
State Formation, Liberal Reform and the Growth of International Organizations

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Abstract

This article argues that the growth of international organizations over the past century has been imagined and carried out in order to make modern states on a broadly Western model. The proliferation of international organizations and the expansion of their legal powers, through both formal and informal means, raise profound questions regarding the relationship between international law's reforming promise and its imperialist perils. The article proposes a new analytic framework for understanding these phenomena, focusing on the rationalities of international organizations' powers and the technologies through which they are made operable. It argues that both the growth of international organizations and the cultural processes of state formation are impelled by a dynamic of liberal reform that is at once internal and external to law. That dynamic and the analytic framework proposed here are both illustrated and exemplified through a critical account of the emergence of international organizations in the 19th century.

1 Introduction

International law is a discipline, discourse and practice of reform. It tells a story of its own progressive self-improvement and of its prominent role in the betterment of others. As the creatures, instruments and, increasingly, originators of international law, international organizations (IOs) incarnate and epitomize its transformative potential. They intervene in its name and subject themselves to its improving influence. And they are themselves the objects of continuous reform efforts, both from within

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and from outside by states and non-state actors. This article proposes a new analytic framework for understanding the remarkable expansion of powers exercised by IOs over the past century. Today, hundreds of global and regional IOs operate in myriad fields of activity, including peace and security, social and economic development, environmental protection and trade. Together, they exercise far-reaching powers – including the ability to make law and the capability of intervening on a military, financial, economic, political, social and cultural level – which impact directly and indirectly upon the lives of millions of people around the world.¹ Indeed, perhaps the most common outcome of reform efforts directed at IOs has been their assumption of additional powers and expansion into new arenas of activity.²

At one level, this trend raises important issues concerning the legality of international action. Under international law, IOs are created through written agreements between sovereign states.³ These agreements – termed constitutive instruments, founding treaties or charters – define their objects and purposes, enumerate their powers and prescribe formal amendment processes through which they can, among other things, legitimately set themselves new goals and acquire new legal powers. More frequently than is usually acknowledged, however, IOs come to exercise new powers – that is, powers that were neither specifically contemplated at the time of their creation nor explicitly mandated in their founding treaties – through informal processes of discourse, practice and (re)interpretation, which do not involve the amendment of their constitutive instruments. In this mode, the growth of IOs ('IO growth') prompts uncomfortable questions about whether certain powers exercised by international organizations are *ultra vires* or otherwise fail to comply with basic principles of the rule of law.⁴

At a more profound level, the phenomenon of IO growth raises questions regarding international law's perennial promise of reform. IOs are important sites of struggle over the meaning of international law and its potential for creating a better world. Yet a burgeoning literature has demonstrated that IOs frequently fail to act in accordance with the principles they espouse and that many of their activities have had far-reaching, negative effects on the states and populations in which they intervene.⁵ As a consequence, these organizations have often ended up promoting

¹ See generally J.E. Alvarez, *International Organizations as Law-makers* (2006).

² Of course, international organizations (IOs) have not always, and everywhere, expanded their powers; certainly many counter-examples could be cited. Where this phenomenon does exist, however, I argue that it raises a particular set of legal and political questions that demand careful consideration by international lawyers.

³ H.G. Schermers and N.M. Blokker, *International Institutional Law* (4th rev. ed., 2003), at para. 33.

⁴ See, e.g., Osieke, 'The Legal Validity of Ultra Vires Decisions of International Organizations', 77 *American Journal of International Law* (1983) 239. 'IO growth' and other similar expressions used in this article are intended to capture the expansion of IOs through the informal assumption of new powers as well as through more formal means.

⁵ Of a vast literature, see, e.g., R. Peet, *Unholy Trinity: The IMF, World Bank and WTO* (2nd edn, 2009); Mégret and Hoffmann, 'The UN As a Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibilities', 25 *Human Rights Quarterly* (2003) 314; K. Danaher and M. Yunus (eds), *Fifty Years Is Enough: The Case against the World Bank and the International Monetary Fund* (1994).

forms of international intervention that look a lot like the extension of deep-rooted relationships of colonial domination.⁶ The proliferation of IOs and the expansion of their legal powers accordingly raises the troubling possibility that international law's impulse to reform is indistinguishable from its originary 'civilizing mission', which supplied a pretext and justification for violent intervention in the colonial encounter between different peoples and cultures.⁷ A basic puzzle, therefore, is to understand the relationship between international law's reforming promise and its imperialist perils.

In seeking to unlock this puzzle, this article argues that IO growth has been imagined and carried out as necessary to the ongoing process of making modern states on a broadly Western model. The article thus offers an unusual perspective on the relationship between states and IOs. In most mainstream views of international law and international relations, sovereign states create IOs and strive, more or less successfully, to exploit their benefits and restrain their pathological tendencies. However, these accounts overlook the fact that the vast majority of states recognized as independent today were not acknowledged as such in 1919, or even in 1945. Most IOs and states were born and grew up together during the past century; it might seem equally plausible, then, to think of IOs as shaping states.⁸ Accordingly, it would be overly simplistic to assume that IO growth has necessarily resulted in a loss of sovereignty by states. To the contrary, I contend that IO growth is intimately bound up with the creation of states, the construction of state powers and the very constitution of modern statehood.

None of this is intended to suggest that every instance of IO growth is directed towards a unitary, monolithic programme of state formation, nor to endorse the notion that IOs are agents for the diffusion of a putative 'world culture'.⁹ Rather, IO growth should be understood as a highly contested, always provisional and never-ending process involving the interaction of numerous, varied and frequently conflicting projects of reform, resistances, failures and, importantly, counter-reforms aimed at reshaping international law and institutions. The participants in this process include states, IOs and an array of other non-state actors. Each is influenced by a divergent set of personal, professional, practical and political factors; nevertheless, they often join forces in their efforts to reform each other. Picturing IO growth in this way – as a dynamic process of reiterative, reciprocal reform among a multiplicity of actors – permits an adequate account of resistance and the agency of movements 'from below',¹⁰ without losing sight of the asymmetries of global power and relations of domination in the world. It also supports the more holistic

⁶ See, e.g., S. Pahuja, *Decolonising International Law* (2011); A. Orford, *International Authority and the Responsibility to Protect* (2011).

⁷ See, e.g., M. Koskenniemi, *The Gentle Civilizer of Nations* (2001); A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004).

⁸ See generally M. Finnemore, *National Interests in International Society* (1996).

⁹ Cf. Meyer *et al.*, 'World Society and the Nation-State', 103 *American Journal of Society* (1997) 144; C.L. McNeely, *Constructing the Nation-State* (1995).

¹⁰ B. Rajagopal, *International Law from Below* (2003).

view that the nation-state and the international community emerged together as complementary imaginaries;¹¹ that states and IOs are continually co-constituted and that the phenomenon of IO growth can best be understood today in light of its critical role in the production of different modes of governing in the decolonized world.

Moreover, the parallel, mutually reinforcing processes of IO growth and state formation have helped in turn to shape international law itself. From an early stage, the growth of IOs came to be understood and advocated in terms drawn from specific national experiences – in particular, the growth of state bureaucracies and legal reform in Europe and North America during the 19th century – and applied by analogy to the international realm. A rich repertoire of conceptual tools, borrowed from Western traditions of public law, could thereby be incorporated into international legal thinking about the growth of IOs. The activities of international bodies came to be seen as a form of administration, parallel to, and intricately interconnected with, the growth of state bureaucracies in Europe, North America and their colonial territories. The law that IOs created, and which regulated their activities, could be considered a species of administrative law. The constitutive instruments of IOs were comparable to states' constitutions. The hermeneutic doctrines and techniques that had been developed for the interpretation of the latter were applicable to the former. Both were expected to undergo similar processes of 'constitutional transformation',¹² often imagined in organic terms but capacious enough of a concept to embrace notions of emergency powers, necessity and exception. It thus became possible, at different times and in shifting circumstances, to imagine and legitimate radical change in the governing practices of both IOs and states simultaneously.

A detailed account of all of these complexities is not possible here.¹³ Instead, this article focuses on articulating the relationship between state formation and IO growth in general analytical terms and on identifying a particular dynamic of liberal reform, at once internal and external to law, that impels those interlinked processes. The second part of the article situates its overall argument and methodology in relation to the existing scholarship on IOs' powers. The third part introduces the theoretical framework of state formation as a cultural process and delineates the article's core claims. The fourth part illustrates and exemplifies those claims through an analytical account of the emergence of IOs in the 19th century. This story is familiar to international lawyers in broad outline; however, I seek to reimagine and recast it in a new light, demonstrating the profound interrelations between IO growth, state formation and the dynamic of liberal reform. Finally, the fifth part concludes with

¹¹ Cf. Malkki, 'Citizens of Humanity: Internationalism and the Imagined Community of Nations', 3 *Diaspora* (1994) 41, at 62: '[I]magining the political community of the nation always necessitates – and even presupposes – the imagining of an international community.'

