Trump, Reciprocity, and the Liberal International Order[*]

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Abstract

There is a growing tendency to argue that international law shapes the behavior of states via a logic of appropriateness rather than the logic of consequences stressed by realists and neoliberal institutionalists. In contrast, I argue that the core evolution in law is a more nuanced understanding of reciprocity. Building on Robert Keohane's distinction between specific and diffuse reciprocity, I distinguish between two types of specific reciprocity: legal and strategic. While legal reciprocity involves the reciprocal commitments that states build into the wording of international treaties, strategic reciprocity can be used as a policy device regardless of the law. This understanding of reciprocity allows for an appreciation of domestic debates regarding international obligations that are often missed by other logic of consequences approaches.

I apply this understanding of reciprocity to the question of whether the liberal international order is under threat by the new American administration. Beginning in the 1990s, a critique emerged arguing that international law and other such institutions were created by global elites attempting to impose their cosmopolitan values and constrain American power. President Donald Trump has criticized numerous international institutions including NATO, the World Trade Organization, and the United Nations and is likely to repudiate international norms in many issue areas. Applying my theory of reciprocity to this question may lead to a less pessimistic conclusion about international cooperation than has been argued for by others.

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Introduction

John Ikenberry has written of the liberal world order's future that "…despite its troubles, liberal internationalism still has a future" (2018: 8). While I do not wish to dispute this claim, I do want to take issue with Ikenberry's view that what we are seeing is "…a gradual diffusion of power away from the West" (2018: 17). The liberal world order of which Ikenberry speaks is made possible by the expectation of reciprocal treatment built into many of that order's institutions. Rather than witnessing a shift in power away from the West, what we are witnessing is a shift in emphasis away from one type of reciprocity that makes this order possible towards another type. Building on Robert Keohane's distinction between specific and diffuse reciprocity, I differentiate between two types of specific reciprocity, one which I term "legal reciprocity" and another which I call "strategic reciprocity." What we are seeing, especially with respect to the policy choices of the current Trump administration, is a change in emphasis away from legal reciprocity and towards strategic reciprocity in dealing with its international partners.

First, I discuss reciprocity and its role in international agreements. I review Keohane's definition of reciprocity and outline the neoliberal institutionalist argument for why such agreements embed reciprocity to enhance compliance. I then offer a more nuanced approach to understanding specific reciprocity. Using H. L. A Harts' concept of law as the union of primary and secondary rules and highlighting the multi-actor setting of domestic decision making, I then show how what appear to be debates about compliance may just as easily be interpreted as what type of specific reciprocity to adopt. Second, I consider mechanisms other than reciprocity to ensure compliance with international agreements other than reciprocity. Lastly, I apply this understanding of reciprocity to the question of whether the liberal international order is under threat by the new American administration. President Donald Trump has criticized numerous international institutions including NATO, the World Trade Organization, and the United Nations and is likely to repudiate international norms in many issue areas. Applying my theory of reciprocity may lead to a less pessimistic conclusion about international cooperation than has been argued for by others.

Reciprocity and International Agreements

Keohane defines reciprocity as "…*exchanges of roughly equivalent values in which the actions of each party are contingent on he prior action of the others in such a way that good is returned for good and bad for bad*" (1989: 8). He distinguishes between two key features of reciprocity: equivalence and contingency. Equivalence requires that state B's response to state A be roughly similar to the action by A. Contingency implies state B's behaviour toward A is conditional on what A last did to B.

Keohane uses these features to distinguish between two types of reciprocity. The first, which he calls "specific reciprocity," describes situations in which "…specified partners exchange items of equivalent value in a strictly delimitated sequence. If any obligations exist, they are clearly specified in terms of rights and duties of particular actors" (Keohane, 1989: 4). Both equivalence and contingency feature prominently in specific reciprocity. For example, consider a sequential *quid pro quo* where B gives something of value to A precisely because A has given something of equal value to B. For example, in international trade, a relation of specific reciprocity exists when one country reduces its tariffs on a certain item precisely because another

country did the same. The same phenomenon occurs in the field of arms control when one side reduces its levels of a certain weapon in response to the other side's reduction in its numbers of that weapon.

