How to Get Away with Cholera: The UN, Haiti, and International Law

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The legalization of world politics is often celebrated for reducing impunity for those who contribute to humanitarian crises. This may sometimes be true but the opposite is also true. In 2010, United Nations peacekeepers unwittingly brought cholera to Haiti and sparked an epidemic. Nearly a million people were made sick and 8,500 died. Legal activists have sought to hold the UN responsible for the harms it caused and win compensation for the cholera victims. However, these efforts have been stymied by the structures of public international law—particularly UN immunity—which effectively insulate the organization from accountability. In short, the UN is empowered, and the cholera victims disempowered, by legalization. The Haiti case powerfully illustrates the dangers of legalism, which have been largely overlooked in discussions of international law, and suggests that law alone is an inadequate arbiter of responsibility in international politics.

They filled the benches
and told us of death upon death
A man who'd lost his son:
'I am a bird left without
a branch to land on.'

Jeffrey Brown, 'Haiti'[1]

In October 2010 UN peacekeepers from Nepal arrived in Haiti carrying the *Vibrio cholerae*. By way of leaky latrines, they introduced the cholera-causing bacteria into a river that ran behind their camp at Méyè and began an epidemic that as of November 2015 had killed over 9,000 people and sickened over 750,000, about 7 percent of Haiti's population.[2] It was a devastating public health disaster in a country already decimated by an earthquake earlier in 2010. Although much about the case remains contested, there is little dispute regarding the UN's role and the consequent suffering and loss of life.

In response to the epidemic, activists in the United States and Haiti have attempted to compel the UN to take responsibility for the epidemic in the form of an apology, investment in clean water, and compensation for the victims. They have not claimed that the UN had intentionally introduced the disease nor that it has criminal responsibility; instead, they assert that it had unintentionally harmed them and thus has a form of civil responsibility. They submitted petitions for relief to the UN offices in New York and in Haiti, and when these were rejected they filed lawsuits in U.S. courts against the United Nations and its senior leadership. In response, the UN has used the immunity provided by international law to shield itself from legal action. The UN's position has been upheld by the courts with the result that in practice the UN cannot be held accountable for the harms it caused in Haiti. With its immunity, the UN can act with near impunity.

Much of the commentary surrounding this case has focused on the perceived moral failure of the UN; however, we shift attention to the role of international law. International law has been more than the neutral background to this story; it has been a central actor. And far from being a force that protects the weak from the strong, as is the standard portrayal in contemporary treatments of international politics, it has contributed

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directly to the substantive outcome in which the victims are denied redress. The legalization of the Haiti/cholera case ensures that the UN cannot be held responsible—indeed, it cannot even be forced to discuss its responsibilities. This calls to mind Charles Dickens' *Oliver Twist*, wherein Mr. Bumble receives word that the law presumes that his wife operates under his direction: "If the law supposes that," says Mr. Bumble, "the law is an ass—a idiot." International law might or might not be an ass, but the case of Haiti exposes aspects of the political power of international law that are routinely overlooked by liberal internationalists and others who see international legalization—the fitting of political disputes into a legal frame—as a solution to political problems.

To grasp the limits of international law we turn to the concept of legalism, which Judith Shklar defined as an "attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules."[3] In bringing Shklar's critique of legalism to the study of international law and politics, we intend to explore how international law can be more than a domesticator of power and deliverer of justice but also an accessory to power and defender of the status quo. As it assigns responsibility and accountability for some actions, the law simultaneously assigns irresponsibility and immunity for others. With its ideology of impartiality and objectivity, legalism can become a source of judgment that is viewed as superior to everyday morality and politics and thus provide the criteria for determining whether a moral breach has occurred. Legalism, in this regard, can help determine whether the suffering of another is viewed as worthy of public concern. The law can legitimate suffering.[4] Yet legalism can cause those who demand change to channel their resistance into legal modalities. Law might serve as a stealth defender of the powerful and help legitimate their privileges. In international relations, for instance, law helps to produce distinctions between the civilized and the uncivilized that enables the "civilized" to intervene in and govern the rest.[5]

The case of Haiti and the concept of legalism provide important reminders of the limits of international law. This is valuable for two reasons. First, as the power and responsibility of international organizations (IOs) have expanded over the last two decades, there is growing attention to IO accountability, and international legalization is often seen as the answer to their deficits of accountability.[6] There is ample evidence of harms caused by UN peacekeeping.[7] The United Nations has recently found itself accused of various kinds of harms, including exploiting weak and vulnerable people. Peacekeepers have repeatedly been accused of criminal activity and human rights violations, including trafficking, child abuse, and rape, and the UN has apparently been covering up this misbehavior, most recently in the Central African Republic.[8] In response, there has been a wave of research and policy recommendations to improve the accountability of IOs, many of which use law and legalization as a centerpiece.[9] The Haiti case undermines the assumption that law leads to accountability by demonstrating how law may produce its opposite as well. Law can be the solution but it also can be the problem.

Second, Shklar advanced her concept of legalism as a wake-up call for practitioners but also as an antidote to the assumption that legalization is an inherently positive normative force. She observed law's Jekyll-and-Hyde character: it can be both progressive and reactionary depending on the political ends to which it is put. This dual nature has generally been overlooked in International Relations (IR) scholarship. IR debates about law have concentrated on arguing over whether or not law can constrain power. To respond to the realists' contention that that law was irrelevant or epiphenomenal (because it depended on existing state power to work), IR liberals and constructivists have sought evidence of law's ability to constrain powerful states and nudge them into compliance.[10] These debates understood law as an alternative to power—"a multilateral set of rules that effectively eliminate coercive rule"[11]—and then fought over whether it could work or not in practice. For many IR scholars, the verdict is a "win" for international law; it represents the triumph of reason and rationality, a mechanism to create an enlightened way of handling disputes, and an end to impunity. Beth Simmons writes that "rather than viewing international law as reinforcing the patriarchal and other power structures, the evidence suggests that it works against these structures in sometimes surprising ways."[12] Karen Alter says that "international law embodies principled ideas about best practices that have been signed off by governments thinking rationally and outside of the heat of the moment . . . 99 times out of 100, following international law is the prudent approach for avoiding provocation, and triggering retaliation, further violence and international instability."[13] For Kathryn Sikkink, the advent of courts with jurisdiction over human rights is evidence of a "justice cascade" in world politics.[14] Legalization is commonly assumed to be equivalent to progress.[15] The Haiti case shows otherwise.

We begin with the facts of the cholera epidemic. Initially the UN denied that its peacekeepers had anything to do with the cholera in Haiti, but it changed its position when the physical evidence became undeniable. Rather than accept responsibility the UN relied on the law as a shield against accountability. We next chronicle the efforts by Haitian citizens to advance their claims against the UN, showing how international law allows the UN to control the terms of its own legal responsibility to those individuals who seek redress from it. Although the Haitian citizens have hit a dead end, there was a road not taken: the Haitian government could

have advanced claims on behalf of its citizens. The reasons why it didn't, we speculate, have to do with the rough realities of international politics and dependency; law is not equally available to all and it protects some interests over others. Using Judith Shklar's concept of "legalism" as a stepping stone, the next section addresses the productive power of international law as it structures power, responsibility, and justice in world politics. We conclude by asking how the Haitian case and the concept of legalism raise questions regarding how to think about accountability in world affairs.

