# ARTICLES

# Measuring the Growth and Decay of Transnational Norms Relevant to the Control of Violence: A Prospectus for Research

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## I. INTRODUCTION

> Modern jurisprudence is open to the scientific study of every phase of law in society.[1]
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> Law has . . . lost much of its old appeal to intellectually gifted and enterprising youth. Law as a science is widely distrusted or scorned, sometimes feared, by representatives of other scientific disciplines as some kind of secular priesthood.[2]

Despite occasional persuasive calls for the application of scientific methodology to the analysis of the nexus between international law and national behavior,[3] investigators operating from both the legal tradition and the scientific paradigm have demonstrated a marked reluctance to accept such research challenges. Many sociological and epistemological factors can be readily identified for this reluctance. Nevertheless, it may be submitted that the apparent antagonism and methodological differences separating scientific and legal analytical technique and scholarship are neither necessary nor constructive, and that indeed the two orientations share more in common with each other than members of either profession have been prone to acknowledge. For instance, both traditional international law and modern peace research share a common concern with the maintenance of systemic stability; both law and science strive for predictability; both law and science function to provide a consensus about the empirical nature of the international system; and both international legal theory and behavioral science assume that interstate behavior is governed by sufficient repetition and regularity to render the search for nomothetic knowledge about those general patterns of interstate practice to be a meaningful endeavor.[4] Moreover,

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1. Lasswell & Arens, *The Role of Sanction in Conflict Resolution*, 11 J. CONFLICT RESOLUTION 27 (1967).

2. Aubert, *Courts and Conflict Resolution*, 11 J. CONFLICT RESOLUTION 40, 50 (1967).

3. W. GOULD & M. BARKUN, INTERNATIONAL LAW AND THE SOCIAL SCIENCES (1970).

4. Thus, when a legal theorist such as Kelsen insists that "states ought to behave

when legal systems are interpreted as abstractions of social reality,[5] then the complementarity of law and behavioral science becomes apparent as cognizance is taken of the fact that both scientific theory and international law bear some relation to, and reflect, actual human conduct, or what states do in interaction.[6] Thus, because both perspectives must necessarily probe the empirical association of "norms of behavior" with "norms for behavior,"[7] it follows that a symbiotic relation between the two fields exists, in that knowledge produced by one contributes to the growth of knowledge in the other.

Given this presumed complementarity of science and law, it seems reasonable to this investigator to attempt to bridge the gap between the two fields by applying the methodology of the former to the study of the latter. That is, international legal norms may be regarded as amenable to systematic empirical observation by rigorous scientific procedure, so that transformations in the structure of the normative order of the international system may be monitored.

Such an ambitious and perhaps pretentious goal is motivated by a cluster of assumptions and convictions which may be briefly outlined here. A basic rationale for a study of this scope stems from the normative conviction that interstate aggression poses a sufficient threat to the survival of nations and mankind so as to render efforts to control it and reduce its incidence a problem which must command our immediate attention. The purpose of this study is not, however, to defend that value statement. Rather, we contend that the realization of that goal is contingent upon our prior ability to identify the causes of violence among nations and to delineate those factors which effectively serve to diminish its likelihood.[8] One such factor, of course, is the type of legal order operative in the international system. It may be contended, however, that we do not as yet possess adequate

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as they have customarily behaved," he is basing his theory on the scientific assumption that the behavior of nations is patterned rather than idiosyncratic and that it is possible in principle to derive generalizations about those behavioral propensities (i.e., customs) on the basis of empirical evidence.

5. Chroust, *Law: Reason, Legalism, and the Legal Process*, 74 ETHICS 1 (1963).

6. Barkun, *International Norms: An Interdisciplinary Approach*, 8 BACKGROUND 121 (1964).

7. Hoffman, *International Law and the Control of Force*, in THE RELEVANCE OF INTERNATIONAL LAW 34, 35 (K. Deutsch & S. Hoffman eds. 1971).

8. That is, if we wish to obtain the power to reduce the incidence and magnitude of international conflict, we must first construct explanatory models of why war between nations occurs; if we can develop an adequate theory of why particular conditions enhance the probability of the outbreak of war, it will inform us what variables to manipulate in order to reduce the likelihood of conflict. Such a theory must deal with the twin questions of (a) the extent to which legal norms modify national behavior and (b) which types of legal orders have historically been most efficacious in restraining the resort to violence in the international system.

knowledge about the linkage between international law on the one hand, and interstate conflict and systemic stability on the other.