¹² Cf. Jellinek, 'Constitutional Amendment and Constitutional Transformation', in A.J. Jacobson and B. Schlink (eds), *Weimer: A Jurisprudence of Crisis* (2000) 54.

¹³ See generally G.F. Sinclair, *To Reform the World: The Legal Powers of International Organizations and the Making of Modern States* (JSD thesis, School of Law, New York University, 2013).

some reflections on how the analytic framework set out in this article can illuminate a series of theoretical questions and concerns in IO studies.

2 Rethinking the Powers of IOs

The central claim advanced in this article requires rethinking standard approaches to the powers of IOs under international law. Inquiring into how IOs have facilitated and legitimated modern state formation calls for an interpretive methodology that can provide a sociologically grounded, thick historical account of the conditions that have made it possible to conceive, effect and justify IO growth in particular cases. More specifically, it demands a focus on the discursive and material practices of IOs, the interaction of legal and other kinds of expertise in those practices, the historical circumstances in which they have emerged and the forms of intervention that have resulted. This part of the article offers a brief critical sketch of recent scholarship on the legal powers of IOs, before outlining the distinctive features of an alternative methodology.

A Theoretical Perspectives on IO Growth and Reform

We can usefully begin with the most traditional, 'doctrinal' stream of IOs law scholarship. Over the past century, the sub-discipline of international institutional law (IIL) has developed around the central enterprise of defining, conceptualizing and applying a set of norms concerning the powers of IOs: the principle of attribution,¹⁴ the related principle of speciality,¹⁵ the doctrine of implied powers,¹⁶ and so on. As critical scholars have argued, however, IIL is far from determinate, coherent or conclusive in its approach to the issue.¹⁷ The doctrinal orientation of IIL has also led it to focus almost exclusively on a restricted set of legal materials, comprised of the constitutive instruments of IOs, the relatively few judgments and advisory opinions of a handful of international (and some national) courts and tribunals, and the draft articles and reports of the International Law Commission.¹⁸ As a result, IIL scholarship frequently fails to connect with the shared assumptions, discourses and practices of reform *within* organizations, which shape and give impetus to IO growth on a daily basis. To the extent that it considers the issue at all, traditional

¹⁴ See Schermers and Blokker, *supra* note 3, at 209: 'A rule of thumb is that ... [IOs] are competent to act only as far as powers have been attributed to them by states ... [IOs] may not generate their own powers, they are not competent to determine their own competence.'

¹⁵ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 66, at 25.

¹⁶ *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 April 1949, ICJ Reports (1949) 174, at 182–183 (holding that the UN 'must be deemed to have those powers which, although not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties').

¹⁷ Alvarez, *supra* note 1, at 82–100; J. Klabbers, *An Introduction to International Institutional Law* (2nd edn, 2009), at 53–73.

¹⁸ Even critical approaches to IIL rely overwhelmingly on these sources: see Klabbers, *supra* note 17.

III scholarship reflexively adopts the functionalist assumption that any expansion of IOs' powers and activities is designed to meet the common needs of states and, therefore, must be a good thing.¹⁹

The flourishing literature on law and global governance reflects a rather more sophisticated appreciation of the powers of IOs.²⁰ Drawing heavily on international relations scholarship, this literature has cast enormous light on the diverse and expanding range of activities undertaken by IOs within the complex mesh of forces comprising contemporary governance.²¹ Very often, however, its analytical insights are tightly interwoven with proposals for institutional reform; indeed, particular kinds of reform proposals are often implicit in the very terms of analysis. It is thus exceedingly difficult for scholarship in this genre to reflect dispassionately upon the extent to which it is itself caught up in the reforming dynamic of international law. Moreover, much (though certainly not all) of this scholarship is premised upon a particular kind of progress narrative that assumes the steady decline of states, their marginalization and substitution by 'governance without government'.²² Yet states clearly remain centrally important actors on the global stage, in addition to coordinating and legitimizing the work of other bodies carrying out governance functions.²³ The growth of governance powers exercised 'beyond the state' can therefore only be fully understood in light of the ideas and practices of state power as they have emerged and changed over time.

A less sanguine perspective on the possibility of reform can be found in the 'critique of ideology' approach that is popular among many critics of international law on the political left.²⁴ Scholars adopting this perspective contend that international law is itself 'part of the problem' and that IOs perform an ideological function in legitimizing the policy preferences of powerful states or capitalist interests. Of course, law can be, and often is, used as an instrument of domination, helping to disguise, naturalize and legitimize the preferences of the powerful through an array of authoritative

¹⁹ Most international institutional law (IIL) scholarship reflexively adopts an eclectic mix of assumptions, rarely made explicit, from functionalist, rational choice and realist international relations theory. On the origins of functionalist thought in IIL, see Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations', 25 *EJIL* (2014) 9. For a recent rational choice perspective, see Guzman, 'International Organizations and the Frankenstein Problem', 24 *EJIL* (2013) 999.

²⁰ See, e.g., Koh, 'Why Do Nations Obey International Law?' 106 *Yale Law Journal* (1997) 2599; A.-M. Slaughter, *A New World Order* (2004); Krisch and Kingsbury, 'Introduction: Global Governance and Global Administrative Law in the International Legal Order' 17 *EJIL* (2006) 1; De Búrca, Keohane and Sabel, 'Global Experimentalist Governance', 44 *British Journal of Political Science* (2014) 477.

²¹ See, e.g., Abbott and Snidal, 'International Regulation without International Government: Improving IO Performance through Orchestration', 5 *Review of International Organizations* (2010) 315; A. von Bogdandy *et al.* (eds), *The Exercise of Public Authority by International Institutions* (2010); Kingsbury and Casini, 'Global Administrative Law Dimensions of International Organizations Law', 6 *International Organizations Law Review* (2009) 319.

²² J.N. Rosenau and E.O. Czempiel (eds), *Governance without Government* (1992). See also generally K. Ohmae, *The End of the Nation State* (1995); S. Strange, *The Retreat of the State* (1996).

²³ Weiss, 'Globalization and National Governance: Antinomy or Interdependence?', 25 *Review of International Studies* (1999) 59.

²⁴ S. Marks (ed.), *International Law on the Left* (2008).

symbols, metaphors and narratives.²⁵ But law does not simply mystify and apologize for power; it also provides occasions and a vocabulary for contestation and resistance.²⁶ Rather than assume that the reforming promise of IOs is a falsehood, deception or illusion, then, it is most important to take that promise seriously as an object of study in itself – indeed, to see the promise of reform as central to how the rule of international law works.²⁷

The recent ‘institutional turn’ in international legal historiography suggests that a more complicated view of IO growth may be appropriate. In this vein, scholars have examined the powers and activities of IOs in a range of temporal settings, most notably in the interwar experiences of the League of Nations and its associated institutions; in the emergence of an international development apparatus in the decades immediately following World War II and in the ‘neo-liberal’ turn by IOs towards the end of the 20th century.²⁸ These studies have usefully drawn attention to the complex roles of IOs in colonization and decolonization. Traditional accounts of the history of IOs, in contrast, usually trace their origins to what were essentially regional, *intra-European* arrangements that were extended only secondarily and unevenly beyond that continent.²⁹ What is lacking is an account of the emergence and initial growth of these early IOs that helps to make sense of their activities in both European states and their imperial domains.

Finally, a number of recent studies from constructivist and historical–institutionalist international relations perspectives provide subtle analyses of the dynamics of growth in IOs and offer important insights into the place of legal–rational authority in their decision making.³⁰ The conception of law on which these studies rely is impoverished, however, by being excessively centred on rules; they are much less attentive to the importance of legal standards, principles, analogies and metaphors in shaping actors’ beliefs, outlooks and expectations. For all of their interest in the normative dimensions of organizational behaviour, moreover, these studies have relatively little to say about how international law, specifically, contributes to IO growth.

B Towards a Historical Analytics of the Powers of IOs

Each of the streams of scholarship surveyed above makes a significant contribution to our understanding of international law’s relationship to IO growth. Building on these contributions, the approach proposed in this article makes three key

²⁵ S. Marks, *The Riddle of All Constitutions* (2000), at 18–22.

²⁶ M. Koskenniemi, *From Apology to Utopia* (rev. edn, 2005).

²⁷ Cf. P.W. Kahn, *The Cultural Study of Law* (1999), at 105: ‘This entire, repetitive cycle of debate – reform proposal, counter-proposal, balance – is internal to law’s rule. The reform of law is a program essentially tied to the rule of law.’

²⁸ See, e.g., Anghie, *supra* note 7; Rajagopal, *supra* note 10; Pahuja, *supra* note 6; Orford, *supra* note 6; M. Fakhri, *Sugar and the Making of International Trade Law* (2014).