Keohane, though, recognized that reciprocity could also involve a more complex relation than a simple *quid pro quo*. The features of equivalence and contingency can be relaxed such that exchanges involve more than two parties and items of different value. Keohane termed this "diffuse reciprocity." In relations of diffuse of reciprocity, "…the definition of equivalence is less precise, one's partners may be viewed as a group rather than as particular actors, and the sequence of events is less narrowly bounded. Obligations are important" (Keohane, 1989: 4). In these exchanges a different party, in a different situation, and at a different time may receive the benefit or share the burden involved. Within the World Trade Organization, Unconditional Most Favored Nation status is an example of diffuse reciprocity. This type of reciprocity emphasizes conformity with a certain standard of behaviour among members of a group rather than the maintenance of a bilateral relation.

Neoliberal Institutionalism and Reciprocity

Neoliberal institutionalism provides an argument for why such reciprocal considerations feature prominently in state decisions to comply with international law. On this account, compliance decisions take the form of a Prisoner's Dilemma (PD) where interactions between states are modeled as one-off games where each has two choices: comply or defect. In such a situation, both states pursue a strategy that will optimize their position with reference to the strategy available to the other. In a PD the dominant strategy is to defect because, whether the other side defects or not, one's own pay-off is higher if one defects. Therefore, both states defect from international agreements and fail to achieve Pareto-improving outcomes.

While the PD explains why compliance is difficult, neoliberal institutionalism interprets the result as showing that states do recognize the advantage of mutual compliance. While defection may be the dominant strategy, compliance by both parties is a Pareto-improvement over mutual defection. If played only once, the PD exaggerates the difficulty of compliance. However, a more realistic picture of relations among states is to view them as interacting repeatedly over time. In these repeated interactions, state A needs to factor in the different possible reactions of state B when deciding whether to comply or to defect with its international obligations. As a result, what Axelrod terms the "shadow of the future" has an important effect on the strategic calculations of the two sides (1984: 12). The iterated nature of these interactions creates the prospect for future gains by rewarding compliance with international law while punishing defection.

In an iterated PD, a strategy of specific reciprocity after an initial cooperative move – nicknamed TIT-FOR-TAT (TFT) – can bring about cooperation (Axelrod, 1984; Axelrod and Keohane, October 1985; Keohane, 1984; Oye, 1986). According to Axelrod:

> What accounts for TIT-FOR-TAT's robust success is its combination of being nice, retaliatory, forgiving and clear. Its niceness prevents it from getting into unnecessary trouble. Its retaliation discourages the other side from persisting whenever defection is tried. Its forgiveness helps restore mutual co-operation. And its clarity makes it intelligible to the other player, thereby eliciting long term cooperation (1984: 54).

Applied to the issue of compliance with international law, neoliberal institutionalism suggests that states include measures implementing the strategy of TFT into their international legal agreements.

Legal vs. Strategic Reciprocity

In developing a more nuanced view of specific reciprocity, this paper shows how the expectation of reciprocity operates in subtler ways within international law than those typically associated with logic of consequence arguments.[1] First, specific reciprocity within international law can take the form of what I will call "legal reciprocity." Here, the exchanges of value in Keohane's general definition extend only to the specified members of an agreement. For example, signatories to treaties only owe the obligations spelled out in those agreements to other signatories. Legal reciprocity is reflected in the use of the term "High Contracting Parties." The concept of contracting is important because states are explicitly recognizing their obligations *vis-à-vis* each other (International Court of Justice, *North Sea Continental Shelf Cases*, 1969). As such, legal reciprocity reflects a foundational principle of international law – voluntarism.

The second way states make use of specific reciprocity within international law I will refer to as "strategic reciprocity." Once parties bind themselves to the provisions of an international agreement through signing treaties and creating relations of legal reciprocity, they often consider the continued application of these agreements as contingent on the *de facto* compliance by the High Contracting Parties. The most familiar implementation of strategic reciprocity is TFT. Responding to the violation of an international legal obligation with a violation can be termed "negative reciprocity." The aim is to make the non-compliant regime member change its behaviour by imposing a price for non-compliance. For example, in response to country A imposing tariffs on the entry of certain goods from country B in violation of a trade agreement between the two countries, country B may also impose tariffs on similar goods from country A in order to get it to change its policy.

