

# The English School and global constitutionalism

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## Chapter 12 The English School and Global Constitutionalism

Filippo Costa-Buranelli

The English School of International Relations (ES) is a theoretical approach that strongly emphasises the role that international law, ethics and morality, as well as informal norms, rules, and institutions have played historically in regulating and maintaining relations between different political communities. Inter-polity orders across history, for the ES, have all been marked by the existence of constitutional structures, legitimacy principles, and normative parameters of rightful conduct. This chapter provides a coherent and systematic overview of the distinctive ways in which the ES has contributed to the study of constitutionalisation of world politics. After briefly summarising the main tenets of ES theory, the chapter analyses the different ways in which ES authors have reflected on processes of global constitutionalism and connects them with Costantino Mortati's idea of 'material constitution'. The chapter will then move to a more analytical section, where three specific aspects of ES theory are discussed in relation to global constitutionalism – the pluralism-solidarism distinction; the relationship between primary and secondary institutions; and the interplay between international and world society. In the final section, the chapter considers how the ES conceptualises current and future challenges to global constitutionalism.

### *Introduction*

The idea of 'global constitutionalism', understood as a constitutional political and legal order which enables and constrains political decision-making by placing limits on political life through its emphasis on the rule of law while also enabling the creation of new institutions and laws in moments of founding and in practices of interpretation (Lang and Wiener, Introduction to this volume) has always been a distinctive mark, albeit perhaps *in nuce*, of the English School of International Relations (henceforth ES). The very premise of this theory, as a matter of fact, is based on the idea of sociability between states (or, to be more trans-historically correct, polities), which to a minimum agree to find a *modus vivendi* and mutually acceptable arrangements, through the development of formal and informal norms, rules, and institutions.

Yet few ES authors have dealt with global constitutionalism, let alone Global Constitutionalism,<sup>1</sup> directly (for an exception, see Clark, 2007; Hurrell, 2007; Lang, 2013). How does the ES conceive of processes of constitutionalisation of world politics? How does it conceptualise the idea of a 'constitution' between political communities? Does it make sense to speak of global constitutionalism from an ES perspective, and if yes, what are the analytical prisms used to study it? This chapter sheds light on these questions.

It does so by following four steps. The first one is to present the reader with a short overview of ES theory – its main tenets, its concepts, and its specific take on international relations. The second step is tasked with reviewing what scholars working within the ES tradition have said

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<sup>1</sup> For the purpose of this chapter, 'global constitutionalism' (lower case initials) refers to processes, dynamics, practices and trends pertaining to the establishment of a constitutional framework/structure in world politics, whereas 'Global Constitutionalism' (capitalised initials) refers to the interdisciplinary academic field studying such issues.

about the idea of constitutionalism, and to what extent their theorisation of international society has been informed by its ideas. Here, ES arguments about (global) constitutionalism are compared to those offered by the Italian constitutional jurist Costantino Mortati (1891-1985), who in his theory of 'material constitution' (1940) sought to reconcile the legal with the political. The third step, more analytical in scope, discusses three prisms through which the ES looks at global constitutionalism – the pluralism-solidarism distinction; the relationship between primary and secondary institutions; and the interplay between international society and world society. The fourth and last step is to indicate some of the current and, possibly, future research areas that an ES approach to global constitutionalism may consider – the regionalisation of international society, the polysemy associated to it, and the embedded pluralism that is being enhanced by such process; the rise of Global IR as a research programme; and the increase prominence of power politics and the related attempts to change the current structure of international society.

### *The main tenets of the ES*

In order to set the argument clearly and to give those readers not necessarily acquainted with the ES a conceptual map, this first section will briefly illustrate the main features, or aspects, of ES theory and its research programme.

First and foremost, the ES conceives of world politics as a tripartite realm – an international system, where inter-state anomic relations operate; an international society, where 'a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions' (Bull, 1977, 13); and a world society, where non-state and transnational actors operate. These three domains, discerned for analytical purposes, are in fact intertwined and are to be thought as in constant interplay, dialogue, and as mutually influencing each other.

Second, the ES thinks that in international relations there is more than a realist would think, and less than a liberal would hope for (Linklater and Suganami, 2006). It is an environment in which organised communities do not live in a Hobbesian state of nature, in constant competition and dealing with violence daily, nor in a cosmopolitan Kantian kingdom of ends. The very idea of an international society is one that accounts for norms, rules, and institutions which, if not always respected and followed, direct and constrain the behaviour of such communities in their intercourses and relations. These institutions, in ES thinking, are conceived of in two different, yet related, ways. The first meaning of institutions, socio-anthropological, is that of rooted, durable but by no means eternal codified practices which channel the behaviour of the states (or, in general, actors) forming the society, giving a sense of order and predictability to their actions (Buzan, 2004). They define the socio-structural context where actors operate, and who the legitimate actors are within that context, too. These are *primary institutions*, such as diplomacy, the balance of power, and international law. The second meaning, more akin to neoliberal institutionalism and regime theory, is that of international organisations and regimes. These are *secondary institutions*. More on this, however, will be said below.

