Albany, NY: State University of New York, 2007).

¹³ Allen Buchanan, ‘From Nuremberg to Kosovo: the morality of illegal international legal reform’, *Ethics*, 111: 4 (2001), pp. 673–705 (p. 687).

¹⁴ *Ibid.*, p. 688.

(and tolerated) by the powerful.’¹⁵ As a way to deal with this perceived elitist conception he suggests that the important aspect is not the domestic analogy but rather to look at the distribution of two types of power, ‘constituent power’ and ‘destituent power’, the latter representing the power to ‘withdraw from the disadvantageous effects of certain international legal obligations’.¹⁶ In short, the problem according to Franceshet is that as long as SCD is linked to constituent power it remains a strategy for the strong.

The concept ‘destituent power’ (*potenza destituente*) is coined by Giorgio Agamben and is discriminated by him from two other types of power: (1) ‘constituent power’ meaning ‘the violence which makes the law’; and (2) ‘constituted power’ meaning ‘the violence that preserves it’.¹⁷ When applied to international society, ‘constituent power’ is the power that shapes the international society in cases of major reform or revolution while ‘constituted power’ is the power used to enforce rules and to manage international society institutions. One could say that a Great Power applies ‘constituted power’ when managing the system from a position of strength.¹⁸ Much the same is the case with the UNSC-resolutions issued to maintain international peace and stability. Occasionally ‘constituent power’ may be used by Great Powers in order to achieve political goals that go beyond the conservation of order and beyond the rules and institutions of international society. Accordingly, Hedley Bull claims that when a state is in the position of ‘preponderance’ it would sometimes be ‘tempted to disregard rules of law’ and ‘lay down the law to others’.¹⁹ Thus, the application of both ‘constituted’ and ‘constituent’ power resonate on established theories of international order. It is a different thing with ‘destituent’ power. Agamben claims that while both ‘constituent’ and ‘destituent’ power are examples of political actions outside of rules and order there is a fundamental difference between the two as far the aim of the action is concerned. While ‘constituent power ... destroys and always recreates new forms of law’, ‘destituent’ power works towards another end ‘deposing law once and for all’ and has nothing to do with law-making but is anarchic.²⁰ As Franceshet points out, actors that lack ‘constituent’ powers will have to rely on ‘destituent’ power. However, if such action is to be justified it nevertheless has to be motivated in relation to moral or political principles that are justifiable and shared by many. There is a difference between the conditions for performing SCD successfully and the reasons for performing SCD at all. The concept ‘destituent’ power may be useful for descriptive purposes but it does not contribute to the justification of SCD because it sets aside the normative point of view. In what sense can international society be viewed as both a political and as a moral association? The next section reviews this and how it possibly resonates with SCD.

SCD and order in international society

John Vincent once claimed that international society and the diplomatic conventions it harbours ‘provide a framework of order within which any moral claims might be met and not merely a vocabulary in which they might be articulated’.²¹ This account of international society, as representing at the same time

¹⁵ Franceshet, ‘Theorizing State Civil Disobedience’, p. 252.

¹⁶ *Ibid.*, p. 240.

¹⁷ Giorgio Agamben, ‘What is a destituent power?’, *Environment and Planning D: Society and Space*, 32 (2014), pp. 65–74 (p. 70).

¹⁸ Inis Claude, *Power and International Relations* (New York: Random House, 1962); G. John Ikenberry, *After Victory: Institutions, Strategic Restraint and the Rebuilding of Order after Major Wars* (Princeton, NJ: Princeton University Press, 2001).

¹⁹ Bull, *Anarchical Society*, p. 108.

²⁰ Agamben, ‘What is a destituent power?’, p. 1.

