

THE LEGAL CULTURE AND THE CULTURE CULTURE

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In this lecture, I will argue that the relation between international law and culture should be understood as interactions between two radically different cultures: the *legal culture* and the *culture culture*.

This interaction may be revitalized, but it cannot be wished away by the evident fact that the legal culture may reflect cultural values or that cultures do internalize their own laws and norms.

I will talk first about the legal culture and, specifically, about international legal culture. There can be said to be emerging a widespread, if as yet thin, global skein of international legal culture: what Professor Oscar Schachter, years ago, identified as the invisible collage of international law. To some degree, that phenomenon probably affects most of us in this audience. We see ourselves, at least in part, as related through the commonality of a shared legal culture that also separates us, for example, from the culture of the Daughters of the American Revolution or that of Afghanistan's Taliban. How we see ourselves as "us" and them as "them" I will discuss presently. Suffice it for the moment to note that we subjectively perceive ourselves as joined in an association of values, perspectives and nomenclature or language that constitutes a culture.

True, most of our identities are constituted of more than one culture. But this does not diminish the importance of the evidence that we share a common culture.

So, of course, do those of the culture culture. In my use of the term, the *culture culture* is a loose conceptual configuration of all those to whom the particularities of race, religion, ethnicity or nationality are—or are among—the defining elements of their identity.

It is evident that one's multilayered identity does permit some of us to define ourselves simultaneously by the legal culture and the culture culture. In most liberal democracies, multilayered identity is tolerated or even encouraged. In Linda Colley's terms, identity is not like a hat. We can wear more than one at a time.

I will turn now to the defining values that distinguish the legal culture and the culture culture. These specific values distinguish in both senses of the word: They demarcate and they differentiate.

The legal culture is a culture of *generality*. It is expressed by its commitment to *equal and universal* application of rights and duties. In the special case of the *international* legal culture, on which I will hereafter focus, this means a commitment to the principles of *normative universality* and *normative equality*. Normative equality applies both to states and—especially in the human rights context—to persons. Normative universality, since World War II, while also applying to states, increasingly applies to persons as individuals who bear both rights and responsibilities.

Admittedly, universality and equality have not always been hallmarks of the international legal culture. Thus, when Article 38(1)(c) of the International Court of Justice (ICJ) Statute, in defining sources of law, cites the practices of "civilized nations," it echoes a hoary concept, much traversed by such medieval scholars as Vittoria and Suarez, of "uncivilized" states and "savage" persons. These, of course, were entitled to no, or far fewer, rights than the Christian nations of Europe, and their practices could not be a source of international law.

But that was then. Now, Article 2(1) of the Covenant on Civil and Political Rights recognizes the equal rights of "all individuals . . . without distinction of any kind, such as race,

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colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The principle of state equality at law is similarly recognized by Article 2(1) of the UN Charter, which adopts as basic to the Organization "the principle of the sovereign equality of all its Members." Equality and universality: universality and equality.

The contemporary international legal culture is suffused with these relatively new legal universalisms and egalitarianisms. Alas, they are still to some degree aspirational and do not yet guarantee equal, or even equitable, apportionment of goods among all states or all persons; nor do they vaporize longstanding, stubbornly retained discriminatory practices against some states and persons. But the professed aim of the international legal culture is to advance universal equality of entitlement: both between states and among persons. That aim is pursued by law's proprietary propensity to speak in terms of general application. The law, in the quaint old words, "is no respecter of persons."

Although the international legal culture aspires to generality in the sense of universality, it does not preclude treating different subjects—states or persons—differently. Nevertheless, it scrutinizes claims to exemption from its generality with a skeptical eye. If a law does not apply to some (that is, if there are exceptions to universal application), or if it does not apply equally to all (that is, if there are exceptions to equality), the onus of demonstrating the need and purpose of an exception rests squarely with those seeking it.

Against this generalizing tendency of the modern international legal culture is ranged a culture of differentiation. This culture emphasizes the exceptional quality of each particular society, whether it be a state, nation, race, religion or society. This exceptionality asks to be respected and preserved for its own sake. Obviously, what these particularists emphasize is differences, not equality or sameness. Or, more accurately, the culture emphasizes rights not of persons but of groups, or of persons as members of groups whose rights are founded on group affiliation and not on individual personhood. Persons acquire rights as a consequence of their membership in such self-differentiating groups.