Background to an Epidemic

The United Nations has operated peacekeeping missions in Haiti for two decades. The first was launched in 1994 following the UN-sanctioned, U.S.-led intervention in Haiti to throw out the military government and install Bertrand Aristide as president. Despite this "stabilization" mission, Haiti never stabilized and the UN never left. Its mandate changed with the changing circumstances, and in 2004 the UN launched MINUSTAH, the UN Stabilization Mission in Haiti, following Aristide's resignation.

MINUSTAH was to support the transitional government in its effort to run an election, integrate with the political opposition, and create the rule of law and public order. Then, on January 12, 2010, a devastating earthquake with an epicenter just a few kilometers from Port-au-Prince killed between 100,000 and 220,000 people. Over three million people were displaced. In the aftermath of the earthquake, the UN Security Council reconstituted MINUSTAH with expanded resources and a new mandate to assist with relief and reconstruction.

In early October 2010, 1,075 troops arrived from Nepal and occupied a base alongside the Méyè tributary of the Artibonite River. A few days later, people near the base began falling sick with cholera and within a few week the country was gripped by a full-scale epidemic. This was the first outbreak of cholera in Haiti in over a century, and by July 2011 Haiti had more cholera cases than the rest of the world combined, with one new infection per minute.[16]

Unlike the earthquake—self-evidently an act of nature—the epidemic was immediately understood in political terms. Public health authorities sought to identify the source of the contamination and prevent another outbreak. Widespread suspicion that the epidemic was connected to the UN peacekeepers generated enormous anger.[17] The UN responded with a twin strategy of rhetorical reassurance and military force. Its peacekeepers fought with demonstrators, killing at least one person, and it issued categorical denials that it was responsible for the disease.[18] In late 2010, Alain Le Roy, the Under Secretary-General for Peacekeeping Operations said that

> [t]here is not a single evidence that they are responsible for this epidemic. It is a rumor . . . that has spread out in Haiti. . . . We have made a number of tests and all the tests that we have done are completely negative. There is not a single evidence that this contingent has brought cholera to Haiti—not at all [*sic*].[19]

The UN spokesman for the Department of Peacekeeping Operations, Michel Bonnardeaux, said that "[a]nyone carrying the relevant strain of the disease in the area could have introduced bacteria into the river."[20] And Edmond Mulet, the Under Secretary-General for MINUSTAH, said it was "really unfair to accuse the UN for bringing cholera into Haiti."[21] It defended the quality construction of the Méyè facility, insisting it has been built to "construction standards of the [U.S.] Environmental Protection Agency. . . . consistent with established international standards."[22] It discouraged further investigation into the source of the outbreak, blocking epidemiologists from the Haitian Ministry of Health who sought access to the base, and arguing that investigations were diverting resources from fighting the epidemic.[23]

In due time, however, epidemiological studies, environmental surveys, molecular biological analyses, and eyewitness reports confirmed that the Nepalese peacekeepers started the epidemic.[24] An outbreak had occurred in Nepal, where cholera is endemic, shortly before the Nepalese soldiers had departed for Haiti; some of them were infected but asymptomatic, and the UN does not require cholera screening for peacekeepers. Once in Haiti, they maintained a sub-standard sanitary system that leaked raw sewage into the Artibonite river, upon which millions of people depend for drinking, bathing, and cooking.[25] The disease spread from there.

In response to the mounting pressure on the UN, the Secretary-General appointed an Independent Panel of Experts to investigate the outbreak, which issued a report in May 2011, confirming the prevailing theory that the outbreak was sparked "by the contamination of the Méyè Tributary System of the Artibonite River with a pathogenic strain of the current South Asian type *Vibrio cholera.*"[26] Although the report conceded a direct, physical connection between the peacekeepers and the epidemic, it did not take the next step and pin responsibility on the UN. Instead, it argued that the

> explosive spread [of the disease] was due to several factors, including the widespread use of river water for washing, bathing, drinking, and recreation; regular exposure of agricultural workers to irrigation water from the Artibonite River; the salinity gradient of the Artibonite River Delta, which provided optimal environmental conditions for rapid proliferation of *Vibrio cholerae*; the lack of immunity of the Haitian population to cholera; the poor water and sanitation conditions in Haiti;. . . . These deficiencies, coupled with conducive environmental and epidemiological conditions, allowed the spread of the *Vibrio cholerae* organism in the environment, from which a large number of people became infected.[27]

Given this multitude of causes, the Report concluded that

> [t]he introduction of this cholera strain as a result of environmental contamination with feces could not have been the source of such an outbreak without simultaneous water and sanitation and health care system deficiencies … The Haiti cholera outbreak was caused by the confluence of circumstances as described above, and was not the fault of, or deliberate action of, a group or individual.[28]

In short, the report concluded that the UN had contributed a necessary but not sufficient link in the sequence of the epidemic. According to Anthony Banbury, the UN Assistant Secretary-General for Field Support, "[w]e don't think the cholera outbreak is attributable to any single factor."[29] In its judgment, because the peacekeepers were one among many factors that contributed to the outcome, the UN itself should not be held responsible. The complexity of "responsibility" was laid bare.

The Law of Immunity

The UN's role in the epidemic is well known and generally undisputed. Much more fraught are the implications of this role—how should one think about the responsibility of the UN for the suffering of the Haitian people? Can the UN be held accountable, and if so for what, and in what venue? Is the UN legally liable for anything? The answers turn on the legal advantages international law provides for the UN and the choices made by UN officials. In other words, this is a story about the structure of international law and the decision by UN officials to use the law to shield themselves from the demands for justice by the victims. We begin the story with the attempt by Haitian citizens to have their claims heard first through private petitions to the UN and then with lawsuits against the organization in U.S. courts, explaining how the legal rules blocked their path and considering why the Haitian government failed to help on their behalf.

Haitian citizens and their advocates first requested compensation directly from the UN, submitting what are known as "petitions for relief." Lawyers representing the victims identified 5,000 individuals who had suffered losses in the epidemic and listed them as the claimants in the petition, which they presented to the offices of the UN in New York and in Haiti in 2011.[30] The petitioners claimed that they suffered personal damage from UN actions, where those actions were unrelated to the UN's official mandate and did not arise from operational necessity. They asserted that the cholera epidemic was a product of "gross negligence, recklessness, and deliberate indifference for the lives of Haitians," amounting to a violation of various international human rights instruments.[31] As remedy, they demanded that the UN acknowledge responsibility for the epidemic, compensate the victims, and invest in public health and water treatment solutions in Haiti. They based their claims on the theory that the UN is in general responsible for the consequences of its actions, a principle that has been affirmed in recent years by the Secretary-General and the International Court of Justice, among others.[32]

The UN is frequently presented with requests for compensation from individuals who say they have been injured by its operations or officials. These include for drunk driving accidents, damage to property, and more.[33] In practice, when responding to such claims, the UN has absolute discretion over whether to consider them and how. The process is entirely ad hoc and often highly informal. A General Assembly resolution in 1998 sought to add some formal terms to the process by setting limits on the size of financial payouts and a bar against paying for "non-economic loss, including pain, suffering or moral anguish, and against punitive or moral damages."[34] However, it did not change the basic arrangement by which the UN has the authority to decide for itself whether to hear a claim. As far as is known, the organization has only ever accepted claims presented by individuals, never a group claim such as the Haiti case.