²¹ R. J. Vincent, ‘Western conceptions of a universal moral order’, *British Journal of International Studies*, 4 (1978), pp. 20–46 (p. 45).

a political and a moral association, has been developed by several scholars looking at the history of international society and has also inspired contemporary and forward-looking contributions to the literature on international society.²² When adding an element of moral consideration to international relations this involves questions like the one posed by Mervyn Frost: ‘What in general is a good reason for action by or with regard to states?’²³ In this way several studies dealing with the working of international society on a variety of issues have focused on both the political and moral dimension of international society invoking moral as well as political responsiveness, notably on the issue of human rights, intervention, and war.²⁴ If there is no such common normative framework, meaning that if there aren’t any shared norms and institutions, any shared moral conception within which justificatory claims can be addressed and met, or any shared and fairly common concept of international legitimacy, then the whole idea of SCD seems difficult to consider. Any ethical theory can of course be the vantage point for discussing the merit of the concept of SCD as well as the application of it in particular situations, but it is difficult to imagine how the practice of SCD could be made legitimate in the absence of an international society or theorised without an account thereof. Thus, the notion of international society is central for dealing with SCD.

The English School theory of international society involves two loosely defined positions that are helpful for dealing with SCD, ‘pluralism’ and ‘solidarism’. The base line ‘pluralist’ conception of international society is that international society should be constructed in order to reduce insecurity and preserve difference among states. Despite the urge among several authors to develop international society in a more ‘solidarist’ direction, responding to cosmopolitan and humanitarian ethics when recommending policies that would at least sometimes set state sovereignty aside for humanitarian reasons, few of them are prepared to contend that international society should not take the order of states as a central commitment.²⁵ The distinction between an international society of states and the world society of people is not always razor-sharp but is nevertheless essential and is helpful for considering a practice of SCD.

A main ‘pluralist’ worry would be that the acceptance of SCD would increase the level of violence in international society, jeopardising international order and state autonomy. Reviewing the general literature on civil disobedience there are at least two critical and somewhat contradictory positions that seem relevant when considering SCD in international society from the ‘pluralist’ point of view: First, there is the claim made by John Rawls that only legitimate and robust institutions can accommodate the practice of civil disobedience because it is the only kind of political association that can sustain civil disobedience. This is so because there is believed to be the risk that civil disobedience results in a lessened respect for law and order more generally.²⁶ Second, there is the contention of

²² Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999); David Boucher, *The Limits of Ethics in International Relations: Natural Law, Natural Rights and Human Rights in Transition* (Oxford: Oxford University Press, 2009); Andrew Linklater, *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era* (London: Polity Press, 1998).

²³ Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996), p. 9.

²⁴ R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986); Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

²⁵ Hedley Bull, ‘The Grotian conception of international society’, in Herbert Butterfield and Martin Wight (eds), *Diplomatic Investigations* (London: George Allen & Unwin, 1966), p. 52; James Mayall, *World Politics: Progress and its Limits* (London: Polity Press, 2000), p. 14.

²⁶ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972), p. 374.

Joseph Raz that the practice of civil disobedience is normally only relevant in any other kind of state than a robust liberal state which after all respects the will of the people and honours the rule of law.²⁷ As for the first point the question simply is whether international society obtains a framework robust enough to be able to sustain such a practice, or whether a notion of legitimate disobedience merely opens the door to an increased use of illegitimate actions of power and violence. As for the second point, that is, the viewpoint that civil disobedience is only called for outside of liberal institutions founded on the rule of law, the practice of legitimate disobedience becomes highly relevant to consider for international society. The working of the rule of law in international society is much disputed, and despite the fact that equality of states is often defined as equality before the law the real inequality of states often compromises this principle in practice.²⁸

Hence, SCD is challenging the ‘pluralist’ notion of international society considering whether or not international society is robust enough to manage SCD and to what extent SCD can be attempted equally by all members of international society. A crucial issue is how far international society is able to curb the policies of states and particularly the Great Powers, that is, to limit the amount of political discretion available in order to regulate the use of power within the legitimate normative framework. It is clear that Great Powers have the capabilities to wield their powers and eventually utilise a concept such as SCD in order to justify unilateral actions securing their interests, positions, and priorities. At any rate, the potential of SCD as a means seems to vary among states and is most likely to the advantage of Great Powers. Thus, the real inequality of states in the international system is likely to affect the way a principle of SCD can be applied weakening SCD as an option for all states.

