Section 1 – Introduction

Observers of international law are currently attempting to come to grips with what is being referred to as the emergence of international legal pluralism. Integral to the many discussions and publications on the issue are related topics concerning the fragmentation of international law, the emergence of new actors within the system, and a general shift away from the Westphalian model, i.e. a state-oriented understanding of the international system. For many, the fate of the traditional state-centred model is closely linked to the emergence of pluralism and the weakening of state authority, to the point that some describe the changes as a ‘crisis’\(^1\). Although the recent preoccupation with these aspects is legitimate, the issue of pluralism in international law is not as novel as it may appear. International legal scholars have long dealt with the challenges of weak enforcement mechanisms, the absence of a strong central authority, and a variety of norms including but not limited to customary law, international treaty law, ‘regional’\(^2\) treaty law, and religious norms. Yet, notwithstanding the historical presence of pluralism, the positivist-leaning theories of international law that rely on the Westphalian model seem to be increasingly at odds with the facts on the ground mainly due to their inability to incorporate these increasingly varied sources of power and authority into their models.

This paper proposes the writings of Michel Foucault as a useful tool to understand the workings of international law and the power relations between its various actors. The theories of the same author will be used to caution that shifts away from the Westphalian model of international law do not necessarily coincide with a long-term weakening of the state and that any out-right dismissal of the power of nation-states is premature.

The paper begins by concisely addressing the definition of pluralism. Following this, the core of the work will apply Foucault’s theories to the international system in order to provide an understanding of the interaction between the multiple peripheral actors and the Westphalian theory of international law. This will be done mainly by analysing the emergence of international non-government organisations (NGOs). The concluding section will explain how, regardless of the presence of pluralism and the
decline of the Westphalian model, the nation-state continues to harbour a significant amount of power.

2 – Pluralism

Before addressing Foucault, an understanding of how the term ‘pluralism’ is employed in international legal theory, and how it is used in this work is necessary. Essentially, pluralism is used in the same manner at the international level as at the domestic level; the basic understanding being that norms are not necessarily only the commands of a single coherent sovereign power, but that, in addition to state law, norms may spring from a variety of norm-generating communities. The lack of an easily identifiable legal system of international law has allowed states to essentially create the law that they in turn are regulated by. This has naturally contributed to state opportunism, with the primary goal of each state being the preservation of its interests, and is manifested in a wide variety of documents and treaties that provide a cacophony of sources of international law. However, this aspect of pluralism, entirely attributable to the state, is but one constituent of the issue. For the purposes of this paper, pluralism will normally refer to the term’s other component; that of entities attempting to assert themselves as subjects of international law and the emerging norms associated with them.

3 – A Foucauldian approach to international law: Subjugated Knowledges vs. Power, Right, and Truth

We can now proceed with an examination of international law, with a particular focus on the topics of the Westphalian model and the emergence of pluralism, through Foucault’s teachings in Two Lectures. Essentially, Foucault’s writings can be used to highlight the methods used by the state in its attempts to maintain dominance over peripheral actors and, in turn, the methods employed by those in the periphery to emerge from domination and confront the state. Thus, Two Lectures provides insight on the following interrelated issues: 1) the self-perpetuating effect of unitary theories, and of central powers through their production of discourses of truth, their creation of ‘theory of right’, and their disqualification of local knowledges, 2) the insurrection of knowledges as a means of countering the effects of centralising powers, and 3) the need to focus on
the peripheral in order to understand relations of power. The ideas these terms represent and the manner in which they apply to international law will be looked at through the emergence of international NGOs. The order in which the material is presented will generally follow that of Two Lectures with one exception: given the ambiguity surrounding the term ‘sovereignty’ a pause in the analysis will be made where appropriate in order to properly define the term and differentiate its use with the national and international spheres.

The influx of the number of international NGOs along with their changing functions provides a clear example of growing pluralism in international law. NGOs are heavily involved in, inter alia, development, disarmament, human rights, the promotion and dissemination of the rule of law, and the promotion of various minority groups. They take part in multilateral conferences, they monitor the implementation of treaties, and, although perhaps less significant than their multitude of activities, they are specifically mentioned in the UN Charter. The descriptive title ‘non-governmental’ distinguishes these organisations immediately from state actors in international law and enforces their supposed apolitical qualities. Hence, their increase in number, and their omnipresent role signifies a growing periphery at odds with the Westphalian model in which states are the only official subjects of the law.

