Syria & Locating Tyranny, Hegemony and Anarchy in Contemporary International Law.

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Abstract:

Substantive renderings of tyranny, hegemony or anarchy as governance forms within international law seldom appear. When invoked, tyranny and anarchy are presented as exceptional while hegemony, in accounts often borrowed from international relations scholarship, is defined as mundane and a natural explanation of international legal governance. This article puts forward substantive accounts of all three – tyranny, anarchy and hegemony – and utilises these to understand a single event, the airstrikes against Syria after the use of chemical weapons by the Assad Government in 2018. This event is first described in detail. The article examines the current use of the three theories in international legal theory and considers their substantive content. Next, these three theories are applied both singularly and in combination to the events in Syria to demonstrate what can be observed about international law through their deployment. This article shows the value of understanding the operation of international law through each of these prisms in their substantive form but also, and most markedly, what can be understood when all three frames are combined to explore a single event.

Keywords: Tyranny, Hegemony, Anarchy, Syria, Use of Force

1 Introduction

Tyranny and anarchy, if mentioned in international legal theory, are confined to descriptive, often anxious accounts at times uncritically borrowed from international relations. Meanwhile hegemony, though similarly reliant on descriptive accounts, is treated as commonplace and natural. Substantive renderings of these three governance forms - tyranny and anarchy at the margins of international governance, hegemony as the mundane - offer much to those wishing to understand the everyday practice of international law. This article puts substantive accounts of all three forward to understand a single event; the strikes against Syria following the use of chemical weapons by the Assad Government in 2018. It demonstrates their usefulness in understanding the operation of international law and the value in observing the three in combination.

Tyranny and anarchy are treated as exceptional, and save for circumstances of egregious bad governance, are all but irrelevant to discussions of international law. Hegemony is the opposite, it is a descriptor of the ordinary, an almost mundane and benign operation of

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power. These perspectives result in incidental invocations of the three terms with little consideration of their substantive content, their relationships with each other or other governance types. Tyranny is an extreme of cruelty or avarice, anarchy is rarely more than chaos or a system of horizontal power-plays, while hegemony is presented as power being concentrated in a functioning, efficient horizontal system. Each invocation both underutilises their content and exploits common (mis)understandings. This has potential implications for their invocation, singularly or in combination within international law as both underutilisation and (mis)understanding) can colour how we perceive events. First, such invocations may exclude law from important discourse by suggesting its irrelevance; second, by insisting on a single prism (tyranny, anarchy or hegemony) it omits other potential explanations. Third, it occludes analysis that offers important insight into events, observations on how international operates in certain events, like Syria, and what this means for future legal and political development.

Tyranny and hegemony have established lineages. Both emerged in recognisable forms in classical Greece. Tyranny is a consistent motif in governance debates, and while authoritarianism, totalitarianism or Bonapartism have from time-to-time supplanted its use, its substantial content persists.[1] Hegemony, initially a descriptor of military dominance, evolved in the 19th Century into a much broader political concept.[2] Anarchy emerged during the Enlightenment, albeit antecedents such as the Levellers suggest earlier iterations. As modern hierarchical political and social institutions emerged, anarchy as a counter-point political theory also took shape.[3] All three terms offer insights that are both prospective on what may be good or bad government and reflect lived experiences. On their own none fully articulate the nature of any single international legal event(s). Examining a specific event through their combined lens helps both to understand why events occurred, but also some of the shortcomings within international legal analysis when it relies – not always overtly but nonetheless manifestly - on single political descriptive theories to understand events. Looking at tyranny, hegemony and anarchy in tandem reveals more than shoehorning every aspect into a single narrative.

The nature of this article means that there is insufficient space to describe every element of tyranny, anarchy and hegemony, and so the introductions to each will set the contours of their substantive content alongside their most common invocations. Tyranny, anarchy and hegemony are chosen as their invocations in international law often overly rely on international relations conceptualisations while under-theorising law's role. The bombing of Syria in April 2018 by the US, UK and France is chosen as a case study for four reasons. First, as a recent example of military action, a firm narrative upon the strikes has yet to be formed. Second, the use of force in Syria and the broader region over recent years established a pattern of action by states which is difficult to classify. Third, the bombing illustrates the intermixing of domestic, regional and global debates on the use of force. Fourth, there is a strong legality thread to debates that enables an assessment of how tyranny, hegemony and anarchy fit within legal analysis.

The piece begins by describing events in Syria in 2018, followed by a conceptual outline of tyranny, hegemony and anarchy (with a brief discussion of the factual existence of each in

[1] Newell 2013

[2] Clark 2011

[3] It also has antecedents in Greece, Levy and Adams 2018

Syria). Syria is then examined through the combined lens of the three theories to establish the multiple instances of law's operationalisation. The article combines a conceptual analysis with an account of the existence of tyranny, hegemony or anarchy in Syria. The article demonstrates the utility of looking at international legal events through multiple perspectives, both individually and collectively, the value of treating tyranny and anarchy as potential avenues of insight into international law and thereby re-evaluates events in Syria in April 2018 from an international legal perspective. The article argues that international legal analysis should move away from descriptive accounts borrowed from international relations scholarship. The rich understanding of law that all three offer moves beyond the partial explanations proffered in international relations scholarship, but it is in combination that they offer the most to our understanding of events within international law such as Syria in 2018.

2 Case Study: Syria, Chemical Weapons and the Use of Force, April 2018

In April 2018 an attack in Douma, Syria, killed over 50 people and injured many more. The Organisation for the Prohibition of Chemical Weapons (OPCW) investigated the attack and found that chemical weapons were used.[4] Chemical weapon attacks violate the Chemical Weapons Convention and customary international law.[5] The first reports of the use of chemical weapons in Syria emerged in 2012, but it was not until 2013, after a chemical attack in Ghouta, that Security Council Resolution 2118 authorised the OPCW to act.[6] A Russian initiative, UNSCR 2118 followed both the UK's failure to get parliamentary approval to join with prospective US airstrikes against the Assad regime and a combined US and UK failure to get Security Council authorisation for the use of force to destroy Syria's chemical weapons stockpile.[7]

OPCW weapons inspectors declared at the end of 2013 that Syria's official inventory of chemical weapons had been destroyed.[8] Clearly, Syria held other unofficial stockpiles. Since 2013, the Declaration Assessment Team (DAT) of the OPCW visited Damascus at least 20 times but were given limited access. The DAT therefore stated that it is, 'not able to resolve all identified gaps, inconsistencies and discrepancies in Syria's declaration.'[9] While Syria admitted continuing research and development, they denied the deployment of chemical weapons. Since 2014, there have been over 100 recorded uses of chemical weapons in

[4] Report of The Fact-Finding Mission Regarding The Incident of Alleged Use of Toxic Chemicals as A Weapon in Douma, Syrian Arab Republic, On 7 April 2018, 1 March 2019 S/1731/2019, s2.17 available at https://www.opcw.org/sites/default/files/documents/2019/03/s-1731-2019%28e%29.pdf, other reports on further chemical attacks https://www.opcw.org/fact-finding-mission

[5] Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (and Protocols) (As Amended on 21 December 2001), 10 October 1980, 1342 UNTS 137, Meron 1996, 238

[6] UN Mission, Final Report, UN Doc. A/68/663–S/2013/735 13 December 2013, Security Council Resolution 2118 27 September 2013 S/RES/2118

[7] Murray & O'Donoghue (2016), 305

[8] OPCW Decision, Destruction of Syrian Chemical Weapons EC-M-33/DEC.1 27 September 2013

[9] 'Outcome of Consultations with The Syrian Arab Republic Regarding Its Chemical Weapons Declaration' EC-91/DG.23 5 July 2019, https://www.opcw.org/sites/default/files/documents/2019/07/ec91dg23%28e%29.pdf

Syria.[10] The International Committee of the Red Cross outlines the many other violations of international humanitarian law ongoing since the beginning of protests against the Assad regime as part of the Arab Uprising, the emergence of ISIS, and the widespread humanitarian catastrophe that resulted.[11] Since 2012, the unfolding events in Syria have become ever more complex, and the brevity and narrowness of this synopsis is not intended to present a full legal analysis. Rather, it sets a context for understanding what tyranny, hegemony and anarchy can tell us about the chemical weapons attack in Douma and the response to it within the international legal paradigm.