²⁹ See, e.g., B. Reinalda, *Routledge History of International Organizations* (2009).

³⁰ See, e.g., Finnemore, *supra* note 8; M. Barnett and M. Finnemore, *Rules for the World* (2004); D.D. Avant, M. Finnemore and S.K. Sell (eds), *Who Governs the Globe?* (2010).

methodological moves: from doctrine to practice; from contemporary global governance to a history of the present; and from critique to analysis of IOs' powers.

In the first place, then, the article advocates a broad view of law as a variable discourse and practice that can assume an array of forms in different contexts.³¹ Adopting this broader perspective on international legal practice aims to de-centre, rather than displace, the traditional IIL emphasis on the work of international courts and publicists – neither discounting their importance nor mistaking them for the totality of international law. Instead of seeking to uncover some overlooked doctrinal unity underlying and explaining all instances of IO growth, the goal is to uncover the ways in which legal doctrine has emerged and evolved in tandem with the changing discourse and practices of IOs in particular historical contexts and to highlight the wider social, cultural, and political dimensions of both doctrine and practice in shaping how power is exercised and people are governed in 'most of the world'.³²

Second, inquiring into how international law has made IO growth possible and legitimate demands sensitivity to contingency, contestation and change over time. The aim here is to contribute towards writing a kind of 'history of the present' of international law and institutions – to try, in other words, to trace the emergence and legitimization of some of the most significant techniques of international intervention that have helped to shape our social and political world and that continue to be exercised today. To the extent that this may be described as a critical historical approach, it is not intended to reject IOs or their efforts to reform the world. Rather, the intention is to problematize those efforts so as to cultivate 'an empirically informed kind of theoretical imagination under the conditions of perceived danger';³³ to illuminate the present by identifying the historical and social conditions of possibility for certain central practices of international organizations; to suggest that contemporary forms of international intervention are less inevitable than they may currently appear; and to open up spaces for thinking differently about the possibilities and perils of international law.³⁴

Third and most distinctively, I propose an integration of history or genealogy with an analytics, rather than a critique, of law's relationship with power. Regarding law as a variable discourse and practice makes it possible to distinguish an array of characteristic configurations in the relationship between law and power. In one modality, law operates as a tool of repression and coercion; in another, it serves as an autonomous apparatus for taming and restraining the repressive tendencies of governments; in yet another, it becomes a responsive, adaptive and purposive instrument of social welfare.³⁵ Rather than providing a ready-made template, such typologies point to the

³¹ Cf. P. Nonet and P. Selznick, *Toward Responsive Law* (2001), at 8–9.

³² P. Chatterjee, *The Politics of the Governed* (2004).

³³ Geuss, 'Genealogy as Critique', 10 *European Journal of Philosophy* (2002) 209, at 213.

³⁴ On genealogy and histories of the present, see generally Castel, "'Problematization" as a Mode of Reading History', in J. Goldstein (ed.), *Foucault and the Writing of History* (1994) 237; Bevir, 'Rethinking Governmentality: Towards Genealogies of Governance', 13 *European Journal of Social Theory* (2010) 423; C. Koopman, *Genealogy As Critique* (2013).

³⁵ Nonet and Selznick, *supra* note 31.

need for a more careful analysis of the diverse ways in which law, in its many forms, joins up with, constitutes and counters particular modes of power.

Such analysis would necessarily entail an investigation in two overlapping domains simultaneously.³⁶ In the first place, it calls for inquiry into the diverse rationalities of the powers exercised by IOs. This involves reconstructing the broader discourses, working social categories and vocabularies connected with the use of those powers in the 'official' discourse of IOs, practising international lawyers and others closely associated with IO growth. By engaging at this discursive level, the aim is to make intelligible the systems of thought and forms of moral and scientific truth through which key actors in and around international organizations have conceptualized, reflected on and rationalized their exercise of power.³⁷

The second line of investigation concerns the particular technologies through which power is made operable. Each act of intervention by an IO can be understood as a complex assemblage, made possible only by an extensive network of heterogeneous and often ill-fitting elements, such as existing bureaucratic systems and procedures, pragmatic instruments of observation and measurement, methods of notation and calculation, architectural plans and arrangements of space, physical mechanisms and devices and actors who may have their own quite distinct goals.³⁸ Such assemblages are inherently fragile and require continuous work to maintain; the goal of analysis here is to show what linkages and relays enable that work to be carried out. In what follows, I develop the argument that a careful analysis of the rationalities and technologies of the powers of IOs will reveal profound interconnections with the processes of modern state formation.

3 State Formation and the Dynamic of Liberal Reform

This part of the article introduces a new and innovative body of scholarship – the theoretical insights of which have not been brought into conversation with international legal scholarship before now – which defines 'the state' in nominalist terms and sees state formation as a cultural process.³⁹ It then outlines the claim that the inter-linked processes of IO growth and modern state formation are sustained by a logic of liberal reform that continually redefines what it means for a state to be 'modern', and which is at once internal and external to the law.

A State Formation as Cultural Process

Conventional approaches to the state in political science treat it as an objective fact. In this view, which is reflected in most international law scholarship, the state is a 'distinct, fixed and unitary entity'⁴⁰ – a centralized set of institutions wielding coercive

³⁶ See generally Rose and Miller, 'Political Power beyond the State: Problematics of Government', 43 *British Journal of Sociology* (1992) 173.

³⁷ Cf. M. Foucault, *The Birth of Biopolitics*, translated by G. Burchell (2008).

³⁸ Cf. Dean, 'Putting the Technological into Government', 9 *History of the Human Sciences* (1996) 47.

³⁹ See, e.g., G. Steinmetz (ed.), *State/Culture* (1999); T.B. Hansen and F. Stepputat (eds), *States of Imagination* (2001); A. Sharma and A. Gupta (eds), *The Anthropology of the State* (2006).

⁴⁰ Sharma and Gupta, 'Introduction: Rethinking Theories of the State in an Age of Globalization', in Sharma and Gupta, *supra* note 39, 1 at 8.

authority over a particular territory and population.⁴¹ This article rejects such a static and objectivized understanding of states, stressing instead the great variability in their meaning, forms and powers. From this perspective, ‘the state’ has no essence and is not a self-producing source of power.⁴² To treat state formation as a cultural process, then, is to direct attention to the specific assemblage of rationalities and technologies – the ‘practices, techniques, programmes, knowledges, rationales and interventions’⁴³ – that make up a state at any particular time.

As a growing number of scholars in diverse fields have recognized, the functions and powers exercised by states are historically contingent and have emerged over a lengthy period of time. The work of sociologist Michael Mann, for example, depicts the gradual displacement of ‘despotic’ by ‘infrastructural’ state powers, the latter consisting of the state’s ‘institutional capacity ... to penetrate its territories and logistically implement decisions ... [a] collective power, “power through” society, coordinating social life’.⁴⁴ Moreover, these infrastructural powers grew out of, and built upon, a diversity of diffuse governing practices. Philip Gorski has thus demonstrated that the ‘infrastructure of governance’ underlying state bureaucracies, armies and schools can be traced back to religious roots in the emergence of ‘a network of practices and institutions’ during the Protestant Reformation.⁴⁵ From the 18th century onward, these diverse elements were gradually united under more or less centralized control, as European states:

increasingly made their power visible ... through the gradual extension of ‘officialising’ procedures that established and extended their capacity in many areas. They took control by defining and classifying space, making separations between public and private spheres; by recording transactions such as the sale of property; by counting and classifying their populations, replacing religious institutions as the registrar of births, marriages, and deaths; and by standardizing languages and scripts.⁴⁶

The rationales and techniques of power that constituted early modern states were made possible by novel regimes of power and knowledge, linked to the emergence of new forms of scientific truth and expertise.⁴⁷ Already a century ago, Max Weber drew attention to the importance of techniques such as double-entry bookkeeping and filing systems in the construction of rational–legal authority in modern Western states.⁴⁸ Some of the most important practices associated with the construction of the centralized bureaucratic and military apparatuses of early modern states, such as Frederick the Great’s Prussia and pre-revolutionary France, were what Michel Foucault called the ‘disciplines’:⁴⁹ micro-technologies of power that work in a molecular way, shaping

⁴¹ Cf. Montevideo Convention on Rights and Duties of States 1933, 165 LNTS 19, Art. 1.

⁴² Foucault, *supra* note 37, at 77.

⁴³ Miller, ‘On the Interrelations between Accounting and the State’, 15 *Accounting, Organizations and Society* (1990) 315, at 317.

⁴⁴ M. Mann, *The Sources of Social Power*, vol. 2 (1993), at 59.

⁴⁵ P. Gorski, *The Disciplinary Revolution* (2001), at xvi.

⁴⁶ B.S. Cohn, *Colonialism and Its Forms of Knowledge* (1996), at 3.