The UN's discretion over private claims is tempered by the requirement that the UN should create alternative extrajudicial procedures to deal with them. This is included in the Convention on the Privileges and Immunities of the United Nations (CPIUN), which states that

> [t]he United Nations shall make provisions for the appropriate modes of settlement of: a) disputes arising out of contracts or disputes of a private law character to which the United Nations in a party; b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.[35]

A similar requirement is included in the Status of Forces Agreement (SOFA) that governs the legal relations between the MINUSTA and the government of Haiti. It says that

> any dispute or claim of a private-law character, not arising from the operational necessity of MINUSTAH, to which MINUSTAH or any member thereof is a party and over which the courts of Haiti do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose.[36]

However, the UN has never created such a body, either for Haiti or for any other peace operation,[37] and so the petitioners found themselves with no institutional channel by which to submit their claims. They therefore directed them to the UN headquarters in New York and to the MINUSTA office in Port-au-Prince.

After thirteen months of silence, the UN rejected the claims. In a brief letter from the Under-Secretary General for Legal Affairs, the UN explained that it was unable to respond to the substance of the petitions because they "would necessarily include a review of political and policy matters … [and so] these claims are not receivable

pursuant to Section 29 of the Convention on the Privileges and Immunities of the United Nations."[38] This makes a distinction between harms caused by the UN and its agents in the course of their public functions and harms that come about unrelated to those functions. The former, it says, are not actionable but the latter are. In practice, the UN's decision to refuse the petitions was decisive and the matter ended there—there is no institutional procedure by which such a refusal can be challenged and no external body to which claimants can appeal.

As a question of law, however, it leaves unaddressed whether the UN was right in treating the cholera epidemic as a "political and policy" matter. The issue rests in part on the distinction between the public and private obligations of international organizations. States and international organizations have international legal personality, which confers on them certain rights and obligations toward other international legal persons under public international law. These rights include the capacity to bring legal claims against actors who harm their interests and the obligations include the responsibility to account for such harms of their own. The legal personality of the United Nations is established by the UN Charter and the CPIUN and was affirmed by the International Court of Justice in the *Reparations for Injuries* opinion.

The UN can take on legal obligations toward individual persons or firms, as when it signs a lease for office space with a private landlord. In these cases, the UN is acting in a private capacity. If it fails to fulfill the contract it may be liable for the losses suffered by the other party. This domain is regulated by the local legal system where the transaction takes place and by the body of private international law that resolves conflicts among jurisdictions. This is separate from the UN's public international obligations, which it owes to other entities with international legal personality. The two domains become intermixed in the case of the UN because public international law grants the UN immunity from domestic legal actions—a point critical to the story. It also means that the UN's commercial contracts always include mandatory arbitration procedures to make up for the fact that the parties are precluded from using domestic courts to resolve any disputes.

In this distinction between public international law and private transactions, the UN's position appears to be that the epidemic came about as an incidental consequence of the peace operation and therefore relates to the formal, public-political authority of the organization. Its consequences are therefore not reviewable by a private-claims process. As the cholera victims are private individuals without a legal relationship to the UN—they are neither international legal persons nor parties to a contract with the UN—they have no standing to address their concerns with the organization. This logic has been used before by the United Nations, including to decide that the residents of a UN camp in Kosovo should not be compensated for the lead poisoning they suffered there in the 2000s.[39] No processes exist for appealing or challenging decisions on these issues, and so the UN's word is decisive. The cholera victims' petitions ended there.

With the UN's door firmly closed from the inside, advocates for the cholera victims turned to the courts to advance their cause. They filed lawsuits against the United Nations and its senior leadership in U.S. federal courts. Three cases have proceeded and they are similar in substance and jurisdiction:[40] they have as Plaintiffs a class of U.S. or Haitian citizens who suffered in the epidemic and as Defendants the UN and its Secretary-General, as well as MINUSTAH and its chief. The substantive claim also is the same across the cases: that the "outbreak resulted from the negligent, reckless, and tortious conduct of the Defendants."[41] On jurisdiction, the plaintiffs claim that American courts have jurisdiction over the UN in Haiti because the UN has its headquarters in the *United States* and the individuals named as defendants are residents of the *United States*. Substantively, they argue that the UN failed in its legal obligation to create a standing claims commission to receive the private petitions of cholera victims and the court should therefore force the UN to respond to the petitions or impose a solution itself.

Despite some early procedural victories for the victims, in January 2015, Judge J. Paul Oetken rejected the first of the suits, stating directly that "[t]he U.N. is immune from suit unless it expressly waives its immunity."[42] This outcome was not unexpected. While the terms of UN immunity are debated by scholars,[43] international bodies and courts around the world accept the immunity of the organization and dismiss legal claims against it. According to the Charter, "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes" (Art. 105). The CPIUN (§3) states that the UN and its delegates are immune from "every form of legal process except insofar as in any particular case it has expressly waived its immunity"; UN officials shall (among other things) "be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity" (§18(a)). The UN's premises are immune from "search, requisition, confiscation etc." The UN is also exempt from taxes, customs duties, and restrictions on imports and exports. These immunities are described in the Charter as "functional," that is, they exist in order to enable the UN to accomplish its public functions. In this spirit, the European Court of Human Rights (ECHR) called immunity "a long-standing practice established in the interest of the good working of these organizations."[44]

Yet national courts have followed the more expansive language of the CPIUN and interpreted the UN's immunity in the broadest of terms. Wouters and Schmitt note that "in the near-totality of cases national courts scrupulously stick to the UN's immunity."[45] Immunity was the key reason why the ECHR, and the Dutch

Supreme Court before it, rejected a suit by the Mothers of Srebrenica group claiming that the UN failed in its responsibilities around the Srebrenica massacres of 1995.[46] Specifically, the courts ruled that the Netherlands' obligation to respect UN immunity took precedence over its obligation to guarantee individuals' right of access to a court.[47] The U.S. government and courts have taken a similar position. American courts consistently reject suits against the UN, affirming the UN's immunity from legal action, based on the CPIUN or the UN Charter or both.[48] The State Department also advises courts that it is the U.S. government's view that "under the plain language of the UN General Convention on Privileges and Immunities . . . the United Nations is absolutely immune from all legal process, including suit, in the absence of an express waiver by the UN of its own immunity."[49]

In the Haiti cases, the plaintiffs made a specific claim that sought to undermine UN immunity. They argued that the UN's failure to establish the standing claims commission was a violation of its obligation under the CPIUN and Haiti SOFA, for which the appropriate remedy was to strip the UN immunity as granted by those treaties. In other words, they posited that the UN's immunity was contingent on it providing extra-judicial mechanisms through which private actors could bring claims. They suggested that to uphold UN's immunity without private commissions would be to insulate the UN from *any* legal accountability for its actions. This reading of the law of immunity would represent a significant innovation in treaty interpretation and would carry major implications for the relation between individuals and UN peace operations.