2.1 US, French and UK Airstrikes following the Douma attack.

Several states have used force within Syrian territory. Some, such as Russia, have done so at the invitation of the Assad regime, while the US, Turkey, UK, France and Iran, amongst others, have done so to assist various rebel groups, to attack ISIS, or in response to chemical weapon usage.[12] In April 2018 the US, UK and France attributed the Douma attack to the Assad regime. Russia vetoed Security Council proposals from the US, UK and France to establish a body to investigate the attack. These countries likewise vetoed Russian proposals.[13] On 13 April 2018, the US, France and the UK launched punitive air strikes against three military targets in Syria.[14]

Russia, Bolivia, Iran and Syria described the US/UK/France attacks as a violation of international law and Russia proposed a Security Council resolution condemning it as such. This was supported by China and Bolivia, albeit some states that abstained or voted against, such as the Netherlands and Sweden, referred to the resolution's text and its need for balance, rather than disagreeing with Russia's interpretation of events.[15] The US Ambassador to the UN, Nikki Haley, said that '[t]hese strikes were a justified, legitimate and proportionate response to the Syrian regime's continued use of chemical weapons on its own people'[16] but this is not a legal test based within the UN Charter. One of the Trump Administration's arguments came perilousness close to armed reprisals which are entirely unlawful.[17] In the months following the attack the US published the advice of the Legal Counsel with regard to the legality of the airstrikes, however this addressed only US domestic law.[18] France chose not to publish its legal position, nor did President Macron invoke international law in his public statements.[19] The UK published *part* of its Attorney

[10] Naqvi 2017, 969
[11] Bernard (2017), 865, UN Office for the Coordination of Humanitarian Affairs, "About the Crisis", available at: https://www.unocha.org/syria
[12] Grey 2018, 108, 238-240, Kleczkowska 2019, 369, Anderson 2013
[13] 'Security Council fails to adopt three resolutions on chemical weapons use in Syria' https://news.un.org/en/story/2018/04/1006991
[14] Scharf 2019, 189
[15] Security Council Record 8233rd Meeting, S/PV.8233 14 April 2018, Russian Federation: draft resolution, 14 April 2018, UN Doc. S/2018/355, Kleczkowska 2019, 374
[16] Ambassador Haley Delivers Remarks at a UN Security Council Briefing on Chemical Weapons Use in Syria (Apr. 4, 2018), https://usun.state.gov/highlights/8366, Kleczkowska 2017–2018, 14
[17] Grey 2018, 160-164
[18] Office of Legal Counsel 'April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities' 42 (2018) *Opinions of the Office of Legal Counsel*
[19] 'Press statement by the President of the French Republic on the intervention of the French armed forces in response to the use of chemical weapons in Syria' 14 April 2018 https://www.elysee.fr/emmanuel-

General's Legal Advice. The UK's position is based on humanitarian intervention.[20] Other than the UK only Belgium and Denmark have officially endorsed humanitarian intervention, albeit the latter two regarding event in the 1990s.[21] The UK's use of humanitarian intervention is a recent departure from its historic practice.[22] The test used is as follows:

i. There is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;
ii. It must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and
iii. The proposed use of force must be necessary and proportionate to the aim of relief of humanitarian suffering and must be strictly limited in time and in scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose).[23]

The 2018 test is an update of one proffered in 2013 when the UK Government failed to attain Parliamentary approval for strikes against Syria.[24] The UK's Young Constitutional Convention, developed after the 2003 invasion of Iraq, is intended to give the UK Parliament a vote on the use of force except where immediate action is necessary.[25] No Parliamentary vote was held prior to the 2018 airstrikes, despite over a week passing between the Douma attack and the use of force. Despite having no justification under international law, the EU and NATO, as well as Germany, Spain, Canada, Australia and Turkey, welcomed the strikes.[26]

Several justifications for the use of force were possible.[27] Self-defence could be proposed and was invoked in separate uses of force against ISIS in Syria. Given the circumstances it is unlikely that events could have come within either the definitions of pre-emptive self-defence or the unwilling-and-unable doctrine even if they were accepted legal basis for the use of force.[28] It might have been possible to have a basis for action under Responsibility to Protect, through a Security Council resolution, however, Russia's support for Syria and wariness from China following the Libyan Security Council Resolution made that unlikely.[29]

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macron/2018/04/14/press-statement-by-the-president-of-the-french-republic-on-the-intervention-of-the-french-armed-forces-in-response-to-the-use-of-chemical-weapons-in-syria-1.en

[20] Murray & O'Donoghue 2016, 305

[21] Orford 2003, 138

[22] Murray & O'Donoghue 2016, 305

[23] Prime Minister's Office 'Syria action – UK Government Legal Position' 14 April 2018 https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position

[24] Dominic Grieve, 'Guidance: Chemical Weapon Use by Syrian Regime: UK Government Legal Position' (29 Aug 2013) para 2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235098/Chemical-weapon-use-by-Syrian-regime-UK-government-legal-position.pdf

[25] House of Commons Public Administration and Constitutional Affairs Committee 'The Role of Parliament in the UK Constitution: Authorising the Use of Military Force' HC 1891, 6 August 2019, Murray & O'Donoghue 2016, 305

[26] Kleczkowska 2019, 374

[27] Grey 2018, 160-164

[28] Charter of the United Nations (24 Oct 1945) 1 UNTS XVI, Article 51, Dinstein 2017, 222, 322, Grey 2018, 108

[29] Grey 2018, 377

3 Tyranny

Tyranny has a long lineage. In classical Greece, tyranny evolved into a governance form rooted in two forms of illegitimacy. First, a tyrant comes to power through illegitimate means or, second while in office an individual goes beyond their official powers becoming illegitimate and a tyrant. Narratives that document Republican Rome's dissent into Empire often focus on locating the exact moment or actor that caused tyranny's emergence. Was it the point at which the Roman Senate became a silent political space, was it the expansion of Roman territory beyond Roman justice, was it when the office of dictator was altered beyond recognition, when Cicero pronounced that the murder of Julius Caesar was a justified tyrannicide, when Augustus cloaked himself in law while placing himself beyond its scope or a combination of these events.[30] Both classical Greece and Rome remain a constant thread of tyrannical theory and while figures such as Dionysius or Caligula are infamous it is rather the complex relationship with emergencies, legitimacy and tyrannicide that informs contemporary debates.[31]

Intellectual accounts of tyranny evolved through the medieval period in the writings of John of Salisbury and Bartolus, and into the early modern era through Machiavelli.[32] The role of Catholic Church was particularly important. First it established that tyranny was not just connected to secular rule, that a "global" body such as the Church could be tyrannical at both the parish and papal levels.[33] Second, it created a new justification for tyrannicide though it was contested throughout the period. While John of Salisbury argued tyranny releases persons from their oaths and establishes a duty to remove the tyrant, Augustine however argued that tyranny was a punishment from God that must be endured and no action to remove the tyrant taken. It was the Salisbury position that would go on to have traction in both ecclesiastical and political debates.[34] As modern constitutionalism evolved, tyranny became intrinsically linked to contemporary governance and arguments based in theology were replaced with political philosophy and in Bartolus, with law.[35] The relationship between tyranny and constitutionalism, where the latter is a bulwark against the former, is evident the writing of Hobbes, Paine, the Federalists.[36] In the contemporary era Arendt, Dahl and Strauss, among others, consider the inadequacies of constitutionalism – and particularly highly legalised constitutionalism – to prevent tyranny.[37]

Tyranny is often discussed in purely descriptive terms. This descriptive version tends toward shorthand for avarice, or a form despotism linked to Caligula-style governance. In the contemporary era, it is rarely utilised for anything other than the most brutal forms of governance. Except in the very worst of circumstances, authoritarian or sovereign constitutionalism are preferred monikers. The other regular invocation of tyranny is as the

[30] Kalyvas 2007, 412-442, 424-425
[31] Boesche 2010, 34
[32] John of Salisbury 1159, 349
[33] Parsons 1942, 138, 143
[34] Nederman and Campbell 1991, 572, Augustine of Hippo 397, 201
[35] Bartolus 1314, Machiavelli 1531, 10
[36] Paine 1894, 69, Hobbes 1909, 253, Hamilton 1864, 180
[37] Boesche 2010, Paine 1894, 71, Arendt 1951

opposite of chaos. This is common in both world government scholarship and to describe non-orthodox governance reform.[38] This is a conservative narrative where radical reform is foreclosed since it would invite chaos. This is observable in Hobbes' invocation of tyrannophobia where deviation from the status quo – even if it is a tyranny - creates instability.[39]