⁴⁷ See generally M. Foucault, *Power/Knowledge*, edited by C. Gordon (1980).

⁴⁸ M. Weber, *Economy and Society*, edited by G. Roth and C. Wittich, vol. 1 (1978), at 92–93; M. Weber, *Economy and Society*, edited by G. Roth and C. Wittich, vol. 2 (1978), at 956ff.

⁴⁹ T. Mitchell, ‘Society, Economy, and the State Effect’, in Steinmetz, *supra* note 39, 76, ch. 2, 90.

individual subjectivities through subtle, repeated procedures of discipline and normalization, such as enclosure and surveillance, partitioning and ranking, drills and examinations.⁵⁰ Other technologies of state power emerging during the same period operated in a more molar or holistic manner, aiming to regulate the large processes of life by acting upon populations through macro-economic and demographic techniques of intervention.⁵¹ And related techniques of 'state simplification' – maps, censuses, cadastral surveys, title deeds and standard units of measurement – were used to reduce a large and complex reality to 'schematic categories' that would facilitate legibility, comparison and governmental action.⁵²

It is useful, then, to think of the 'state' as a kind of superstructure or codification of powers that is formed by the 'gradual, piecemeal, but continuous takeover by the state of a number of practices, ways of doing things, and, if you like, governmentalities'.⁵³ Embodying these various techniques and rationales of power, contemporary states are the composite structural effects of repeated practices and representations that produce an appearance of solidity and 'thingness'. The appearance of 'external' state structures depends upon the 'repetitive re-enactment of everyday practices' and an array of images and discourses about the state that create a sense of continuity and coherence.⁵⁴ 'The state' is produced and reproduced imaginatively by the banal and technical routines of bureaucracies; by everyday representations in newspapers, in government reports and on television;⁵⁵ by mundane procedures that establish territorial boundaries, such as immigration applications, passport inspections and fencing;⁵⁶ and by the aggregation of manifold dealings and exchanges in multiple settings that generate a 'powerful, apparently metaphysical effect'.⁵⁷ The meaning and limits of the state continue to be constructed and contested on a daily basis in an ongoing and disorderly process of social interaction, all of which paradoxically reinforces the sense of the state's 'reality'.

So understood, state formation includes the construction of systems of rule in colonial territories, the creation of 'new' states at independence, *and* their ongoing (re)formation thereafter. This line of argument builds upon a growing literature that highlights the formative experience of European imperialism in the creation of modern states. As several studies have shown, European colonial expansion supplied highly productive 'laboratories' for experimentation with new practices of government, including the creation of large-scale bureaucracies and a whole

⁵⁰ M. Foucault, *Discipline and Punish*, translated by A. Sheridan (1977), at 141–156, 171–192; C. Dandeker, *Surveillance, Power and Modernity* (1990).

⁵¹ M. Foucault, *The History of Sexuality*, translated by R. Hurley, vol. 1 (1978); Rabinow and Rose, 'Biopower Today', 1 *Biosocieties* (2006) 195.

⁵² J.C. Scott, *Seeing Like a State* (1998), at 77. See also T. Mitchell, *The Rule of Experts* (2002).

⁵³ Foucault, *supra* note 37, at 77.

⁵⁴ Sharma and Gupta, *supra* note 40, at 13, 19.

⁵⁵ Ferguson and Gupta, 'Spatializing States: Toward an Ethnography of Neoliberal Governmentality', 29 *American Ethnologist* (2002) 981.

⁵⁶ Cf. W. Brown, *Walled States, Waning Sovereignty* (2010).

⁵⁷ Mitchell, *supra* note 49, at 89.

range of administrative techniques such as surveying, mapping, collecting, counting, recording and standardizing.⁵⁸ Far from being a one-way imposition, the rationalities and technologies of colonial government were often first tested in overseas colonies and then repatriated and applied in metropolitan states.⁵⁹ Moreover, the world-wide diffusion of such practices established the infrastructures of state power that made universal sovereignty – a central feature of the present-day multi-lateral liberal international order, but only recently achieved through the efforts of anti-colonial movements after World War II – at least imaginable if not welcomed by European state officials.

B Liberal Reform and IOs

As the discussion above suggests, the process of state formation is profoundly shaped by a complex and ever-evolving web of global forces. Thinking of state formation in this way makes it possible to identify a number of major transnational configurations or ‘forms’ of the state – associated with absolutism, *laissez-faire* liberalism, colonialism, Keynesian welfarism, post-colonial developmentalism, neo-liberalism, and so on – each of them viewed as ‘modern’ in their own time and place. Of course, listing a series of major state forms in a putatively chronological order runs the risk of both reifying these forms and implying the existence of a singular path of modernization determined by the historical experience of particular Western societies. Both would be mistaken. Instead, the key to understanding the shifting definition of what makes a state ‘modern’ is the diffusion and adoption of a particular problematic that demands constant adjustments to the practices of state power.

As a critical ethos and practice that defines modern state rule, liberalism is constantly concerned with the problem of ‘governing too much’.⁶⁰ Taking individual freedom as the principle and limit of governmental action, liberalism posits a number of domains of liberty – including civil society, the market, economy and family – which are subject to their own ‘natural’ laws and dynamics and with which the state should interfere to the least extent possible.⁶¹ Paradoxically, however, liberalism also endorses and legitimizes numerous interventions at the level of both society and the individual. On the one hand, certain compensatory mechanisms of ‘security’ – such as health insurance schemes, old age pensions, public health and hygiene programmes – are seen as necessary to guarantee and support individual freedom in the face of a whole range of risks inherent in modern life. On the other hand, freedom itself can only be exercised by individuals who have acquired the capacities for autonomous action and self-mastery. Where such capacities are lacking, they must be instilled through

⁵⁸ See, e.g., Cohn, *supra* note 46; Appadurai, ‘Number in the Colonial Imagination’, in C.A. Breckenridge and P. Van der Veer (eds), *Orientalism and the Postcolonial Predicament* (1993) 314; Scott, ‘Colonial Governmentality’, 43 *Social Text* (1995) 191; Kalpagam, ‘The Colonial State and Statistical Knowledge’, 13 *History of Human Sciences* (2000) 37; and S. Legg, *Spaces of Colonialism* (2007).

⁵⁹ See generally Cohn, *supra* note 46, at 3–4.

⁶⁰ M. Foucault, *Security, Territory, Population*, translated by G. Burchell (2007), at 385.

⁶¹ See generally N. Rose, *Powers of Freedom* (1999); P. Miller and N. Rose, *Governing the Present* (2008).

the application of appropriate disciplinary techniques, even to the point of requiring interventions that would otherwise be considered despotic or authoritarian.⁶² This tension is present in that key text of liberalism, John Stuart Mill's *On Liberty*:

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children ... For the same reason, we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage. ... Despotism is a legitimate mode of government in dealing with barbarians, provided that the end be their improvement.⁶³

Together, these contradictory pulls – requiring the state to assume additional powers in order to govern more, to provide greater social security and to create the pre-conditions for freedom, while also demanding that it intervene less, relinquish its powers or devolve them to other, non-state actors – produce the endlessly recursive, reiterative dynamic of liberal reform. What counts as a ‘modern’ state, then, depends largely upon a continual (re)definition of ‘what should or should not fall within the state’s domain, what is public and what private, what is and is not within the state’s competence’.⁶⁴ Nor do these definitions ‘evolve’ along a single, discernible trajectory: ideas and practices that are rejected as being overly interventionist at one time may be retrieved, reconfigured and put to use again at a later date; and techniques of government that may be considered inappropriate in ‘advanced’ states may be justified simultaneously as necessary for the tutelage of ‘backward’ or ‘infantile’ societies.⁶⁵

The dynamic of liberal reform is deeply embedded in the language and categories of law. As a fundamental feature of liberal thought and practice, legal–rational authority has been closely associated with modern, Western government since at least the 19th century.⁶⁶ Law not only enables sovereign power in an overall sense but also places limits upon that power, defines the boundaries between state and the several domains of liberty mentioned above, delineates institutional architectures, and assigns specific powers to different state organs. Disciplinary institutions such as schools, prisons and hospitals are all supported and interpenetrated by a latticework of legal rules. All mechanisms of ‘security’ likewise rest upon a framework of empowering legislation and are checked and controlled by a complex set of administrative regulations. Any perceived imbalance between freedom, discipline and security requires a corresponding adjustment in law. Public law has accordingly developed a sophisticated variety of principles and doctrines – the rule of law, *Rechtsstaat*, limited powers, individual rights, prerogative powers, and so on – which supply a technical vocabulary for debates over whether there is too much law, not enough law or the wrong kind of law.⁶⁷ And each

⁶² Cf. Valverde, ‘“Despotism” and Ethical Liberal Governance’, 25 *Economy and Society* (1996) 3; Hindess, ‘The Liberal Government of Unfreedom’, 26 *Alternatives* (2001) 93.

