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The Politics of International Law

Politics and law appear deeply entwined in contemporary international relations. Yet existing perspectives struggle to understand the complex interplay between these aspects of international life. In this path-breaking volume, a group of leading international relations scholars and legal theorists advance a new constructivist perspective on the politics of international law. They reconceive politics as a field of human action that stands at the intersection of issues of identity, purpose, ethics, and strategy, and define law as an historically contingent institutional expression of such politics. They explain how liberal politics has conditioned modern international law and how law 'feeds back' to constitute international relations and world politics. This new perspective on the politics of international law is illustrated through detailed case-studies of the use of force, climate change, landmines, migrant rights, the International Criminal Court, the Kosovo bombing campaign, international financial institutions, and global governance.

CHRISTIAN REUS-SMIT is Professor and Head of the Department of International Relations in the Research School of Pacific and Asian Studies at the Australian National University. He is the author of *American Power and World Order* (2004), *The Moral Purpose of the State* (1999), co-author of *Theories of International Relations* (2001), and co-editor of *Between Sovereignty and Global Governance* (1998).

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Jurisprudence: Legal Change in its Social Context (Oxford: Hart Publishing, 1998) (co-edited with Anne Marie Slaughter and Joseph Weiler).

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Preface

In late 2002 an increasingly heated debate arose within the United Nations Security Council about the merits of using force to disarm and depose Saddam Hussein's regime in Iraq. The Bush Administration gave the Council an ultimatum: uphold the rule of international law, expressed in numerous Council resolutions calling on the regime to disarm, or follow the League of Nations into the dustbin of history. If the Council would not license the use of force, the United States would lead a 'Coalition of the Willing' to defend the rule of law and protect international security. Despite the immense material resources commanded by the United States, the majority of Council members remained unpersuaded. Most did not accept that the regime posed an imminent threat to international security and favoured a strategy of deterrence combined with an invigorated system of weapons inspections. They were also suspicious of American motives. It was clear to even the most casual observer that the Bush Administration was at least as interested in regime change as it was disarmament.

The Administration's position came to be seen, therefore, not as essential to upholding the rule of international law but as a threat to that rule. When the weapons inspectors returned to Iraq their reports failed to support the Administration's claims that Iraq posed an imminent threat (thus warranting Chapter 7 action), America's not-so-veiled commitment to regime change threatened the fundamental principles of sovereignty and non-intervention, and the Administration was threatening the unilateral use of force outside of the UN framework. In the end, the United States suffered its worst diplomatic defeat in fifty years when it failed to achieve a new Council resolution licensing the use of force. Its subsequent war in Iraq successfully deposed Hussein's regime

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but the Bush Administration has struggled ever since to shake off an aura of illegality and illegitimacy.

This story reveals the complex interplay between politics and law in contemporary international relations. The entire process was deeply political, but law was implicated at every turn. Once the Bush Administration entered the Council process its arguments were always cast in legal terms – it was the demands of international law, so publicly flouted by the Iraqi regime, that it insisted warranted the use of force. But its interpretation of the law, and also of the regime’s threat to that law, was contested by other Council members and large sectors of world society. Having lost this politico-legal debate, the Administration fell back on America’s material power and acted unilaterally without the cover of international legitimacy.

This interplay between politics and law is a recurrent feature of international relations at the beginning of the twenty-first century, but our existing frameworks of understanding are poorly equipped to comprehend this phenomenon. As Chapter 1 explains, we are accustomed to thinking of politics and law as separate domains of international social life, each with their own distinctive logics. This book is an attempt to rethink the relationship between international politics and law so as to better understand the complex interconnections we see in so many issue-areas. It grew out of a long-standing conversation with my friend and colleague, Paul Keal. Both of us were deeply dissatisfied with the way in which International Relations scholars discussed politics and law, with the way in which politics was reduced to an anaemic form of strategic action and law deprived of all socially-constitutive influence. The ideas that frame this book are very much the product of our conversation, and I am deeply indebted to Paul for his friendship and insight.

The project took form around a small research workshop that Paul and I organised at the Australian National University in November 2000. With financial and administrative support from the Department of International Relations in the Research School of Pacific and Asian Studies, we brought together an extraordinary group of International Relations scholars and international lawyers. Most of our contributors participated in this event, although Wayne Sandholtz was unable to attend and Amy Gurowitz joined the project later. Richard Devetak, Hilary Charlesworth, and John Braithwaite also presented papers at the workshop, and Paul and I are immensely grateful for their invaluable contribution to the group’s deliberations. The event would never have

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occurred had it not been for the support of John Ravenhill, then Head of the Department of International Relations. Lorraine Elliott and Greg Fry also supported the project from the outset, and played crucial roles as discussants throughout the workshop. Carolyn Bull and Malcolm Cook facilitated our discussions by providing daily rapporteurs' reports on the preceding day's deliberations, and Amy Chen was invaluable in administrative support. Most of my colleagues in the department participated in the workshop and deserve thanks for their ever-reliable support and critical interventions. Finally, I would like to express my gratitude to those who not only participated in the workshop but also provided chapters for this volume. It is ultimately their efforts that have made this project so satisfying.

Steve Smith and John Haslam have supported the project from the outset, and I am immensely grateful to both for their sage advice at critical junctures in the book's evolution. Cambridge solicited reader's reports from three leading scholars, and together these were invaluable in guiding our revisions. Mary-Louise Hickey, my department's research officer, managed the editorial process and skilfully co-edited the manuscript. Without her ever-patient assistance I would have even less hair and the book even less polish. I cannot thank her enough.

Finally, I would like to thank my partner, Heather Rae. As a member of the Department, she is thanked implicitly in preceding paragraphs. This project has been part of our life for the past three years, however, and this merits special mention. It has lurked in the corridors of our life like a mischievous gremlin, frequently inspiring conversation and debate, but also demanding far more time and energy than perhaps it merits. Just as the book bears the imprint of my conversations with Paul, so too does it bear the mark of Heather's and my ongoing discourse about the relationship between politics and norms in international relations. For this and so much more I am eternally grateful.

CHRIS REUS-SMIT
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