The culture thus rejects John Rawls's claim that the individual is the "sole self-originating source of valid claims."¹ Instead, it is the culture that is the source of claims. To those defined by culture, it is axiomatic that the legal culture—that is, any generally applicable legal system based on individual equality and universal rights—is likely to be inhospitable to particularist claims to exemption from law's equal and universal reach.

Thus, human rights are not seen as friends. According to Professor Adeno Addis, the whole human rights enterprise of post- World War II international law is perceived "as a first step towards making group affiliation irrelevant in the treatment of individuals."² It is, thus, anathema to the culture. The culture views the legal culture, in its self-professed commitment to universality, as the progenitor of individualism. Universalism, the culture says, supports individualism. In this view, the legal culture, because it purports to recognize in every person a full panoply of inherent rights, undermines the group by substituting personhood for group membership as the source of rights.

Inevitably, the culture demonizes the legal culture as a culture of runaway individuation. Professor Michael Walzer has warned that law's new emphasis on individual rights "generates a radical individualism and then a radical competition among self-seeking individuals."³ Addis adds that such a regime "breeds social dislocation and social pathology among members of groups."⁴ The generality, equality and individuality advanced by the

¹ John Rawls, *Kantian Constructivism in Moral Theory*, 77 J. OF PHIL. 515, 543 (1980).

² Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 67 NOTRE DAME L. REV. 638 (1992), and cites therein.

³ MICHAEL WALZER, *RADICAL PRINCIPLES: REFLECTIONS OF AN UNRECONSTRUCTED DEMOCRAT* 98 (1980).

⁴ Addis, *supra* note 2, at 645.

modern international legal culture is perceived by advocates of the culture culture both as thinly disguised homogenization—"CNN-ization," the "Coca-Cola culture," etc.—and as a subordination, radical alienation, atomization, anomie, etc. The advocates of the culture culture see its subordination by the international (or, as they say, cosmopolitan) legal culture.

This confrontation between the legal culture and the culture culture leaves many of us so-called liberal cosmopolitans in a quandary, since we value the new global law of individual rights but also acknowledge the role of cultural diversity, out of respect not only for deep-rooted traditions but also for the capacity of particular cultures to interrogate critically the unexamined assumptions of the law and its saturation with society's dominant values. Professor David Kennedy has noted this quandary and "the broader sensibility of the modern legal internationalist . . . [which] worries about improving global governance while respecting cultural differences." He adds that for "international law, global governance means, at least in part, norm generation and enforcement. Relations with something called 'culture' are both more fraught and less central than those with sovereigns [or individuals]. Like politics or religion, culture and cultural difference precede the move to law [and] exist external to it as a constant challenge or threat."⁵

In an important recent study, Professor Berta Hernandez-Truyol demonstrates this quandary. She first praises the United States' 1994 Violence Against Women Act (VAWA)⁶ for "removing violence against women from the protected, private realm by placing it squarely in the public domain as a matter of federal law."⁷ (The Act, upheld in some circuits, was declared unconstitutional in whole or in part by the Fourth Circuit on March 5, 1999, but its uncertain future need not detain us here.⁸) The purpose of the law is to "establish a federal cause of action for gender-motivated violence."⁹ The obvious effect is to generalize rights and duties by providing universal (in this case U.S. federal) remedies. While welcoming this generalizing of norms and remedies, however, Hernandez-Truyol predicts that the law will have a "long and bumpy" ride to acceptability in the prevailing Latina and Latino culture: a "particularly difficult task."¹⁰ Its accomplishment, she suggests, will require the reeducation of "the entire family (including not only the spouse, children and extended family, but the battered spouse herself) about the inappropriateness and illegality of domestic violence."¹¹ She recognizes the problems inherent in seeking to trump a culture culture by recourse to legal culture, but welcomes the effort by law to relieve a specific instance of cultural oppression.