⁶³ J.S. Mill, *On Liberty*, edited by D. Bromwich and G. Kateb (2003), at 81.

⁶⁴ Foucault, *supra* note 60, at 109.

⁶⁵ This helps to explain how imperialism may be seen as internal to liberalism. Cf. U.S. Mehta, *Liberalism and Empire* (1999), at 20, 31–33.

⁶⁶ See generally Weber, *supra* note 48, vol. 1, at 215ff.

⁶⁷ See generally M. Loughlin, *Foundations of Public Law* (2010).

of these concepts has been applied, at one time or another, to the realm of international law and the activities of IOs.

The larger argument being advanced here, then, is that much of IO growth can be seen as supporting, and gaining social legitimacy from its support of, a dynamic of liberal reform that continually redefines what it means for a state to be ‘modern’. Appearing at the precise historical moment that the liberal ethos took hold, IOs were from the start understood to be necessary adjuncts to the promotion and consolidation of liberal government within states. To be clear, this is not yet another version of the old functionalist argument that IOs were created and have evolved to meet state needs. Rather, it is an interpretive claim about the web of meanings – the background assumptions, beliefs and discourses – that are embodied in, and make sense of, institutional practices. To describe those practices and meanings is not to endorse them. It is to seek a fuller understanding of the motivations, and thereby a better explanation, of the actions giving rise to IO growth.⁶⁸ The next part of this article begins the task of illustrating and exemplifying this claim by considering the birth and growth of the earliest IOs as auxiliaries to projects of liberal reform and European state building, both at home and overseas, during the 19th century.

4 A New Global Rationality: IOs and State Formation in the 19th Century

The general outline of the emergence of IOs in the 19th century is well known to international lawyers.⁶⁹ In most tellings, the earliest IOs (or proto-IOs)⁷⁰ were established in Europe to solve problems and meet the functional and technical needs of European states.⁷¹ Few such accounts relate this phenomenon to the remarkable upsurge in state (not to mention empire) building during the same period.⁷² By re-examining the activities of these earliest international organs in the wider context of state formation and liberal reform, then, new light may be cast on the dynamics of IO growth and the rationalities and technologies of IOs’ power more generally. This part of the article considers these activities in three broad clusters: bolstering the new liberal political economy that shaped states in the first half of the century; reforming the ideas and practices of government in response to the social problems arising out of

⁶⁸ Cf. Bevir and Rhodes, ‘Defending Interpretation’, 5 *European Political Science* (2006) 69.

⁶⁹ See generally Kennedy, ‘The Move to Institutions’, 8 *Cardozo Law Review* (1987) 841; G.J. Mangone, *A Short History of International Organization* (1954); I.L. Claude, *Swords into Plowshares* (4th edn, 1971).

⁷⁰ Not all of these organizations would meet the definition of an IO under IIL today; several would be classed as hybrid public–private regulatory bodies and treated as a distinct class of ‘global administration’. See Krisch and Kingsbury, *supra* note 20, at 17.

⁷¹ See, e.g., Mangone, *supra* note 69, at 67–97; Claude, *supra* note 69, at 21–40.

⁷² See, e.g., Peters and Peter, ‘International Organizations: Between Technocracy and Democracy’, in B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (2012) 170. For an excellent exception, see C.N. Murphy, *International Organization and Industrial Change* (1994), at 46–118.

rapid industrialization and urbanization; and constructing systems of colonial rule. In doing so, this part of the article is intended to demonstrate that the dynamic of liberal reform is congenial to IOs – not as functional need or object but, rather, as a problematic that has impelled their growth ever since.

A Liberal Political Economy

The early 19th century was a period of transition from one set of ideas and practices of state power to another, quite different, rationality of government. The former was associated with the policies of self-sufficiency prescribed by *raison d'état*: the maintenance of European equilibrium through the organization of a permanent military–diplomatic apparatus, famously described by Vattel as having made Europe into a 'kind of republic';⁷³ mercantilist strategies for maximizing state wealth by ensuring a trade surplus, maintaining gold and silver reserves, and increasing the size of the population; and the cameralists' ever-expanding science of public administration (*Polizeiwissenschaft*), which sought to safeguard the welfare of the state through the detailed regulation and supervision of every aspect of its subjects' lives.⁷⁴ The 'new form of political calculation on an international scale' that replaced these older ideas linked together liberal political economy, growing industrialization and the potential for unlimited commercial expansion by European states.⁷⁵

The practical corollaries of the new rationality were a policy of governmental restraint, a rejection of the overreaching regulatory ambitions of cameralism and *Polizei*, and economic *laissez-faire*.⁷⁶ Building on the free trade philosophy of the French physiocrats, while rejecting their belief that agriculture was the only productive sector, Adam Smith and his followers sought to demonstrate that markets – and civil society more broadly – had their own intrinsic, 'natural' processes and regularities, which could be neither completely understood nor directed.⁷⁷ Immanuel Kant gave hopeful expression to a similar notion in his assurance that the ultimate guarantee of Perpetual Peace was nature itself, which 'visibly exhibit[ed] the purposive plan of producing concord among men' through the power of the world-spanning 'spirit of commerce', finance, and 'mutual self-interest'.⁷⁸ A corresponding movement in European legal thought, equally hostile to the absolutist state, emerged around the same time: in Germany, jurists developed the concept of *Rechtsstaat* in an effort to reconcile the competing demands of state power and modern liberty,⁷⁹ and the growth

⁷³ E. de Vattel, *The Law of Nations*, edited by B. Kapossy and R. Whatmore (2008), at 496.

⁷⁴ Tribe, 'Cameralism and the Sciences of the State', in M. Goldie and R. Wokler (eds), *The Cambridge History of Eighteenth-Century Political Thought* (2006) 525.

⁷⁵ Foucault, *supra* note 37, at 58.

⁷⁶ Neocleous, 'Policing and Pin-making: Adam Smith, Police and the State of Prosperity', 8 *Policing and Society* (1998) 425.

⁷⁷ See generally Rothschild, 'Political Economy', in G.S. Jones and G. Claeys (eds), *The Cambridge History of Nineteenth-Century Political Thought* (2011) 748.

⁷⁸ H. Reiss (ed.), *Kant: Political Writings* (2nd edn, 1991), at 108, 114.

⁷⁹ Loughlin, *supra* note 67, at 318.

of legal codification and constitutionalism throughout the 19th and early 20th centuries ‘gradually transform[ed] national systems of rule’ worldwide.⁸⁰

Paradoxically, the practical implementation of liberal political economic ideas was made possible by an enormous growth in the legislative and administrative capacities of European states. Led by the work of manifold expert-led reform movements, the necessity of constructing and extending commercial markets resulted in an ‘explosion of governmental intervention’.⁸¹ As Karl Polanyi put it, ‘[t]here was nothing natural about *laissez-faire*; free markets could never have come into being merely by allowing things to take their course.’⁸² It was only through a significant expansion of the state that ‘free trade’ could be constructed.⁸³

Novel technologies of inter-state coordination reinforced the growth of national administrations to support these new directions. Like municipal law, international law became increasingly codified throughout the century in the writings of ‘positivist’ theorists from von Martens onwards and in a proliferation of multilateral treaties,⁸⁴ and the ‘new global rationality’⁸⁵ was also embodied in some of the earliest formal international bodies. Following the end of the Napoleonic Wars, the Congress of Vienna (1814–1815) inaugurated the Concert of Europe, condemned slavery and ushered in a new era of modernity in European culture, sciences and diplomatic relations.⁸⁶ Consistent with the liberal spirit of the age, a committee was formed at Vienna to negotiate terms for the freedom of navigation, commerce and trade on European rivers. The Final Act of the Congress established a Central Commission for the Navigation of the Rhine to achieve these purposes,⁸⁷ and several other similar commissions were created in subsequent years.⁸⁸

These new organizations linked up with, and augmented, the work of national administrative bodies to create an infrastructure for the continued expansion of European markets. One of the most important in this respect was the International Telegraph Union (ITU), created by the International Telegraph Convention of 1865.⁸⁹ First installed in the late 1830s along railway lines, commercial telegraphy served both to improve the efficiency of that transport system – including, importantly, the transportation of commercial goods – and to provide a new, almost instantaneous mechanism for financial transactions.⁹⁰ Telegraph companies were among the first

⁸⁰ Reus-Smit, ‘The Constitutional Structure of International Society and the Nature of Fundamental Institutions’, 51 *International Organizations* 555, at 577. See also Loughlin, *supra* note 67, ch. 10–11.

⁸¹ MacLeod, ‘Introduction’, in R. MacLeod (ed.), *Government and Expertise* (1988) 1, at 9.

⁸² K. Polanyi, *The Great Transformation* (1957), at 139.