‘Solidarists’ would share the ‘pluralist’ concern with international order up to a point. After all, the ‘solidarist’ position advocates peaceful and ordered relations among states and is concerned with developing the rule of law in international relations. The existing literature on SCD does not reject the ‘pluralist’ concerns but rather views SCD as a strategy for making international society more humane, for enforcing human rights, taking action against rules that are viewed as impediments of a humanitarian commitment that places the interests of individuals and peoples before the interests of governments. While not explicitly ‘solidarist’ authors such as Goodin, Hoag, Buchanan, and Franceshet share in this commitment and in the desire to morally improve international relations focusing on justice, human rights, self-protection, and resistance against unfair rules. The question is how far SCD can contribute to the desired ends and at what costs?

The following two sections deal with these problems. While the first section takes a closer look at SCD from the ‘pluralist’ perspective the next section looks at prospects for a practice of SCD in international society.

SCD, status, and narratives

Franceshet (2015) claims that civil disobedience is often viewed as an instrument for the weak and marginalised while literature on SCD rather seems to apply the framework to the strong and powerful, that is, the actors in possession of ‘constituent’ powers. Hence, the weak would have to rely on ‘destituent’ power. However, this section shows that both ‘constituent’ and ‘destituent’ power

²⁷ Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), p. 271.

²⁸ Benedict Kingsbury, ‘Sovereignty and equality’, in A. Hurrell and N. Woods (eds), *Inequality, Globalization, and World Politics* (Oxford: Oxford University Press, 1999); Ronnie Hjorth, *Equality in International Society: A Reappraisal* (Houndmills Basingstoke: Palgrave Macmillan, 2014b).

are likely to be utilised mainly by the powerful. But the distinction between strong and weak powers does not suffice for dealing with SCD in international society. Instead two other dimensions are elaborated on here in order to understand more clearly.

The first dimension is status. While the equality of states has for a long time been a central principle, states have always been graded to some extent on account of resources and capabilities as well as according to a notion of a civilisation hierarchy.²⁹ For this reason there has always been a quest for status in international society, a quest for which there is both historical and contemporary evidence.³⁰ In their book *Status in World Politics* (2014), T.V. Paul, Deborah Welch Larson, and William C. Wohlforth defines status in this context as ‘collective beliefs about a given state’s ranking on valued attributes (wealth, coercive capabilities, culture, demographic position, socio-political organization, and diplomatic clout)’.³¹ Thus, status refers to hierarchical social accounts among the members of international society. In international society, status is manifested in mainly two ways: in terms of membership in the society or ‘club’ of states and as the ‘relative standing’ within international society.³² To illustrate, membership in the UN is an example of a certain standing whereas the Permanent Five members (P5) represent a higher relative standing compared to the Elected Ten (E10) enjoying not only formal equality before the law but special rights on top of that. Recognition of statehood is necessary to be able to qualify for SCD because only states can pursue SCD while the degree of status is relative and follows from other considerations. Below, this is presented as high or low status even if there is in practice several layers of special rights in different contexts. As pointed out by Iver B. Neumann and Benjamin de Carvalho (2015), small states do not compete with Great Powers but are nevertheless likely to strive to improve their position in world affairs.³³ This reasoning affects more traditional categorisations such as the grading of powers.³⁴ Certainly, higher status enables states to exercise power, but status is a broader social conception than military and economic capabilities and is voluntarily and consensual. Therefore, reason power and status may sometimes diverge.³⁵

The second dimension concerns narrative accounts of world politics that are intended to legitimise policies. Questions of justification and legitimacy typically relate to shared values and commitments as well as to narrated accounts of the political space. The times of the great metanarratives and stories of human history and progress may be gone.³⁶ Instead, and perhaps as a result of the demise of metanarratives, there is room for competing narratives of the international. One such notion is that of ‘strategic narratives’ defined by Alister Miskimmon, Ben O’Loughlin, and Laura Roselle (2013) as ‘means for political actors to construct a shared meaning of the past, present, and future of international

²⁹ Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002); Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004); Ian Clark, *Hegemony in International Society* (Oxford: Oxford University Press, 2011).

³⁰ Erik Ringmar, *Identity, Interest and Action: A Cultural Explanation of Sweden’s Intervention in the Thirty Years War* (Cambridge: Cambridge University Press, 1996); Iver B. Neumann and Benjamin de Carvalho (eds), *Small State Status Seeking: Norway’s Quest for International Standing* (London: Routledge, 2015).