At the same time, Hernandez-Truyol makes clear her belief that the legal culture, in its pursuit of generality, must strive to accommodate culture culture's particularism. Thus, she praises VAWA's program of grants to improve victim services "to racial, cultural, ethnic, and language minorities."¹² These grants are to help provide "culturally sensitive" services that pay appropriate attention to the minority women's "history, religion, language and culture."¹³ Hernandez-Truyol welcomes the law's deference to the very cultural particularism that gives rise to some of the problems the law's generalization seeks to redress.

⁵ David Kennedy, *The Disciplines of International Law and Policy*, 12 LJIL 9, 62–63 (1999).

⁶ Subtitle C, 42 U.S.C. § 13981.

⁷ Berta Esperanza Hernandez-Truyol, *Las Olvidadas—Gendered in Justice/Gendered Injustice: Latinas Fronteras and the Law*, 1 J. OF GENDER, RACE AND JUSTICE 353, 402 (1998).

⁸ *Brzonkala v. Virginia Polytechnic Institute and State University*, 1999 WL 111891 (4th Cir. (Va.)).

⁹ The Violence Against Women Act: Factsheet, U.S. Department of Justice, <<http://www.usdoj.gov/vawo/vawafet.htm>>, Aug. 7, 1994.

¹⁰ Hernandez-Truyol, *supra* note 7.

¹¹ *Id.*

¹² 42 U.S.C. § 379699 (1994).

¹³ Hernandez-Truyol, *supra* note 7, at 403.

So there it is: the conundrum in which many of us, in the legal culture, find ourselves. We hold simultaneously two hard-to-reconcile attitudes: We approve of both enforced conformity and benevolence toward deviance.

This ambivalence is apparent on the face of the VAWA statute. On the one hand, the law seeks to effect a certain delegitimization of Latina-Latino particularism as an answer to the evils of a particularly unattractive manifestation of culture in the form of sanctioned male violence against women, children and other men. The legal culture has concluded that it is necessary to use general law to curb one aspect of culture. The offending cultural particularism is confronted by law's insistence on universalizing a standard of behavior through civil and criminal remedies.

At the same time, the legal culture recognizes that Latina-Latino culture must also be deferred to. Hernandez-Truyol notes with approval that the statute purports to "enhance the opportunities of Latinas in the delivery and receipt of services" through "linguistically and culturally sensitive programs that Latinas have so long been lacking."¹⁴ In other words, federal law also recognizes and supports the culture that is a source of violence, not least by providing special services to facilitate victims' equal access to the law's new remedies.

It will be readily apparent that what, at first glance, appears as a paradox is, in fact, a perfectly sensible yet controversial and somewhat unstable effort to accommodate both the demands of groups for cultural recognition of their particularism and the demands of broader liberal societies for conformity to foundational values of liberty and equality.

We of the legal culture will just have to learn to live with this sort of paradox in our fraught relations with culture. As sensible humans we have the unique capacity, when necessary, to hold two seemingly contradictory views simultaneously. No arduous stretch of the legal imagination is necessary to recognize a need for accommodation. Hernandez-Truyol herself makes this clear in another essay which focuses on "global rights."¹⁵

The Convention on the Elimination of All Forms of Discrimination Against Women,¹⁶ the General Assembly's Declaration on the Elimination of Violence Against Women¹⁷ and the Convention on Racial Discrimination all prescribe both normative universality and equality.¹⁸ Yet Article 3 of the Women's Convention and Article 2(2) of the Convention on Racial Discrimination make explicit exceptions for measures and legislation that affirmatively favor a historically victimized group, legitimizing this particularist exception as a necessary step toward eventual universality and equality. As the Permanent Court of International Justice said in its 1935 Advisory Opinion on Minority Schools in Albania, "Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations."¹⁹

The outstanding example of the international legal culture embracing the culture culture is Article 27 of the Covenant on Civil and Political Rights. While the Covenant focuses almost entirely on universal and egalitarian principles, Article 27 provides that in "those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

¹⁴ *Id.* at 402.

¹⁵ Berta Esperanza Hernandez-Truyol & Kimberly A. Johns, *Global Rights, Local Wrongs, and Legal Fixes: An International Human Rights Critique of Immigration and Welfare Reform*, 71 S. CAL. L. REV. 547 (1998).

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979; entered into force Sept. 3, 1981. 1249 U.N.T.S. 13, 19 ILM 33.