However, specific reciprocity can also exist in a positive form. In general, positive reciprocity refers to a state's effort "…to induce reciprocal compliance from other actors through continued respect for an international norm or treaty provision, notwithstanding their legal right not to comply by virtue of breach or non-accession by other states" (Watts, 2009: 377-78). A state may want to continue to comply with its treaty obligations despite a breach by one of its partners for several reasons. It may want to verify that the partner was in fact in violation of or intended to violate its obligations before also defecting. In the case of non-accession, High Contracting Parties may also want to extend the possibility of enjoying the benefits of an agreement as an incentive to regularize interactions between them and other non-party states. Nevertheless, the decision to make such a positive inducement is not a legal requirement under international law. The Vienna Convention on the Law of Treaties does not require treaties to contain articles offering non-parties the ability to comply on an *ad hoc* basis in return for reciprocal treatment by signatories.

Hart, Secondary Rules, and Specific Reciprocity

Using H. L. A. Hart's theory of law as the union of primary and secondary rules, this section notes how states implement the different types of specific reciprocity noted above via secondary rules. Hobbes famously claimed that, "Covenants, without the Sword, are but Words, and of no strength to secure a man at all" (Hobbes, 1985: 223) Many conclude from this observation that

[1] March and Olson draw a distinction between two types of motivational logic driving state behaviour. One is a "logic of expected consequences" where actors decide on a certain course of action based on their expectations of the costs and benefits that action will entail. The other is a "logic of appropriateness" where such decisions are based on "…evoking an identity or role and matching the obligations of that identity or role to a specific situation" (1989: 23).

the key to something being law is its status as a command. Notably, John Austin concluded that the laws of a society are the general commands of the sovereign intended to govern the conduct of the society's members (1995: 18-37). However, at the international level no such sovereign with the power to issue such commands exists. If Austin is correct in his understanding of the nature of law, it is hard to see how there could be such a thing as "international law" to affect state behavior. Indeed, Austin's own response was that: "The so called law of nations consists of opinions or sentiments current among nations generally. It therefore is not law properly so called" (1995: 124).

Hart developed his theory of law as the union of primary and secondary rules in direct response to Austin's "command theory" (1961). According to Hart, the primary rules of a legal system are those rules that either forbid or require certain actions and generate duties or obligations. The secondary rules, on the other hand, are rules that describe the manner in which we recognize, change, and adjudicate violations of primary rules. This provides an answer to Austin's allegation that international law is not really law while at the same time explaining why states comply. Following the lead of Bentham, Hart claimed that international law was "law" since it "…was 'significantly analogous' to municipal law" (1961: 231). This is to assume that international law has some method of sanctioning non-compliance. Indeed, Hart himself stated "…secondary rules provide the central official 'sanctions' of the system" (1961: 87). At the domestic level, law affects behavior because the state imposes penalties on individuals for non-compliance. At the international level, where no such sovereign exists, secondary rules implementing reciprocity provide states with the means to punish non-compliance with the primary rules of an agreement.

We can conceive of international law in terms of a combination of primary rules outlining the legal obligations that signatories have towards one another and secondary rules conditioning the application of those primary rules. The application clauses of international agreements are a type of secondary rule because they determine who will be the beneficiaries of those agreements' primary rules. Secondary rules preserve legal reciprocity based on the principle of voluntarism. According to this principle, states are only bound to those agreements to which they have freely consented. The principle of voluntarism finds its expression in the judgment of the Permanent Court of International Justice in the *Lotus Case*:

> International law governs relations between independent states. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-exiting independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States therefore cannot be presumed (*France v. Turkey*, 1927: 18).

Only through becoming a signatory does a state create relations of specific reciprocity between itself and other members of an agreements. Article 34 of the Vienna Convention codified the principle of voluntarism in international law: "A Treaty does not create either obligations or rights for a third state without its consent."