The third aspect of ES theory pertains specifically to the idea of international society itself, which can assume a pluralist or a solidarist configuration ( even if, as recent research as show, these are better conceived as an interplay as opposed to two dichotomic ideal-types – for different conceptualisations of this interplay, see Bain, 2021; Buzan, 2004; Weinert, 2011) . Pluralism and solidarism are two normative, ethical, and moral schemes that serve to frame and individuate the goals of the society of states itself. Pluralism pertains to a communitarian ethics, premised on the idea that the absence of any moral authority in international society means that states are the ultimate arbiters on the meaning of ‘the good life’ within their domains. This results in a strict embracement of principles of non-interference and non-intervention, on a minimal, often procedural set of norms to agree upon, and on the value of cultural diversity and plurality of worldviews. Solidarism, on the other hand, pertains to the idea that states are capable of advancing sophisticated forms of cooperation that benefit them and humanity as well. Solidarism thus rests on a more cosmopolitan ethics, strongly incorporates the domain of world society within international society, and is bearer of a more progressive, emancipatory agenda.

The fourth and, for the purpose of this chapter, last aspect of the ES as a theory of international relations is its accentuated humanism and holism. It emphasises the role that co-constitution plays in world politics, thus accounting for both agency and structure; it stresses the pivotal importance of law, philosophy, history, and political theory in the pursuit of explaining and understanding international relations; and it ascribes equal importance to power and morality in world politics, as well as to order and justice.

From the above, it is evident that, within the IR theory panorama, the ES is in an advantaged position to synthetise and integrate the multiple views of global constitutionalism (and, consequently, the different strands of Global Constitutionalism) identified by Jeffrey Dunoff and colleagues (Dunoff et al., 2015) – as a political theory, as a moral project, as a legal process, and an institutional development.

#### *Global constitutionalism in ES scholarship*

As stated in the introduction, since its very inception scholars working within the ES tradition have been interested in processes of constitutionalisation of world politics as well as in the existence of defined constitutional structures, defined as ‘a set of fundamental and prioritized principles and rules that serves as a framework for the self-ordering of relations between polities’ (Muller, 2014, 73). Martin Wight, for example, was among the first to reflect on these issues by drawing on a rationalist understanding of international relations supported by his Christian realism and its related middle-ground ethics, defined as ‘a move toward compromise, an effort to find a middle ground between those who disagree’ (Navari quoted in Lang 2013, 114). It was Wight, in fact, who first coined the expression ‘middle-ground ethics’ when addressing the role of Western values in contemporary world politics (Cochran, 2009; Wight, 1966) and who identified in the charted of the League of Nation ‘a constitution’.

Another prominent ES scholar who much contributed to incorporating and developing ideas of constitutionalism was Maurice Keens-Soper, who clearly recognised the role that deeper institutionalised practices played in fostering a sense of constitutionalisation of world politics

across history (Keens-Soper, 2016). Although very much Eurocentric (more on this in the last section of this chapter), Keen-Soper's argument was premised on the idea that relations between political communities have always been conducted within what he calls 'a framework of some kind', which 'has to be seen not as an empty shell circumscribing and setting limits to the play of political forces, but as intimately and pervasively related to the substantive issues arising between states' (1978, 28). He further argued that even before Westphalia, the fact that Europe was known as a 'respublica Christiana' hinted at the fact that the idea of a 'respublica' is necessarily paired with that of a constitution, being both terms borrowed from liberal political theory and tradition. He also argued, *passim*, that 'Europe got a novel "constitution"' (1978, 29), that international politics in the continent were premised on discernible 'constitutional' arrangements (1978, 30), and that such constitution was 'composed of "institutions"' (1978, 32).

This importance of the historicization of constitutional forms and principles has recently been noted by Thomas Muller, when arguing that '[a] crucial consequence of [the] characterization of global constitutionalism as a contemporary new phenomenon is the largely missing historicization of constitutional forms in the international realm' (2014, 72), thus emphasising the synergy that exists between the ES and the historical comparative approach (which, similarly to Keen-Soper, was that endorsed by Martin Wight and, perhaps even more so explicitly, by Adam Watson, another key ES author). This understanding of constitutionalism was then shared, in different forms, by other ES scholars, such as Donald MacKinnon and Hedley Bull who, supported by his epistemological scepticism and conservatism, made the case that international society as an empirical fact is premised on three layers of normative precepts, an idea he took from H.L. Hart: constitutional normative principles, rules of coexistence, and regulative rules (1977). Other prominent ES authors have used constitutional categories to analyse world politics from an ES perspective. Cornelia Navari, who apart from her work on middle-ground ethics, has resorted to the concepts of 'compacts' and 'packages' to illustrate the normative substance of international society (Navari, 2016). Also, James Mayall defined the workings of international society and the interplay between power and morality within it as 'constitutional arrangements' (Mayall, 2016). Furthermore, the work of scholars such as Robert Jackson has very much hinted at the deep relationship that exists between the ES and Global Constitutionalism. One of his books, 'The Global Covenant', illustrates this aptly – the idea that, even in the absence of a world government, states and societies have been able to devise a normative structure that, when not stymying illegitimate behaviours, at least induces them to either apologise for doing so or offer a justification.