In the end, the plaintiffs were rebuffed and the UN's immunity from domestic legal action was upheld.[50] As a result, the Haiti cholera victims have reached a legal dead-end: they have no access directly to the UN and they cannot make use of domestic courts to press the issue on their behalf. The United Nations appears to have no legal obligation to respond to those who say they have been harmed by its negligence. We turn now to considering the implications of this end-point—we look at the role of the government of Haiti, which has maintained a conspicuous silence in the controversy, and at the political consequences of international legalism.

The Road Not Taken

Where was the Haitian government during this ordeal? In classical international law, states are expected to act on behalf of their citizens when they suffer harm or loss in an international context. An individual who is harmed by an IO has been expected to press their claims through their national government. This is known as diplomatic espousal or diplomatic protection. International tribunals have invested a great deal of energy to resolve ambiguities regarding dual citizenship and other problems in the practice of diplomatic protection.[51] Had it chosen to take them on, the government of Haiti had several means to advocate for its citizens in relation to the UN.

The most direct involves taking advantage of the procedures for establishing the claims commission under the UN-Haiti SOFA. That treaty includes a provision by which either party could create the commission unilaterally in the following way. The commission is to be comprised by three members: one appointed by the UN Secretary-General, one by the Haitian government, and a chairperson appointed by joint agreement. Either the UN or Haiti can initiate the appointments and if they cannot agree on a chairperson within thirty days of the appointment of the first commissioner, either party can request the President of the International Court of Justice to intervene and make the appointment. The commission would then have a quorum despite the opposition of one party. In theory, therefore, "the Haitian Government . . . holds the power to provide redress to its people under the SOFA,"[52] even in the face of UN unwillingness.

Haiti could also make use of existing international legal or arbitral institutions. If it wished to challenge the UN's determination that the petitions are "not receivable" it could invoke the arbitration procedures in either the SOFA or the CPIUN. These could lead to international legal review, either by the International Court of Justice (ICJ) (CPIUN §30) or an arbitration tribunal (SOFA ¶57 & 58) and force the UN to provide further legal justification for its decision. The Haitian government also could use its membership in the UN and other international organizations to press the issue, including the UN General Assembly, ECOSOC, and the WHO, all of which have clear substantive jurisdiction over public health, as well as the UN Security Council if it could be persuaded that the issue relates to the Security Council's mandate on "international peace and security." Haiti could request that one of these organizations request an advisory opinion from the ICJ regarding the interpretation of the treaty and other legal obligations in the issue. It could also use extra-juridical forms of protest, such as publicly naming and shaming the UN Secretariat and the Secretary-General.

Yet the Haitian government left all of these options on the table. It declined to create compensation and arbitration panels. It elected not to endorse or participate in any of the private claims or lawsuits. It has been remarkably silent on the choices of the UN and the Secretary-General. In one of the few statements by the Haitian government, Prime Minister Laurent Lamothe called on the UN to take "moral responsibility" for the epidemic[53]—notably avoiding the issue of its legal obligations.

What explains the Haitian government's unwillingness to take action? It has offered no public statement on the matter, but one likely reason is Haiti's weakness as a domestic state and its condition of dependence in global politics, economics, and history.[54] Haiti gained its independence in 1804 after a successful slave revolt; however, the end of slavery did not mark the end of

dependence. The explanation for Haiti's chronic state of underdevelopment is rooted in various factors, including a harsh environment and a series of kleptochratic dictatorships, but these domestic factors were made possible and supported by international actors, beginning with imperial control and continuing with a more well-meaning international community.[55] Throughout the nineteenth century, France forced Haiti to pay compensation to the former slave owners for their "losses" (fully repaid only in 1947).[56] It eventually paid 150 million francs plus interest —or roughly $21 billion in today's dollars. Paying off this debt would take over 80 years and require Haiti to take out international loans, launching a cycle of borrowing and debt in which the country remained mired into the twenty-first century.[57] While repaying Haiti's "debt," Haitian dictators borrowed more money from states and international financial institutions; such borrowing was presented as necessary for public projects, but it mainly went to lining their own pockets. In its first century of independence, this political instability allowed lots of different leaders to put their hands in the till. Between 1843 and 1915 the country had twenty-two presidents; seventeen were deposed, and eleven within a year of taking office.

In 1915 the United States invaded Haiti, ostensibly because of its concern with German influence but mainly because it wanted to protect its business interests.[58] When the Marines withdrew in 1934, they were replaced by the Haitian military which remained the *de facto* power behind the throne until 1957.[59] For instance, the United States controlled Haiti's finances, formally, until 1947. For the next three decades, Haiti was ruled by Francois "Papa Doc" and Jean-Claude "Baby Doc" Duvalier, a father-son pair with the dubious distinction of being "two of the worst Latin American dictators ever."[60] In 1985–1986, a series of protests culminated in the Duvalier regime's overthrow and the Reagan administration brokered his exile to France. In 1990 Haiti voted Jean-Bertrand Aristide for president, who survived an entire year before being overthrown by a coup. After several years of domestic turmoil in 1994 a U.S.-led UN operation restored Aristide to power and introduced a new chapter in international control.

For the past two decades, the Haitian state has existed in a relationship of extreme dependency on the UN in specific and a flotilla of international actors in general. Without this external support, Haiti's coffers would be nearly empty and it would be unable to provide even the barest of public services, including security, stability, and public health—and now, with some irony, cholera eradication. Haiti is not only dependent on external financial assistance, it also is dependent on thousands of NGOs for the delivery of basic services; this "NGO-ization" of Haiti has furthered hollowed out an already weak state.[61]

The country's financial dependence on foreign actors provides a powerful explanation for why the government would not want to challenge the UN on its responsibility for the cholera. If it did successfully confront the UN, there is always the chance it would receive an acceptable settlement. More likely, though, are several other reactions that might leave Haiti worse off than before. The UN might decide to achieve "budget neutrality" by reducing whatever it spent in its official assistance from the total compensation it was forced to pay. Or, the UN might choose to withdraw its operations altogether, perhaps out of fear that it might now be vulnerable to a rash of other kinds of claims. Additionally, if the Haitian government brought legal action against the UN, the UN might, in turn, argue that the government itself assumed some risk by inviting the peacekeepers—and therefore shares some of the liability.[62] And if these were not reasons enough, there was also the possibility that the Haitian government might be reluctant to partner with and legitimate civil society organizations that have also been at the forefront of efforts to challenge the government's record on human rights, corruption, and mismanagement.[63] In general, a weak state is unlikely to bite the hand that meagerly feeds it. A result of this dependence is that the Haitian people are without the state-based representation on which classical international law depends and without institutional channels by which they might represent their own interests. The failure of both the private claims and the public lawsuits around the cholera epidemic follows directly from the fact that in the state-centric world of public international organizations, private agents are legally disempowered. The international legal system was constructed primarily as a system to govern the relations of states *inter se*, that is to say as a system of public law, made by states and for states, with IOs incorporated as public actors alongside states. In this classical system, private citizens with grievances were assumed to be covered by their governments acting on their behalf. In the Haiti case, the distribution of public power and liability in the international system fatally impairs individuals' ability to hold the UN legally accountable. The UN is able to simultaneously declare its fidelity to its responsibilities under international law and also decide when and how it can be held responsible.