³¹ T.V. Paul, Deborah Welch Larson, and William C. Wohlforth (eds), *Status in World Politics* (Cambridge: Cambridge University Press, 2014), p. 7.

³² Paul, Welch Larson, and Wohlforth, *Status in World Politics*, p. 7.

³³ Neuman and Carvalho, *Small States Status Seeking*, p. 10.

³⁴ Martin Wight, *Power Politics* (London: Leicester University Press, 1978).

³⁵ Paul, Welch Larson, and Wohlforth, *Status in World Politics*, p.14.

³⁶ Andrew Linklater, ‘Grand narratives and International Relations’, *Global Change, Peace & Security*, 21:1 (2009), pp. 3–17.

politics to shape the behavior of domestic and international actors'.³⁷ Such narratives are both about states – what states should be like – and the character and purpose of the society of states. This article is not primarily concerned with the content of strategic narratives but with how narrative accounts may affect the possibilities for disobedient action. Below I distinguish between two major types of narratives, hegemonic narratives and counter narratives. While some states succeed in developing a hegemonic narrative other states strive to formulate counter narratives. Forming a counter narrative is an anti-hegemonic strategy but does not necessarily imply disobedience. Moreover, a state succeeding in presenting a counter narrative that gains support not only contributes to the weakening of the hegemonic narrative but may improve the state's position in the international system as well.

Combining the dimensions – status and narratives – it follows that a leading state in the global political system is one that enjoys both high status and is a leading proponent in expressing a hegemonic narrative. Such a state can use its powers in both a material sense and in shaping the narrative. By contrast, a marginalised state lacks both possibilities. However, adhering to a counter narrative does not necessarily imply low status. The powers of some states owing to their status may be combined with a counter narrative. The high status then provides the opportunities and capabilities to act and to spread a counter narrative. Similarly, low status can be combined with a hegemonic narrative. In that case the weak status limits the possibility to act, but being on the right side of world debates, may merit certain actions, for instance executing moral power. The two dichotomies reveal four different positions:

- (1) High Status – Hegemonic Narrative
- (2) High Status – Counter Narrative
- (3) Low Status – Hegemonic Narrative
- (4) Low Status – Counter Narrative

These four positions show four different opportunities to successfully practice disobedience. While disobedience is never trivial, the disobedience of leading actors, meaning those combining high status and the hegemonic narrative, is likely to be more acceptable than disobedient behaviour of the marginalised. When looking at status the distinction between the two categories does not simply mirror the realist distinction between the *status quo* and revisionist states.³⁸ Also, narratives are not necessarily related to the distribution of power in the international system but are more about the access to international legitimacy and, in short, reflect the consequences of being on the right or the wrong side of the dominant world opinion. Consequently, states with high status may contribute either to the formulation and maintenance of a hegemonic narrative, try to establish a counter narrative or, when trying to weaken a hegemonic narrative or reinterpret it, render it more difficult to legitimise policies on account of it. Looking at the P5 after the end of the Cold War, all five enjoy high status but at least Russia and China have used their position to foster counter narratives while the US, the UK, and France have maintained a hegemonic narrative of liberal internationalism and interventionism. When backed by a hegemonic narrative, concerns about disobedience become easier to appease. In other words, if disobedient action is backed both by high status and hegemonic narrative the act is probably easier to justify and legitimise. The narrative helps to legitimise whereas the status enables the state to act from a position of strength.

³⁷ Alister Miskimmon, Ben O'Loughlin, and Laura Roselle, *Strategic Narratives: Communication Power and the New World Order* (London: Routledge, 2013), p. 2.

³⁸ Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (New York: Alfred Knopf, 1967).

For states that are not able to foster a hegemonic narrative the situation is likely to be different even when backed by high status. Unless the formation of a counter narrative is successful for the legitimisation of disobedient action, high status actors may have to rely on their powers, acting from a position of material strength. It is clear that a state in opposition to the hegemonic narrative may use ‘destituent power’ in order to ‘opt out’. But even a dominant actor may occasionally rely on ‘destituent power’. While the action of dominant states would often be better characterised as ‘constituent power’ the desire to ‘opt out’, for example when disobeying particular rules, may obtain anyway and could be understood as ‘destituent power’ if the aim is not to reconstitute. Hence, states enjoying high status are in the position to recalibrate international orders and practices and may possibly be quite successful when failing to comply with international standards and norms. Thus, ‘destituent’ power is not primarily an instrument of the weak but perhaps more a strategy of the strong.