States can also use application clauses in international agreements as secondary rules to implement positive reciprocity. Often, states will include provisions that allow non-party states to accede to the obligation set out in international agreements. Under the Vienna Convention, such provisions allowing for positive reciprocity are not a legal obligation. Instead, the insertion of such clauses reflects a strategic choice among state parties to extend the benefits and obligations of these agreements to others to further regulate behavior in the international system.

Reservations are also a type of secondary rule affecting the operation of an international agreement's primary rules. The ability to submit reservations is important for states because it allows them to become party to an international agreement while at the same time excluding the effects of certain provisions to which they object. Article 2(1)(d) of the Vienna Convention defines a reservation as "…a unilateral statement, however phrased or named, made by a State, when signing, ratifying, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Article 21 of the Vienna Convention codifies the legal effects of reservations. When submitted, other state parties either accept or reject the reservation on an individual basis. If accepted, the reservation modifies the agreement between the reserving and accepting states. If rejected, the particular treaty provision does not operate between the reserving state and the rejecting states.

The Domestic Multi-Actor Setting

Standard accounts of compliance with international law emphasizing the role of reciprocity in its TFT form rely on the assumption that the state is a unitary actor, attempting to maximize its interests in an international system characterized by anarchy. In making this assumption, these accounts miss the extent to which policy debates within states about compliance often involve disputes about which form of reciprocity to apply.

Liberal international relations theory rejects the unitary actor assumption on the basis that it does not adequately take into account the role of domestic politics in determining state interests (Milner, 1997; Moravcsik, 1997). States are not just "black boxes" attempting to survive in an anarchic system; they are a configuration of individual and group interests projected through a government. Therefore, state policy reflects the interests of some dominant subset of domestic society. In the international law literature, liberals emphasize the primacy of the individual in transnational society reversing the traditional emphasis of international law on inter-state relations (Slaughter and Alvarez, 2000: 242). Emphasizing the effect of law on individuals militates against the role reciprocity can play as a mechanism for ensuring compliance and in its place, liberals introduce other mechanisms such as regime type, audience costs, and national courts enforce international law (Dixon, 1993; Fearon, 1994; Helfer and Slaughter, 1997). Yet this tends obscure the fact that debates among policymakers about compliance can just as easily reflect disagreements about what type of reciprocity to apply in a certain case. The way in which policymakers understand reciprocity will play an important role in shaping compliance with international law.

Alternative Perspectives on Compliance

Realist theories in both the international law and international relations literature deny that international law has any independent constraining effect on state behavior. Some claim that international law merely reflects a pre-existing "harmony of interests" among states in certain issue areas of the international system (Grieco, 1988; Waltz, 1979). Others argue that states comply with international law because it demands only modest departures from how they would have otherwise acted (Downs, Rocke et al., 1996). If this is truly the case, why is there so much talk about law in the international system? Goldsmith and Posner reply that appeals to international law are just cheap talk: "…international legal rhetoric is used to mask or rationalize behavior driven purely by self-interested factors having nothing to do with international law"

(2005: 226). On the "cheap talk" model, governments merely use the rhetoric of liberal internationalism as *ex post facto* justifications for actions they would have taken anyway in pursuit of their own self-interest.

Still other realists claim that what truly is constraining state behavior is not the law itself but rather a hegemonic actor who is willing to sustain the cost of maintaining and enforcing international legal requirements that match its own interests (Gilpin, 1983; Grieco, 1990; Kindleberger, 1986; Krasner, 1991). For example, during the 19th century, the United Kingdom used its power to help establish and police the regime outlawing the international traffic in slavery (Allain, 2012: 64-74). In addition, the economic regimes established after the Second World War exist because of the hegemonic power of the United States. On this account, states comply with international law because compliance reduces the likelihood the hegemon uses its power against them. On the other hand, the hegemon complies and forgoes the possible benefits of occasional violations of the law in return for the long-term benefits of order and stability in the international system (Ikenberry, 2009).