Legalism and the Limits of Accountability and Responsibility

The UN has earned a great deal of negative publicity for its legalistic response to the cholera epidemic. By refusing to apologize or accept a common-sense understanding of its causal contribution to the crisis, and by asserting its legal privileges to defeat all claims, the UN has generated a widespread perception that its main concern is with protecting its power rather than helping the people it is ostensibly meant to serve. But whatever failings one might identify in the UN's behavior, compliance with international law is not among them. In Haiti, the UN maintains that it has acted according to its legal obligations and its position is supported by powerful legal and political

institutions. Accordingly, the UN Secretary-General is probably correct when he observe that the organization is "consistently integrating rule of law ... issues into the strategic and operational planning of new peace operations"[64]—even while it is refusing to receive the cholera victims' claims.

From the standpoint of contemporary scholarship on international law in IR, this possibility generates discomfort for two principal reasons. The first owes to its emphasis on compliance for determining whether or not law "matters."[65] If measured from the standpoint of compliance, then the UN's role in Haiti might count as a success; if measured from the standpoint of "common sense" it is a failure. The second, more general, source of discomfort owes to the normative bias in the literature on legalization. Legalization is widely celebrated by scholars, activists, and many states on the grounds that it helps to equalize unequal power relations between parties in a dispute, helps to ensure due process, helps to ensure elements of fairness and justice, and forces even the powerful to obey universal rules and laws. In this formulation, the natural alternatives to law are coercion and domination. However, the Haiti case suggests that law may in fact be an accomplice to these things. In other words, there is power *in* law, and part of this power is associated with maintaining existing inequalities.

Specifically, in this section we examine the productive power of law in three substantive areas. First, the presumption that international law provides a neutral framework for resolving disputes rests on an untenable separation between "legal" and "political," and creates a form of anti-politics.[66] Second, by hiding the politics of international law, the legalization of the Haiti dispute reinforces a power hierarchy in which the decisions and desires of the UN and some strong states have authority over the people and government of Haiti.[67] Finally, legalism forecloses non-legal modes of responsibility and accountability and contributes to a version of international ethics in which the suffering of the cholera victims is less significant than the goal of preserving the UN and its power. It shows the power *of* law, beyond the power *in* law.

Anti-Politics

When the Haiti-cholera issue is treated as a legal question, one to be answered with reference to the UN's legal obligations and rights relative to others, the political content of the dispute, as well as the political history of the law, moves into the background. This is a danger warned against by Judith Shklar (and others), who suggested that the artificial distinction between legal and political issues can easily be reified such that legal processes appear as politically neutral. Shklar says "law is endowed with its own discrete, integral history, its own 'science' and its own values, which are treated as a single 'block' sealed off from general social history, from general social theory, from politics, and from morality."[68] It encourages lawyers, legal theorists, and others to see law as taking the place of politics, as a natural, apolitical, fair-minded, platform to solve social ills—what Samuel Moyn calls "the noble lie."[69] Shklar call this "legalism," the "attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules."[70] It leads to what Bonnie Honig called the displacement of politics: that is, the transformation of arguments about what should be done, how life should be lived, etc. into merely the "juridical, administrative, or regulative tasks" associated with fitting current behavior into existing legal categories.[71]

The legalization of responsibility entails a double-movement, as Scott Veitch has pointed out: it simultaneously specifies the harms for which an agent is responsible and by implication also defines those for which it is not responsible. Veitch calls these "zones of responsibility" and "zones of irresponsibility" of an actor.[72] Housing law, for instance, specifies what a landlord is responsible for and what she is not; labor law does the same for employers; the laws of war determine when a killing is responsible under criminal law or not. At a global level, international law defines responsibility and irresponsibility for the United Nations and other actors. The practical content of these zones of responsibility and irresponsibility is decided by the specific language of the law and by the agents who are authorized to interpret it. In the UN's case, it is authorized to decide for itself when (and whether) it will consider the claims presented to it by individuals or waive the immunity of its officials. It is therefore no surprise that it has used that authority to shield itself from responsibility. By refusing to consider the petitioners' claims while also maintaining its immunity, the UN has created for itself a model of legal responsibility by which it is in principle accountable for the consequences of its actions but in practice not responsible for these particular consequences. It uses legal concepts and categories to write itself a get-out-of-jail-free card in international politics. This shapes how public officials define their responsibility relative to the organization and to their private morality. As Hannah Arendt and others have suggested, bureaucracies depend on officials who act according to the logic of the institution and set aside their private moral judgments.[73] If the law tells them that they are not responsible for some consequences, then from an institutional perspective they can live with those consequences without concern or guilt, regardless of what their feelings might be outside of the organizational setting.

In Haiti, legalization has produced a specific political outcome—it protected the UN and its authority and resources from any claim presented by the cholera victims. "Law as anti-politics" is on display to the extent that the UN's legal responsibility is allowed to exhaust its responsibility *tout court*. The productive power of law is

at work here, defining agents and their capacities, shaping what counts as a problem and the parameters in which problems can be addressed, and determining who owes what to whom.[74] These may sometimes act as constraints on the powerful and give the weak a position from which to advocate, but the opposite results are also possible—indeed, given that law is generally made by the powerful, it may be more realistic to expect that it will protect their interests in precisely the way that international law protects the United Nations. The rational-legal attributes of legal processes, including formal impartially and apparent objectivity, obscure the politics and power that make it possible and that follow from it.[75]

Hierarchy

Legalization should be seen in its political context. It both reflects and produces particular distributions of power. The difference in power between the cholera victims and the UN is enhanced by the turn to law as a means to address their losses. This is a consequence of the disempowerment of individuals in public international law and also the particular weakness of Haiti in the system of sovereign states.

International law provides absolute protection for the UN against the claims made by individuals. The immunity against private claims that the UN enjoys is founded on the theory that this is necessary if it is to be expected to perform its functions. This anticipates that the organization will do damage to the interests of individuals in the course of its duties, and it gives protection in advance against their claims. The international legal-political system makes it impossible for individuals to address international bodies. The outcome in the UN-Haiti situation is not an accident or an aberration—it is an example of the system working as planned.

Legally speaking, the United Nations is beholden to Haiti and other states where it operates but its structural advantages in law and politics means that it can exercise power in weak states without legal liability. More broadly, therefore, the case of Haiti points to a disjuncture between the theory and practice of sovereignty as a legal institution. The theory of sovereignty suggests that all states are created equal and are afforded the same rights, responsibilities, and protections; Haiti has the same rights and obligations as any other sovereign state. The principle of non-interference applies equally to the powerful and the powerless—and the latter may well be especially strong defenders of a legalized world precisely because they have no other means of defense.[76] Yet having rights and being able to use them are two separate matters; for a highly dependent Haiti, it is one thing to have the right to press claims against the UN and quite another to be in a position where it makes sense to invoke it.