In more recent times, both Ian Clark (2005) and Andrew Hurrell (2007) have focused heavily on how the ES, *de facto*, incorporates fundamental ideas at the centre of global constitutionalism. Clark has grounded his work on the idea of constitutional legitimacy, which revolve around the two legitimacy principles of 'rightful membership' and 'rightful conduct' which, albeit not explicitly, remind one of Reus-Smit's (Reus-Smit, 1997, 556) two functions of constitutional structures: defining legitimate actorness and 'the basic parameters of rightful state action'. The echoes of global constitutionalism are even more audible in that Clark (2005, 2, *emphasis added*) defines his legitimacy principles as 'rudimentary *social*

*agreement* about who is entitled to participate in international relations, and also about *appropriate forms* in their conduct'. It is the very idea of a social agreement, as a human product of reason, that constitutes a direct link with the tradition of global constitutionalism, albeit arguably from a more political, as opposed to legal, perspective. Hurrell, too, has very much made the case for a progressive constitutionalisation of international society, arguing that a pluralist understanding of world order is not morally tenable anymore and that it is through solidarism that one can see the progressive constitutionalisation of world politics, as a legal but most importantly as a *moral* project. This, according to him, has been mostly visible in the 'failure' of pluralism to advance world politics and human emancipation in the two areas of human rights and environmental stewardship.

The above discussion provided only a snapshot of how past and contemporary authors who have contributed to ES theorising conceive of the idea of constitutionalism, and its applicability to the global domain. The gist of the ES understanding of global constitutionalism is that the ES embraces an idea of law that is deeper than the positivistic one, although not necessarily rejecting the latter. It is expression of something deeper. It is thus possible to distil some main features of this understanding.

First, the ES considers 'constitutional' not simply in legal terms, but also and one may say especially in *sociological* ones in the sense of *constituting* – the very idea of defining legitimate players and legitimate identities within the context of international society. This very well stresses the fundamental *enabling* function of constitutions, as opposed to a merely *prescribing* one. This idea is embodied in the very concept of institutions, norms, and rules, that through the practice and intersubjective understandings of state representatives creates a legitimate framework of action. This is enucleated in one of the pivotal, yet still underappreciated, concepts at the heart of ES theorising, that of *raison de système*, which implies that political communities, alongside their individual interests, are aware of the systemic, pluralistic interest(s) of the other communities, too, and acknowledge that their interests and the stability that protects them are best served by abiding by the constitutional structures at play (Keens-Soper, 2016; Watson, 1992). Neatly encapsulating the idea at the core of an international society, and therefore of a covenant, *raison de système* can be defined as 'the belief that it pays to make the system work' (Watson 1992, 14).

Second, and related to the above, the ES places diplomacy at the centre of these constitutional structures, for it is through diplomacy that common practices, mutual understandings, compromises, and accommodation of differences can be achieved. Indeed, as has been noted, within an ES understanding of global constitutionalism it is diplomacy which serves as an exemplification of middle ground ethics, which places compromise as the ultimate good. Tellingly, Keens-Soper (2016, 38, emphasis added) maintained that

Purposes and therein 'thought' are to be detected not merely in the pursuit of the expressly formulated and justified determinations of foreign policy but equally, through differently, in the practices upon which the ability to pursue the substantive ends of policy are themselves dependent. *By way of analogy, in*

*constitutionalism, the content of any legislation is unimportant; it is the procedures that matter. And diplomacy is to foreign policy what constitutionalism is to legislation.*

Third, due to its focus on co-constitution as well as the interplay of morality, power, and politics, the ES de facto de-essentialises constitutionalism as a given and renders it a process,<sup>2</sup> subject to historical contingency, contextuality, and waxing and waning. The constitutional structures, or orders, across history arise, develop, change, and demise – and, with them, their underpinning practices and institutions. Therefore, it can be said that because of its ontological, epistemological, and methodological toolkit, the theory is able to investigate the structure and the content of the current global covenant (the contemporary existing order) as well as those practices and normative principles that are slowly assuming a constitutional, prescriptive character without necessarily having reached codification.

Considering constitutional theory, I argue that the above are interesting parallels that connect the ES with the idea of ‘material constitution’ advanced by the famous Italian jurist and constitutional theorist Costantino Mortati (Mortati, 1940).<sup>3</sup> As a matter of fact, Mortati tried to ‘reconnect the juridical with the political’ advocating for an approach to constitutionalism that would ‘legalise the political through reference to constitutional principles and values, supported by the force or group of forces that are at the basis of the legal system’ (Lanchester, no page, 2012). As we shall see, this conceptualisation of constitutionalism, rooted in practice and experience and not in aprioristic assumptions (à la Lauterpacht, who identified this assumption in the *civitas maxima*), is helpful in illustrating an ES understanding thereof (although crucially not the only possible one), not far from the socio-legal tradition of George Schwarzenberger (who, incidentally, was contemporary of Mortati) (Navari 2021a, 137-140; see also Navari 2019, 68-72). As a matter of fact, for Mortati, the constitution was not necessarily ‘the spring of the law’, from which other laws and norms flow, as was Kelsen’s *Grundnorm* or Schmitt’s *decision*. Rather, it was an *expression of the interests, power relations, priorities, and goals of different social actors*. It is clear that this is a dynamic, processual reading of the constitution, as opposed to a static one, which very much is in line with the idea of ‘international society’ and its idea of (global) constitutionalism.<sup>4</sup>

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<sup>2</sup> Which, crucially, is not teleological.

<sup>3</sup> Costantino Mortati (1891-1985) was a constitutional jurist, theorist, and academic, who participated in the Italian Constitutional Assembly (1946-1948) after the fall of the Fascist regime and served as judge of the Italian Constitutional Court, of which was also vice-president. Strongly influenced by German organicism and by French and Italian institutional pluralism, and constantly attempting to mediate between the historical-political orientation of Franco-British origin and the legal positivistic tradition with German roots, Mortati saw in the concrete and historically situated ‘dominant order’ the fundamental element of a constitution. His writings, especially those about comparative constitutionalism and public law, are still considered relevant today (Rubinelli 2019).