Foucault’s approach helps to understand the deeper significance of NGOs on the international scene and provides insight as to why their presence, beyond their simple contribution to pluralism, can indeed be seen as weakening the Westphalian model. Following Foucault’s approach, NGOs must be seen as representing subjugated knowledges or knowledges in insurrection. Such knowledges are in a continuous struggle against ‘global theories’, in this case the Westphalian model. The Westphalian model fits Foucault’s description of a global or unitary body of theory mainly due to its role in suppressing local knowledges, its discourse of truth, and its creation of a theory of right. NGOs, for their part, represent knowledges in the sense that their presence both negates the dominant ideology of state sovereignty and raises alternative discourses. I will begin by analyzing NGOs and the insurrection of knowledges and will subsequently examine the role of the unitary theory under the Westphalian model.
Foucault begins the first of his *Two Lectures* by stating that the last ten to fifteen years (lecture date was 7 January 1976) had witnessed a ‘sense of the increasing vulnerability to criticism of things, institutions, practices, [and] discourses’\(^\text{18}\). This statement subtly emphasises the power of criticism, and sets the tone for the lecture. Criticism of a unitary or global theory, according to Foucault, is based in the aforementioned subjugated knowledges, which comprise of two categories. The first category, called ‘erudite’ knowledge, consists of scholarly knowledge that has been buried and ‘disguised within the body of functionalist and systematising theory’\(^\text{19}\). The second knowledge, described as more local and specific, represents what is commonly referred to as ‘popular knowledge’. The two combined are classified under the term *genealogy*, whose role is identified as the following:

> What it really does is to entertain the claims to attention of local, discontinuous, disqualified, illegitimate knowledges against the claims of a unitary body of theory which would filter, hierarchise and order them in the name of some true knowledge and some arbitrary idea of what constitutes a science and its objects.\(^\text{20}\)

It is arguable that the insurrection of knowledges in the form of NGOs can be both local and erudite. For Foucault, local knowledges consist of popular or particular regional knowledge that ‘owes its force only to the harshness with which it is opposed by everything surrounding it’\(^\text{21}\). It consists of knowledges dismissed as ‘low down on the hierarchy’, insufficiently elaborate, and unscientific that have fallen into disuse or have been unable to maintain themselves\(^\text{22}\). Thus, numerous NGOs represent local knowledges in the sense that regional organisations often struggle for ideological autonomy from the state\(^\text{23}\). Moreover, Fisher explains that the more *avant-garde* theorists attribute significance to grass-roots organisations for the reason that, “they see them as part of a process that is capable of transforming the state and society”\(^\text{24}\). Foucault elaborates less upon erudite knowledges. An acceptable definition might be ‘minority or peripheral theories challenging a central theory’ had Foucault not gone to such lengths to avoid labelling knowledges as ‘theories’. Essentially, erudite knowledge appears to represent scholarly knowledges that only surface through the questioning of central theories. The knowledge generally has a historical content and is used to unveil that which is being masked by ‘functionalist or systematising thought’\(^\text{25}\), therefore revealing a system of oppression by showing the forgotten alternatives. Such knowledge is more difficult to
locate at the NGO level. However, it may emanate from independent research projects or from ‘think tank’ NGOs offering possible solutions to a variety of issues. Regardless of the category, NGOs can promote knowledges that are otherwise overshadowed by state actions. They provide a manner of challenging the mainstream discourse present in various apparatuses including, most notably for the present topic, a ‘framework of reference that is provided by a political system’.

If NGOs, as holders of subjugated knowledges, can be seen as exceptions to ‘the rule’, what then, constitutes ‘the rule’? In his second lecture Foucault examines the relationship between power, truth and right; opening the lecture by posing the question ‘what rules of right are implemented by the relations of power in the production of the discourses of truth?’ Truth, for the purposes of this discussion, is to be understood as the ‘discourse of truth’ or as ‘philosophy as that discourse which par excellence is concerned with truth’. Rules of right can be seen as the simulated or constructed ‘right’ created by the combination of power and discourses of truth. Foucault links the exercise and maintenance of power to the support provided by a dominant discourse and underlines the efforts made in turn by the power concerned to reinforce the same discourse. The idea of a power maintaining itself in a cyclical fashion by creating the fuel and parameters for a ‘discourse of truth’ therefore emerges. Although this is arguably applicable to all forms and degrees of power, its centralising effect and its benefit to large holders of power seems evident. Foucault explains that the relationship between power, right, and truth is especially established in Western society, and that ‘when it comes to the general organisation of the legal system’, power and the supply of discourse remain rooted in the idea of sovereignty and its accompanying ‘right’. Foucault elaborates upon the idea of sovereign right by explaining how it disguises the characteristic of the ‘domination’ of authority by rendering its power artificially legitimate and by incorporating its authority within the law:

*When we say sovereignty is the central problem of right in Western societies, what we mean basically is that the essential function of the discourse and techniques of right has been to efface the domination intrinsic to power in order to present the latter at the level of appearance under two different aspects: on the one hand, as the legitimate rights of sovereignty, and on the other, as the legal obligation to obey it.*

Foucault’s explanation of the current role played by sovereignty in relation to power is
integral to the understanding of the relationship between central authorities, the discourse
they emit, those who contest it, and the emergence of ‘disciplinary power’. It is therefore
important to be aware that Foucault was addressing sovereignty in its traditional form and
not ‘state sovereignty’ as understood in international law. For this reason, before
continuing with Foucault’s approach, an analysis of the how the terms compare is
needed.

3.1 - ‘State sovereignty’ under the Westphalian model of international law vs.
‘sovereignty’ as understood at the domestic level

The discussion of the ideology of sovereignty, as presented in the summary of
Foucault’s methodological precautions in Two Lectures, concerns that of the domestic
variety as elaborated upon by Hobbes and Bodin, i.e. a single hierarchy of domestic
authority33. However, Foucault did not limit his theory to the model of the 16th and 17th
centuries. He emphasised that sovereignty was ‘re-activated through the doctrine of
Roman Law’ and the writings of Rousseau in the 18th century with its focus shifting from
‘administrative, authoritarian and absolutist monarchies’ to parliamentary democracy34.
Moreover, Foucault argued that the theory of sovereignty continues to exist as both an
ideology and as an organising principle of state law35. Following this argument, although
the monarchist qualities may be absent today, the ideology of sovereignty is nevertheless
present and is disguised in Western democracies by their respective legal systems. Thus,
Foucault clearly explains that sovereignty is not merely a model from the past and exists
alongside ‘disciplinary power’, one of the foundations of industrial capitalism:

To put this in more rigorous terms, one might say that once it became necessary for
the disciplinary constraints to be exercised through mechanisms of domination and
yet at the same time for their effective exercise of power to be disguised, a theory of
sovereignty was required to make an appearance at the level of legal apparatus, and
to re-emerge in its codes.36

The sovereignty of states, on the other hand, as advanced through the Westphalian model
and discussed infra, applies to the international arena, and implies something different.
The ideology of state sovereignty encompasses the theory that states are autonomous and
independent from one another37. This is reflected in none-other than the Charter of the
United Nations, commonly seen as the constitution of international law, under Article
2(1), which states, “The Organization and its Members [i.e. nation-states], in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. The Organization is based on the principle of the sovereign equality of all its Members”.

Given the different uses of the term, a fair question is whether it is at all legitimate to apply Foucault’s views on sovereignty and his ‘theory of right’ to international law? An affirmative answer can be based upon the following reasoning: for the purposes of this study, the ideology of state sovereignty can be seen simply as a component of the sovereignty referred to by Foucault and/or the similarities between Foucault’s use of sovereignty and the sovereignty of states are sufficient for his theories to apply by analogy.

As per Foucault’s writings, the origin of the international use of the term offers insight as to how it can be understood to stem from the use at the national level. Beaulac traces the term ‘state sovereignty’ to Emer de Vattel’s *Droit des Gens* and explains how it is merely an ‘externalization’ of its more traditional application:

> This forcefully illustrates how *Droit des Gens* carried out the externalization of “sovereignty” by providing that the State is the sole holder of authority without as well as within. Indeed, Vattel’s juridical person does not only have the exclusive power among other internal authorities to represent and rule its people within the territory, but it also has the exclusive power among other public authorities outside (that is, other States) to represent and rule its people within the said territory. This is, of course, in addition to the exclusive power to represent and rule its people in their relations with foreign States and individuals just discussed. Such a use of the word “sovereignty” is thus really a question of exclusivity of authority.38