Normative tyranny is defined by its political and legal illegitimacy, either through the means employed to gain office or persistent and egregious *ultra vires* actions in office.[40] The tyrant can be an individual, a group or an institution, for instance, the Christian Church during the medieval period. It can also include a constitutional state acting tyrannically beyond its territory as with the expansion of Roman territory.[41] Tyrannies are often silent. The absence of contestation is a key attribute and silencing techniques include depoliticization through the extension of technocracy, the creation of a governance space absent democracy but often employing much legality in form and infrastructure, and gross abuses of power including violence and cruelty.[42] Tyranny sometimes produces societal benefits, such as the absence of war, or the creation of order, but there is always a price paid for those benefits.[43] The ultimate benefits accrue to the tyrant and their cadre. Empire is often close to tyranny; states otherwise democratic at home can be tyrannical abroad. As far back as classical Greece, the corrupting influence of empire and tyranny on domestic governance were key concerns for philosophers.[44] Tyrannies are full of law, but they exhibit rule by law rather than *of* law, where law cloaks authoritarian actions in false legitimacy.[45] Arbitrary power to create and redefine law at will is a key feature, but it is not lawlessness but the absence of the rule of law.[46] The presence of law is essential however its legitimacy is entirely lacking. As Arendt outlines, tyrannies can be entirely bureaucratic, a form of faceless rule by nobody.[47] Tyrannies are often gendered.[48] Tyrannies are often violent or the fear of violence is such that it becomes a continuous backdrop.[49] Scale features strongly, from Cicero through to the Federalists and World Government discourse. Geographic distance between the centre and periphery creates gaps in justice and silence as those ruled are too distant to hear. For some, the impact of competition between minorities and majorities forestalls tyranny since it ensures contestation while for others the inevitable negative outcome of majority rule makes it, and by implication democracy, tyrannical.[50]

Tyranny had fallen out of use in discourse in the 20th Century.[51] This is partly due to the rise of phrases such as Bonapartism and Caesarism in the 19th Century, but also the emergence

[38] Müllerson, 2000, 134–47
[39] Hobbes 1909, 253
[40] Machiavelli 1531, 154
[41] Bartolus outlined 10 characteristics of tyrannical government Bartolus 1314, 16-17
[42] Arendt 1951, 374
[43] de Tocqueville 1835, 254
[44] Only occasionally was the harm caused to those living under empire and tyranny discussed. Lane 2014, 112, Paine 1894, 65
[45] Machiavelli 1531, 86
[46] Arendt 2007, 714
[47] Arendt, 1958, 40, Arendt, 2009, 78, this can also be found in others such as Mill 1861
[48] Women in government are inevitably tyrants, their lives should be lived in the private tyrannical sphere, or they are the root of tyranny Astell 1996, 17-19
[49] Arendt 1969, 37 -42
[50] Montesquieu 1748) 199-200, Marston 2000, 219
[51] There are of course exceptions to this such as the Struss- Kojève debate, Strauss and Kojève 1961

of totalitarianism as a description of all-encompassing governance which collapses the private into the public in the 20th Century.[52] This shift also occurred due to the reluctance in both scholarship and politics to describe any system as no longer possessing a constitutional order. This is not limited to extreme cases such as North Korea or failed states but also in the emergence of new terms such as authoritarian constitutionalism, illiberal democracy, sovereign democracy or advanced democracy.[53] The rise of populist discourse and the dismantling of liberal constitutionalism have renewed interest in tyranny,[54] but there remains a reluctance to use tyranny - in contrast to hegemony and anarchy - and rarely is any system found to meet either its descriptive or normative description.

Tyranny's normative content is relevant to international law.[55] International law's relationship with democracy,[56] with the rule of law,[57] its beneficence towards particular social groups,[58] its ongoing relationship with colonialism,[59] its connection to technocracy and its gendered underpinnings suggest that tyranny could be a useful measure for international legal critique.[60] International law's relationship with imperialism reached its apex as Western states were at their colonial height but the consequences of this nexus remain.[61] The institutional and legal structures of international law have yet to emerge fully from imperialism's shadow.[62] The lack of engagement with tyrannical theory in international law mirrors its broader side-lining in governance debates. Nonetheless it has the potential of opening a new form of critique that would require deep reflection on the content and structure of international law.[63]

3.1 Tyranny and Syria

Syria's Government fits the attributes of tyranny. Assad presides over an illegitimate regime where benefits accrue to a single group, while claims to the creation of 'order' when compared with other regional states or the ISIS caliphate are its core benefit. Non-contestation and rule by law are sustained through violence or its threat. There was a relatively stable governance order under Assad with elections, a judiciary and a division of power but none of these amounted to constitutionalism. Rather rule by law, with a chimera of democracy and a compromised judicial system subsisted for a considerable period. While prior to the Arab Spring the epithet of authoritarian constitutionalism could be applied, if that existed than a process where an otherwise constitutional order would have had to

[52] Baehr and Richter 2004, Arendt 1951, 146, Arendt 2006, 96, for a critique of totalitarianism as a descriptor of Nazi Germany and the notion of state-phobia see Foucault 2008, 74-76
[53] Kovács, Kriszta; Tóth, Gábor Attila 2209
[54] Snyder 2017
[55] Koskenniemi 1990, 4, von Bogdandy 2019
[56] Houghton 2019, 465
[57] Krieger, Nolte and Zimmermann 2019
[58] Chimni 1993, 236-237
[59] Anghie 2005
[60] Heathcote 2019
[61] Bento and Ford *Rage for Order* 2016, Natarajan, Reynolds, Bhatia and Xavier, 2019
[62] Orford 2011
[63] Schwöbel, 2011, Walker 2015

become tyrannical over time. The Assad regime never possessed the attributes of constitutionalism. As a state, Syria emerged from both the fall of the Ottoman Empire and the mandate system under France and, as such, has historically fallen under imperial tyranny. ISIS rule would fall under Arendtian totalitarianism in both its governance form and the egregious treatment of women and other marginalised groups.[64] Syria's internal governance is not the focus of this piece but rather the events following the chemical attack in Duoma and international law's role in states' responses to it. However, if we are to consider whether the removal of a tyranny or regime change is justificatory it becomes relevant. None of the three states that attacked based their arguments on regime change and the duty or entitlement to engage in tyrannicide lies with those living under tyranny.[65] The declaration of a state to be a tyranny does not strip it of statehood, rather it recognises that constitutionalism is not synonymous with statehood.

Turning to the bombing campaign, the UK Government took the decision to use force despite the emergence of the Young Constitutional Convention under which the UK Parliament should vote on uses of force except in emergencies. In this instance, no prior vote was offered. This raises questions of constitutionality, albeit it would be difficult to argue the UK is an a-constitutional order. It is, as previously described, possible for a domestically constitutional order to act tyrannically abroad. The UK's domestic constitutionality does not provide a justification for an illegal use of force.[66] The combination of acting on the basis of rule by law and the utilisation of force at the periphery – an analysis that could be extended to both France and the US who also faced domestic constitutional issues - raises the possibility that all three states were acting tyrannical beyond their borders.

The UK was the only state to give a formal international legal justification for the bombing. The UK's Attorney General's legal advice builds upon previous iterations which had not convinced an earlier Parliament as to the legality of humanitarian intervention in Syria. By placing reliance on humanitarian intervention as opposed to the UN Charter and using force in the absence of a Parliamentary vote, despite the Young Constitutional Convention, the UK appears to be moving away from the governance order of which it is a co-creator and firm member of as one of the permanent members of the UN Security Council. Neither the US nor France released their legal justifications, and the US' only published advice focused entirely on domestic decision making. All three states failed to inform the UN Security Council of their justifications for their use of force before undertaking action, preferring public statements which conferred little legal legitimacy. Their approach suggests either that they consider themselves to be above any existing international rule of law system or demonstrates that the system is nearer to an international rule by law order regarding the use of force. This is not the absence of law. As under a tyranny, law is plentiful, but it operates at the whim of those in power.