A cursory review of the literature suggests that conventional wisdom has been permitted to suffice for rigorous inquiry, with the result that we possess an abundance of speculative insights concerning the problem, many of which are contradictory,[9] but we have precious few hypotheses which have been subjected to scientific verification to ascertain their plausibility. Consequently, the role of international law in interstate relations has a rich folklore,[10] but the extent of our empirical knowledge about that role remains limited. Thus, if we are to reduce the prospects for interstate aggression, we must first acquire knowledge about the relationship of legal norms to national behavior that is grounded on evidence rather than mere conjecture; we cannot control violence until we can uncover the normative conditions which facilitate or deter its occurence.

As a research strategy for acquiring such knowledge, it is further assumed that it is most fruitful to attempt to systematically *describe* the international legal order as it has evolved through time before one attempts to delineate the causes and consequences of variations in the structure of that order; description should precede explanation as well as prediction[11] because until we can adequately *map* the world legal system in its multifarious dimensions we are precluded from cogently accounting for it and anticipating its future characteristics. This tactic recommends an *inductive* approach to the systematic description of international norms which assumes that the normative system is open to *observation* and visual inspection. To assert that the international legal order is amenable to observation is to contend that that order constitutes a social datum which can be treated as "an objective political concept," a view which Field[12] forcefully argued many years ago but which remains controversial despite supporting arguments by international lawyers[13] and political scientists.[14]

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9. For instance, compare the view of those who see the contemporary legal order as serving to promote the perpetuation of the war/threat system with those who perceive that order as a conflict reduction mechanism.

10. Fried, *International Law—Neither Orphan nor Harlot, Neither Jailer nor Never-Never Land*, in THE RELEVANCE OF INTERNATIONAL LAW, *supra* note 7, at 124.

11. J.D. SINGER, QUANTITATIVE INTERNATIONAL POLITICS 1-2 (1968); Singer, *Modern International War: From Conjecture to Explanation*, in ESSAYS IN HONOR OF QUINCY WRIGHT 47 (A. Lepawsky ed. 1971); Rood & Kegley, *Explaining War and Conflict: A Review of Contemporary Studies*, 7 HISTORICAL METHODS NEWSLETTER 25 (1974).

12. Field, *Law as an Objective Political Concept*, 43 AM. POL. SCIENCE REV. 229 (1949).

13. M. MCDOUGAL & F. FELICIANO, LAW AND THE MINIMUM WORLD ORDER (1969); H. KELSEN, THE PRINCIPLES OF INTERNATIONAL LAW (1961).

14. L. PYE & S. VERBA, POLITICAL CULTURE AND POLITICAL DEVELOPMENT 512-60 (1965).

If indeed international legal norms are amenable to observatio then the legal concepts are in principle also *measurable*. Measur ment is the *sine qua non* of scientific research. However, given t symbolic nature of legal norms, it is submitted that measurement these rules should begin at the nominal level,[15] with the classificatic of the presence or absence of specific legal categories. And, finall since in dealing with international norms we are necessarily measu ing a systemic attribute (and therefore operating at the systems lev of analysis[16]), we are consequently required to measure this characte istic of the system in a longitudinal, or diachronic, fashion sinc systemic features are only subject to variation across time.[17] Thes foregoing assumptions and convictions serve to rationalize and struc ture the research design characteristics that are proposed to study th growth and decay of transnational norms bearing on the control c interstate violence.

## II. CONCEPTUALIZING TRANSNATIONAL NORMS

Devising an explicit definition of legal norms which permits codi fication of its content for a specific temporal span is a seemingl intractable task. Principles of international law are conventionall couched in a broad abstract manner, rendering them imprecise, non exhaustive, contradictory and elastic;[18] moreover, the problem of def inition of what rules exist is exacerbated by the simultaneous pres ence of diverse cultural and legal orders in the international system.[19] Consequently, efforts to authoritatively define the "sanctioned pre scriptions for, or prohibitions against, others' behavior, belief or feel ing"[20] operative in the international legal system at a particular point

15. Typology construction is conveniently considered to be the most appropriate first requisite in the scientific study of any phenomena, and is often conceived as a form of measurement itself. C. KEGLEY, JR., A GENERAL EMPIRICAL TYPOLOGY OF FOREIGN POLICY BEHAVIOR (1973); Kalleberg, *The Logic of Comparison*, 19 WORLD POLITICS 69, 73 (1966).

16. Singer, *The Level-of-Analysis Problem in International Relations*, in THE INTERNATIONAL SYSTEM: THEORETICAL ESSAYS 77 (K. Knorr & S. Verba eds. 1961).