The theory and practice of sovereignty is constituted by discourses of civilization which, among other effects, allocate varying degrees of protection from outside interferences.[77] Ideas such as civilization, empire, good governance, humanity, and more have provided a shifting justificatory language with which powerful states permit themselves to intervene in the rest.[78] As founding members of the modern-states system with sovereignty at its core, Western states had considerable influence over who was and was not civilized and who was and was not eligible for admission to the privileges of non-intervention. Haiti's position in this hierarchy has been consistently subordinate since the eighteenth century. The principle of non-interference has had a different meaning for Haiti, one that authorized external interference and intermittent occupations by foreign powers, as well as permitted domestic leaders to pocket foreign money for themselves and leave the debt to the Haitian people.

Legalized Ethics

The pervasive influence of legalism in international relations leads scholars to look to international law to answer substantive questions. This is evident whenever legal resources and arguments are used to dispose of controversies regarding what should or shouldn't be done in world politics. Robin West notes this tendency in public debates over the U.S. invasion of Iraq, where the legitimacy or wisdom of the invasion was treated as a question that could be answered by a close reading of international law.[79] Andrew Trevor Williams sees a similar pattern in the legalization of human rights *qua* "rights," where "law . . . provides a focal point for examining the legitimacy of human rights determinations in relation to suffering. From international norm articulation to judicial review of state practices, law and the legal process have acquired a position of pre-eminence in judging whether human rights have any purchase in a given context."[80] Before attacking Abbotabad to kill Osama bin Laden in 2011, a very senior group in the U.S. government wrote five secret memos to justify the legality of the operation, on the assumption that without legal justification the plan would much more difficult, perhaps impossible, to execute.[81] The power of legality to legitimate policy is widespread and it encompasses both the faith in law as an ordering power that Shklar criticized and law's availability as an instrument for opportunistic actors.[82]

The tendency to equate legality with wise policy is common in international relations scholarship, particularly among liberal internationalists; legality is taken as evidence of wisdom or justice or ethics in a policy.[83] For Shklar, this is a sign that legalism has come to shape discourses of justice, ethics, and morality, and it should be resisted as it leads to the subordination of ethics and morality to the primary concern with legality and liability. Similarly, Hannah Arendt sought to preserve a political and moral notion of responsibility distinct from the legal concept of guilt and to ensure that legal

reasoning and institutions do not supplant ethical judgment. She argued against seeing responsibility as a quality that can be determined by law. Whereas "guilt" signifies a violation of law, "responsibility" applies to violations of the obligations that one owes to the community of which one is a member.[84] Accordingly, complying with an immoral law (e.g., "following orders") might give an actor a legal justification for their action but it cannot absolve one of responsibility for its effects. Peter Cane concludes from this that responsibility might not be "a legal concept at all. Liability comes much more readily to the legal mind than 'responsibility' . . . . Thus we tend to speak of 'moral responsibility' and 'legal liability.'"[85] Whereas liability refers to the "formal, institutionalized, imposts, sanctions, and penalties, which are characteristics of law and legal systems," morality refers to more generalized and constitutive rules of conduct and thus are "prior to and independent of social practices in general, and of legal practices in particular.[86]

For Cane, Arendt, Shklar, and others, legal responsibility is narrower than responsibility understood in moral, political, or other terms. The gap between legal liability and political responsibility can be felt in the outrage of the Haiti activists who find themselves blocked by the institutions of law, international and domestic. It is a gap that Joel Feinberg describes as inherent in the legalization of human affairs—he says that legal processes often leave people with the "stubborn feeling . . . even after legal responsibility has been decided that there is still a problem . . . left over; namely, is the defendant *really* responsible (as opposed to 'responsible in law') for the harm."[87]

In light of the cholera crisis and other issues, a series of potential changes to the UN's legal obligations are either underway or have been suggested.[88] There is pressure on the UN to establish private claims commissions for peacekeeping operations, or to find other ways to give standing to individuals along the lines that are increasingly common in other international organizations and some international courts.[89] Others have suggested that the UN should at a minimum make cholera testing mandatory for peacekeeping.[90] The activists also hope that an admission of responsibility by the UN over the epidemic would set a precedent, making future claims easier—this is likely precisely the reason that the UN resists it, as well as resists even token-sized cash payouts. Through these processes or others the UN in future might not enjoy such impermeable legal immunity as it does today. This may well cause the UN to take more seriously the potential damages its missions might cause and internalize the legal and financial risks for new operations. This would be a powerful incentive to exercise more oversight over peacekeeping missions, either (or both) improving these operations or discouraging them altogether. The consequence might be a world with less UN peacekeeping—and this might be better or worse depending on one's interpretation of the evidence regarding the impact of UN peacekeeping.

Whether increasing UN liability is an improvement over the current state of affairs is impossible to say. Shklar, Arendt and the others argue specifically that ethical, political, and normative questions (such as whether removing UN immunity makes the world a better place) cannot be answered using legal resources. Their point is that the legalist mind-set permits law to determine ethical questions, and that this is a mistake. They seek instead to differentiate between legal logic and ethical considerations and to point out how the resources and institutions that determine the legality of an action are not sufficient or even necessarily appropriate to determine its politics or its morality. Therefore, pointing out that legalization has disempowering effects on Haitians with cholera, as we have done earlier, is not sufficient to sustain the inference that the opposite would be normatively superior—ethics and law are separate conversations, with separate logics and resources.

Conclusion: Law and the Opposite of Accountability

The Haiti case highlights the radical disjuncture between the preventable harms of the cholera epidemic and the ability of the harmed to seek redress. International law ensures that those who caused the epidemic are insulated from legal accountability for its costs. This result raises questions both about the moral and political value of particular pieces of law (i.e. UN immunity), and also more generally about the moral and political effects of legalization as a device in global governance.

One constructive way to channel the outrage that results from the case is to seek to change the law that impedes accountability. And in fact over the last several decades there have been slow but steady increase in individuals' access to international courts and tribunals.[91] Individuals are increasingly empowered by domestic and international courts to bring claims against states, multinational corporations, and other kinds of public and private entities. While the parameters of those legal relations are a source of great controversy, the growth of direct access by individuals to international courts can (in principle at least) give people tools to seek redress against international organizations.[92] In another approach, the 2011 Draft Articles on the Responsibility of International Organizations allows IOs to bring claims against one another. However, the proposed treaty contains no judicial mechanism and only applies to "internationally wrongful acts," which presumes a prior finding that the conduct in question was a violation of international law and so narrows its scope of application significantly. Third, the UN has the power to establish standing claims commissions, ensuring that they are available if needed. It could easily accept and implement the requirement that all its

operations should have an office to receive and consider private claims. It does not have to wait until something goes wrong.[93] By inviting private claims through such an office, the UN would no doubt encounter enormous challenges in sorting and deciding on them but it would at the same time redress some of the political imbalance between the UN and local people. A change in the UN's legal architecture could empower those who suffer harms in its operations.

The call to make the UN more responsible for its harms is related to the broader demand for greater accountability in global governance, driven by the belief that more accountability could bolster the legitimacy of global institutions, improve their effectiveness and learning capacity, reduce slack and slippage, and ensure that these increasingly powerful organizations are held responsible for the harms they cause. Notwithstanding the broad demand for greater accountability, there is no consensus definition on what it means, or even whether standard definitions that are developed for the domestic realm are suitable for an international realm where there is no legal public, no existing social contract, and often no clear delineation of the rights and responsibilities of global actors.[94] Still, the demand for accountability has rushed past these academic concerns to focus on the "how" of accountability in global governance—what is the most practical and effective mechanism for holding accountable large complex, international organizations such as the UN. Some of these forms of accountability depend on the law, but others look beyond the law, as Shklar suggested.