Russia's role in Syria is different. Outwardly, Russia is acting within the legal bounds of international law as they have been invited by the Syrian Government to use force. Further, the Duma in Moscow supports the use of force.[67] Nonetheless, if we consider Russia's

[64] Arendt 1951, 374
[65] Ford 1987
[66] Buchan 2013
[67] Duma ratified agreement on limitless deployment of aviation group in Syria. TASS (in Russian). 7 October 2016, https://tass.ru/politika/3687095

engagement with a tyrannical regime in Syria, its obstinate dealings with the OPCW and its own potential violations of international humanitarian law in its Syria intervention, it is possible to characterise Russia's international actions as tyrannical.[68] Whether the Putin regime is itself tyrannical is beyond this paper but certainly it is one of the states that has consistently called for a 'redefinition' of democracy and constitutionalism to extend rule by law and authoritarianism.[69]

Where does the benefit lie, and could the bombings be benevolent? If we begin with benevolence, the UK action framed its bombing as humanitarian intervention which presents itself as benefiting a population however outside the parameters of Responsibility to Protect where there are duties regarding the types of force used.[70] As the Security Council sanctioned action in Libya demonstrates, in practice this doctrine is limited.[71] Whether the general population of Syria benefited from the airstrikes is debatable. While there were military targets and no reports of civilian casualties, it is far from evident that the strikes prevented the Assad regime from further use of chemical weapons or other violations of the laws of war or that they will bring the civil war to a swifter conclusion. The US already had special forces fighting ISIS forces within Syrian territory and both France and the UK had engaged in bombing campaigns against them in Iraq however the justifications for those uses of force are entirely separate to Douma and this attack does not appear to be differentiated from the bombings.

Who benefited? The political benefits that flowed to the three states involved in the airstrike both domestically and internationally are hard to quantify, particularly if damage was also done to their legitimacy. Similarly, the benefits that were gained by either Syria or Russia from portraying themselves as victims of states engaged in ignoring the lack of evidence of attribution for the chemical weapons attacks and international law is equally difficult to quantify. There is also the use of force as a form of violence in and of itself. Violence as an element of tyranny is not essential, but the threat of violence often features. The threat of the use of force or violence without the constraint of law or the due process of sorts, that the Security Council or other international legal mechanisms offer, certainly cleaves close to tyrannical actions. Not every attribute of tyranny is present, but this does not mean that such actions are not tyrannical. Rather the question is whether the actions were, in practice, outside of the legitimate governance order, and if they employed the tactics of tyranny.

4 Hegemony

Herodotus first described hegemony as the political and military dominance of one state over others within a league of states.[72] Hegemony has since moved beyond the narrow confines of city states to the global arena and into international law.[73] As hegemony evolved it came to embody a theory that goes beyond raw power to include social, cultural and economic

[68] Bernard (2017), 865
[69] Smith and Stewart Sharlet 2008
[70] Chesterman 2011, 279
[71] UNSC Res. 1973, 'Libya' (17 Mar 2011) UN Doc. S/RES/1973
[72] Anderson 2017, 1 - 5
[73] Gramsci 1971, Laclau and Mouffe 2001, Butler, Laclau and Žižek 2000

domination.[74] Hegemony breaks through the Grotian state as a method to understand inter-state, transnational, regional and global dominance. Global hegemony or the predominance, control or undue influence of one entity or group of entities over others is not established as core to the international legal debate as it tends to emphasise Westphalian sovereign state equality which a hegemonic account contest. Nonetheless, a form of international relations hegemonic theory has come to dominate international legal discourse.[75]

A hegemon's ideas and practices are the default and so entrenched in discourse that dislodging them and establishing new ideas becomes difficult. Gramsci regarded hegemony as based both on dominance and consensus.[76] Hegemony extends beyond traditional ideas of dominance through threat or use of force to establish dominance. Hegemonic dominance includes pre-dominance, control and undue influence and is related to consent, coercion and socialisation. Force may maintain or establish dominance – military or political – but more often hegemony is achieved through intellectual and moral leadership (force often remains a potent aspect of a hegemon's artifice). For Gramsci, hegemony is part of class rule that operates beyond states boundaries.[77] To embed and persist predominance requires both the consent of civil society and its expansive engagement. In Gramsci's view hegemony required a core around which the system's ideology operates and a common world view revolves. In the work of Cutler and Gill alongside other neo-Gramscian critical scholars this is the basis on which the intersection of institutions, ideologies, capitalism and class establishes hegemony.[78] Hegemons are often presented as singular, however they can be a heterarchy including networked systems, concerts, alliances and coalitions where the hegemon does not necessarily dominate the entire international system but rather its own sphere of influence.[79] As with tyranny, for some, hegemony can be positive if it creates stability and order. For others, the tools necessary to establish and maintain hegemony (including inequality and social, economic and physical harm) are little more than gratuitous uses of power, whatever benefits some might perceive.[80] Often it is at the core, where the hegemons are, that the stability and thus benefits are felt. Hegemony rarely is considered to create global stability and relies on instability at the peripheries to subsist, as such, who benefits from the system is limited to the hegemons and those at the core.

Countering hegemony is difficult but possible.[81] Contestation can involve a frontal attack on the predominant ideas, or engaging with or subverting those ideas to bring about their overturn and replacement.[82] It is in understanding and employing these methods in combination that Gramsci argued capitalism, and other hegemonic forms, could be toppled.

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[74] It appears to have first emerged in its modern context to describe Prussia, Anderson 2017, 6-8

[75] Byers and Nolte 2003, Vagts 2001, 843, Koskenniemi 2011, 219. Koskenniemi, in focusing on Gramsci and Laclau, departs from other accounts that focus on international relations scholarship.

[76] This is tied to his philosophy of praxis Schwarzmantel 2014, 214

[77] Schwarzmantel 2014, 214

[78] Gill and Cutler 2014

[79] Clark 2011, 7

[80] Hegemony has long been used to explain the inequality behind sovereign equality of states, Oppenheim 1908, 213

[81] Bellamy 1994, 313

[82] Schwarzmantel 2014, 96, Mouffe 1979, 186

For all of the significance of Gramsci's theory, his substantive description of hegemony rarely forms the basis of international legal critique.[83]

At the academic intersection between international relations and law there is no agreed definition of hegemony, but international legal scholarship, with few exceptions, rarely departs from the descriptive account offered by non-critical international relations scholarship.[84] Doyle argues that hegemony is the 'controlling leadership of the international system as a whole', while Ilkenberry and Kupchan suggests that it establishes 'a set of norms that others willingly embrace.'[85] Counter-hegemony, hegemonic stability and instability are given considerable attention as have questions of consent, coercion and the socialisation process by which hegemonic norms are established but international law rarely reflects on how this impacts on structures that support its own operation.[86]

Within international relations the dominant narratives focus on state or state networks of domination. These accounts centre upon force, with economic, social and cultural elements taking only supporting roles. Hegemonic stability theory, often associated with Kissinger and his treatise on Metternich, provides the traditional explanation of the US's role in maintaining international security as a successor to the *Pax Britannia* or even *Pax Romana*.[87] This stability narrative often ignores the instability that arises at peripheries which seldom, if ever, get the 'benefits' of the hegemon. Within such a hegemony law is important in establishing systems, but it is rarely more than a tool. Grewe argues that successive hegemons established the foundations of international law, facilitating subsequent neat descriptions of international law's evolution.[88] European attempts to establish hegemony over America, Asia and Africa from the 15th Century to the first half of the 20th Century become essential to understanding contemporary international law. Within Europe the Vienna Concert system established hegemonic stability.[89] Post-World War II the US and USSR provided counter-hegemonies until the end of the Cold War. In recent years the rise of China has provided a new point of departure, even if China is rarely portrayed as a benign hegemon, in the mould of the US or European Concert system.[90] The EU presents a new challenge which the historical international relations narratives of both the Concert system and external European hegemonic forces do not capture. While international law adjusted to the twentieth century by regulating overt aggressive uses of force, this shift has not displaced hegemony within international relations.[91]

These accounts focus on the core of the hegemony with rare discussions of its peripheries, their narratives or their legal engagement. Where these are addressed, they are presented as imperial expansion as seen from the core.[92] They also infrequently consider the counter-hegemonic practices of feminist activism or anti-colonial revolutions, their impact on