⁸³ *Ibid.*

⁸⁴ Koskenniemi, ‘Into Positivism: Georg Friedrich von Martens (1756–1821) and Modern International Law’, 15 *Constellations* (2008) 189; Reus-Smit, *supra* note 80, at 578.

⁸⁵ Foucault, *supra* note 37, at 56.

⁸⁶ P. Johnson, *The Birth of the Modern* (1991).

⁸⁷ Reinalda, *supra* note 29, at 28–30.

⁸⁸ Mangone, *supra* note 69, at 68–73.

⁸⁹ See generally G.A. Coddling, Jr. *The International Telecommunication Union* (1972). International Telegraph Convention 1865, 130 CTS 198.

⁹⁰ Reinalda, *supra* note 29, at 85.

organizations to develop complex bureaucratic management structures and had already started to build a far-flung network with trained managers supervising local telegraph offices.⁹¹ Established to connect and regulate the separate networks being created by private telegraph companies, the ITU helped to construct an integrated system for rapid exchange of communications and capital that Marx and Engels described as replacing ‘the old local and national seclusion and self-sufficiency’ with ‘intercourse in every direction, universal interdependence of nations’.⁹² To European observers at the century’s end, organizations such as the ITU appeared as the natural fruit of modern ideas and social progress and as complementing and supplementing large public administrations in European states.⁹³ As Paul Reinsch wrote in 1911, discussing the ‘new internationalism’ exemplified by the ITU:

[t]he ideal of the civilized world with respect to economic relations is that the entire surface of the globe should be rendered readily accessible to the enterprise of any individual, and that rapid and uninterrupted communication should make possible a uniform management and control of the natural resources which humanity has inherited.⁹⁴

An assortment of new inter-governmental organizations pursued the same ideal. The Universal Postal Union (UPU, established in 1874), the International Association of Railway Congresses (1885), the Central Office for International Railway Transport (1890) and the Radiotelegraph Union (1906) further supported the international circulation of capital, goods and ideas. The International Unions for the Protection of Industrial Property (1883) and of Literary and Artistic Works (1886), together with the Hague Conference on Private International Law (1893), sought to regularize the intellectual and other property rights that lay at the foundation of the new global economy. The International Bureau of Weights and Measures (1875) and the International Bureau of Commercial Statistics (1913) drew on the new social sciences linked to political economy to aim at a greater degree of uniformity and legibility in international trade, ‘so that commercial transactions [could] be carried on conveniently and honestly’.⁹⁵ And organizations such as the International Union for the Publication of Customs Tariffs (1890) and the ‘Sugar Union’ (1902) institutionalized the principle of free trade by making state subsidies and surcharges visible to their members.⁹⁶ The structure of the ITU – comprising two organs, a conference and bureau, whose functions were set out in a convention and supplementary *règlement* – established a general model for these other organizations.⁹⁷ While some variability

⁹¹ Barry, ‘Lines of Communication and Spaces of Rule’, in A. Barry, T. Osborne and N. Rose (eds), *Foucault and Political Reason* (1996) 123, at 136; A.D. Chandler, Jr, *The Visible Hand* (1977).

⁹² K. Marx and F. Engels, *The Communist Manifesto* (1998 [1848]), at 8.

⁹³ G. Moynier, *Les bureaux internationaux des unions universelles* (1892) at 8, 152.

⁹⁴ P. Reinsch, *Public International Unions* (1911), at 3. On Reinsch’s contribution to a ‘functionalist’ approach in ILL, see Klabbers, *supra* note 19.

⁹⁵ Moreau, ‘The Genesis of the Metric System and the Work of the International Bureau of Weights and Measures’, 30 *Journal of Chemical Education* (1953) 3, at 3.

⁹⁶ Fakhri, ‘The Institutionalisation of Free Trade and Empire: A Study of the 1902 Brussels Convention’, 2 *London Review of International Law* (2014) 1.

⁹⁷ L. Woolf, *International Government* (1916), at 157, 164, 205–208.

persisted, their general form – constituted by formal legal agreements and set up as legal–rational bureaucratic entities – reflected the new liberal ideology, no less than their particular goals and activities.

B *The Social Question*

A range of problematic conditions accompanied the expansion of European commercial activity. Population growth, spreading industrialization and urbanization in Europe were attended by mounting anxieties regarding the ‘social question’. Pictured as a realm of disorder located ‘between’ the economy and the state, ‘the social’ was associated with multiple interlinked problems connected to a large, underemployed proletariat: ‘economic crisis, mass poverty, disease, pestilence, decay, crime, immorality ... urbanization, and unprecedented geographic mobility’.⁹⁸ These conditions, in turn, provided an array of productive rationales for governmental action.⁹⁹

The social was thus already constituted as an object of state intervention in the first half of the 19th century. The decades immediately following the Congress of Vienna witnessed a dramatic increase in the use of expert technologies to widen and deepen the powers of European states. Disciplinary techniques that had developed over prior centuries – now linked up with the emergence of new human sciences such as clinical medicine, psychology, penology and criminology – were deployed to marshal and manage the proletariat in factories, prisons, schools and professional armies.¹⁰⁰ Utopian socialist thinkers, claiming to have invented a ‘new science of man and society’, generated all manner of experimental, technocratic schemes to achieve this end.¹⁰¹ Meanwhile, European governments sought to master the new technologies of demography and economics, establishing centralized offices to collect statistics on all aspects of society, and resulting in an ‘avalanche of printed numbers’ in the years 1820–1840.¹⁰²

As the century progressed, a rising concern with social welfare gave further impetus to the expansion of administrative states.¹⁰³ Traumatic upheavals all around the world – including colonial wars and rebellions, civil wars, wars of national independence and workers’ insurrections – marked the century’s midpoint and were followed by the reconstitution and consolidation of state power to an unprecedented degree.¹⁰⁴ That reaction included massive public works schemes such as Baron Haussman’s redevelopment of Paris, which emphasized ‘simplification, legibility, straight lines, central management, and a synoptic grasp of the ensemble’, both to improve public

⁹⁸ G. Steinmetz, *Regulating the Social* (1993), at 57.

⁹⁹ Rose, *supra* note 61, ch. 3.

¹⁰⁰ Cf. Foucault, *supra* note 50, at 209–228.

¹⁰¹ Picon, ‘Utopian Socialism and Social Science’, in T.M. Porter and D. Ross (eds), *Cambridge History of Social Science*, vol. 7 (2003) 71.

¹⁰² I. Hacking, *The Taming of Chance* (1990), at 27–34. See also generally T.M. Porter, *The Rise of Statistical Thinking 1820–1900* (1986); A. Desrosières, *The Politics of Large Numbers* (1998).

¹⁰³ See generally J. Donzelot, *The Policing of Families* (1977).

¹⁰⁴ Maier, ‘Leviathan 2.0: Inventing Modern Statehood’, in E. Rosenberg (ed.), *A World Connecting* (2012) 29, at 69–170.

health and to secure the city against social disorder.¹⁰⁵ However, it also included a range of other reforms. Spurred on by the continent-wide revolutions of 1848, the European response to *laissez-faire* liberalism was, as Polanyi shows, the spontaneous introduction of legislation on a wide range of issues, including 'public health, factory conditions, ... public utilities, trade associations, and so on'.¹⁰⁶ Each of these legislative measures in turn introduced a new technology of 'social' government: workmen's compensation, factory inspections, vaccination programmes and social insurance, most notably in Bismarck's Germany.¹⁰⁷

By the century's end, the social comprised a central feature of the 'transnational legal consciousness'.¹⁰⁸ As legislation and state bureaucracies grew haphazardly to address the manifold problems associated with industrialization, population growth and urbanization, administrators began to see themselves as the active agents of reform, culminating in a 'revolution in government'.¹⁰⁹ Reacting to the vast social disruptions wrought by industrialization and urbanization, progressive legal thinkers in both Europe and North America promoted a flexible, 'living' conception of law that would permit adaptation, social legislation and reform.¹¹⁰ The idea of social solidarity – associated in France with the sociology of Émile Durkheim, the jurisprudence of Léon Duguit and the politics of Léon Bourgeois – grounded the state's legitimacy in laws that guaranteed social security, public health, employment and individual development and assumed a dominant position as the 'official social philosophy' of the Third Republic.¹¹¹ Similar ideas, steering a middle path between individualist *laissez-faire* liberalism and revolutionary socialism, were espoused by the progressive movement in the USA, the New Liberals in England and comparable movements elsewhere in Europe.¹¹²

Coordination through international bodies facilitated the transnational diffusion of the rationalities and technologies of social government. Concerned with 'all that relates to the moral and physical amelioration of prisoners', the International Penitentiary Commission (1875) enabled its members to share the latest methods of 'prison administration, penal law, prevention of crime, and juvenile delinquencies'.¹¹³ The International Office of Public Hygiene (1907) and the International Association

¹⁰⁵ Scott, *supra* note 52, at 59–61.