Following this insight, it becomes clear that the term used in international law essentially provides an extension of the internal hierarchical dominance of the state to issues outside of the state realm. Although ‘state sovereignty’ is commonly employed to explain how international law is organised, and the manner in which states interact, its effects on individuals and other non-state entities is virtually the same. The ‘exclusive power to represent and rule its people’, as detailed in the quote above, is simply the manifestation of the sovereign’s power over its subjects expanding into another jurisdiction. In response to the issue raised above, then, it is entirely legitimate to use Foucault’s theories on power and sovereignty to analyze international law. Admittedly, part of the reason for this lies in the parameters of this paper. The goal of this work is not to apply Foucault’s
domestically focused theories to international law by replacing the domestic sovereign with a world government (i.e. the United Nations), and by altering the subject from the individual to the state. Rather the paper focuses on the light shed by Foucault on the manner in which smaller actors perforate the sovereign monopoly of ‘subject of international law’ and the power relations between smaller actors and the state.

3.2 - The Westphalian model as ‘the rule’ and the insurrection of knowledge

How, then, does this detailed discussion on sovereignty enter the debate surrounding the insurrection of knowledges? The ideology of the Westphalian model, and its dependence on state sovereignty, is the theory that attempts to subjugate knowledges at the international level, while struggling to maintain its power through a centralising discourse.

Many legal scholars appear keen to add to the discourse of the sovereignty of states by insisting upon the Treaty of Westphalia as the birth of modern international law. According to the narrative, in ending the Thirty Years’ War, the treaty established the supremacy of the sovereign authority of the state within a system of independent nation-states, thus forming the concept of sovereignty of states as one of the fundamental principles of international law. The model, based on state-centricity, legal positivism, and a powerful public (state) authority, essentially positioned the discipline of international law as the ‘handmaiden of statehood’.

Shaw explains that, by following this approach, the interpretation of international law shied away from concepts derived from reason to focus on ‘what actually happened between competing states’. The emergence of the positivist approach coincided with the Peace of Westphalia as well as theories highlighting and supporting the notion of the sovereignty of states. Consequently, a model was created in which the state was given the monopoly over the status of subject of international law as well as the accompanying authority. International law therefore became a tool for states to exert their authority, and to subsequently legitimize this authority, rather than as an instrument to constrain their conduct.
This description of international law leaves little room for other actors in the form of, for instance, NGOs. The Westphalian model creates what amounts to a funnel effect whereby the subjects of the states became entirely excluded from the ‘official’ international sphere, leaving their ‘sovereigns’, as the subjects of international law, as their brokers on the international scene. As the sole subject of international law, only the state may possess rights and duties under the organization. Moreover, the state in turn can use this power to maintain its rights by making international claims.

Given the numbers presented in section 3 of this paper, it appears that, regardless of the Westphalian model’s constraints, NGOs have been relatively successful in re-establishing buried knowledges. Given also that NGOs are but one example of the struggle of the periphery versus the central model, it is understandable that pluralism (in this case in the form of subjects) has become a popular issue.

3.3 - Sovereignty, disciplinary power and pluralism

Foucault’s summary of his five methodological precautions towards the end of Two Lectures provides dense material to consider surrounding the discussion on sovereignty, and raises yet another aspect of legal pluralism. Foucault describes the emergence in the 17th and 18th centuries of a mechanism of power that is separate from sovereign power: that of disciplinary power. As alluded to earlier, Foucault believes this power to have emerged from bourgeois society as part of industrial capitalism and describes it as being dependant on what bodies do, as operating through surveillance, and as replacing the physical presence of a sovereign by ‘material coercions’. Interestingly, Foucault explains that the ideology of sovereignty nevertheless continues to exist in part because it has superimposed a system of right on that of disciplinary power which both conceals that power’s procedures and its elements of domination. Thus, the state is now seen as the provider of ‘collective sovereign rights’, while operating within a system anchored in disciplinary coercion. In Foucault’s own terms:

[… once it became necessary for disciplinary constraints to be exercised through mechanisms of domination and yet at the same time for their effective exercise of power to be disguised, a theory of sovereignty was required to make an appearance at the level of the legal apparatus, and to re-emerge in its codes.
Foucault goes on to explain that power is ‘exercised simultaneously’ through both the right of sovereignty, and through the separate disciplinary form (what he terms ‘normalisation’).\(^{54}\)

Of significance to the issue of pluralism, Foucault explains that disciplines have created their own discourses across a multiplicity of new domains and knowledges, and are thereby invading the areas of sovereign right so as to colonise law.\(^{55}\) Foucault states that the discourse of disciplinary power has equally used ‘apparatuses of knowledge’ to promote non-judicial forms of power in the forms of rules and norms.\(^{56}\) Although this observation does not directly refer to the subjugation of knowledges as addressed in the section on NGOs (subject focus), it nevertheless raises the issue of legal pluralism with respect to the multiplication of norms.

*Two Lectures* therefore provides an approach to understanding the advent of pluralism in international law. However, not only does it explain how pluralism emerges, it encourages the reader to develop the reflex of addressing sources outside of the central discourse in order to understand power relations. Given that the focus above was on pluralism versus a *theory* of international law, any discrediting of the Westphalian model and sovereignty of states must be limited to just that. The actual power of the nation-state, although surely affected by pluralism, is something quite different. This point is vital to a complete understanding of this paper: Foucault can be used to both explain the rise of pluralism *vis-à-vis* the centrist Westphalian model, and the continuing possibility of a powerful nation-state.

4 – Conclusion and Power and the nation-state

Foucault warns that a preoccupation with the study of the ‘limited field of juridical sovereignty and State institutions’ is the wrong approach to the investigation of power and that a more insightful approach consists of examining the ‘techniques and tactics of domination’.\(^{57}\) In his analysis of government,\(^{58}\) Foucault offers similar advice by dismissing the importance of law to achieve the aims of government and by underlining the value of ‘a range of multiform tactics’.\(^{59}\) In essence, by analysing the rise of pluralism, and the reproductive elements of unitary models, this is what the main part of
the paper attempted. As a complement to, and in conclusion of, the previous section, and following Foucault’s suggestion of delving further into the periphery, the following shows that the condition of the Westphalian model is not necessarily linked to the potential power of the nation-state. This is demonstrated by moving the focus further away from the state and by considering the current relationship of power between the state and its population. Analyzing Foucault’s views in both Two Lectures and Governmentality will perform this exercise.

Foucault explains that a proper analysis of power should not begin by looking at a central entity, and to subsequently follow the entity’s power down through its networks to the point of full dissipation. Power must instead be analysed in an ascending manner, with a final analysis targeted at how the power produced in the periphery is dealt with by ‘more global phenomena’. In keeping with this method, Foucault underlines the fundamental role played by ‘the population’. In Governmentality, Foucault describes the population as being the finality of government, i.e. the ultimate goal or reason of being of government:

[…] the population is the subject of needs, of aspirations, but it is also the object in the hands of the government, aware, vis-à-vis the government, of what it wants, but ignorant of what is being done to it. […] this is the new target and the fundamental instrument of the government of population. This is the birth of a new art, or at any rate of a range of absolutely new tactics and techniques.

Moreover, Foucault emphasizes in Two Lectures the role of individuals and power, explaining that they ‘are in the position of simultaneously undergoing and exercising power’. Thus, individuals, rather than merely submitting to power, can also be seen as what Foucault terms ‘vehicles of power’. Although it is important not to confuse the terms ‘state’ and ‘governmentality’ at this point, Foucault defines the modern governmentality-based state as that which is defined ‘by a mass: the mass of the population, with its volume and density, [and] with the territory that it covers.’ Admittedly, Foucault’s arguments regarding population and individual power are not precisely the same, however, the lessons derived from them are similar; inter alia, power is widely diffused, can emanate from the periphery and, as will be shown, has a fluctuating character. The following insight can therefore be interpreted from Foucault’s views: given that central powers may use tactics that are not manifestly apparent to
influence and control their ‘population’ (i.e. population ‘ignorant of what is being done to it’), and given that population can exercise a tremendous amount of power in return, the state can theoretically benefit from immeasurable levels of power when specific conditions permit. In essence, the state’s challenge is therefore to understand, nourish, and harness this power. By shifting the focus of the examination of power to the periphery, and by understanding the relationship between the state and its population, one can begin to see how an increase in pluralism and a weakening Westphalian model do not necessarily equate to weaker nation-states.