[83]Koskenniemi 2011, 219. Koskenniemi, in focusing on Gramsci and Laclau, departs from other accounts that focus on international relations scholarship.
[84]Beckett 2007, 2, Knox 2016, 306, Buckel, Fischer-Lescano 2009, 437, Cox 1987
[85] Doyle 1986, 40, Ikenberry and Kupchan 1990, 283
[86] Keohane 1984
[87] Clark 2011, 8, 11, Snidal 1985 579, Cox 1987, 211
[88] Grewe 2000, see also Keohane *After Hegemony* 1984, Alvarez 2003, 873
[89] Clark 2011, 9, Kissinger 1994, 78
[90] Huntington 1999, 35
[91] Vagts 2001, 843, Kingsbury 2002, 419
[92] Johns et al 2011, 797

international law's development, instead favouring linear (progressive) narratives that overestimate hegemonic power. The critique provided by Third World Approaches to International Law (TWAIL) also recognises the existence of a hegemon, however the consequences are perceived differently.[93] Critical scholarship examines the networks and class interests that transcend national borders and comes closer to Gramsci's account of cultural hegemony, arguing that that dominant political and economic ideas reflect and are to the benefit of the dominant state and class.[94] This critique suggests that hegemonic influence establishes what for some may be positive norms but for most others is an unjustified imposition of Euro-American exceptionalism.[95]

Krisch argues that hegemons typically instrumentalise law, reshape into a hierarchy and supplant it with domestic legal tools that better suit their purposes.[96] But Krisch also points to a paradox within the international legal order, that to operate it requires power to enforce its norms.[97] This suggests a very close relationship between international law and hegemony, whereby they appear locked together in substance, procedure and structure. The hegemon will establish and buttress the global order that best suits its requirements through both coercion and acquiescence, and this narrative reoccurs as differing hegemons assert themselves within international law.[98] This recognises both the role and use of law within and by hegemons and its import within the international legal order.

Gramsci emphasised the complicated ways in which cultural hegemony reproduces capitalism and the role of ideology in determining what becomes common sense.[99] The neoliberal scholarship of Mises and Hayek, establishing what is 'common sense' and utilising law to create a global neoliberal capital system, reflects Gramsci's descriptions, much as he would not agree with their worldview, and provides a good example of his theory in action. Over an extended period, neoliberal economic scholars replaced the welfare narratives of Keynesian economics within regional and international economic institutions with neoliberalism market oriented legal structures and enforcement.[100] Unlike international relations approaches, substantive hegemonic theory moves beyond the inter-state or Concert analysis and places law in a more active role. It argues that the tools of technocratic, social and political elites are apparent within international law, as such, when international law is presented as universal this is unreflective of reality as in fact it is particular.[101] Gramscian hegemonic contestation argues that the political use of legality to establish a regime of benefit to an actor or set of actors is evident. For neoliberal theorists this was quite apparent.[102] Often, but not always linked to globalisation, contemporary scholarship on hegemony recognises that actors beyond states may also be sources of hegemonic power.[103]

[93] Natarajan et al, 2019
[94] Gramsci 1971, Taha 2019, 1
[95] Orakhelashvili 2013, 114
[96] Krisch 2005, 369
[97] Krisch 2005, 367
[98] Williams et al 2012, Schoenhardt-Bailey 2006
[99] Gramsci 1971
[100] Slobodian 2018
[101] Scott 2003, 451
[102] Scott 2003, 451, Keohane 1984, Koskenniemi 2011, 219-222
[103] Ziccardi Capaldo 2008, 22

Hegemony occurs within, amongst, and between states and while most often hierarchical, it can assume heterarchical form where networks of states or interest groups become hegemons.[104] Networks of states, agents of states such as international organisations, non-state elites, multinationals and civil society operate within and beyond the state. Law is often the instrument used by these groups. Hegemony may involve military, political, social, cultural, economic and technocratic practices, alongside legal practices where the dominant narrative of what the law ought to be is seldom contested.

Hegemony includes pre-dominance and control with consent, coercion and socialisation intrinsic to its maintenance. Hegemons do not control everything at all moments, hegemonic power can be particular to a system or regime. A system can have multiple hegemons active across different sites. The benefits that emerge from hegemony such as stability, peace or economic prosperity, however, are confined to the core with instability maintained at the peripheries. Law and international law are closely connected, be it in the hegemonic creation of law, its enforcement of policy objectives that affirm the hegemon or in the operation of rule by law where the hegemon dictates the content of the law.

4.1 Syria and Hegemon

The Assad regime and its power base maintain their power and domination through coercion and consent and would qualify as a local hegemon. This does not exclude the tyrannical argument already offered but rather switches the frame to provide a different analysis, these two will ultimately be combined with anarchy. While force is important, both economic power and socialisation had maintained stability in the region where elsewhere instability is common, a hegemonic benefit. Recently, however, this power could only be maintained through the intervention of outside forces who often utilised international law as a source of legitimisation. At first glance it would be difficult to describe the US, France and the UK airstrikes as hegemonic action as they were collaborative within their own group, however, a different light is cast on the action when only one of the three would be a position to act on their own. The US has long been identified as a hegemon, and in 2017 bombed Syria alone.[105] The addition of the UK and France might indicate a troika of hegemons, and their places as permanent Security Council members reflects the historic hegemonic international institutional and legal structure as it existed in 1945. However, the strikes allude to the strength of the US as a – albeit not sole - global hegemon in bringing two others, relatively powerful, states along with it, despite the legal ambiguity.

Other manifestations of hegemony (legal, social and cultural) apply to the actions of these three self-identified democratic constitutional states in several ways. First amongst these is the technical ability to undertake action from such a distance that risks no lives. The social and legal hegemony that enables such lawless action to sidestep Security Council censure and even receive a measure of international backing is also important. If the US is the sole hegemon, the socialisation which ensures the consent of other states within its penumbra of power is essential to its status. The unlawfulness has no legal consequence beyond the social and cultural capital that may be affected, and this will be more apparent for the 'junior'

[104] Ziccardi Capaldo 2008, 22
[105] Kleczkowska 2019, 369

partners in the action. If we see it as a heterarchical hegemony, then consent from other actors which align with the hegemonic will is evident. Behind the social and legal hegemony stands the military coercion that supports the ability to undertake the action.

The US and French executives' nonproduction of international legal justifications, in contrast to the UK, reveals a lack of homogeneity. All three were more concerned with domestic audiences rather than international, and this points to a wider trend where gaining domestic legal legitimacy has been put in the place of international law, a form of creeping unilateralism that sidesteps the UN Charter.[106] As Krisch argues, this replaces international with domestic regulation. International law operates as the tool of the hegemon where acting beyond the law, as per the rule by law, becomes and is the norm. Law then is a useful instrument of the hegemon, enforced when a state violates international humanitarian law, as in Syria, but not when the hegemon uses force outside of the structures it has set as the norm.

Russia aligning itself with Syria re-enacts the old Russia/US (with France and the UK) dance of two hegemonic forces facing off in the context of proxy wars. In supporting - both militarily and politically - a state violating international humanitarian law, while purporting to uphold the UN Charter, Russia may look like it is taking a different course but in reality, is mirroring the US in taking very similar steps of establishing the legal legitimacy of its action. The UN Security Council acts as the legal and political instrument of both, it is their touchstone in establishing the legal and political legitimacy of their actions and enables both to maintain their own hegemonic spaces. In that space the Security Council acts for the hegemons in creating a legalised political order that through both coercion and consent calcifies their power.

Russia's actions and its intervention to prevent an investigation by the OPCW into Douma might suggest that a hegemonic explanation is insufficient, and indeed that is the main argument of this piece. Russia had to manipulate the political and legal space that it had partially created to prevent the emergence of facts that would destabilise the legitimacy of its own actions in Syria. Hegemons do not have to control all things at all moments. The activities of multiple hegemons across multiple sites is evident. Hegemonic stability is less apparent in this multi-sited discourse, and along with it the benefits that some insist it obtains. Hegemonic stability, however, insofar as it exists, most often leads to instability at the periphery. The October 2019 decision by the US to abandon its alliance with the Kurds of Northern Syria is clear example of when a decision at the core causes chaos at the periphery. A tweet in Washington can cause untold misery for those living far away from the source of power because that power has made a decision, the consequences of which do not trouble the benefits accrued at the core.[107] These events in Syria demonstrate both that a hegemon's power is finite, in that Russia had to block a legal step in a system it is a fundamental part of and that hegemonic theory, as it is traditionally presented in international relations theory, is finite in what it can explain about the operation of international law.