The mechanisms examined below base compliance in a logic of appropriateness rather than a logic of consequences. Both constructivists in international relations theory and legal theorists who believe that states naturally respect legal commitments or have a capacity to be socialized into following international law, endorse this logic of state motivation. Rather than asking what the expected costs and benefits of a certain decision are, these theorists propose that policy makers ask themselves what course of action is appropriate in the situation they are facing. March and Olsen describe the process as follows:

> To describe behavior as driven by rules is to see action as a matching of a situation to the demands of the position. Rules define relationships among roles in terms of what an incumbent of one role owes to incumbents of other roles…The terminology is one of duties and obligations rather than anticipatory, consequential decision making. Political actors associate specific actions with specific situations by rules of appropriateness (1989: 23).

Such an explanation is plausible because even rationalists in international relations theory and international law concede that states must consider the social opprobrium associated with certain actions when deciding how to react to violations of international law.

Two important logic of appropriateness approaches to compliance fall under the broad heading of legal process theory. The first is managerialism. For the managerial school, the mechanism driving compliance with international law is an already pre-existing propensity to comply (Chayes and Chayes, 1993; Chayes and Chayes, 1995). For one thing, compliance is a more efficient use of states resources than is the constant re-calculation of a state's interests regarding treaty obligations. Second, since states need only join those treaties that reflect their interests, compliance is already in the state's best interest. Finally, states would waste the care and resources used in negotiating international agreements if they did not comply. The existence of international forums where states meet to discuss legal issues enhances this pre-existing propensity to comply. Such forums provide venues for repeated interaction among treaty members where non-compliant members must justify their actions. According to Chayes and Chayes, since "…good legal arguments can generally be distinguished from bad," the very nature of the legal discourse used by states in these forums puts a premium on compliance (1995: 119). This process – known as "jawboning" – tends to increases the commitment of states to international agreements and maintains compliance at an acceptable level (Chayes and Chayes, 1995: 25).

If states do have a pre-existing disposition to comply with international law, then failures to comply are not rooted in state preferences. Instead, they are due to other factors (Chayes and Chayes, 1993: 187-197; Chayes and Chayes, 1995: 9-17). For one thing, treaty language is often vague and reflects a lack of international consensus on more specific legal obligations. Therefore, a state may be exploiting an ambiguity in the text of an agreement to test the acceptable limits of its obligations. Alternatively, a state may be non-compliant because it lacks the resources to establish the necessary treaty implementation mechanisms. Lastly, since states intend international agreements to govern their behavior for long periods, non-compliance may reflect a time lag in the implementation of treaty requirements. According to supporters of managerialism, we should think of these alternative explanations for non-compliance as defenses used to justify the behavior of a non-compliant state. Thus, violations of international law are not something to be punished through reciprocal sanction. Instead, treaty members should manage such non-compliance.

As emphasized by managerialism, the legal processes in which states interact need not be restricted to formal affairs such as diplomatic conferences. Koh has expanded the notion of legal process to include non-state and domestic actors and the influence they can bring to bear on state compliance with international law in what he terms "transnational legal process" (1997; 1998; 2004). This is a process where "…domestic decision making becomes 'enmeshed' with international legal norms as institutional arrangements for the making and maintenance of an international commitment become entrenched in domestic legal and political processes" (Koh, 1997: 2654). In this way, international treaties can influence state incentives. As Koh writes, it is through this "…repeated cycle of interaction, interpretation, and internalization, that international law acquires its 'stickiness'…and that nations come to 'obey' international law out of perceived self-interest" (1997: 2655). The important mechanism in transnational legal process that leads to compliance is the degree to which the state's domestic law incorporates a certain treaty's provisions. As such, it is the differing degrees to which domestic law has incorporated the relevant international agreements that explains variations in compliance.

A second logic of appropriateness-based explanation for compliance refers to the discourse of international law. What differentiates this explanation from legal process theories is the belief that international law is more than just a set of rules to regulate state behavior. Rather, the prescriptions of international law exert a specific "compliance pull" (Franck, 1988). The compliance pull of laws will be stronger or weaker depending on their perceived legitimacy. Franck defines legitimacy as "…a property of a rules or rule-making institution which itself experts a pull towards compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process" (1990: 24).