There are those who demand a rather simple form of accountability: the UN should simply acknowledge its role and own the harms it has caused. For some Haitian activists, this is the bare minimal form of accountability and would deliver some modicum of justice. In the case of Haiti the UN has been notably reluctant to make such statements and the Secretary-General has issued no statement of apology. Others propose a form of reputational accountability. "Naming and shaming" works in this vein, playing on the hope that publicizing UN's failure will cause it to clean up its act—indeed the lawsuits might be seen as part of this strategy by forcing the UN to make uncomfortable public invocations of its blanket immunity. Both sides of the dispute treat the UN's legitimacy and public reputation as political assets with real value, worth undermining by the one side and defending by the other. Such fights over the politics of reputation and legitimacy are outside of the legalist framework and show that greater accountability can come not by changing the law but also from putting law in its place relative to other social forces. Still, the UN appears to have a great capacity to withstand this shaming, and in this regard it is telling that UN peacekeepers are still not routinely screened for cholera.[95]

A key demand of the activists is for financial compensation by the UN to the cholera victims. This invokes the principle that corporate actors should compensate people who have suffered a financial loss due to their negligence and, it is said, will give the UN a strong incentive to avoid such problems in the future.

However, if the UN were forced to provide pay the people it has harmed, a range of unintended consequences might follow. The "petitions for relief" sought compensation of $50,000 per illness and $100,000 per death.[96] Based on the number of victims, the scale of UN liability might amount to $32 billion—four times the UN's total annual peacekeeping budget and 72 times MINUSTAH's annual budget.[97] These costs might cripple the UN and drastically limit the conditions under which it is prepared to undertake peacekeeping or other assistance missions. If the payout came directly from the UN's budget it would bankrupt the organization. If it came from the peacekeeping budget, which comes from separate voluntary contributions by governments, it would require immediate payments by the troop-contributing countries. Regardless of the budgetary source, the UN would presumably have to dramatically reduce its operations. The MINUSTAH operation might end, along with other peace operations and any number of other UN projects. It would also set a precedent for other claims and the risks would make all future operations much more expensive.

One effect of such a development would be to force the Security Council to think more clearly about the financial risks associated with its liability for harms. This could be beneficial if it meant a more critical assessment of its operations and a more careful mode of proceeding. The Council might reasonably aim to reduce its exposure by passing the costs along to the troop-contributing countries. This points to a complicating feature of UN accountability: the UN is often comprised of states and other kinds of actors over whom the UN has little effective authority. This is manifest in the UN's difficulties in punishing peacekeeping soldiers for human rights violations and sexual violence—it is constrained by the fact that the contributing states, and not the UN, have disciplinary power over their troops. The UN cannot prosecute these soldiers, though it can send them back to their home countries and it is considering refusing new troops from countries that do not investigate and punish offenders.[98] If the UN asked troop-contributing countries to accept the financial risks of peacekeeper misbehavior, it would essentially be asking relatively poor countries to carry the financial costs of outcomes like the cholera epidemic. Many troop-contributing countries are almost as impoverished as the countries in which they serve. Compared to the UN, Nepal is in a weak position to pay the costs of cholera.[99] Given the knock-on effects of accepting financial obligations over cholera, it is clear why neither UN officials nor nation-states are eager for the organization to give up its immunity, regardless of the costs to its reputation.

The case of Haiti shows how legalization can shape international politics. It provides reason to doubt the liberal-internationalist tendency see law as an escape from politics and power. Instead, it tells a cautionary tale regarding the political effects of law, anticipated by Shklar some 50 years ago. Writing as a liberal who saw the enduring value of laws that safeguarded the rights of minorities and vulnerable populations, Shklar had many good things to say about liberalism and, its kindred spirit, law. Law can constrain intolerant politics. But she worried that when law comes to be seen as an independent mechanism of governance, and as superior to other forms judgment, then the ideology of legalism prevents "its exponents from recognizing both the strengths and weaknesses of law and legal procedures in a complex social world."[100] She offered this warning informed by the politics of the post-World War II war crimes tribunals. If her worries about legalism had resonance then, it would appear to be even more resonant today as international legalism has spread. Law, she argued, should never be seen as an escape from politics and power; law *is* a form of power and it can be used to perpetuate injustice as well as remedy it. To see power as neutral among political interests would be to contribute to its mystification. It remains highly contestable whether what happened in Haiti constitutes a violation of international law, but apportioning responsibility should not hinge on this question alone. It is a mistake to allow law to have the last word on political responsibility.

Notes

1 Brown 2015.
2 PAHO 2014.
3 Shklar 1986, 1. We are extracting features of Shklar's argument for our purposes, not attempting to reproduce the intent of her argument or its nuances. For recent discussions of Shklar's concept, as applied to international relations, see West 2003; Sinclair 2011; Moyn 2013; Leebaw 2011, 2014; and Dickson 2015.
4 Veitch 2007.
5 This summary draws heavily from the excellent overview of legalism's effects by Bronwyn Leebaw. Correspondence with Barnett, August 4, 2015.
6 Rawski 2002, Sweetser 2008, Verdirame 2013.
7 E.g., Smith and Miller-de la Cuesta 2011, Verdirame 2013, Klein 2016, Koenig-Archibugui 2016.
8 Sengupta 2015.
9 Verdirame 2013; Ladley 2005.
10 On the importance of compliance in the effectiveness of international law see Guzman 2008, where the central question is "if and when international law changes the behavior of states," 22. For current debates see Dunoff and Pollack 2012.
11 Ikenberry 2011, 83.
12 Simmons 2009, 7.
13 Alter 2014a.
14 Sikkink 2011.
15 Cooper-Stephenson exemplifies the optimistic view when he projects from the domestic growth in legal remedies for human rights harms to the international domain, saying the latter will "undoubtedly flow . . . from the pressures of international conventions and the general rules of international law"; 2013, 43.
16 Schaefer 2013, 3; Yale 2013, 1.
17 BBC 2010; Katz 2013a.
18 BBC 2010.
19 France24 2010.
20 Reuters 2011.
21 Sontag 2012.
22 Katz 2013b.
23 Archibold 2010; Katz 2013a, 235–9.
24 Cravioto et al. 2011; Lantagne et al. 2013; Yale 2013.
25 Katz 2013a, 234.
26 Cravioto et al. 2011, 4.
27 Ibid.
28 Ibid. However, in light of subsequent studies, the panel members eventually revised their conclusion, publishing an updated report in which they stated that "the preponderance of the evidence and the weight of the circumstantial evidence does lead to the conclusion that personnel associated with the Mirebalais MINUSTAH facility were the most likely source of introduction of cholera into Haiti." See Lantagne et al. 2013.
29 Sontag 2012.
30 IJDH/BAI 2011.
31 Ibid, 1.
32 Secretary-General Kofi Annan: "a reflection of the principle of state responsibility—widely accepted to be applicable to international organizations (IOs)—that damage caused in breach of an international obligation and which is attributable to the state (or to the organization) entails the international responsibility of the state (or of the organization) and its liability in compensation." See UN A/51/389: Report on the Administrative and Budgetary Aspects of the Financing of the United Nations Peacekeeping Operations 1996, ¶ 6 (cited in Klein 2016, ms. 3). The International Court of Justice in *Cumaraswamy* said that as a general matter "[the UN] may be required to bear responsibility for the damage . . . incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity." See ICJ advisory opinion *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* 1999, 62 & 88-89 ¶ 66 (cited in Klein 2016, ms. 3).
33 See instances in Sweetser 2008, Boon 2013b; Lewis 2014.