¹⁷ G.A. Res. 48/104, U.N. GAOR, 48th Sess. at 1050, U.N. Doc. as a/Res/48/104 (1994).

¹⁸ Convention on Racial Discrimination, 660 U.N.T.S. 195 (1966); entered into force Jan. 4, 1969.

¹⁹ Advisory Opinion No. 64, 1935 P.C.I.J. (ser. as a/B), at 19.

Thus it appears that the international legal culture, like VAWA, offers an accommodation to cultural particularism, but on its own principled, generalized terms. Cultural exceptionalism is recognized, but specifically for the limited purpose of easing the way for persons of disparate or disadvantaged cultural backgrounds to avail themselves fully of the offer of equal, personal rights.

That this accommodation does not represent a capitulation by the generalizing legal culture has not escaped the attention of champions of culture culture. Professor Adeno Addis, a sharp-eyed critic of the “totalizing” effect of the international legal culture, points out that Article 27 of the Covenant on Civil and Political Rights “does not create, as it appears at first reading, a space for group rights . . . but it affirms an important dimension of the individualist project: the individual right to freedom of associationThe explicit concern with ethnic minorities as a group here is in fact regarded as a first step towards making group affiliation irrelevant in the treatment of individuals.”²⁰ The culture culture, it seems, is not easily appeased.

Compromise between the legal culture and the culture culture, Addis’s critique makes clear, will not come easily. Nor, perhaps, is such an accommodation always desirable. Cultural claims for exemption from equalizing, generalizing rules of international law should be approached with skepticism. Sometimes the appropriate response to noncompliance is enforcement rather than accommodation.

But when should the legal culture meet the culture culture in compromise, and when in confrontation?

I have noted, on the one hand, that the hallmark of legal culture is universality and equality. The hallmark of the culture culture, on the other hand, is authenticity and pedigree. Whereas international law’s claim to legitimacy—by which I mean its pull toward compliance—is its fairness, the claim of culture is based on its widespread and deep roots, through which a group draws sustenance for its common identity.

These hallmarks—the fairness of law and the authenticity of culture—provide some guidance for developing a general principle on which the legal culture can base decisions as to when to accommodate and when to confront a culture-based claim to exemption from universal norms. The cultural claim is at its strongest when based on group norms of pedigreed authenticity and when the legal norm from which exemption is sought has a manifest fairness deficit, as when it has failed to achieve equal application or universal recognition. The particularist claim is at its weakest when its pedigree and rootedness are questionable.

Take the example of the Taliban regime in Afghanistan, which prohibits women from leaving home alone, going to school, or engaging in careers or public affairs. The Taliban argue that Afghan women, separated from all public obligation, have been freed to focus on home and family, in contrast to women in other societies, who are degraded through prostitution and other forms of exploitation. The Taliban assume the posture of a victimized minority culture fighting a lonely battle against totalizing practices that undermine deeply felt Islamic customs and practices.

How should the legal culture respond?

A first move would be to examine empirically the legal culture’s validating claim of universality. Do states really accept the principle of women’s entitlement to equality? Such fact-skepticism would seek to ascertain not only the extent of actual compliance with the ideal of equality but the direction and momentum of change.

A second move would be to examine skeptically the pedigree of the inequality norm for which the Taliban seek recognition. This would have to entail a diligent examination of

²⁰ Addis, *supra* note 2, at 638.

evidence for and against the cultural norm's authenticity. It seems self-evident that the institutions of the international legal system should treat with utmost skepticism any exceptionalist claim advanced on behalf of a norm of a particularist culture. Customs said to be deeply rooted in a group's history and laws, on closer examination, may turn out to be no more than the self-interested preferences of its current power elite.