According to proponents of this alternative perspective, the determinacy of international law makes legal discourse distinct from strategic calculations of costs and benefits. As Kratochwil writes, legal rules "…provide relatively firm guidance not only with respect to ends but also to the means to be adopted" (1989: 206). Franck, in a slightly different way, agrees that determinacy provides greater legitimacy to international law and, therefore, leads to compliance. However, determinacy is only one of four intrinsic elements of legal norms that give them legitimacy. For Franck, the compliance pull of international law is generated by the key mechanisms of legitimacy and fairness. He identified the following four non-coercive factors falling under the general heading of "legitimacy" that prompt states to comply with international law:

1. Determinacy: The law clearly communicates permitted and prohibited behaviors;
2. Symbolic validation: The law has attributes that identify it as a significant part of a system of social order;
3. Coherence: The law relates in a principled manner to other rules in the same system and in its application like cases are treated alike; and
4. Adherence: The law is "made within the procedural and institutional framework of an organized community" rather than in an ad hoc fashion (Franck, 1988: 712).

Franck expanded on the idea of legitimacy in an effort to respond to the criticism that his earlier work concentrated too much on procedural legitimacy (See Teson, 1992). Franck modified his conception of legitimacy to say that not only must a rule be procedurally fair, in the sense that it embodies the four elements mentioned above, but that it also be substantially fair. In this case, "substantial fairness" means that the rule leads to distributive justice (Franck, 1995: 7). When those to whom rules apply view those rules as both procedurally and substantively fair, international law will exert a compliance pull that is independent of a state's material considerations (Franck, 1988: 712). In this case, since states have themselves negotiated international agreements, the compliance pull of the rules codified in law is substantial.

The final logic of appropriateness approach to compliance with international law considered here draws on the constructivist literature from international relations theory. Constructivism focuses on how ideas construct social environments that in turn help constitute state identities and interests. Since actors attribute meaning to reality through ideas, actors construct their beliefs – including beliefs about appropriateness – out of their understanding of the world as they take it to be (Wendt, 1999: 313). For constructivists, the constitutive power of norms creates actors' identities and hence their interests. This suggests that norms also have causal power (Wendt, 1999: 397). States do not comply with norms of international law merely because they have a pre-existing interest in compliance shaped by the fear of material consequences. States may also comply because they have internalized these norms or because they understand themselves as good citizens of an international society where they understand "good" in terms of compliance with international law.

The process of internalization can occur at different levels. At the state level, policy makers may choose to comply with certain norms of international law for their own sake, most notably because they believe in the moral rightness of the norm (Price, 1995; Price, 1998; Tannenwald, 2005). Finnemore and Sikkink provide a useful model of the life cycle of a norm (1998). The life cycle of a norm consists of three stages: (i) norm emergence, (ii) norm cascade, and (iii) norm internalization. Stage I, "norm emergence," is characterised by norm entrepreneurs attempting to convince a critical mass of states to adopt a given norm. At stage II, the "norm cascade" stage, states adopt norms in response to international pressure in order to conform to international standards. If norms reach stage III, they become "internalized" in the sense that they "…achieve a 'taken-for granted' quality that makes conformance with the norm almost automatic" (Finnemore and Sikkink, 1998: 904). Thus, we can assume that during stage I and stage II of the life cycle, substantial external persuasion is necessary to bring about compliance and that acts of non-compliance should be relatively common. With stage III norms, on the other hand, compliance should be standard and the need for external enforcement should be rare.

The End of Liberal International Order?

During the 1990s, a significant political critique of international law emerged within the United States, viewing existing international legal regimes as vague, unenforceable, and illegitimately intruding into American domestic affairs. Underlying this view was the notion of sovereignty. Peter Spiro referred to critics of the existing international order as the "new Sovereigntists" (2000). On this account, the sovereign state is best placed to protect the rights of citizens; not international legal regimes. For example, legal scholar Jeremy Rabkin claims that "Sovereignty is at the heart of all (political) compromises, because it supplies the idea of political authority which can accommodate difference…and yet still demand ultimate political allegiance" (2005: 25). Given both the power of the United States and the constitutional duty of its President, these new Sovereigntists contend that the country should opt-out of any international legal regime not in its national interest.