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[106] Murray and O'Donoghue (2016), 305

[107]Donal J Trump 'As I have stated strongly before, and just to reiterate, if Turkey does anything that I, in my great and unmatched wisdom, consider to be off limits, I will totally destroy and obliterate the Economy of Turkey (I've done before!). They must, with Europe and others, watch over…' https://twitter.com/realDonaldTrump/status/1181232249821388801?s=20

5 Anarchy

Anarchy is offered in two forms: as a boogieman to be feared or as the underlying reality of international relations. In the former guise anarchy requires intervention to prevent lawlessness and chaos, a clarion call to any lawyer. In the latter anarchy reflects international relations as they are where international law operates, at best, as guidelines. Within international law anarchy is influential, but rarely directly addressed. Hedley Bull's book *The Anarchical Society* is prominent and the touchstone for international legal discourses seeking to prove international law's substance and import when faced with international relations accounts of its ineffectiveness. [108] Anarchy in its second type involves chaos, lawlessness and disorder. This emerges in two forms; first "total" anarchy, the outcome of a failed world government and, second, the world established in the absence of law. This absence narrative is apparent in 19th Century discourses on civilisation. These are reproduced in the 21st Century in the extension of technocratic forms which aim to bring certainty into governance by removing politics from decision-making.[109] Anarchy's substantive form as political philosophy is rarely considered worth international law's attention.[110]

Anarchism does not offer a single vision of a society, but traces of it can be found in libertarianism, communism and republicanism.[111] Anarchy, or the absence or rejection of centralised authority, offers far more than chaos. Kant placed anarchy alongside despotism, barbarism and republicanism as one of four forms of government, describing anarchy as law and freedom without force.[112] Anarchy, like hegemony and tyranny, has antecedents in the classical period where anarchy held both the utopian ideal of a non-hierarchical society alongside connotations closer to chaos.[113] Anarchy and lawlessness can be embodied (in the negative) Hobbesian or (in the positive) Edenistic states.[114] Hobbes' nasty, brutish and short state of nature necessitates strong government and discipline. Edenistic states of nature suppose a system where law and order are unnecessary as want and conflict are absent. For Kant, anarchies fell short of being full sovereign states, as law was mere recommendation not backed by force. This prevailing view of anarchy as not meeting the minimum requirement for statehood has had lingering ramifications for international law. In the age of imperial expansion, territories closer, or characterised as, closer to substantive anarchy were not deemed civilised.[115] As Lorimor famously argued 'Communism and Nihilism are thus forbidden by the law of nations.'[116]The control of the use of force and the role of the Security Council permanent five members further underpins the link to a monopoly of force and its relationship to legitimate government characterising statehood.[117] Those states that possess the ultimate control of force inside and beyond their territories are those given the greatest

[108] Bull 1977, 9
[109] Johns 2019, 833, Krasner 1999, 42
[110] Amster et al 2009
[111] Pettit 1997, 41, Graeber 2002
[112] Kant 2006, 235
[113] Levy and Adams 2018, 305
[114] Hobbes 1909, 142, Bull 1981, 717
[115] Bowden 2005, 1, Becker Lorca 2014
[116] Lorimer 1883, 159, discussed in Simpson 2016, 446
[117] Simpson 2004

prominence in the UN order. Those that reject force are of little consequence in the system and those that cannot exercise a monopoly on force within their borders are, at times, deemed failed states.[118]

Pierre Joseph Proudhon described anarchy as 'the absence of a master, of a sovereign'.[119] For Proudhon anarchies are stateless societies where activities and organisation are undertaken by voluntary associations without fear of disorder or chaos.[120] While anarchists reject the state, intention to create a system where all share in decisions and outcomes forms a central tenet of anarchist organisation. Anarchy does not focus on freedom from domination but rather on the lack of force to compel individuals to act in particular ways. Anarchism requires a refoundation of an entire order not merely a process of reform. Following Proudhon, later iterations embraced both collectivism and individualism.[121] Collectivism is most often connected to radical left politics, while individualism is embraced by libertarianism. Both reject states' monopoly on force, however collectivism regards community and collective decision making as essential, whereas libertarianism prioritises individual decision-making.

Community is an important strand of anarchist theory, which Jean Luc Nancy argues should be conceived of as a group of 'beings in common'; a community not allied by communion but rather where individuals recognise the other within the community and individuals are not subsumed into a greater whole.[122] Community is centred on being in common and, as such, individuals do not become subordinate to the sovereign.[123] International law might embrace the absence of a master or sovereign as definitional, but in the main legal scholars have either attempted to disprove this characterisation entirely or to detail how international law is evolving away from it.[124] Focusing on an absence of government or, in Waltz's terms, an absence of the figure of a higher common sovereign, however, does not correlate with Proudhon's anarchy as the absence of such a figure is irrelevant to his theory.[125]

Bull's *Anarchical Society* established anarchy within the international order not as Proudhon would have envisaged, but as the product of force and power. This brings Bull's use of the term, in some respects, closer to tyranny.[126] Bull's realist view validates international law, but only since, as per Kant, it is the recommendation of an international society where there is no force to coerce submission. The international society creates international law to stave off unrestricted violence.[127] This related closely to Bull's view that inter-state relations exists without a sense of community or society until the point at which a shared common interest points toward the creation of rules. Hobbes and the anarchic state of nature is especially influential within this realist tradition.[128] Much like Kant, Hobbes did not see international relations as being absent law, but rather that the law of nations was consent based and therefore lacked authority.[129] For Bull, an international society with common rules and

[118] Simpson 2004
[119] Proudhon 2007, 191, he also first used capitalism in its modern sense.
[120] Proudhon 2007, 191, Chartier 2013
[121] Amster et al 2009
[122] Nancy 1991, 34
[123] Armstrong 2009, xvi
[124] Peters 2006, 579
[125] Waltz 1979
[126] Bull 1977, 9
[127] Waltz 1979, see also, Wendt 1987, 391
[128] Bull 1981, 720-721
[129] Hobbes 1909

institutions is possible, sustains itself by maintaining a constant state of competition, which as with Hobbes, results from human nature.[130] In this characterisation international law is both a social construct and a product of habit.[131] Waltz argues that anarchy within international relations allows states the freedom to act as they wish and this enables autonomy to flourish.[132] This view is predicated on sovereign equality being a reality, rather than the presence of a hegemon or tyranny. But hegemonic stability is also invoked as a rampart that prevents anarchy if the latter is thought to be closer to Hobbes than to Proudhon.[133]

In contrast, critical accounts of world government rely on descriptive tyranny and anarchy to maintain that a world government would be tyrannical, because anything less would lead to anarchy.[134] This sets tyranny and anarchy at opposite ends of a hypothetical spectrum. Whether anarchy is better than tyranny is rarely articulated. That they are equally bad is intimated, albeit for Bull and Waltz anarchy is always present within the international order (but not the chaos that emerges from the infeasibility of world government).[135] Between these extremes is a constructivist approach which places international law at the heart of a global order based upon socially constructed rules.[136] International law, and specifically the international rule of law, supposedly combat excesses in politics 'understood as a matter of furthering subjective desires and leading to an international anarchy.'[137] The realm of politics is projected as requiring restraint.

Anarchy as governance, in the substantive Proudhon form, is largely absent from international legal theory where it is used as shorthand for chaos or force. Bull's international relations perspective, while not as extreme as Hobbes', disregards conceptions of this political theory resting in voluntary cooperation without the state.[138] These conceptions of anarchy are critical to the relationship between capitalism, society, technology and culture and include strands of anarchfeminism and self-liberalisation.[139] Traditional legal orders, including systems that foster hierarchy and authority, where theories of crime and punishment underpin order and institutionalised structures such as marriage are rejected. In their place, a strong focus on individualised direct action is put in place.[140] This requires individuals to be at the heart of the governance order rather than – as with current international law – rarely the subject of law but often its object.

Substantive anarchy is directly at odds with current international law. Anarchism rejects the international legal order both because it is impervious to individualised activism and because sovereign equality is no more than an ideal. There is also a strong strand of pacifism within anarchism which makes it difficult to reconcile with legalised force under the UN. Instead, international law relies upon operationalised coercive forms, often backed by force or

[130] Bull 1977, 49
[131] Bull 1977, 133-137
[132] Waltz 1979
[133] Yee and Morin 2009, 117, Reism and Kessler 2016, 347
[134] Koskenniemi 1990, 28, Krasner 1999, 42, Rousseau 1917, Müllerson 2000, 134-147
[135] Lu 2006
[136] Reism and Kessler 2016, 347
[137] Koskenniemi 1990, 5
[138] Chartier 2014
[139] Ehrlich, 1996
[140] Chartier 2014

economic pressure.[141] International law's intermediaries, including the law-making and operationalising structures, are state and institution based. They are coercive and designed to prevent direct individualised action.