¹⁰⁶ Polanyi, *supra* note 82, at 147. See also generally D. Roberts, *Victorian Origins of the British Welfare State* (1960).

¹⁰⁷ Steinmetz, *supra* note 98; Dahl, 'State Intervention and Social Control in Nineteenth-Century Europe', 1 *Contemporary Crises* (1977) 163.

¹⁰⁸ Kennedy, 'Three Globalizations of Law and Legal Thought: 1850–2000', in D.M. Trubek and A. Santos (eds), *The New Law and Economic Development* (2006) 19, at 37–42.

¹⁰⁹ MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal', 1 *Historical Journal* (1958) 52.

¹¹⁰ Kennedy, *supra* note 108.

¹¹¹ Hayward, 'The Official Social Philosophy of the French Third Republic: Léon Bourgeois and Solidarism', 6 *International Review of Social History (IRSH)* (1961), at 19; Hayward, 'Solidarity: The Social History of an Idea in Nineteenth Century France', 4 *IRSH* (1959) 261; P. Rabinow, *French Modern* (1989) 184–195.

¹¹² D. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (1998); J.T. Kloppenberg, *Uncertain Victory: Social Democracy and Progressivism in European and American Thought, 1870–1920* (1986); Freedman, *The New Liberalism: An Ideology of Social Reform* (1978).

¹¹³ Reinsch, *supra* note 94, at 56–57.

of Public Baths and Cleanliness (1912) encouraged governments to take on greater responsibility for public health problems that were especially linked to the working classes and promoted techniques for their more effective management. Further promoting the refinement of state infrastructural powers aimed at regulating populations and disciplining individuals, the International Institute of Administrative Sciences (1910) circulated information about ‘the most efficient ways to carry out and further extend the expanding functions of the state’.¹¹⁴ As contemporary observers noted, all of this burgeoning international activity, far from detracting from state sovereignty, directly bolstered and extended it:

The process of international organization frequently favors the expansion of the sphere of the national government. When interests are organized upon an international basis, the persons and associations concerned begin to see more clearly how their purposes may be furthered through state action. They consequently demand new legislation as well as the expansion of the administrative sphere ... [I]n every way the state is encouraged to make the fullest use of its powers.¹¹⁵

Among contemporary legal scholars observing the proliferation of inter-governmental bodies, Pierre Kazansky was perhaps the most conscious of their connection with rising concerns regarding the social. It was in the social relations that created the internal administration of states, he argued, that answers could be discovered regarding the nature of international administration, its law, and the international interests they expressed.¹¹⁶ Indeed, international administration itself could be defined as the activity of states, international societies, their organs and international organs for the purpose of protecting international social interests.¹¹⁷ The goals of international administrative law were therefore identical to those of the internal administrative law of states, which Kazansky identified as ‘police’ (in the broad sense of public administration), public prosperity and security.¹¹⁸ International unions performed the vital task of developing in the minds of modern people the ideas of solidarity and cooperation, reminding them of their common interests and of the possibility of social harmony and progress.¹¹⁹

Most significant of all in this regard were the efforts towards international organization in the field of labour reform. Established in 1903 as a secretariat to the International Association for Labour Legislation (IALL), a semi-official body that was partly government funded and included a number of well-known European public figures and politicians, the International Labour Office represented a model of social reform that promoted social legislation as an alternative to violent revolution. The IALL’s most notable successes were in producing the 1906 conventions that

¹¹⁴ Murphy, *supra* note 72, at 100.

¹¹⁵ Reinsch, *supra* note 94, at 140.

¹¹⁶ Pierre Kazansky, ‘Théorie de l’administration internationale’, 9 *Revue de Droit International Public* (1902) 353, at 353.

¹¹⁷ *Ibid.*, at 361.

¹¹⁸ *Ibid.*, at 362.

¹¹⁹ Kazansky, ‘Les premiers éléments de l’organisation universelle’, 29 *Revue de Droit International et de Législation Comparée* (1897) 238, at 246.

prohibited night work for women and the use of white phosphorous in the manufacture of matches; the Office supported the IALL's work, carrying out inquiries into specific issues relating to working conditions, especially in factories.¹²⁰ Later serving as a prototype for the International Labour Organization, the Office exemplified the internationalization of concerns regarding the security of individual freedom in the conditions of modern, industrial society.¹²¹

C Colonial Government

Finally, IOs were seen as vital instruments for the extension of liberal government to territories and populations outside Europe as well as within it. International law in the 19th century was understood to apply to a limited 'family of nations' that met a 'standard of civilization' defined by European values and governmental practices.¹²² The new 'international administrative unions' established in the same century were distinctive in admitting members from outside that 'family', including colonies and so-called 'semi-civilized states' such as Turkey and China.¹²³ Nevertheless, as Kazansky put it, these unions fulfilled '*une grande mission civilisatrice*'.¹²⁴ In territories outside Europe, as within it, new inter-governmental organizations undertook a wide range of activities that reflected the contradictory demands of liberalism, pursuing reforms to enable the construction of 'free' commercial markets, the disciplining of individuals, the mitigation of social problems and the regulation of populations affected by them.

Europe's borderlands were particular sites of experimentation with regulatory forms of power relating to 'the calculated management of life'.¹²⁵ One such experiment arose from the threat of 'devastating invasions of epidemic diseases', such as the plague and cholera, from the East.¹²⁶ The fear of such 'Asiatic invasions' led European states to institute a series of international organs, whose functions were to establish sanitary and quarantine measures at key oriental capitals along trade and Islamic pilgrimage routes: the Conseil supérieur de Santé, established in 1838 at Constantinople; the Conseil sanitaire, maritime, et quarantenaire d'Egypte (1881), which was to 'act as an international guard' along the Suez Canal – 'that dangerous passage for disease between Asia and Europe' – and similar councils at Alexandria and Teheran.¹²⁷ Putting European scientific knowledge to work for modern state formation, these bodies introduced and applied disciplinary techniques of separation, inspection and

¹²⁰ J.W. Follows, *Antecedents of the International Labour Organization* (1951) 157–176; Delevingne, 'The Pre-War History of International Labor Legislation', in J.T. Shotwell (ed.), *Origins of the International Labor Organization* (1934) 19.

¹²¹ See generally Sinclair, *supra* note 13, at ch. 2.

¹²² Koskenniemi, *supra* note 7, at 49ff; Anghie, *supra* note 7, at 35, 59ff.

¹²³ Howland, 'An Alternative Mode of International Order: The International Administrative Union in the Nineteenth Century', 41 *Review of International Studies* (2014) 161.

¹²⁴ Kazansky, *supra* note 119, at 246.

¹²⁵ Foucault, *supra* note 51, at 140.

¹²⁶ Woolf, *supra* note 97, at 222.

¹²⁷ *Ibid.*, at 223, 231.

surveillance,¹²⁸ at once to enhance the welfare of local populations and to defend European civilization at its frontiers.¹²⁹

The Sanitary Councils were part of a larger European effort to reform and modernize the administration of countries in the Near East. Modernization meant more centralized institutions, standardized practices, professionalization and legalization – the work of ‘civilizing’ meant ‘structuring and establishing what was perceived to be a “European-style” order’.¹³⁰ At around the same time, Saint-Simonist and Benthamite reformers were enthusiastically disseminating a range of utopian technocratic schemes, including disciplinary institutions modelled on Bentham’s Panopticon, to places such as India, the Ottoman Empire and Egypt.¹³¹ However, reforms such as these were not simply top-down, European projects of civilization; they were also embraced and led by local elites who adopted similar values and seized the opportunity to consolidate power and advance their own national projects.¹³²

International organs more generally came to be seen as vehicles for administrative reform in non-European societies and for the projection of European rationales and techniques of government as universally normative. In ‘countries with inefficient or backward governments’, international bodies were given substantial powers of control over local situations to ensure that they were administered appropriately.¹³³ The Danube Commission, for example, was established in the aftermath of the Crimean War to ensure the necessary dredging and improvement of the river mouths, ‘which could never have been expected under Turkish rule’.¹³⁴ Granted significant powers by a Public Act, the Commission fixed and collected tolls, licensed vessels, imposed fines and penalties, exercised complete control over the port at Sulina, and even established and managed two hospitals there.¹³⁵

As European state administrations followed their national commercial concerns overseas, existing models of inter-governmental organizations were adapted to serve as supplementary mechanisms of indirect rule in formal and informal empires. The General Act of the Berlin Congress (1885) thus authorized the creation of an International Commission, based explicitly on the model of the Rhine and Danube Commissions, to guarantee equal rights of commerce along the Congo and the Niger rivers; and similar commissions were constituted to govern the use of the Suez Canal and the Huangpu River in China.¹³⁶ European creditor nations likewise formed

¹²⁸ See, e.g., F.B. Sayre, *Experiments in International Administration* (1919), at 54 (stating that the Sanitary Council at Alexandria ‘exercises a permanent surveillance over the public health of Egypt’).