17. Ray & Singer, *Aggregation and Inference: The Levels-of-Analysis Problem Revisited*, March 1973 (unpublished paper prepared for delivery at the Annual Meeting of the International Studies Association, New York).

18. R. FALK, THE STATUS OF LAW IN INTERNATIONAL SOCIETY 7-40 (1970); Falk, *The Adequacy of Contemporary Theories of International Law: Gaps in Legal Thinking*, 50 VA. L. REV. 231 (1964). As Nader and Metzger summarized this idea, within a single society several legal systems may be operating, "complementing, supplementing, or conflicting with each other." Nader & Metzger, *Conflict Resolution in Two Mexican Communities*, 65 AM. ANTHROPOLOGIST 584 (1963).

19. A. BOZEMAN, POLITICS AND CULTURE IN INTERNATIONAL HISTORY (1960); McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT'L L. 1 (1959).

20. Morris, *A Typology of Norms*, 21 AM. SOCIOLOGICAL REV. 610 (1956).

in time appear nearly hopeless,[21] the contributions of some toward this goal notwithstanding.

Given the difficulties of devising a system for distinguishing legal from illegal forms of behavior, as well as our primary interest in the relation between normative ideas and action, it is advisable to construct a concept of norms which skirts the above problems and which lends itself more fruitfully to observation and measurement. This may be partially accomplished by jettisoning constitutive definitions of transnational norms which seek to demarcate what conduct the legal order prohibits for a functional definition which depicts norms according to the function(s) or task(s) they perform in the system. Here, if law is seen, in its ultimate essence, as crystallized public opinion, then one of the salient functions of transnational legal norms is the communication and articulation of prevailing *beliefs* regarding the nature of the international system and the appropriate behavior of members comprising it. That is, transnational legal norms serve the purposes of indicating what fundamental beliefs about required and appropriate behavior are operative and of inculcating an awareness among members of international society that there is community support for particular beliefs.[22]

In adopting this conception we thus adhere to the view expressed by Coplin that " . . . the primary function of international law is as a communication technique."[23] As Coplin elaborated,

> . . . the laws of a society help to express and develop a climate of opinion about the society, that is, a set of attitudes about the nature of the society . . . . Law reaches all members of the society . . . . Just as law, along with governmental institutions in democratic societies aids in developing and communicating a consensus on the nature of the state system . . . international law expresses a set of ideas about the nature of the international system generally held throughout the system. Through international law and international organizations, a basic set of ideas concerning the values and patterns of the international system is communicated to the members of the system. Moreover, as the international system develops to new forms in the rapidly changing contemporary environment, the law and its related institutions aid in developing agreement on the changing nature of international relations.[24]

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21. To dramatize the magnitude of the task of codifying legal norms in such a way as to organize, digest, collate, and eliminate obscure views and discrepancies, it is instructive to recall that Justinian is reported to have compiled CORPUS JURIS CIVILIS under ideal circumstances (i.e., conditions of systemic universality) only with an army of legal experts after prolonged inquiry, and at that time (527 A.D.) it was necessary to condense 2,000 books consisting of 3,000,000 lines to 150,000 lines. Rhyne, *Peace With Justice*, 28 VITAL SPEECHES OF THE DAY 462 (1962).

22. This conception follows closely Katz and Kahn's definition of norms as a statistical commonality of beliefs. D. KATZ & R. KAHN, THE SOCIAL PSYCHOLOGY OF ORGANIZATIONS 2 (1966).

23. W. COPLIN, THE FUNCTIONS OF INTERNATIONAL LAW 169 (1966).

24. *Id.* at 168-71.

Seen in this light, transnational norms thus serve

> as authoritative (i.e., accepted as such by the community) modes of communicating or reflecting the ideals and purposes, the acceptable roles and actions, as well as the very processes of the societies. The legal system functions on the level of the individual's perceptions and attitudes by presenting to him an image of the social system — an image which has both factual and normative aspects and which contributes to social order by building a consensus on procedural as well as on substantive matters.[25]

This conception depicts transnational norms as indicators o nature of the international system during particular temporal ods, rather than as a system of coercive norms with sanctions for enforcement. The conception sees norms fostering the creation *image* held by members of the system regarding the global syste which they are a part,[26] rather than identifying clear limits to per sible behavior or operating as a restraint system. This functi definition of norms therefore perceives of norms as contributing t development of an international political *culture.*[27] As an attitu variable, transnational norms define the international political ture or "climate of opinion" by specifying the beliefs which mem of the system hold about the relations between nations. As V phrased it:

> The political culture of a society consists of the system of empirical beliefs, expressive symbols, and values which defines the situation in which political action takes place . . . . It refers not to what is happening in the world of politics, but what people believe about those happenings. And these beliefs can be of several kinds: they can be empirical beliefs about what the actual state of political life is; they can be beliefs as to the goals or values that ought to be pursued in political life; and these beliefs may have an important expressive or emotional dimension.[28]

It is this conception of transnational norms that is propose employment in the present study. It allows us to investigate the tionship between normative belief systems regarding violent beh and the conduct of behavior without raising questions concernin status and/or universality of particular legal stipulations. Tha when we treat norms as attitudinal characteristics of the inte tional system, we can probe the statistical association between be and behavior while concomitantly avoidi g legalistic discus about the legitimacy or illegitimacy of the beliefs themselves. Th of such norms, which hereafter will be termed "transnational r in order to attempt to circumvent the semantic confusion associ

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25. Coplin, *International Law and Assumptions About the State Syste* WORLD POLITICS 615 (1965).

26. Boulding, *National Images and International Systems*, in A MULTI-M INTRODUCTION TO INTERNATIONAL POLITICS 366 (W. Coplin & C. Kegley, Jr. eds. 1

27. W. COPLIN, *supra* note 23, at 168-95.

28. L. PYE & S. VERBA, *supra* note 14, at 513, 516.

with the conventional meaning of the terms "law" and "norms,"[29] thus enables us to ultimately investigate our central empirical question, namely, the relation between the prevalence of various types of transnational rules or normative ideas and the level of systemic aggression in the system. Thus, this conceptual orientation permits investigation into the related generic questions of the structural determinants and consequences of transnational rules, of the temporal connection between rules and conduct (i.e., do rules of behavior become rules for behavior, or do international rules instead merely legitimate the status quo by condoning diplomatic practice), and of the relationship between the extent of behavioral conformity and normative identification (i.e., does the system, as Hoebel suggests,[30] perform according to the prescription, "What the most do, others should do?").

## III. OPERATIONALIZING THE CONCEPT OF TRANSNATIONAL RULES

Durkheim is reported to have once contended that:

> Moral facts are facts like any others; they consist of rules of action which can be recognized by some distinctive characteristics; thus, it must be possible to observe them, to describe and classify them.[31]

Such reasoning, if valid, would appear to apply equally well to the measurement of the transnational rules or international beliefs comprising the international political culture. What is required for the operationalization of transnational rules is a definition specifying a technique for identifying the contents of transnational rules as well as a set of procedures by which source material which is publicly available could be systemically coded by replicable methods of observation and classification for the conversion of such source information into quantitative data.

When transnational rules are conceived as reflections of systemic images and global beliefs about the kinds of permissible foreign policy behavior of states, then evidence of those rules, and transformations in them, it is submitted, may be derived from what international jurists and publicists report about them in international legal texts. That is, authoritative classical legal texts may serve as a data *source* from which indicators and measures can be constructed of the attitudes which prevailed about the nature of international political behavior at the time they were written. While such treatises may not accurately reflect whatever body of law may have been operative at a given point in historical time in the international system, the observations and interpretations provided by these scholars provide an

29. Goldman, *International Norms and Governmental Behaviour*, 4 COOPERATION & CONFLICT 162 (1969).

30. E.A. HOEBEL, THE LAW OF PRIMITIVE MAN (1954).

31. M. OSSAWSKA, SOCIAL DETERMINANTS OF MORAL IDEAS 17 (1970).

index of the perceived rules which statesmen regarded as impor in regulating the relations of nations. As such, then, if the descrip information found in these legal texts are interpreted not as exact summaries of the law of nations, but rather as opinions al the system and its characteristic or standard operating rules, then descriptions may serve as *evidence* of the transnational rules ex in particular temporal spans. These descriptive accounts and ob vations are amenable to quantification for systematic data collect

The conversion of this source information into quantitative is a complicated process. The operational instructions are descri fully in the *Coder's Manual of the Transnational Rules Indica Project*[32] which outlines the procedure by which the contents of tual material found in classic legal texts are screened and codifie 184 variables. Basically, the operational technique is that of them content analysis, an analytic and data generation procedure for tematically scanning documents and quantatively profiling their tents by replicable procedures of observation and classification. technique has been described fully elsewhere.[33] When internati legal texts are subjected to the technique, the authors are conce as experts and their descriptions are treated as observations wh when coded, are thereby measured along specific dimensions. coding rules articulated in the *Coder's Manual* delineate these op tional rules by which various features of transnational rules are m sured to generate data regarding the presence, absence, and inten with which particular beliefs concerning appropriate interstate havior were perceived to prevail at the time the scholar was expr ing his opinions.