Anarchy as a governance theory should be deployed as a principled critique of international law's cost to individual lives, emphasising the need for both resistance and direct action. International law, and especially the international rule of law, often characterises politics as destabilising good governance. Politics, in this regard, is 'understood as a matter of furthering subjective desires and leading to an international anarchy.'[142] Whether international law buttresses international rule by law and thus creating the vacuum in which chaos breathes is rarely queried.

Such a critique is not a call for chaos, or for Bull's state-dominated international society, but taking anarchy as governance without domination seriously, in the absence of a master, entails the participation of all within a community. Direct action creates a space at odds with international law, where procedural sovereign equality marks the absence of a substantive equality.[143] Here substantive anarchy can reveal possibilities for reform. Anarchy does not possess a single idealised governance form. Rather, Proudhon's account is based on heterarchal decision-making, resistance and cooperative governance. It is these elements that sets the contours of what anarchy embodies. While anarchy is often lawless, this lawlessness is not chaos; it comes from co-operative non-hierarchal decision-making.

5.1 Syria and Anarchy

If anarchy is treated as a theory of chaos, then Syria's dissent under the Assad regime leaves it in one of contemporary international law's newest categories, the failed state.[144] In certain periods, comparing the precarity of the Assad Regime against the Montevideo Convention criteria on statehood could lead to the conclusion that Syria had descended into anarchy.[145] This raises questions over Syria's ability to decide the international legal repercussions of events. The US characterised it as unwilling and unable to tackle ISIS, arguably a form of descriptive anarchy.[146] This, the US argued, enabled elements of their multi-part military intervention. At the height of the advances by Rebel Groups and ISIS, states raised questions about the Syrian Government's ability to issue an 'invitation' to Russia to intervene.[147] This descriptive account of anarchy works to disempower Syria both as a state and its government, no matter that in other circumstances the potentially tyrannical nature of the Assad regime was otherwise ignored.

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[141] Gordon 2009, 253-356
[142] Koskenniemi 1990, 5
[143] Gordon 2009, 253-356
[144] Simpson, 2004
[145] Article 4, Organization of American States (OAS) Convention on Political Asylum, 1933
[146] Corten 2016, 777, Tzouvala 2015, 266
[147] The UK (and several other states) have departed from the recent practice of not recognising governments separately to states, for instance in Venezuela https://www.gov.uk/government/news/sir-alan-duncan-welcomes-greeces-recognition-of-juan-guaido

The legal wrangling at the UN Security Council suggests a hierarchal structure that may appear akin to Bull's anarchy. International law is used by Russia and the three bombing states to end the chaos in Syria within a society that is based on co-operation not law. There was clearly co-operation amongst the three states undertaking the airstrikes and acquiescence from other states. The billiard ball analogy for international law that often sits at the core of international relations scholarship suggests that the internal operations of states are immaterial and states only interact where the come into contact with each other appears apt to a co-operative inter-state structure where law is of use in a cooperative context.[148] It might, however, be more fruitful to use substantive anarchy as a point of critique rather than attempting to find its operationalisation in the Syria conflict.

The UK's predicated the legality of the 2018 bombing on the need for evidence 'generally accepted by the international community as a whole' of large-scale humanitarian distress requiring immediate action.[149] This invocation of community ties the idea of liberal peace to Bull's invocation of society.[150] A self-declared community of liberal democratic states agree when a use of force is needed, thus side-stepping inconvenient established international law. The UK test for humanitarian intervention can be conceptualised as Bull anarchy in that it refers to a community of states agreeing that action must be taken outside of the structured legalised institutional system for the better of the whole.

The community of states leading a liberal peace, however, does not consider any community argument beyond immediate allies, often just Western states. The UK, in coming to its decision, consulted with just two states and not its own Parliament. It relied on a conception of community within which democratic states - even those choosing to ignore domestic constitutional processes - ought to be given more of a 'say' on whether force can be used.[151] Thus it refers not to the community of states made up by the United Nations, nor a community as Nancy would recognise that is not based upon subjugation, allegiances or self-identification. The absence of substantive anarchy reveals the problematic operation of international law. What remains amounts to hierarchical decision-making, where 'good' states take the decisions because of domestic constitutional superiority. One community retains the power to determine the four corners of decision-making regarding the use of force. Community here is a process of othering, of them and of us and nowhere is that planner than in the UK's test for humanitarian intervention.

Syria was bombed for violating international law; law did not and has not stopped the use of chemical weapons. Similarly, international law did not curtail the actions of the US, the UK and France, even if the UK still felt it necessary to couch its actions in the legalised language of a self-created test, as did the US and France to a lesser extent. Under a traditional international relations analysis these strikes demonstrate the non-importance of international law and the existence of anarchy. The 2018 bombings do not imply the absence of domination, instead they suggest that law's presence is not an equaliser. It acts to enshrine domination at both the domestic and international levels. Substantive anarchy requires cooperation in the absence of violence, but the 2018 bombing of Syria is predicated on the

[148] Wolfers 1962, 19-24

[149] Prime Minister's Office 'Syria action – UK Government Legal Position' 14 April 2018 https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position

[150] Buchan 2013, 73

[151] Buchan 2013, 96

ability of some states to use overwhelming force to punish another state's violation of international law with no repercussions for their own actions. Waltz's "freedom to" within international anarchy omits any consideration of "freedom from" the force of a sovereign, including that of another state.

6 Tyranny, Hegemony and Anarchy

This final part of the article considers what can be revealed by looking at tyranny, hegemony and anarchy in tandem. The Syrian civil war is extremely complicated with a multiplicity of legal explanations given for a variety of uses of force alongside political support and destabilisation by those located at the global core and within Syria's geographic region. Decisions made at the core, for instance the US' withdrawal of support for Kurdish troops alongside the Russia-Turkey settlement on the use of the military along the Turkish-Syrian border is yet another example of both the manipulation and side-lining of international law to suit particular circumstances within that civil war. The legal justifications for the array of uses of force in Syria are distinct and each in themselves reveal something different about tyranny, hegemony and anarchy. Anarchy offers an alternative to the hierarchies of international law and international relations which buttress hegemons and tyranny and establish a negative space for cooperation. Using hegemony as critique, rather than a realist view of power relations, highlights the inadequacies of the international legal order, and in particular the manipulation of the UN Charter Articles designed to prevent unlawful uses of force, especially by those granted special veto powers in the Security Council. Conceding tyrannical elements to the international order does not mean the system is absent positive aspects but it does require action to bring it to an end. The UN Charter's use of force structure is neither fully hegemonic, nor anarchic, nor is it fully tyrannical, but in the bombing of Syria in April 2018 each form of governance is notable by its presence or absence. This article argues that each tells us something interesting about the international legal order but using all three as a pooled lens on a single event offers insights unavailable when they are used alone.

The 2018 bombings and their aftermath reveal the exceptionalism that continues to surround the use of force particularly when it involves the Five Permanent members of the Security Council.[152] Syria was 'punished' for violating international law and threatened by the US with reprisals; law is thus present, but only in part and only for some.[153] This is law backed by force as Kant would recognise, but only those subject to hegemonic power suffer the consequences of their tyranny. Assad is punished for violating international law, however, despite evidence of Russian involvement in violating the laws of war, they have not been subject to similar repercussions nor have the states that have violated the UN Charters' use of force Articles. Law's presence offers protection only if the hegemonic powers put it into operation, it is partial and subject to the will of the power holders. Whether there is protection for Syrian civilians is subject to the 'will' of those possessing power and their decision to invoke law. At best, rule by law can be said to operate. But critically it is not chaos. Law reflects the hegemon and the possibility for tyranny, law is everywhere. It is not the freedom *to* that Waltz articulates, that freedom is only enjoyed by the hegemonic powers. Nor is it freedom *from* the overweening power of the hegemons. Rather it is a space where law cloaks illegitimate action by those with power, both within Syria by the Assad regime

[152] White (2004)
[153] Scharf (2009), Grey 2018, 160

and outside Syria by those intervening by force. Co-operative decision-making is absent except within the frame of the exercise of hegemonic power.