Looking at some illustrations, the position of states seems to be important for the possibilities to justify and legitimise unlawful actions. The cases are all about intervention. First, the 1999 bombings of Kosovo, the 2003 War in Iraq, and the war against terrorism, including the imprisonment of warriors at Guantanamo, can all be understood as results of US unilateralism. These are actions that are made legitimate through diplomatic effort and supported both by a hegemonic narrative (that of liberal internationalism and interventionism) and a very strong status for the US as the only remaining super power in the global political system. By contrast to the US exceptionalism of the Bush years the intervention in Libya and the policies towards Syria motivated by R2P have been met with criticism from, among others, Russia and China – reflecting a post-hegemonic international system with conflicting strategic narratives.³⁹ The R2P is thus questioned and becomes more difficult to rely on after these events. The severe refugee catastrophe following the political decay in Syria and Iraq rather seems to involve the ‘bringing home’ of the R2P when offering protection in Europe for many migrants rather than motivating military action abroad.⁴⁰ Finally, the Russian annexation of Crimea and policies towards Ukraine are clearly both illegal and illegitimate acts when judged by the UN. In the case of Russia’s policy, it makes sense to argue that Russia uses ‘destituent’ power owing to the country’s military strength and high international status. Russian attempts to construct a counter narrative based on the alleged threat from NATO against Russia and its interests seems to hold sway within Russia but have not so far gained much support internationally. As for international politics, the counter narrative invented is not a new one but rather the resurrection of a buried narrative, that of the Cold War. It is interesting to notice that even some Western authors have supported this notion and in a sense contributed to the strengthening of the counter narrative.⁴¹ During the Cold War both sides not only enjoyed high status but also shared to some extent the hegemonic discourse of the Cold War, that of super power competition and inter-systemic conflict. At least in this sense the revival of the Cold War discourse once again renders status and military capability decisive while toning down the creed of liberal internationalism. This makes it more difficult to legitimise humanitarian interventions as an instance of SCD.

For states with comparably lower status, those being the majority of states in the world, the changes of succeeding when practicing disobedience is likely to be much lower as the option of using ‘constituent’ power is rare. One possibility is to rely on legal argumentation, claiming a legal

³⁹ Morris, ‘Libya and Syria’.

⁴⁰ James Souter, ‘Towards a theory of asylum as reparation for past injustice’, *Political Studies*, 62:2 (2014), pp. 326–42.

⁴¹ Graham Allison and Dimitri K. Simes, ‘Russia and America: Stumbling to war’, *The National Interest* (April 2015).

exception, pointing to an anomaly in the legal system or addressing a controversial principle of international law where there is room for different interpretations. Antonio Tzanakopoulos has dealt with this matter in his book *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (2011). His main conclusion is that states can resist unlawful sanctions by the Security Council by disobeying. This, he argues, can and should be viewed as a ‘countermeasure’ against the unlawful act of the Council. According to Tzanakopoulos such action is *not* an instance of civil disobedience because it is carried out in response to an illegal act and is therefore within the domain of the legal; or in other words, there is still room for judicial redress.⁴² But it seems that SCD can be practiced when the matter of illegality is disputed or when there are strong and possibly legitimate moral claims against complying with sanctions. Another option to practice disobedience may offer itself in relation to hegemonic narratives. Neumann and Carvalho (2015) argue that small states may seek to increase their position in world affairs portraying themselves as ‘good’ in the sense that they capitalise on their moral authority or strives to act as ‘reliable partners in a hegemonic arrangement or within a multi-lateral set-up’.⁴³ Thus, a small state sympathetic to a hegemonic narrative could gain reputation as a moral power participating in or supporting Great Power action, for example supporting US liberal interventionism or NATO operations. Supporting such action, the small state can both gain reputation and possibly contribute to bring about moral improvement of international rules and institutions.