This approach to operationalization of the transnational r concept raises a number of issues, most of which center on the p lems of construct validity. An obvious distance necessarily pert between concept and operational indicator. A number of consid tions suggest that the operationalization is valid, on the face o however. In particular, the operationalization may be defended rationalized in the following terms.

(1) There is a relatively close fit between transnational r defined in terms of their communicative function, and the infor tion provided by text-writers. The information and opinions exre by textbook writers are not treated as descriptions of what the is, but rather as quasi-authoritative statements of the assumpt

32. C. KEGLEY, JR., K. CHOI & G. RAYMOND, A CODER'S MANUAL FOR TRAN TIONAL RULES INDICATORS PROJECT (TRIP) (1974).

33. B. BERELSON, CONTENT ANALYSIS IN COMMUNICATIONS RESEARCH (1952); H. SWELL, LANGUAGE OF POLITICS: STUDIES IN QUANTITATIVE SEMANTICS (1949); R. NO CONTENT ANALYSIS (1963); I. POOL, TRENDS IN CONTENT ANALYSIS (1959).

policy-makers held about the nature and normative rules of the system in a particular period of history. From this perspective, we agree with Coplin that the writings of jurists may be seen

> . . . as an institutional device for communicating to the policy-makers of various states a consensus on the nature of the international system. It is a "quasi-authoritative" device because the norms of international law represent only an imperfect consensus of the community of states, a consensus which rarely commands complete acceptance but which usually expresses generally held ideas. Given the decentralized nature of law-creation and law-application in the international community, there is no official voice of the states as a collectivity. However, international law taken as a body of generally related norms is the closest thing to such a voice. Therefore, in spite of the degree of uncertainty about the authority of international law, it may still be meaningful to examine international law as a means for expressing the commonly held assumptions about the state system.[34]

We are, thus, not seeking to measure and quantify international law; rather, the concept and indicator relate to the opinions about the system made by those qualified by their experience and research to summarize the operating behavioral practices and rules of the system.

(2) Such a conceptual orientation is warranted because it avoids the "essentialist fallacy" of which logicians speak when they refer to attempts of people to seek "correct" or "true" definitions of concepts. That is, we are not trying to answer the question, "What is law?" It may be contended that is "an ill-conceived or a wrong-headed question in the first place,"[35] because:

> It becomes fairly plain that the attempt to define "law," like similar attempts to define "art" and "religion," should be abandoned at least if the traditional tight genus-specie kind of definition is attempted. "Law" simply has no genus. Hence, we may more profitably inquire into the *use* of such words as "law" and "ethics," and analyze these as concepts. So avoiding the error, derived in part from Aristotle of seeking a "correct" or "true" definition, on the fallacy of nouns and referents, namely, of assuming that there is an object (law) which must point to certain (unchangeable) objects, we use an open texture approach . . . . We should ask only how any given word has been used, is used, or, we may propose, ought to be used in a given context. We cease to ask what it "means" — as if it always and everywhere possessed a certain meaning.[36]

From this posture, then, the way in which legal scholars attempt to describe international conduct, rather than the meaning of law in a particular time frame, is what we seek to tap; such an approach avoids the dangers identified above.

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34. Coplin, *supra* note 25, at 618-19.

35. Kegley, *Observations on Legal vis-a-vis Moral Thought and Life*, 51 PERSONALIST 58 (1970).

36. *Id.* at 61-62.

(3) The use of textbook writers' opinions as a data source recommends itself because of the absence of an alternate source from which to extract information about the rules prevailing through time. Legal scholars comprise the only profession which have traditionally sought to monitor changes in the rules and conduct of interstate behavior. While, to be sure, diplomatic history provides some clues on this dimension of international relations[37] and the memoirs of policy-makers provide information about the "standing rules of procedure" they perceived to influence their behavior,[38] this information is not systematic and not readily amenable to comparative historical survey. Hence, international legal texts serve as the only source from which evidence about the norms regulating behavior may be extracted. Within international law itself, the statements of textbook writers are seen as serving to provide useful evidence of what legal norms are operative;[39] more importantly, for our purposes, these statements are seen as "helping to create the opinion by which the range of consensus is enlarged."[40] That is, international law regards the writings of textbooks as evidence of legal norms and as modifiers of opinion about the conduct of states. This fits with our desire to extract data about the psycho-cultural attributes[41] of the international system.