<sup>4</sup> Conscious of the temptation of (yet another!) domestic analogy, I realise that the parallel with Mortati’s understanding of material constitution would require a theorisation of the analogy between states and political parties, and whether such analogy is tenable. However, here the analogy is presented simply to illustrate the broad similarity between the two approaches.

According to Mortati, the heart of the ‘constitution’ was the appreciation, in a unitary way, of the various interests that gather around the State. Although not a positivistic document, the material constitution understood by Mortati was nonetheless juridical, for the material constitution could ‘transfer itself in the formal constitution, which consequently stabilises and warrants the *balance of power* and *the political goals* of the material constitution’ (Pinelli, 2010, no page, emphasis added).<sup>5</sup> For Mortati, therefore, as well as for the ES, the idea of a fundamental, unwritten, and political constitution understood as a balance of different interests, goals, and moral positions necessarily predates any formalisation of it, and lends itself to diachronicity, contestation, and change, reminding us that every constitution is, at the same time, stability *and* tension. A tension that is primarily *political*, residing in the creation of boundaries and areas of legitimacy, ‘between inside and outside and between what counts as politics and what doesn’t’, which is a reminder that for the ES the analysis and the operation of order and constitutional structures is primarily ‘about the power politics of these constitutive processes’ (Hurrell, 2021, 40). This is in line with Navari’s argument who maintains that ‘the *constitution* of the international order does not serve particular masters: it represents rather a *particular balance* of achievable goals among power equals, near equals and unequals’ (2018, 69, emphasis added). The logical conclusion of these arguments is, with timely relevance for the recent shifts in world order, that ‘power transition [in an ES sense] can be conceptualized and studied as a matter of *continuity and change in the constitutive principles and reproductive practices of fundamental institutions* with the superstructure of international organization as a key site and potential stimulator of such deep changes’ (Knudsen 2022, 42, emphasis added).

The constitutionalism theorised by the ES is, therefore, deeper and more pervasive than mere legalisation, especially in a positivistic understanding of the law. The treaty, the charter, the covenant at play at a given time in history is only an epiphenomenal expression of more fundamental principles, norms, and rules of conduct. This is most evident, perhaps, in the institution of international law. For those theorists of global constitutionalism stressing the legal character of it, international law is the *explanans*, and the mover, of the processes underpinning the progressive constitutionalisation of world politics. From an ES viewpoint, however, international law is both *explanans* and *explanandum*, the coalescence in the form of a primary institution of deeper and more substantial constitutional norms in a Bullian sense, such as the preservation of a society of states predicated on limits to (and regulation of) violence, establishment of property rights, and sanctity of agreements (*pacta sunt servanda*). If, therefore, one subscribed to the more fundamental idea of a constitution in the ES sense and, following Keen-Soper, accepts that for the ES a constitution between states is not necessarily ‘announced, signed, or proclaimed’, but is visible and operates ‘in the no less instructive reiteration in practice of shared precepts and rules of conduct’ (2016, 29), then there is also the acceptance that *international law is an institution of that very constitution*, and not merely its prime mover.

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<sup>5</sup> The emphasis on the quintessentially political character of constitutions on the international stage echoes Cox’s arguments on social forces and social orders (1981).



This section has situated the idea of global constitutionalism within past and recent scholarship of the ES, showing how since the very beginning of the activities of the British Committee of International Relations scholars and theorists associated with its workings have explored issues pertaining to rights, freedoms, liberties, morality, power, and ethics – both between states, and between states and people. The next section, more analytical in scope, moves towards an account of three of main ways in which current debates within the ES are contributing to the idea, the practice, and also the problematisation of global constitutionalism.

### *Three possible ways to study global constitutionalism from an ES perspective*

Against the backdrop outlined above, this section now zooms into three specific ways in which ES scholarship has dealt with the ideas and principles of global constitutionalism. These three ways are the pluralism-solidarism distinction; the relationship between primary and secondary institutions; and the interplay between international and world society.

#### *The pluralism-solidarism distinction*

It is now an accepted idea within ES scholarship that international society can be underpinned by two different logics of organisation, behaviour, and order – pluralism and solidarism. In William Bain's words, 'pluralism and solidarism are framing principles for a debate about the limits of reform and the possibilities for progress in international society' (2021, 96). The former refers to the idea that territorial communities agree on a minimum, often procedural set of principles, rules, and norms to 'live and let live', holding to the two principles of non-interference and non-intervention.

The idea of pluralism rests on a communitarian ethics, aimed at preserving and protecting cultural and moral differences, on the basis that no single culture can argue to be better than others. Conversely, solidarism refers to the idea that international society can and should be premised on enhanced and increasing cooperation between territorial communities, as well as the people inhabiting them. In a solidarist international society, sovereignty is conceived as responsibility; international law makes room for individuals; and institutions that bring together states in largely cooperative framework are developed, such as the market or environmentalism. This means that global constitutionalism from an ES perspective can be studied by paying attention at the underpinning logics, justifications, and moral claims that give birth to these two compacts (Ahrens, 2019), and in particular at the tensions between them, with interesting and potentially fruitful connections with legal and ethical pluralism and their connections with international law (Schmidt, 2020; Swenson, 2018; Williams, 2015).