Have Afghan women always been restricted to the home? How widely shared among Islamicists is the Taliban's cultural commitment to such a circumscribed role? On closer examination, the authenticity of the Taliban's claim may prove less than persuasive. The UN Security Council appears to have reached that conclusion when, on December 8, 1998, it demanded that the Taliban put an "end to discrimination against girls and women and other violations of human rights" and instead adhere "to the international norms and standards in this sphere."²¹

Take another example. The apartheid regime of South Africa, quoting Scripture (Joshua 9:21), long insisted that role assignment by race was an essential part of its Calvinist culture and that its particularism should be exempted from liberal equality-based global norms. That threshold argument was examined and, appropriately, rejected in 1974, when the UN General Assembly refused to recognize the credentials of the white South African delegation on the ground of its illegitimacy: It did not represent its constituent population.²² Thereafter, sanctions were applied to enforce the universal norms against the particularist deviants.²³ The exceptional claims made on behalf of South Africa's white Calvinists were rejected as unauthentic by many Calvinist theologians in South Africa itself, and certainly had no support whatsoever from the Calvinists of Scotland and the Netherlands.

Consider, finally, the case of Sandra Lovelace, a member of the Maliseet tribe of New Brunswick, Canada. Lovelace had "married out" of her tribe. Maliseet law, incorporated into Canadian federal law,²⁴ consequently stripped her of the right to live on tribal land. After her divorce, Lovelace brought to the Human Rights Committee a complaint grounded in the Covenant on Civil and Political Rights.²⁵ The Committee in effect rejected the tribal leaders' claim to exemption from the Covenant's strictures of equality and generality.²⁶

It soon became apparent that the tribal leaders' claim was unauthentic.²⁷ The Committee's rejection of the claim coincided with a rank-and-file revolt against leaders who no longer represented the modern values of native peoples and who had misrepresented the tribes' traditional cultural practices.²⁸ Maliseet subordination of women has turned out to be more a copying of Edwardian imperial style than a pedigreed indigenous custom. With wide support from inside the tribal community, the Canadian Government repealed the offending provisions of the Indian Act.²⁹ As the culture opened up, more than 130,000 persons came forward to reclaim their cultural affiliations.

²¹ S/RES/1214 (1998), 8 December 1998.

²² U.N. GAOR, 29th Sess., 2281st mtg., 12 Nov. 1974, agenda item 3, Report of the Credentials Committee.

²³ S. Res. 418 (1977); S. Res. 566 (1985); S. Res. 569 (1985).

²⁴ Canadian Indian Act, Rev. Stats. Can., 1985 ch. I-5, §§5-6. See also D. Hawley, *The Annotated 1990 Indian Act*.

²⁵ Communication R.6/24. *Lovelace v. Canada*, 36 U.N. GAOR Supp. No. 40, Annex XVIII, Doc. as a/36/40 (1981).

²⁶ Views of the Human Rights Committee under Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, Case Submitted by Sandra Lovelace, U.N. GAOR, 36th Sess., Supp. No. 40 at 166, U.N. Doc. as a/36/40 (1981) (annex 18).

²⁷ See John Borrows, *Contemporary Traditional Equality: the Effect of the Charter on First Nation Politics*, 43 U.N.B.L.J. 19, 31-36 (1994); Will Kymlicka, *Individual and Community Rights*, in *GROUP RIGHTS*, 17, 21 (O. Baker ed., 1994).

²⁸ Borrows, *supra* note 27, at 35-36; Raidza Torres, *The Rights of Indigenous Populations: The Emergent International Norm*, 16 YALE J. INT'L L. 127, 135 (1991).

²⁹ Bill C-3 (1985) amending the Indian Act, R.S.C. c. 1-6, s.1.

But what if a particularist claim to exemption from a widely implemented general norm turns out to be authentic? Suppose group X can be shown always to have engaged in human sacrifice and that the practice is still regarded by most of the members as central to their identity?

Even if factual sociocultural evidence of the authenticity of human sacrifice could be demonstrated, that need not be conclusive. Assent that underpins claims of authenticity or rootedness may have been coerced, imposed, conditioned, or obtained by fraud. Thus, women reared in a culture from earliest childhood to accept violence, confinement to the home, political disenfranchisement, socioeconomic subordination and physically coercive male dominance cannot provide evidence of free and informed consent to their subordination. Sometimes, too, on closer examination, particularism turns out to be no more than an internalization of externally imposed stereotyping.³⁰