(4) It has been convincingly argued[42] that the role of scholars in the formation of law is diminishing and is "now close to nominal," and, moreover, that the credibility of textbook writers has declined as cognizance has been taken that "what international lawyers care to describe as international law is their own invention," that "the legal order was all the scholar saw about him, for it was an order of

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37. M. KAPLAN, SYSTEM AND PROCESS IN INTERNATIONAL POLITICS (1957).

38. FOREIGN POLICY DECISION-MAKING (R. Snyder, H.W. Bruck & B. Sapin eds. 1962).

39. E.g., Article 38(1)(d) of the Statute of the International Court of Justice declares "the teachings of the most highly qualified publicists of the various nations" to be a subsidiary means for determining the rules of international law. In Justice Gray's opinion,

> . . . [W]here there is no treaty, and no controlling executive or legislative act, or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals . . . for trustworthy evidence of what the law really is. Paquette Habana, Lola, 175 U.S. 677, 700 (1900).

40. W. GOULD, AN INTRODUCTION TO INTERNATIONAL LAW 143 (1957).

41. Singer, *supra* note 11, at 62-63.

42. Onuf, *Law-Making in the Global Community: A Working Paper*, May 10, 1974 (unpublished paper prepared for presentation at the conference on "Law-Making in the Global Community," Center of International Studies, Princeton University).

his own making, an artifactual order." Acknowledging this proclivity certainly undermines the function of textbook writers as *sources* of international law, but does not vitiate the use of legal texts for the purpose pursued here. Whether the descriptions provided by legal texts are artifactual is immaterial, for we are not interested in observing the actual content of the law (whatever that may be) but rather what people believe about the rules of the international system. The opinions expressed by these scholars, whether valid or not, continue to create and communicate attitudes about the nature of international society, and the images provided thus invariably continue to influence and modify the development of the actual law. Thus these *beliefs* remain important indicators of the international political culture, regardless of whether they accurately reflect the law itself.

(5) The operational rules for the most part are designed to enhance the validity of the indicators by employing a low level-of-measurement; that is, most variables are measured at the nominal or ordinal level on the conviction that that level is appropriate for concepts that are not open to interval measurement[43] such as norms. Thus, by asking such questions as whether a particular source discusses a particular transnational norm (coded yes-no at the nominal level) or the proportionate amount of attention given to that norm in the text (coded high to low at the ordinal level), our confidence in the validity of the measures is increased. We are more confident of data coded at this level because that is all data regarding rules are able to yield, in our opinion.

(6) To treat publicists as "expert observers" appears reasonable, on the face of it, because their writings are explicitly designed to describe the "character of the system" at the point in time at which they were writing. Moreover, for the famous scholars whose works have gone through many editions (e.g., Oppenheim/Lauterpacht went through eight editions from 1905 to 1955; Hall went through eight editions from 1880 to 1924; von Liszt made eleven revisions of his treatise; there are twenty-four editions of Martens' text), the commentaries of each edition have been revised to reflect perceived changes in the normative structure of the international system. Thus, in principle, changes in their treatments serve as instructive indicators of changes in the opinions statesmen held about the nature of he international political system, and the chronology provided permits us to monitor how the system of rules has changed over time. What publicists perceive the system permitting and prohibiting, therefore, may be monitored to trace and detect changes in the rules statesmen subscribe to.

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43. H. BLALOCK, JR., SOCIAL STATISTICS 17, 40 (1960).

Whether one finds the above reasoning acceptable will mos likely be a function of the analytic paradigm from which one is work ing[44] rather than the cogency, or lack thereof, of the argument. Th rationale does, however, serve to explicitly identify what the autho regards as an appropriate research strategy for dealing with an admit tedly difficult research problem.

## IV. RESEARCH UTILITY OF THE DATA SET

> For years the study of value change has been a central topic in intellectual, political and social history. Unfortunately, speculating about causes and consequences of value change is far easier than determining accurately the magnitude and direction of such change.[45]

While Namenwirth and Lasswell were speaking in reference t the study of American values, their statement is equally valid as description of the study of changes in transnational rules. Impressio and subjective belief about fluctuations in the normative structure the international system have yet to be replaced by measurement an verifiable knowledge. The data generated here is designed to me this perceived need. Like Namenwirth and Lasswell, the gener question to which this proposed study is addressed is: What hav been the long-range changes in the rules governing the internation system, and what questions do the observed changes raise about th causes and consequences of legal rule change?