In conclusion, it is probably fair to claim, first, that high status is important for a successful conduct of SCD when using ‘constituent’ as well as ‘destituent’ powers and, second, that a hegemonic narrative may appease concerns about disobedience regardless of status. Thus, international society may accommodate a selective practice of SCD that is not open to all states on an equal footing. Finally, it is important to notice that the conditions for performing SCD are not relevant for the justification of the action in question. As is pointed out above, each act of SCD has to be evaluated according to moral standards and not conditions of power. The more problematic issue concerns the legitimacy of the act, because acts that are supported by a hegemonic narrative are likely to be the most widely shared. In times when there are several strong and competing strategic narratives SCD will be difficult to legitimise even when possible to justify.

The prospects for SCD in international society

Up until this point, the article has done more to criticise SCD than to contribute to theorising a working concept of SCD for international society. The main argument so far is that the real inequality of states makes SCD selective and mainly a strategy for states that enjoy high status and are supported by a hegemonic narrative. But the fact that SCD seems difficult to apply in international society is of course not an argument against thinking the matter through in a more constructive way. The question of inequality in international society is clearly a more general problem with several implications. To begin with, the degrees of inequality and the various ways inequality works in practice is a contingent but recurring element of modern international relations. The fact that states are unequal may even be considered as conditional for international society, viewing international society primarily as a means to organise plurality among states.⁴⁴ Thus, inequality is accounted for in international society theory. Buchanan’s argument that international law is not a

⁴² Tzanakopoulos, *Disobeying the Security Council*, p. xxxvi.

⁴³ Neumann and de Carvalho, *Small States Status Seeking*, pp. 10–11.

⁴⁴ Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000).

‘seamless web’ and that, therefore, occasional violation of international rules does not severely threaten the international legal order makes sense to international society theory. Accordingly, Bull would contend that even if the violation of particular rules discredits the authority of international law when repeated, occasional violations of particular injunctions of international law does not necessarily jeopardise the system of rules as a whole.⁴⁵ Moreover, international society theory accounts for a number of other institutions that contribute to upholding international order. Accordingly, the English School theorises core institutions such as Great Powers and the balance of power, both of which are examples of practices based on inequality of power. This implies that the practice of disobedience involves the role of Great Powers, the working of the balance of power, and the influence of diplomacy. The inequality of power among states is perhaps one reason why international society may accommodate a practice of SCD without running the risk breaking up entirely. The greater threat towards international society is most likely the disorder and ‘political decay’ recently experienced in countries such as Syria and Iraq.⁴⁶ The problem with SCD in relation to inequality rather is that only a few states are likely to be able to effectively utilise SCD depending on status and strategic narrative positions.

The remaining part of this article deals with two different ways to develop a practice of SCD that are not dependent on status and strategic narratives. The first path is an attempt to invigorate international society as a moral association, thereby empowering the weaker members of the society while not destroying the element of inequality that preserves order. The basis for this is the contention that civil disobedience necessarily has to be justified as a moral practice on account of moral principles that are justifiable and legitimate. Looking at historical conceptions of international society, morality is ascribed both to a predominantly naturalist and often cosmopolitan notion of a world society, and to the idea of a moral association of states, for instance when identifying the element of moral norms in the early modern conception of the balance of power in Europe.⁴⁷ The moral element of international society is also evident in contemporary international society theory, when, for example, the harm principle in international relations is emphasised or when looking at the question of how international society affects the vulnerability of societies and individuals.⁴⁸

However, if a moral reinvigoration of international society actually took place would it not make SCD a less interesting strategy to rely on? After all, if international society was less unjust there would be less reason to respond or resist by means of SCD. Alternatively, the more injustices that are perceived, the more likely is the strategy of SCD among those states that have no other option. This certainly makes sense but requires that there is after all some degree of common morality that is not only about sovereign equality of states in a formal and mainly ‘negative’ sense preserving state sovereignty. It is probably fair to claim that the globalisation of international society has made international society less substantial; there are fewer commonly shared norms (albeit there are more treaties and regimes for specific issue-areas than ever before). Bull observed this and thought of it as a lack of common culture among the members of international society.⁴⁹ The fact that more states are

⁴⁵ Hjorth, ‘Hedley Bull’s paradox’, p. 609.

⁴⁶ Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Straus, and Giroux, 2014).