34 UN A/RES/52/247 9(b). This Resolution relates to claims arising from "personal injury, illness or death, and for property loss or damage (including non-consensual use of premises) resulting from or attributable to the activities of members of peacekeeping operations in the performance of their official duties."
35 Sec. 29 CPIUN.
36 Sec. 55 SOFA.
37 Boon 2013a, Ladley 2005, 85.
38 O'Brien 2013.
39 ASIL 2014, Lewis 2014.
40 They are *Georges et al. v. UN et al.*, *Laventure et al. v. UN et al.*, and *Jean-Robert et al. v. UN et al.*
41 *Laventure et al. v. UN et al. 2014*, ¶1.
42 *Georges et al. v. UN et al. Opinion & Order* 2015. *Jean-Robert et al. v. UN et al.*, which was also before Judge Oetken, was dismissed. *Laventure et al. v. UN et al.* has been stayed pending the outcome of the *Georges et al. v. UN et al.* appeal.
43 See Klabbers 2015.
44 *Stichting Mothers of Srebrenica et al. v. The Netherlands* 2013, §139(c).
45 Wouters and Schmitt 2010, 83 (cited in Lewis 2014, 278).
46 Pomy 2012.
47 There have been a number of challenges to the immunity of other IOs on the grounds of the human right of access to courts and effective remedy, and some of these have been successful in lower courts, e.g., *Waite and Kennedy v. Germany*. See Boon 2013b.
48 *Lempert v. Rice* 2013; *Sadikoglu v. UN Development Programme* 2011; *Brzak v. United Nations* 2008; *De Luca v. United Nations Organization* 1994; and *Boimah v. United Nations General Assembly* 1987.
49 *Lempert v. Rice* 2013, ¶1. On Haiti, see *also Georges et al. v. UN et al.* 2014.
50 Judge Oetken states that the *Brzak v. United Nations* ruling forecloses this argument. See *Georges et al. v. UN et al. Opinion & Order* 2015.
51 The *Nottebohm* case (*Lichtenstein v. Guatemala* 1955) has been particularly productive on this subject.
52 Yale 2013, 29.
53 Morrison and Charles 2013.
54 The tragic history of Haiti is obviously beyond the scope of this article, but the following books are an excellent overview and highlight how external interventions and interference have contributed to its poverty and dependency: Dubois 2012; Dupuy 2014; Fatton 2014; and Lundahl 2013.
55 Lundhal 2011, 3–18; Schuller 2007.
56 *Guardian* 2015.
57 Dunkle 2010.
58 Lundhal 2011, 8.
59 Ibid., 42.
60 Ibid., 12.
61 Schuller 2012, 2016; Farmer, Gardner, and Van Der Hoof Holstein 2011; Kaufmann 2010; Klarrich & Polman 2012.
62 ASIL 2014.
63 Quigley 2014.
64 UN A/61/636 2006, 4.
65 For instance, Guzman 2008. For discussion, see Howse and Teitel 2010.
66 Honig 1993. On anti-politics, Ferguson 1990.
67 Sinclair 2011, 1095.
68 Shklar 1986, 2.
69 Moyn 2013, 494; and see Sinclair 2011, 1098.
70 Shklar 1986, 1.
71 Honig 1993, 27.
72 Veitch 2007. Law's capacity to distribute responsibilities and to legitimate outcomes is central to legal realism, critical legal studies, and the law and society movement, among other approaches. The literature is vast. In international affairs, this idea has been put to use recently to understand human rights law (e.g., Kennedy 2004, 3–36; Kratochwil 2014, 200–229) and various aspects of war (e.g., Hull 2014, Kinsella 2011). Dodd 2015 gives an intriguing application to civil rights processes and remedies in the U.S. context. Its legal theory ancestors include Shklar, Gramsci, and (arguably) Nietzsche, to name just a few. However, our use here is distinct from both Agamben's state of exception and Schmitt's extralegal legitimation of legal decisions, in that Agamben and his followers emphasize the capacity of the sovereign to define the outer limits of legal forms and authorities and then to operate beyond those limits, while Schmitt suggests that the legal/constitutional system rests on extraconstitutional values that give it its "real" meaning such that acts that violate the constitution may well be lawful if they uphold these broader values; Agamben 2005, Schmitt 2004. The Haiti/cholera story here is the opposite of both of these—it reflects the unfolding logic of the contemporary international political-legal system as it is written in treaties and other instruments and as interpreted and executed by legal institutions operating in their "normal" fashion, neither in exception nor reaching for extralegal resources.
73 Arendt 1963.
74 Barnett and Duvall 2005.
75 This is in line with Mamdani's (2014) critique of "human rights legalism" in South Africa, and with the recent historicization of the human rights project in general by Moyn 2010, Leebaw 2011, and others.

76 For critiques of the classical view, see Rajkovic 2012, Sinclair 2011; Altwicker and Diggelmann 2014; Crawford and Koskenneimi 2012.
77 Grovogui 2002.
78 Simpson 2004, Grovogui 2002, Anghie 2005, Koskenneimi 2004.
79 West 2003.
80 Williams 2007, 145.
81 Savage 2015.
82 Hurd 2015a.
83 Hurd 2015b.
84 Arendt 2005; May 1996.
85 Cane 2002, 1.
86 Ibid., 2.
87 Feinberg 1970, 30 quoted in Ibid.
88 Koenig-Archibugui 2016.
89 Compare for instance Wuerth 2013 on *Kiobel* and Kokott and Sobotta 2012 on *Kadi*.
90 Murphy 2014.
91 Alter 2014b; Koenig-Archibugui 2016; Teitel 2011.
92 Compare for instance Wuerth 2013 on *Kiobel* and Kokott & Sobotta 2012 on *Kadi*.
93 Koenig-Archibugui 2016.
94 Koppell 2010; Deloffre 2011; Erickson and Sending 2013; Crack 2013.
95 Murphy 2014.
96 IJDH/BAI 2011.
97 The UN's annual peacekeeping budget for FY2013-2014 is $7.83 billion (refer to https://www.un.org/en/peacekeeping/operations/financing.shtml). The MINUSTAH budget is $576.6 million (http://www.un.org/en/peacekeeping/missions/minustah/facts.shtml).
98 http://www.theguardian.com/world/2015/aug/14/ban-ki-moon-says-sexual-abuse-in-un-peacekeeping-is-a-cancer-in-our-system
99 Schaefer 2013.
100 Shklar 1986, 8.

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