## V. SOME SUGGESTIVE HYPOTHESES FOR INVESTIGATION

In pursuit of that general goal, and in conformity with the r search strategy described above, the study proposed here will empl the TRIP data to confront with evidence some prevailing impressio regarding the extent to which particular transnational rules releva to the control of violence have fluctuated over time in order to asce tain the plausibility of those impressions. That is, we will seek empirically *describe* the evolution of transnational rules across tir rather than attempt to devise explanations of observed fluctuations

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44. I.e., "traditionalists" will undoubtedly regard any effort to *measure* id about transnational rules as absurd, while "behavioralists" will be inclined to see a treatment of legal rules as unwarranted and a wasteful expenditure of research ener in conformity with their general view that international law is irrelevant to the beh ior of nations.

45. Namenwirth & Lasswell, *The Changing Language of American Values*, i SAGE PROFESSIONAL PAPERS IN COMPARATIVE POLITICS 5 (1970).

46. Ultimately, the nexus between changes in systemic behavior and changes the normative structure of the system may be addressed; such assessments wo consider such things as the impact which the growing number of nation-states a international organizations exert on the nature of transnational norms, as well as relationship between the salience of particular normative systems and the magnitu and frequency of war. An example of the latter type of inquiry would be an empir test of Wight's hypothesis that "when diplomacy is violent and unscrupulous, inter

This means that we will be conducting *time-series univariate* analysis in order (1) to describe, via trend line interpretation, variations in the performance of particular transnational rules, and (2) to measure transformations in the rule system of the international community.[47]

The literature on international law is fraught with impressionistic statements and often contradictory conventional wisdoms about the diachronic performance of particular rules which are amenable to testing and precise respecification with the TRIP data. While decisions as to which of these descriptive hypotheses should be included in the study have been postponed until a thorough review of the literature has been conducted, some examples for illustrative purposes include the following:

> *Hypothesis 1:* Since 1648, there has been a gradual limitation on the rights of states in conflict conferred by the sovereignty principle.
>
> *Hypothesis 2:* Since 1700, the central Grotian assumption of the solidarity, or potential solidarity, of the states comprising the international system has been replaced by a pluralist conception with respect to the enforcement of legal rules governing violence.[48]
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> *Hypothesis 3:* Throughout the history of the contemporary international system (i.e., 1648-1975), the system has maintained that with respect to rules relating to the legitimacy of war, a distinction should be drawn between some wars, or acts of war, and others; some wars may be legitimate while others are not. To assert that this notion has prevailed across time in the system is to reject the hypothesis that during certain periods neither the pacifist perspective (that no war or act of war is legitimate) nor the militarist view (that any war or act of war is legitimate) has ever prevailed.[49]

A contending view to the above "invariant" hypotheses suggests:

> *Hypothesis 4:* Since 1919 prohibitions against the resort to force have increased; in 1919 the resort to war was not completely outlawed (it was outlawed only in case certain pre-established proceedings seeking peace proved useless); by 1925 (Locarno) the resort to war was prohibited; by 1928 (Kellogg-Briand Pact) war both as a tool of self-help to right international wrongs and as an act of national sovereignty to change existing rights was renounced; since World War II, a return to the distinc-

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tional law soars into the regions of natural law; when diplomacy acquires a certain habit of cooperation, international law crawls in the mud of legal positivism." Wight, *Why Is There No International Theory?*, in DIPLOMATIC INVESTIGATIONS 15, 29 (H. Butterfield & M. Wight eds. 1968). The analysis of such a theoretical question is possible with the data compiled by Singer and Small in the Correlates of War Project, which the present data is expressly designed to complement. J.D. SINGER & M. SMALL, THE WAGES OF WAR 1816-1965: A STATISTICAL HANDBOOK (1972).

47. Kegley & Hamilton, *Approaches to the Measurement of Transformation in the International System*, April 24, 1974 (unpublished paper prepared for presentation at the Annual Meeting of the Midwest Political Science Association, Chicago).

48. Bull, *The Grotian Concept of International Society*, in DIPLOMATIC INVESTIGATIONS 51, 52, *supra* note 46.

49. *Id.* at 53-54.

tion between kinds of war in determining legitimacy was manifest, but, in general, aggression continues to be regarded as illegal in and of itself; this contrasts with the view of Suarez in the classical system of the seventeenth century that aggressive war was something both moral and legal.[50]

*Corollary 4.1:* Since 1900 the traditional right of states to resort to war to defend not only their legal rights but also in order to destroy the legal rights of other states has been renounced.[51]

*Hypothesis 5:* The salience of the just war concept, in terms of the amount of attention publicists allocate to it in their discussions of international law, has steadily declined through history but has witnessed a modern resurgence with the advent of nuclear weapons.