The new Sovereigntists were particularly suspicious of integrating international human rights law with the law of armed conflict. The law of armed conflict developed separately from human rights law and reflected the interests of those states involved in such conflicts. Yet in the 1990s, human rights non-governmental organizations and many international lawyers began advocating for full implementation of international human rights law in armed conflicts. For example, Antonio Cassese claimed the law of armed conflict had "…increasingly impregnated with human rights values" (2005: 404). These kinds of claims worried those who believed combining the two legal regimes would needlessly complicate the law of armed conflict. Critically, they feared that such a move would undermine the role played by reciprocity in enforcing compliance. Reciprocity makes little sense in the enforcement of human rights treaties, as reciprocal violation must somehow harm the party that initially violated the agreement.

The experience of the Clinton administration during NATO's bombing campaign against the Federal Republic of Yugoslavia reinforced this attitude among the new Sovereigntists. The establishment of a Review Committee by the International Criminal Tribunal's Prosecutor Carla Del Ponte to investigate possible war crimes committed by NATO angered many US politicians. As the Chairman of the US Senate Foreign Relations Committee Jesse Helms remarked, "…the very fact that (Del Ponte) entertained the idea brings to light all that is wrong with the UN's conception of global justice, which proposes a system in which independent prosecutors and judges, answering to no state or institution, wield unfettered power to sit in judgement of the foreign policy decisions of Western democracies" (2000: 33). As Helms saw it, the United States was putting its troops in harm's way to prevent a genocide from occurring on European soil and should not have its actions scrutinized by those unwilling to take part in this effort.

Bush administration policy respecting the POW status of detainees in the War on Terror provides another example of the new sovereigntist' reliance on strategic reciprocity. John Yoo, the author of the "failed state" argument had argued for a strategic rather than legal understanding of reciprocity regarding POW status. Yoo argued that combatants who did not engage in the reciprocal patterns of behavior expected from state actors in armed conflict should not revive the protections of POW status (2003-2004). In a *Wall Street Journal* editorial Yoo cited a lack of strategic reciprocity as one of the justifications for not awarding POW status to War on Terror detainees: "The reason to deny Geneva status to terrorists extend beyond pure legal obligation. The primary enforcer of the laws of war has been reciprocal treatment. We obey the Geneva Conventions because our opponent does the same with American POWs" (Yoo, 2004). Ultimately, participants in the discussion about the POW status of detainees viewed the debate as one of policy and not of law.

The Trump administration's attitude towards international agreements, just as that of the new sovereigntists, exhibits a similar emphasis on strategic rather than on legal specific reciprocity. President Trump has already pulled out of agreements such as the Trans-Pacific Partnership and the Paris Climate Agreement. He has recently withdrawn from the Joint Comprehensive Plan of Action limiting Iran's development of its nuclear weapons capability. Pulling out of these agreements was not motivated by a rejection of international agreements *per se*, but because of the President's belief that he could negotiate better deals. He believes he can negotiate better deals by using the leverage the United States has due to its power. On the other hand, nearly all the remaining states party to the Trans-Pacific Partnership, Paris Climate Agreement and the Joint Comprehensive Plan of Action have agreed to stay in these deals. These deals have not collapsed with the withdrawal of the United States. What we are witnessing is just what we should expect in a world of neoliberal institutions. States staying in agreements which they believe are beneficial to themselves and using different reciprocal strategies to improve their positions in cases where they believe – rightly or wrongly – that their interests are not being served.

Conclusion

Questions about the relationship between power and norms and between states pursuing their self-interest and the constraining effects of international law have been at the forefront of both academic research and public policy debates. Many have depicted the Trump administration's response to many international issues as reversing a trend towards liberal internationalism. Indeed, Barry Posen has recently argued that, "Trump has ushered in an entirely new U.S. grand strategy: illiberal hegemony" (2018: 21). I hope to have shown that such a depiction is overstated. What differentiates the Trump administration's response to others is not the application of reciprocity arguments *per se* but the types of specific reciprocity arguments make in particular circumstances.

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