In sum: On the one hand, all claims made by the legal culture should be evaluated skeptically in the light of evidence of the asserted rules' legitimacy and the extent of their pull to actual universal compliance. On the other hand, claims made on behalf of cultural norms must similarly be assessed skeptically by reference to their authenticity. As the novelist Salman Rushdie recently wrote, "There are fundamental freedoms to fight for, and it will not do to doom the terrorized women of Afghanistan or of the circumcision-happy lands of Africa by calling their oppression their 'culture.'"³¹

This sort of pedigree skepticism should not be suspended merely because nonconformity per se may be a valuable social asset. True, diversity sometimes effectively interrogates prevailing values and norms and should be treasured for that capacity. But diversity can also paralyze. For example, if Article 27 of the Covenant on Civil and Political Rights meant that every linguistic group had the right to be educated in its ancestral language, the U.S. system of free public education would collapse. The death of languages, unlike the death of species to which it is wrongly compared, is not invariably an unalloyed disaster. More than 300 languages are dying. I suggest it is not something over which to get teary eyed. The demise of Eyak is not like the death of the last panda or condor.³² I remember when England had thirteen different types of electrical sockets. Good riddance to that.

Still, in today's America, the culture culture seems increasingly determined to revive and preserve Americans' every historical particularism. That, in turn, tends to fray America's fragile fabric of social unity. Absent such a coherent fabric, there is no sense of mutual social responsibility: of rich for poor, of suburbs for inner cities, of north for south, east and west, of industry for labor and agriculture, of Anglos and African Americans for newer immigrants. Diversity has responsibility costs. In any society, but especially in democracies, it is hard to effect resource transfers to persons who insist that they are not, and will not become, kith and kin to those from whom the transfers are demanded.

None of this argues that there is no need for the international legal culture to accommodate at least some of the claims of the culture culture, so long, in any event, as particularism is not at war with equality and personal rights, and does not operate in the service of oppression, dominance, elitism or subordination. Thus, for example, as Professor Will Rymlicka—also a champion of cultural autonomy—has pointed out, a liberal legal culture can and should accommodate an autonomous culture culture, but only one that permits unencumbered exit. Some cultures do not.

³⁰ Cf. Frank Upham, *Weak Legal Consciousness as Invented Tradition*, in *THE MIRROR OF MODERNITY* 48 (S. Vlastos ed., 1998).

³¹ N.Y. TIMES, Mar. 5, 1999, at A25.

³² Paul Lewis, *Thousands of Languages Are Endangered*, N.Y. TIMES, Aug. 15, 1998, at B1. Lewis quotes Michael Krauss, a linguist at the University of Alaska: "Should we mourn the loss of Eyak or Ubykh less than the loss of the panda or the California condor?" He also cites evidence that 336 languages are "nearly extinct."

I have tried to identify generalized principles for reconciling, or measuring, the relative gravitas of the trumping claims made on behalf of a legal norm and countervailing claims of exemption advanced by particularist cultures. I have proposed that, as a general principle of recognition, the authenticity of a trumping exceptionalist claim be measured by the standard of that claim's authenticity. Conversely, a law's claim to trumping universality should also be weighed by reference to the standard of its own authenticity.³³

To conclude: Both the advocates of universality and the advocates of exceptionalist particularism tend to overstate their positions. Hans Kelsen, long ago, called our attention to the fact that:

any legal order which is based on a territory invariably consists of a combination of norms, some of which are valid for the entire territory (known as the "central" norms), while other are valid for part of the territory only (and known as "local" or "partial" norms). A wholly centralized legal order with no local norms is virtually impossible to set up. Conversely, a fully decentralized legal order with no central norm is simply inconceivable.³⁴

The challenge is to develop a general theory of the proper allocation of jurisdiction between fundamental principles of particularist cultures and the transcendent principles of the larger legal culture (statal, regional or global) within which the particularist culture is located.

Such a general theory cannot hope to resolve every incident of conflict between the defenders of the autonomy of particularist cultures and those charged with implementing universal human rights laws. At most, a general theory may aspire to delineating guidelines that dispose of some of the more straightforward issues, while creating a framework of discourse within which more complex conflicts may be addressed.

³³ THOMAS FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990).

³⁴ Charles Leben, 9 *EUR. J. INT'L L.* 287, 293 (1998) (citing H. KELSEN, *GENERAL THEORY OF LAW AND STATE* 306 (1961)).