⁴⁷ Boucher, *The Limits of Ethics in International Relations*; Andreas Osiander, ‘Sovereignty, International Relations, and the Westphalian Myth’, *International Organization*, 55 (2001), pp. 251–87.

⁴⁸ Andrew Linklater, *The Problem of Harm in World Politics: Theoretical Investigations* (Cambridge: Cambridge University Press, 2011); Ian Clark, *The Vulnerable in International Society* (Oxford: Oxford University Press, 2013).

⁴⁹ Bull, *Anarchical Society*, pp. 16 and 316–17.

insiders, in the sense of sharing a few basic rules in their international relations, does not imply that they are sharing an international morality. Moreover, the hierarchy among states still prevails, which is why status matters and why strategic narratives are formulated with the aim, perhaps, of turning them into hegemonic narratives.

However, a strengthening of the moral element of international society cannot be realistically based on a common culture with shared moral norms. The way to proceed, at least to begin with, is to imagine a widening of the 'realm of consideration' in international society thereby promoting an 'equal consideration of interests', and not only the interests of states or particular states when responding to international actions.⁵⁰ The principle of 'equal consideration of interests' as formulated by Peter Singer stipulates that 'we give equal weight in our moral deliberations to the like interests of all those affected by our actions'.⁵¹ Thus, the widening of the 'realm of consideration' for example involves taking into an equal account the interests of both strong and weak states as well as of non-state actors regardless of their position in international relations. This does not necessarily involve a major reorganisation of international society; being that the members of a club are not expected to consider the interests of non-members. Hence, the main point is not that a new set of world institutions would necessarily have to be established but rather that a renewed emphasis on international society as a moral association is required. One has to bear in mind that civil disobedience is civil because it is motivated by concern for the society in which it is articulated and that it is meant to reflect the moral consciousness of a society as well as the moral foundations on which the society is founded. However, it is important to notice that a strengthening of the moral element of international society does not automatically solve problems of injustice, but nevertheless forms the basis from which reforms can be urged and against which SCD can be evaluated.

The other way to think about SCD is more practical and does not involve a major rethinking of international society. There seems to be at least two aspects involved here. First, the means of SCD is an issue to be considered when dealing with disobedience in international society as well as within bounded communities. More precisely, this has to do with the distinction between violent and non-violent means. What difference would it make to restrict SCD to non-violent means only? An argument against including violent means is that when such means are legitimised among states this opens the door to more violence. Hence, SCD would provide yet another reason for conducting military interventions leading not only to the violation of the principle of autonomy of states, but also to more violence and human suffering. It makes sense to strive as far as possible to reduce violence in policy and adhere instead to the principle of peace. To that end there is reason to avoid accepting principles that may increase the use of violence. However, when considering domestic violence and human suffering resulting from bad government, failed states, wrongful conduct of war, etc., the use of military means may sometimes not only be more effective but also, on balance, may reduce the levels of violence and suffering. Nevertheless, a restriction to non-violent means would render SCD much less controversial as it would not open the door to military interventions and would also make disobedience in the form of non-violent resistance a more acceptable means of reforming international society.

Second, the idea of civil disobedience more generally is related to law and legal thinking although it is obviously not a legal action but rather a type of action to be considered when there is no judicial redress. The relation between international law and international society is complex. Peter Wilson (2009) shows

⁵⁰ Hjorth, *Equality in International Society*, pp. 125–33.

⁵¹ Peter Singer, *Practical Ethics* (3rd edn, Cambridge: Cambridge University Press, 2011), p. 20.