The scholar who may want to study global constitutionalism using an ES prism may look, for example, at how state actors fight (discursively but also non metaphorically) for a pluralist world order based on *jus inter gentes*, at the moment best enshrined in the UN Charter of 1945. Nowadays, it is countries like Russia and China who advocate for a 'democratic world order', in which 'democratic' is unequivocally a substitute for 'pluralist'. Conversely, one may read the post-1990 liberal order as an attempt to project solidarist logics across the globe and to give them rule-like, *jus gentium* nature (Ahrens and Diez, 2015; Wheeler, 2000) and approach processes of global constitutionalisation as the development of institutions like

humanitarian international law, environmental stewardship, and the market as ways of 'reducing the tension between the needs and imperatives of states and the needs and imperatives of humankind' (Bain 2021, 95).

### *The relationship between primary and secondary institutions*

The second prism which the ES uses to study processes of constitutionalisation of world politics is the distinction between primary and secondary institutions. With the first one, it is usually understood a set of durable, consolidated yet not eternal practices that inform both the identities of the legitimate actors within international society as well as their behaviour. Conversely, by secondary institutions within the ES it is usually understood (regional) international organisations, akin to institutions as meant by regime theory and neoliberalism. The ES contributes to global constitutionalism through this angle by, on the one hand, acknowledging that there are deeper, fundamental practices that structure, regulate, and inform world politics as opposed to the epiphenomenal organisations mentioned and studied by regime theorists. The analytical power of this angle is that it shows how a 'constitution', global or regional but in any case international (still, we are referring to inter-polities relations, to cover space diachronically), does not have to be formalised in a treaty or in an official document to exist, but can be internalised, 'felt', and followed by those actors who acknowledge to be bound by it through routinary practices (institutions) and discourses.

On the other hand, the ES has been placing increasing importance on the role which secondary institutions play in 'locking in' the constitutional principles of international society – global, as well as the regional ones. While it can be argued that, in principle, secondary institutions are an empirical, physical manifestation of the primary institutions operating within an international society at a given time and space, recent scholarship has also illustrated how international organisations (secondary institutions in an ES sense) contribute to the refinement, development, and change of primary institutions, thus changing de facto the content and the values at the base of a given constitutional compact in a given period of history (Friedner Parrat, 2017; Navari and Knudsen, 2019; Spandler, 2015). Examples of this may include the emergence of international humanitarian law through the workings of the UN, the ICJ, and the ICC as well as regional courts such as the ECJ and ECHR (Knudsen, 2019; Schmidt, 2019); the institutionalisation of environmentalism through the establishment of UNFCCC; and the evolution of the meaning of sovereignty in a solidarist sense through the conceptualisation of R2P following GAR/60/1 in 2005.

A possible research programme on global constitutionalism from an ES perspective in this area would, for example, trace and explore the mechanisms through which secondary institutions alter, change, and enhance meanings and practices of those norms and principles that have potential global constitutional character, while accounting for power politics and interest-based behaviours in international organisations. As aptly noted by Navari (2021b, 140, emphasis added),

In liberal institutional theory, phenomena such as sovereignty, balance of power, inclination to war and great power management are generally considered to be constraints on the working of IOs. In the ES understanding of institutions, they are

not constraints but *constitutional foundations* that inform the inner mechanisms of the organisations.

Finally, recent studies working on the distinction between primary and secondary institutions at the regional level have highlighted how, in line with the embedded pluralism that seems to be underpinning the post-liberal order, it is perhaps better to start talking about constitutionalisms in the plural, as opposed to only one, with different fundamental rules and practices ossified and coalesced in different organisations of different regional orders (Costa Buranelli, 2019). More on this will be said in the next section.

### *International and World Society*

The third prism that the ES adopts to study processes of global (and regional) constitutionalisation is that of the interrelation between international and world society. While the first generation of ES thinkers paid attention to the ontological tripartition of world politic (system, society, world society) but at the same time privileged analytically the international society dimension, the new turn of the ES has started inquiring more and more not simply into the interrelation between international and world society, but also into how world society can affect institutional dynamics at the level of international society, thus impacting on processes of constitutionalisation thereof.

The focus on how non-state actors can have agency in international society, to the point of creating new primary institutions and/or dismantling existing ones, has been at the forefront of the work of, for example, Ian Clark, who specifically links ideas of legitimacy in international society to the inter-human component of it. This is an argument developed in a solidarist fashion, for it locates the source of the moral viability and acceptability of order between states within humanity. It also echoes Bull's 'solidarism of the heart', for in an oft-neglected aspect of his thought he actually located the ultimate source of the legitimacy of international society in what he called the 'world political system', i.e. the interplay between states and peoples (1977).

More recently, by distinguishing a *normative* world society whose primary institution is collective identity from a *political* world society whose primary institution is advocacy, Barry Buzan (2017) has theorised how solidarist institutions such as the market, human rights, or the environment were initially promoted, and now are supported and developed, thanks to the role that world society has been playing. Conversely, authors such as John Pella (2013) have pointed at how world society has contributed to a restructuring of international society in a decolonial sense through the movements for the abolition of slavery.

This third prism of the ES can therefore help in the study of global constitutionalism by emphasising how different forces located at different levels of analysis impact, shape, tailor, and affect the institutional structure of the normative compact at a given time in history, highlighting how global constitutionalism and the process thereof are not simply a matter of states, but are a complex interplay of interests, aims, moral preferences, and ethics. In this respect, for example, the focus on the interplay between international and world society has been crucial in identifying 'constitutional moments' in contemporary international relations that have elevated human beings as both bearers of rights *and* responsibilities in international

society, such as the formation of the International Criminal Court (Ralph, 2007), the institutionalisation of individual sanctions (Wilson and Yao, 2019), and the creation of the UN Ombudsperson, tellingly defined as a 'contact point between international and world society' (Giumelli and Costa Buranelli, 2020).