*Corollary 5.1:* From circa 1850 to 1919, the just war concept is interpreted as dealing exclusively with the lawful conduct of war, whereas in the classical system just and unjust causes of war were distinguished.[52]

*Corollary 5.2:* Since the First World War the Grotian distinction between just and unjust causes of war has been written into positive international law.[53]

*Hypothesis 6:* In the classical international system, a state which is party to a belligerent relationship with another state but which is "seeking to uphold the law" is regarded as bound by no obligations, whereas the "unjust" belligerent is regarded to enjoy no rights; in the contemporary system (post-1900) the laws of war regarding belligerents are regarded as reciprocal—the rules of war apply equally to both parties in a conflict.[54]

*Hypothesis 7:* The laws of war governing the conduct of belligerents has gradually, but steadily, become less permissive (e.g., the laws of war no longer permit belligerents to kill all those in enemy territory including women and children, to destroy sacred enemy property, to kill captives and hostages, or to make slaves of prisoners of war; at one time, all these practices were permitted).[55]

*Hypothesis 8:* In the classical international system (circa 1648) the rules of war espoused collective security principles (i.e., if a war breaks out in which one party has a just cause, all other states have a right to join in the struggle); gradually, this rule was replaced by a balance of power conception which recognized the rights of neutrals to refrain from involvement in conflicts between other parties; by 1919, the system returned to the collective security principle, only to discard it again for the balance of power concept in 1945.

*Corollary 8.1:* Since 1919, the traditional right to remain neutral has been weakened.[57]

*Hypothesis 9: Rebus sic stantibus* rules regarding alliance commit-

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50. A.V.W. THOMAS & A.J. THOMAS, JR., THE CONCEPT OF AGGRESSION IN INTERNATIONAL LAW 14-23 (1972).

51. Bull, *supra* note 48, at 69.

52. *Id.* at 55.

53. *Id.*

54. *Id.* at 57-58.

55. *Id.* at 58.

56. *Id.*; I. CLAUDE, JR., POWER AND INTERNATIONAL RELATIONS (1962); W. COPI INTRODUCTION TO INTERNATIONAL POLITICS (1971).

57. Bull, *supra* note 48, at 62.

ments under conditions of war have gradually, since circa 1900, been replaced by *pacta sunt servanda* (treaties are binding) conceptions.

*Hypothesis 10:* The classical (circa 1648-1700) recognition of individual human beings as subjects of international law and members of international society in their own right gradually receded to the notion that only states are members, but has been resurrected in recent (post-1940) history.

*Corollary 10.1:* The classical right of the individual citizen to refuse to bear arms on behalf of his society for a war he believes to be unjust has virtually disappeared in the present century.[58]

*Hypothesis 11:* The 18th century was dominated by natural law thinking; the 19th, and particularly the latter half of the 19th century, was dominated by positivism; the 20th century has witnessed a modern resurgence of natural law orientations.[59]

*Corollary 11.1:* In periods where positivism was dominant, international law considered every state to have the right to make war as an attribute of sovereignty.[60]

*Hypothesis 12:* The classical concept of aggression (direct military operations by regular national forces under government control) has been gradually extended and expanded in scope so as to include rules dealing with new issue-areas and types of acts (e.g., economic pressures, threats, propaganda, etc.).[61]

*Corollary 12.1:* The classic prohibition against military interventory acts has been gradually relaxed by qualifications permitting new forms of interventory behavior.

These hypotheses are merely suggestive of the types of longitudinal descriptive statements which are amenable to testing with the TRIP data. As the hypotheses are verbally stated here, the need for greater precision through quantitative measurement becomes obvious. While we know, as Rosecrance[62] has recently posited, that different perspectives toward warfare have existed at various times since 1700, precision requires that these perspectives be identified (so we can ascertain their presence or absence on the basis of evidence rather than opinion) and charted. When changes in transnational rules are observed, they may be interpreted as evidence of the emergence of new "mapping" rules regarding international warfare and may, therefore, be taken as empirical manifestations of a transformation of the normative dimension of the structure of the international system.[63] That is, we may probe the data to discover if periodicities exist. It is to this end that this project is directed.

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58. *Id.* at 64.

59. M. KAPLAN & N. KATZENBACH, THE POLITICAL FOUNDATIONS OF INTERNATIONAL LAW (1961); W. GOULD, *supra* note 40 at 72.

60. A.V.W. THOMAS, *supra* note 50, at 15-16.

61. *Id.* at 69-92.

62. R. ROSECRANCE, INTERNATIONAL RELATIONS: PEACE OR WAR? (1973).

63. Kegley & Hamilton, *supra* note 47.