that there are a variety of approaches to international law and international society and that it makes sense to regard international law in this context as 'a framework within which and with reference to which states make their decisions'. Wilson also quotes Bull's claim that international law 'is a social reality to the extent that there is a substantial degree of conformity to its rules; but it does not follow from this that international law is a powerful agent or motivational force in world politics' and that states are rather 'programmed to operate within the framework of established principles'.⁵² This seems to cover two different ways to respond to norms: (1) 'norm following', which means adjusting one's behaviour to the norm because of the norm; and (2) 'norm conforming' which involves adjusting one's behaviour to the norm for other reasons.⁵³ State conduct in the context of international society often means reacting to other than legal rules and may therefore be characterised as 'norm confirming' than 'norm following'; at least that is one way to make sense of Bull's observation hence weakening the power of international law. Buchanan (2001) observes the problems with changing international customary law and claims that it is a 'gamble' because a new customary norm can only be established following repeated actions and changing understanding of the norm among major states. Nevertheless, he concludes that there are good reasons to support illegal legal reform if the established system of rules diverges from the ideals of the rule of law, substantive justice, and legitimacy.⁵⁴ The legal framework of international society is not as coherent as are domestic legal systems in developed countries but nevertheless there is a legal framework and a common legal language, both of which adds structure and precision even when operating outside of legal institutions. International law obtains a framework within which to reason about and seek to justify SCD. When venturing outside of legal context the discourse becomes more unclear and the arguments run a greater risk of being distorted by the rhetoric of ideology or identity politics.

These ways to proceed in order to make sense of SCD set aside both the dimensions of status and narrative sketched out above. Either this is done through an attempt to reform international society into a more perfect association through a shared morality or attempting to confine SCD to a limited sphere. In a sense both ways reflect a certain kind of idealism and an urge to deprive international society of the element of enmity which to varying degree is obtainable in most human relations and perhaps even more so in international relations. Yet, this means engaging in an important enterprise, namely that of improving the capacity for civilised conduct in international relations, and end to which the 'international society tradition' in its different guises has always sought to contribute. After all, the practice of SCD would little contribute to developing international society in any direction worth having if it were to involve raising the level of conflict and violence within and among states.

Conclusion

To conclude, the key idea behind SCD is that there should be room for disobedience in international society if such conduct contributes to a moral improvement of international society and if it can be justified, is found legitimate, and there is no judicial redress. But SCD should not be carried out to the extent that the system collapses. A widespread practice of SCD would perhaps challenge the fundamental order of international society. But since international society is based on several institutions the risk that it would collapse as a result of occasional violations of particular rules is not

⁵² Peter Wilson, 'The English School's approach to international law', in Cornelia Navari (ed.), *Theorising International Society: English School Methods* (Houndmills Basingstoke: Palgrave Macmillan, 2009), p. 173; Bull, *Anarchical Society*, p. 139.

⁵³ Geoffrey Brennan, Lina Eriksson, Robert E. Goodin, and Nicholas Southwood, *Explaining Norms* (Oxford: Oxford University Press, 2013), p. 193.

⁵⁴ Buchanan, 'From Nuremburg to Kosovo', pp. 678 and 698.

immediately apparent. The main obstacle to the practice of SCD, in the context of international society, is rather that the inequality of states makes SCD a selective strategy and an option mainly for the powerful states to consider. This not only goes against the idea of civil disobedience as primarily a strategy for the weak but also challenges the concept of international society as based on the formal equality of states. The problem, then, seems to be in establishing a practice of SCD that is neither a way to legitimise the use of discretionary power on behalf of the Great Powers nor an anarchist strategy attempting to tear down international order and which does not increase the level of violence and suffering. Two alternatives are sketched out: One alternative is to invigorate international society as a moral association improving the conditions for moral practical reasoning in order to develop the kind of shared conceptions of social morality that are necessary for justifying civil disobedience. The other alternative is to develop a more limited approach to SCD based on non-violent means issued in response to perceived legal anomalies, hence relying on shared legal conceptions and a legal language, and refraining from the use of political violence when exercising SCD. The main challenge posed by SCD is that international society will have to endorse the value of disobedience into the particular conception of political association. Civil disobedience cannot be regulated or ordered but rather resonates on shared moral conceptions and a willingness and preparedness to sometimes challenge established laws and conventions. The capacity for any society – domestic or international – to handle disobedience in a way that captures the sense of justice and the urge for reform and vitality inherent in some instances of disobedient behaviour while at the same time staying firm against disruptive activities, is, if anything, an indication of a strong, open, yet cultivated political association.

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Biographical information

Ronnie Hjorth is Professor of Political Science in the Swedish Defence University, Stockholm. He specialises in international political theory, international society, and international ethics. His latest book is *Equality in International Society: A Reappraisal*, Palgrave Macmillan (2014).