#### *Current debates and future research areas*

This last section intends to discuss some of the current debates that pertain to an ES approach to Global Constitutionalism as well as indicate some future research areas that, in the mind of this author, may be promising avenues to enhance and entrench the synergies between ES and Global Constitutionalism. In other words, this section is asking what aporias, areas of contestation and debate is the ES illuminating that can be important for students of Global Constitutionalism to address and reflect on? I will elaborate on three.

First, there is the issue of regionalisation and the polysemy of institutions (Costa Buranelli, 2015). As the world seems to have entered a post-hegemonic era and current dynamics of embedded pluralism seem to be underway, it is spontaneous to at least question the meaning of 'global' in global constitutionalism. This is a debate that pertains to the pluralist wing of the ES (in the sense of how morally justifiable the defence of cultural and moral differences between regional groupings is) as much as for the solidarist one (where is solidarism going, and is solidarism necessarily liberal?) The issue here is that there is evidence that regional international societies are coalescing around their own constitutional compacts, developing new institutions and/or altering the fundamental meanings of existing ones thus undermining the globality of the covenant, á la Jackson (Buzan and Schouenborg, 2018).

Second, and related to the above, there is the growing demand for incorporating the theoretical, epistemological, and moral arguments of the Global IR and decolonisation within established IR theory, and the ES is no exception (Costa Buranelli and Taeuber, 2022). As noted in the previous section, much of the work of the ES in the realm of global constitutionalism has been very much derived from the European experience, and has been based on strong Eurocentric accounts of political theory and history (Bull and Watson, 1984; Dunne and Reus-Smit, 2017). The point here is to understand what the impact for global constitutionalism would be for those people who, in the past, were left outside the constitutionalised realm of international society because of different 'standards of civilisation' (Costa Buranelli, 2020) and therefore not protected by the obligations of such compact, and to retrieve the connection between the globalisation of the constitutional structures of international society, rooted both in primary and secondary institutions as analysed above, and racism, colonialism, violent dispossession, and oppression (Pasha, 2017). This means an acknowledgment of the not-so-voluntary 'associationalism' at the heart of the constitution of global international society, as well as a recognition that other traditions of constitutionalism have been silenced.

Here, the ES in dialogue with Global IR may encourage a reflection on what is meant by 'constitutionalism', whether the Western, republican idea of a covenant rooted in explicit rights, values, and non-compromisable principles, or whether it should be meant something more fundamental along the lines of 'constituting' in the sense of 'informing', 'sustaining',

‘regulating’, thus embracing the richness and diversity of non-Western experiences, both contemporary but also historically (Phillips and Reus-Smit, 2020; Spruyt, 2020). Once again, here the strength of the ES is that of appreciating, if not necessarily resolving, the tension that exists between uniformity and diversity, socialisation and resistance, domination and emancipation, globalisation and localisation – all fundamental tensions within the project of Global Constitutionalism. Recently, authors have started exploring the long-dated contribution of the Asian continent, if with all its internal diversity, to global constitutionalism (Bhandari, 2013; Lang, 2021), and more should be done in this respect.

Thirdly, and again at least in part related to the above, is the issue pertaining to the structure itself of international society and, therefore, the kind of covenant that would legitimise it. In a partial overlap with the issue of regionalisation of world order and the polysemy of its institutions, one can make the case that some states are pushing for a return to an order based on spheres of interests (when not influence) and more hierarchical relations in international politics, embracing a flexible understanding of sovereignty (arguably the bedrock of the current global covenant). This would present an interesting interplay between power politics and a further constitutionalisation of the institution of great power management, consolidating and de facto legitimising the inequality between them and other states and redrawing the rest of the institutional architecture of global politics by subsuming diplomacy under transactionalism and self-determination under an interpretation of sovereignty as birth-culture (Michelsen et al., 2022). The recent events in Eurasia and, more specifically, in Ukraine are a sad yet timely reminder that the globality of constitutionalism is an institutional, as well as moral, aspiration and tension, as opposed to a *fait accompli*.

### *Conclusions*

This chapter had a dual goal. On the one hand, it presented the reader with how the ES has always been concerned with, and interested in, constitutional processes *latu sensu* in world politics. It did so by elaborating on the existing synergies between the ontological and epistemological components of the theory and the research programme of Global Constitutionalism as well as on analysing the work of past and current scholars working with the theory. On the other hand, it identified similarities with the constitutional theory of Costantino Mortati, and advanced three distinctive ways in which the ES can shed light on global constitutionalism – the pluralism-solidarism distinction; the relationship between primary and secondary institutions; and the interplay between international and world society. After this, an overview of the existing challenges for global constitutionalism from an ES perspective was offered, alongside with some ideas for future research trajectories. While not necessarily exhaustive, the hope is that this chapter has successfully made the case for the mutually nourishing relation between the ES and Global Constitutionalism and offered a set of convincing arguments as to why this mutually nourishing relation should be maintained, fostered, and celebrated.