Both tyranny and hegemony raise questions of where the benefits of a governance order lie. While the ultimate answer may be the same, that answer can be reached by different routes. Traditional hegemonic discourse considers hegemonic stability to benefit the entire governance order, but events in Syria demonstrate how people and places on the peripheries only see the ill effects of centrifugal forces. The US and Russia, alongside others including Turkey, Iran and Saudi Arabia, attempt to project hegemonic power in the Middle East as a region in order to gather benefits, political, cultural and economic, to themselves. While their rationales for power projection will and do vary to suggest it is always altruistic would be to deny the outcomes of their interventions, which rarely benefit the individuals in the region.[154] As the Syrian example demonstrates, international law is either overtly invoked as a key instrument in attempting to gain those benefits, or efforts are made to divert its gaze. Tyranny raises the possibility of other beneficiaries. International law, while outlawing chemical weapons, a form of benefit to individuals within Syria, only empowers those states who wield power through the institutionalised and legitimate hierarchy of the Security Council to act against those that use them. But enough gaps exist to facilitate the illegitimate avenue of side-stepping that body's scrutiny either to provide cover to an alley or because the state wishes to take steps on their own initiative or know that any investigatory steps will be blocked. Russia, the US, France and the UK all proportionately profit from the strength and weaknesses of these aspects of international law, all based in a system that they were fundamental to creating and sustaining.

The UK based its arguments in humanitarian intervention, a doctrine which is entirely reliant on producing benefits within the territory that force is used.[155] Yet, even Responsibility to Protect, as Libya demonstrates, does not appear to produce benefits for those living in the peripheral territory subject to states at the core's beneficence through force.[156] As the civil war in Syria continues, whether civilians have benefited from these airstrikes is at best, in doubt. Chemical weapons and other violations of the laws of war continue apace and few of the interventions appear to have benefited Syrians beyond the potential of reassertion of stability by the Assad regime through tyrannical governance and hegemony. The political s that three states involved in the airstrike both domestically and internationally is difficult to ascertain, particularly if damage was done, and this is uncertain, to their domestic and international legitimacy. Likewise, the benefits gained by Syria and Russia from posturing as the victims of airstrikes that ignored the lack of attribution evidence of their use or acquiescence to the use of chemical weapons appear weak. But all four intervening states assumed some advantage – political or strategic - would come from their interventions or contravention of the UN Charter, beyond any humanitarian relief or it is possible to argue they would not have intervened. The ultimate answer to who benefits in hegemony and tyranny may be the same, however both reveal different ways by which international law contributes to the accumulation of those advantages.

Anarchy requires heterarchal decision-making, resistance and cooperation. It is only in the outlawing of chemical weapons in conjunction with international humanitarian law that the

[154] Voon 2017, 40
[155] Chesterman 2011, 279, Voon 2017, 40
[156] UNSC Res. 1973, 'Libya' (17 Mar 2011) UN Doc. S/RES/1973

individuals living in Syria become factors in international legal decision-making, not as decision-makers but rather as victims of tyrannical actions. They have no path to direct action, other than the possibility of tyrannicide against the Assad regime.[157] A path that arguably they tried during the Arab Uprising of 2011. The structure of international law is such that beyond the renewed interest in recognising governments and the marginalised doctrine of Responsibility to Protect, there is little concern for domestic tyranny. Albeit the recent potential re-emergence of the recognition of governments in the case of Venezuela does suggest that this avenue may potentially return.[158] Anarchy's support of resistance, and tyranny's corollary tyrannicide – which includes both non-violent and violent removal of tyranny – permits, and in some circumstances insists upon a duty to action against tyranny.[159] This would tend to lend itself to support for the overthrow of tyrannical governments by groups within a state, however the duty or ability lies with those subject to the tyranny so outside interference which foments a situation would still fall foul of Article 2.4 of the UN Charter.

International law's recognition of resistance is confined to specific forms within self-determination, the Responsibility to Protect and international human rights law.[160] This is unsurprising in a system, which as discussed earlier, contains tyrannical attributes and supports sovereignty but not democracy, and as such, overthrowing tyrannies is unlikely to be a priority.[161] If these tyrannical attributes are combined with Bull's anarchical order, then the international society thereby created might well establish some general beneficial elements, for instance, outlawing chemical weapons and creating a system of investigation and monitoring when violations occurred. The investigations into chemical weapons use in Syria in 2014 are an example of this in operation. This approach within the international legal order, rather than the specific body tasked within investigation, will prioritise easy wins over reducing the power of the tyrant. Setting up such bodies delays the attribution of fault and in cases of war, the circumstances have often long moved on. Albeit it is possible for ICC intervention, albeit in Syria this would be reliant on the UN Security Council and so is unlikely. International humanitarian law provides real substantive benefits which have prevented both the spread and use of chemical weapons. But this benefit is conceded while creating a broader Charter system where the *jus ad bellum* question is institutionalised to provide military hegemons, the permanent five Security Council members, with extensive power. It also allows those possessing overwhelming force to by-pass the legal system while punishing only the domestic tyrant for their actions. The lack of punishment does not mean there is no law, but points towards a tyrannical legal order.

Hegemony is evident in the military engagement in April 2018. Its political and social forms also operate in the instrumentalisation of international law to facilitate the use of force. The nature of the force used, and especially the distance between those deploying force and those subject to it, bring the scale of global hegemony close to tyranny. Military hegemonic descriptions might be prominent within realist accounts of the international order, but these do not account for how law itself is a hegemonic force that creates a negative space for those unable to make use of its tenets. Legal hegemony is fundamental to a rule by law system

[157] Ford 1987
[158] O'Connell (2019)
[159] John of Salisbury 1159, 231
[160] Rodenhäuser 2018, Rajagopal 2002,4 Honoré 1988, 34
[161] Besson 2020

because it establishes legal domination as mundane and thus enabled the long extension of imperial era structures into the supposed era of sovereign equality. The reliance upon rule by law and imperial constructs within international law, principally by states that otherwise meet the standards of liberal constitutionalism, demonstrates how hegemony and tyranny align. The role of force as sanction, wielded by the small band of states able to employ overwhelming force, establishes that anarchy's requirement of cooperation without the presence of force is far removed from contemporary international law and governance.

7 Conclusion

The bombing of Syria in April 2018 is but part of a broader failure of the international legal order. This catastrophe is palpable in events since the Arab Uprising but is evident in the long-term abandonment of the Syrian population who have been subject to generations of tyrannical governance, including under the mandate system. The focus of this article upon the 2018 strikes is not intended to underplay the long-term suffering of those living in Syria and of the many Syrian refugees now globally dispersed. Rather, this event provides an opportunity to evaluate the actions of players within the international legal order.

That hegemony, anarchy and tyranny are frequently employed in the domestic context is not necessarily problematic. Hegemony is always considered with domination amongst governance sites. Tyranny, since Aristotle, is disturbed by its application beyond the domestic. Anarchy, moreover, is co-opted to describe an international system where law is marginal or in its original form imagines governance without states. Seeing the three in tandem makes it easier to understand the emergence of tyrannical governance structures through hegemony. Hegemony is domination and precludes the rule of law, as such, both hegemonic stability and hegemonic legal evolution normalise its existence as inevitable and natural. The current international legal order and the hegemonic forces that created it become the natural standard and, in the main, are uncontested. Rule by law, the deployment or threat of force and the creation of a legal order which operates to the benefit of powerful groups become merely the normalised outcomes of hegemony, rather than symptoms of tyranny. Anarchism's call for cooperation without force may be present in elements of the Charter and the corralling of war into its frame, however the Charter also reflects the mid-20th Century hegemony behind its creation.

It is possible to see international law in other ways. There is no inevitability to any legal construction and this paper would be different had it considered international human rights or economic law. Each could nonetheless be analysed via individual and collective deployment of tyranny, hegemony and anarchy theory. Engaging with substantive anarchism reveals the possibility of re-imagining a non-hierarchal, co-operative decision-making space within international law. Recognising the tyrannical elements within international law, and using that as a point of reform, would be more valuable than conceding that international legal theory attempts to move beyond its historic roots in 19th Century imperialism, but has not yet achieved its task. Utilising tyranny requires admitting the inadequacies within international law and theory and then acting. Anarchy, tyranny and hegemonic critique forces international legal theory to acknowledge the extent to which the status quo causes harm and to move beyond tinkering with the peripheries as if they are the

problem. Using hegemony as a point of critique, not as a point of stability ignores harm at the peripheries and reveals the lack of substantive equality at the inter-state level.

Hegemony's deployment should be a point of critique that highlights the inadequacies of the international legal order in preventing the unlawful uses of force, rather than as an international realist acknowledgment of "the way things are". Acknowledging that a system is tyrannical is not fatalistic; it produces a duty to bring that tyranny to an end. Looking to anarchism represents possibilities of what a truly cooperative international order, detached from domination or the force of sovereign force, might involve.

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