¹²⁹ See also N. Howard-Jones, *The Scientific Background of the International Sanitary Conferences 1851–1938* (1975).

¹³⁰ Chahrour, ‘“A Civilizing Mission”? Austrian Medicine and the Reform of Medical Structures in the Ottoman Empire, 1838–1850’, 38 *Studies in History and Philosophy of Biological and Biomedical Sciences* (2007) 38, at 39.

¹³¹ T. Mitchell, *Colonising Egypt* (1991), at x, 16, 35.

¹³² See generally L. Kuhnke, *Lives at Risk: Public Health in Nineteenth-Century Egypt* (1990).

¹³³ Sayre, *supra* note 128, at 14.

¹³⁴ *Ibid.*, at 40. See also generally Krehbiel, ‘The European Commission of the Danube: An Experiment in International Administration’, 33 *Political Science Quarterly* (1918) 38.

¹³⁵ Sayre, *supra* note 128, at 41–45.

¹³⁶ *Ibid.*, at 68–79, 84–91.

international commissions to address cases of 'serious disorganization in the financial system of the state' in Egypt (1878) and Turkey (1880), and similar systems were instituted to reform the financial affairs of Greece (1897) and Macedonia (1906).¹³⁷

IOs exercising less overt control over territory and populations also served to universalize Western models of administration while extending European state power. Postal agencies in the most significant overseas colonies and dependencies of the Great Powers, for example, were integrated into the UPU by being granted separate membership and representation on its committees – a move that simultaneously gave the metropolitan states significantly greater voting power within the organization.¹³⁸ Seen as effective means of colonial government 'at a distance', a global postal and telegraph service, promoted by the UPU and ITU respectively, permitted a mode of surveillance that could help to safeguard the political security of European states and their empires.¹³⁹ The telegraph, in particular, 'minimize[d] the need for the *physical presence* of the police or the military' and allowed them to be used economically.¹⁴⁰ In establishing international standards to ensure the integrity of communications, therefore, these organizations facilitated the development of specifically liberal technologies of empire.¹⁴¹

Finally, IOs became part of the repertoire of authority and influence exercised by a formerly colonized country and rising great power outside Europe. For most of the 19th century, the USA remained aloof from the new European mechanisms for international cooperation, probably because the federal administrative state remained weak, only beginning as a 'patchwork' towards the end of that period.¹⁴² The first international organization that the USA joined was the International Commission for the Cape Spartel Light, established in 1865 to manage a lighthouse on the Moroccan Coast, at the Straits of Gibraltar.¹⁴³ But its most significant engagement was in the International Union of American Republics (1889), which led to the creation of an International Bureau of the American Republics and was the forerunner of the present-day Organization of American States (1948). Undoubtedly, the Union offered a convenient tool for the USA to extend its influence and commercial interests in South America.¹⁴⁴ It is noteworthy, however, that the Union's existence was also legitimated

¹³⁷ Reinsch, *supra* note 94, at 75.

¹³⁸ Woolf, *supra* note 97, at 199–200. Under the General Act of the Berlin Conference 1885, 165 CTS 483, for example, the Constitution of the Universal Postal Union 1964, 611 UNTS 7, was specifically applied to the Congo (see Art. 7).

¹³⁹ Barry, *supra* note 91, at 137–138.

¹⁴⁰ *Ibid.*, at 138.

¹⁴¹ *Ibid.* See also D.R. Headrick, *The Invisible Weapon* (1991), ch. 4.

¹⁴² See generally S. Skowronek, *Building a New American State* (1982); M.G. Hannah, *Governmentality and the Mastery of Territory in Nineteenth-Century America* (2000); Herren, 'Governmental Internationalism and the Beginning of a New World Order in the Late Nineteenth Century', in M.H. Geyer and J. Paulmann (eds), *The Mechanics of Internationalism* (2001) 121, at 135–136.

¹⁴³ See generally Bederman, 'The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel', 36 *Virginia Journal of International Law* (1996) 276.

¹⁴⁴ Reinsch, *supra* note 94, at 85. Any suspicion that this was the case could only have been strengthened after the Spanish-American War of 1898 and the USA's annexation of overseas colonies in Puerto Rico, the Philippines and elsewhere.

by broader goals of national state formation, making the Bureau ‘an efficient agent in assisting the internal development of the American republics’,¹⁴⁵ including through the sponsorship of a Pan-American Sanitary Bureau.¹⁴⁶ As elsewhere, this ‘internal development’ was defined by reference to the values and goals of liberal government.¹⁴⁷

5 Conclusion

This article has argued that IO growth can best be understood in light of its inter-connections with the formation of modern states. Both processes, I have suggested, are impelled by a dynamic of liberal reform which, by seeking to maximize liberty, requires constant fine-tuning of state institutions, individuals and society. The article offers a preliminary illustration and substantiation of these claims with an analysis of the activities of the earliest international organizations in the 19th century. In doing so, it attempts to shed light on the promise and perils of reform in international law.

Picturing IO growth as contributing to state formation and driven by the demands of liberal governmental practice offers a productive framework for theorizing change in IOs more generally. The 20th-century ‘move to institutions’¹⁴⁸ is usually depicted as a series of great waves following traumatic upheavals in international politics, such as the two World Wars and the end of the Cold War. While not discounting the significance of such founding moments, this article suggests that it might be at least as fruitful to focus attention on the ongoing, informal expansion of IOs’ powers over the *longue durée*. Rational choice theorists regard such change as being driven by exogenous factors, in particular, the strategic, self-interested behaviour of states; while neo-functionalists and constructivists focus on endogenous factors, such as the culture and ideology of IOs’ officials.¹⁴⁹ By giving priority to one or the other, all such approaches overlook those socio-legal discourses and practices that operate internally and externally at once and, thus, constitute both endogenous and exogenous drivers of change. In contrast, attending to the dynamic of liberal reform allows us to see change in IOs as the outcome of an ongoing and disorderly process of struggle over meaning in a variety of settings – national and transnational, legal and political.

This analytic framework casts light on other theoretical questions as well. As I have shown, formal inter-governmental institutions first emerged as auxiliaries to the interlinked projects of European state and empire building. Linking liberal reform to state formation gives specific content to the civilizing mission of IOs and international law more generally in the 19th century. At the same time, it highlights important continuities between the rationales and techniques of governance in metropolitan, colonial and decolonized states. It aids in understanding how the concerns motivating

¹⁴⁵ Reinsch, *supra* note 94, at 99.

¹⁴⁶ B.J. Lloyd, ‘The Pan American Sanitary Bureau’, 20 *American Journal of Public Health* (1930) 925.

¹⁴⁷ *Ibid.*, at 77ff.

¹⁴⁸ Kennedy, *supra* note 69.

¹⁴⁹ Helfer, ‘Understanding Change in International Organizations: Globalization and Innovation in the ILO’, 59 *Vanderbilt Law Review* (2006) 649, at 657–671.

the establishment of the earliest international organizations – communications and transport, trade and property, public administration and good governance – remain central in the activities of IOs and global governance today. And it sheds light on the puzzle of apparently contradictory goals and purposes pursued by present-day IOs, such as the ‘neo-liberal’ policy prescriptions of the World Trade Organization, the International Monetary Fund and the World Bank, on the one hand, and the more socially oriented programs of the International Labour Organization and the United Nations Development Program, on the other.¹⁵⁰

The framework proposed in this article is not intended to substitute for detailed historical studies of the specific discourses and practices, meanings and contestations involved in particular institutions. To the contrary, it aims to draw attention to the undercurrents of debate, struggle and experimentation within each ‘era’, while making visible similarities in the patterns of thought and practice from ‘civilization’, to ‘modernization’ and then to ‘globalization’, from post-war ‘embedded liberalism’¹⁵¹ to turn-of-the-century ‘neo-liberalism’ and from state-centred development to global governance. In doing so, it reveals that the ideal of modern government has always involved efforts to reform individual character, desires, and attitudes, no less than the structures and culture of society as a whole; helps to make more intelligible long-term ‘geological’ shifts in the practices and structures of global governance;¹⁵² and suggests that the ‘new’ forms of governance emerging towards the end of the 20th century may not be so new after all. Finally, the article establishes a new analytical basis for the separate, but no less important, task of evaluating and critiquing the ever-expanding range of powers exercised by IOs.

¹⁵⁰ Cf. Guzman, *supra* note 19 (using rational choice premises to explain the large number and variety of IOs).

¹⁵¹ Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’, 36 *International Organizations* (1982) 379.

¹⁵² Weiler, ‘The Geology of International Law: Governance, Democracy and Legitimacy’, 64 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2004) 547.