## References

- Ahrens, B., 2019. The European Union Between Solidarist Change and Pluralist Re-Enactment, in: Knudsen, T.B., Navari, C. (Eds.), *International Organization in the Anarchical Society*. Palgrave Macmillan.
- Ahrens, B., Diez, T., 2015. Solidarisation and its limits: the EU and the transformation of international society. *Global Discourse* 5, 341–355.  
<https://doi.org/10.1080/23269995.2015.1053189>
- Bain, W., 2021. Pluralism and Solidarism, in: Navari, C. (Ed.), *International Society*. Palgrave Macmillan.
- Bhandari, S., 2013. *Global Constitutionalism and the Constitutionalization of International Relations: A Reflection of Asian Approaches to International Law* (SSRN Scholarly Paper No. ID 2402084). Social Science Research Network, Rochester, NY.  
<https://doi.org/10.2139/ssrn.2402084>
- Bull, H., 1977. *The Anarchical Society: A Study of Order in World Politics*. Macmillan.
- Bull, H., Watson, A., 1984. *The Expansion of international society*. Clarendon Press.
- Buzan, B., 2017. Revisiting world society. *Int Polit* 1–16. <https://doi.org/10.1057/s41311-017-0065-5>
- Buzan, B., 2004. *From International to World Society?: English School Theory and the Social Structure of Globalisation*. Cambridge University Press.
- Buzan, B., Schouenborg, L., 2018. *Global International Society: A New Framework for Analysis*. Cambridge University Press.
- Clark, I., 2007. *Legitimacy in International Society*. Oxford University Press, Oxford.  
<https://doi.org/10.1093/acprof:oso/9780199219193.001.0001>
- Cochran, M., 2009. Charting the Ethics of the English School: What “Good” is There in a Middle-Ground Ethics? *International Studies Quarterly* 53, 203–225.  
<https://doi.org/10.1111/j.1468-2478.2008.01529.x>
- Costa Buranelli, F., 2020. Standard of Civilization, Nomadism and Territoriality in Nineteenth-Century International Society, in: Levin, J. (Ed.), *Nomad-State Relationships in International Relations: Before and After Borders*. Springer International Publishing, Cham, pp. 77–99. [https://doi.org/10.1007/978-3-030-28053-6\\_5](https://doi.org/10.1007/978-3-030-28053-6_5)
- Costa Buranelli, F., 2019. Global International Society, Regional International Societies and Regional International Organizations: A Dataset of Primary Institutions, in: *International Organisations in the Anarchical Society*. Palgrave Macmillan.
- Costa Buranelli, F., 2015. ‘Do you know what I mean?’ ‘Not exactly’: English School, global international society and the polysemy of institutions. *Global Discourse* 5, 499–514.  
<https://doi.org/10.1080/23269995.2015.1053195>
- Costa Buranelli, F., Taeuber, S.F., 2022. The English School and Global IR – A Research Agenda. *All Azimuth* 11, 87–105.
- Cox, R.W., 1981. Social Forces, States and World Orders: Beyond International Relations Theory. *Millennium* 10, 126–155. <https://doi.org/10.1177/03058298810100020501>
- Dunne, T., Reus-Smit, C. (Eds.), 2017. *The Globalization of International Society*. Oxford University Press, Oxford, New York.
- Dunoff, J.L., Wiener, A., Kumm, M., Lang, A.F., Tully, J., 2015. Hard times: Progress narratives, historical contingency and the fate of global constitutionalism. *Global Constitutionalism* 4, 1–17. <https://doi.org/10.1017/S204538171400015X>

- Friedner Parrat, C., 2017. On the Evolution of Primary Institutions of International Society. *Int Stud Q* 61, 623–630. <https://doi.org/10.1093/isq/sqx039>
- Giumelli, F., Costa Buranelli, F., 2020. When states and individuals meet: The UN Ombudsperson as a ‘contact point’ between international and world society. *International Relations* 34, 46–66. <https://doi.org/10.1177/0047117819856402>
- Hurrell, A., 2021. Hedley Bull and the Idea of Order in International Society, in: *International Society*. Palgrave Macmillan.
- Hurrell, A., 2007. *On Global Order: Power, Values, and the Constitution of International Society*. Oxford University Press, Oxford, New York.
- Keens-Soper, M., 2016. The Practice of a State System, in: Donelan, M. (Ed.), *The Reason of States*. Routledge, pp. 25–44.
- Knudsen, T.B., 2022. Power Transition and World Order: Three Rival Theories and the Dynamics of Change, in: *Power Transition in the Anarchical Society: Rising Powers, Institutional Change and the New World Order*. Palgrave Macmillan, London.
- Knudsen, T.B., 2019. Fundamental Institutions and International Organizations: Theorizing Continuity and Change, in: *International Organizations in the Anarchical Society*. Palgrave Macmillan, London.
- Lanchester, F. 2012. 'Mortati, Costantino' in *Il Contributo italiano alla storia del Pensiero: Diritto*, Treccani, [https://www.treccani.it/enciclopedia/costantino-mortati\\_%28Il-Contributo-italiano-alla-storia-del-Pensiero:-Diritto%29/](https://www.treccani.it/enciclopedia/costantino-mortati_%28Il-Contributo-italiano-alla-storia-del-Pensiero:-Diritto%29/), accessed on August 29, 2022.
- Lang, A., 2013. Global Constitutionalism as a Middle-Ground Ethic, in: *Ethical Reasoning in International Affairs*. pp. 106–126. [https://doi.org/10.1057/9781137290960\\_6](https://doi.org/10.1057/9781137290960_6)
- Lang, A.F., 2021. Global constitutionalism: A practical universal. *Global Constitutionalism* 10, 367–375. <https://doi.org/10.1017/S2045381721000149>
- Linklater, A., Suganami, H., 2006. *The English School of International Relations: A Contemporary Reassessment*, 1 edition. ed. Cambridge University Press, Cambridge, UK ; New York.
- Mayall, J., 2016. International Society and International Theory, in: *The Reason of States*. Routledge, pp. 122–141.
- Michelsen, N., de Orellana, P., Costa Buranelli, F., 2022. The reactionary ‘Internationale’: The rise of the New Right and the reconstruction of international society. Presented at the ISA General Meeting.
- Mortati, C., 1940. *La costituzione in senso materiale*. Giuffrè, Milano.
- Muller, T., 2014. Global Constitutionalism in Historical Perspective: Towards Refined Tools for International Constitutional Histories. *GlobCon* 3, 71–101.
- Navari, C., 2021a. *The International Society Tradition - From Hugo Grotius to Hedley Bull*. Palgrave MacMillan.
- Navari, C., 2021b. Institutions and Organisations, in: Navari, C. (Ed.), *International Society*. Palgrave Macmillan.
- Navari, C. 2019. Modelling the Relations of Fundamental Institutions and International Organizations, in Brems Knudsen, T., Navari, C. (Eds.), *International Organization in the Anarchical Society: The Institutional Structure of World Order*, Palgrave Studies in International Relations. Springer International Publishing, Cham, pp. 51–75.
- Navari, C., 2016. Knowledge, the State, and the State of Nature, in: *The Reason of States*. Routledge, pp. 102–121.

- Navari, C., Knudsen, T.B. (Eds.), 2019. *International Organizations in the Anarchical Society*. Palgrave Macmillan, London.
- Pasha, M.K., 2017. Decolonizing the Anarchical Society, in: *The Anarchical Society at 40*. Oxford University Press, pp. 92–110.
- Pella, J.A., 2013. Thinking Outside International Society: A Discussion of the Possibilities for English School Conceptions of World Society. *Millennium* 42, 65–77.  
<https://doi.org/10.1177/0305829813503513>
- Phillips, A., Reus-Smit, C., 2020. *Culture and Order in World Politics*. Cambridge University Press.
- Pinelli, C., 2010. Costituzione formale-costituzione materiale in “Dizionario di Storia” [WWW Document]. URL [https://www.treccani.it/enciclopedia/costituzione-formale-costituzione-materiale\\_\(Dizionario-di-Storia\)](https://www.treccani.it/enciclopedia/costituzione-formale-costituzione-materiale_(Dizionario-di-Storia)) (accessed 2.20.22).
- Ralph, J., 2007. *Defending the Society of States: Why America Opposes the International Criminal Court and its Vision of World Society*. Oxford University Press, Oxford, New York.
- Reus-Smit, C., 1997. The Constitutional Structure of International Society and the Nature of Fundamental Institutions. *International Organization* 51, 555–589.  
<https://doi.org/10.1162/002081897550456>
- Rubinelli, L. (2019). Costantino Mortati And The Idea of Material Constitution. *History of Political Thought*, 40 (3), 515-546.
- Schmidt, D.R., 2020. Pluralism and international law in the English School. *Cambridge Review of International Affairs* 33, 491–494.  
<https://doi.org/10.1080/09557571.2020.1785128>
- Schmidt, D.R., 2019. Institutionalising Morality: The UN Security Council and the Fundamental Norms of the International Legal Order, in: Brems Knudsen, T., Navari, C. (Eds.), *International Organization in the Anarchical Society: The Institutional Structure of World Order*, Palgrave Studies in International Relations. Springer International Publishing, Cham, pp. 99–125. [https://doi.org/10.1007/978-3-319-71622-0\\_5](https://doi.org/10.1007/978-3-319-71622-0_5)
- Spandler, K., 2015. The political international society: Change in primary and secondary institutions. *Review of International Studies* 41, 601–622.  
<https://doi.org/10.1017/S026021051400045X>
- Spruyt, H., 2020. *The World Imagined: Collective Beliefs and Political Order in the Sinocentric, Islamic and Southeast Asian International Societies*, LSE International Studies. Cambridge University Press, Cambridge.  
<https://doi.org/10.1017/9781108867948>
- Swenson, G., 2018. Legal Pluralism in Theory and Practice. *International Studies Review* 20, 438–462. <https://doi.org/10.1093/isr/vix060>
- Watson, A., 1992. *The Evolution of International Society: A Comparative Historical Analysis*. Routledge.
- Weinert, M.S., 2011. Reframing the Pluralist— Solidarist Debate. *Millennium* 40, 21–41.  
<https://doi.org/10.1177/0305829811406036>
- Wheeler, N.J., 2000. *Saving Strangers: Humanitarian Intervention in International Society*. OUP Oxford.
- Wight, M., 1966. Western Values in International Relations, in: Butterfield, H., Wight, M. (Eds.), *Diplomatic Investigations: Essays on the Theory of International Politics*. London.



Williams, J., 2015. *Ethics, Diversity, and World Politics: Saving Pluralism From Itself?* Oxford University Press, Oxford, New York.

Wilson, P., Yao, J., 2019. International Sanctions as a Primary Institution of International Society, in: Brems Knudsen, T., Navari, C. (Eds.), *International Organization in the Anarchical Society: The Institutional Structure of World Order*, Palgrave Studies in International Relations. Springer International Publishing, Cham, pp. 127–148.

[https://doi.org/10.1007/978-3-319-71622-0\\_6](https://doi.org/10.1007/978-3-319-71622-0_6)