An advent of pluralism in international law may indeed be a sign that Foucault’s theory of the increasing vulnerability of ‘things’ in the face of criticism is correct. This view, however, should be considered in light of the fact that the common benchmark to which pluralism in international law is measured, the Westphalian model, is arguably an exaggerated theory based on a fiction that is easily picked apart. Perhaps, then, it remains to be determined whether the pluralism of actors, and insurrection of knowledges in international law is the result of a hard fought battle by entities on the periphery, or whether it is due mainly to the inherent vulnerability of the Westphalian model. It is likely a result of both. What is certain is that the power of the nation-state itself remains potent due mainly to its ability to activate the power in the population when it needs it most. It is possible, then, that the most valuable realisation from the analysis provided in this paper is that fixed ideologies cannot properly represent power and that, in the words of Foucault, ‘[p]ower must be analysed as something which circulates’.

2 e.g. The European Convention for the Protection of Human Rights and Fundamental Freedoms, as opposed to universal treaties.


5 Ibid, p. 10.

6 Pluralism of subjects refers to, inter alia, individuals, transnational corporations, nongovernmental organizations (NGOs), non-state actors threatening the stability of the state (e.g. rebel or separatist groups), and non-state groups trying to instill norms through industry standard-setting or political lobbying.

7 See Fisher, William F. “DOING GOOD? The Politics and Antipolitics of NGO Practices”, Annual Review of Anthropology, vol. 26, 1997 for a review of the influx of NGOs and a discussion of this growth; See also the United Nations run database ReliefWeb which provides the result of 1506 official organisations from a general search for NGOs in its directory: http://www.reliefweb.int/rw/rwc.nsf/doc202?OpenForm&number=1506&cc=all&type=NGO&start=1&count=100 (last visited December 14, 2008).

8 e.g. Oxfam, Action Contre la Faim

9 e.g. Landmine Action, Economists Allied for Arms Reduction

10 e.g. Human Rights Watch, Amnesty International

11 e.g. Trial Watch, International Committee of the Red Cross

12 e.g. Disability and Development Partners, Minority Rights Group International


14 They are attributed a relatively small role under Article 71, which officially outlines that NGOs may be consulted by the Economic and Social Council but only after ‘consultation with the Member of the United Nations concerned.’

15 Although it would be naïve to believe that all NGOs are apolitical, their independent character is an important characteristic of their ‘local’ character. Foucault defines a local character of criticism as an ‘autonomous, non-centralized kind of theoretical production, one that is to say whose validity is not dependent on the approval of the established regimes of thought’. Foucault, Michel, “Two Lectures”, in Gordon, Colin (ed.), Power/Knowledge, Selected Interviews and Other Writings 1972 – 1977, New York, Pantheon Books, 1980, p. 81.

16 NGOs likely represent both subjugated knowledges and knowledges in insurrection. The distinction is no more profound than the literal readings of the terms and may simply depend on the effectiveness of the NGO; subjugated knowledges remaining dormant while knowledges in insurrection actively combating the opposing unitary theory.

17 Foucault, M., “Two Lectures”, p. 80.

18 Ibid.

19 Ibid, p. 82.

20 Ibid, p. 83.

21 Ibid, p. 82.

22 Ibid.


25 Foucault, M., “Two Lectures”, p. 82.

26 For an example of this, see the work of Geneva based Small Arms Survey at
http://www.smallarmssurvey.org/ (last visited December 14, 2008).

Foucault, M., “Two Lectures”, p. 84, with other examples provided by Foucault being the university, an educational apparatus, and a ‘theoretical-commercial institution such as psychoanalysis’.

Ibid, 93.

Ibid.

Ibid: As per Foucault: “We are subjected to the production of truth through power and we cannot exercise power except through the production of truth.”

Ibid, 94.

Ibid, 95.


Foucault, M., “Two Lectures”, p.103.

Ibid, p. 105: “…the theory of sovereignty has continued not only to exist as an ideology of right, but also to provide an organizing principle of the legal codes which Europe acquired in the nineteenth century, beginning with the Napoleonic code.”


Kennedy, David “A new Stream of International Law Scholarship”, Wisconsin International Law Journal, vol. 7, 1988, p.14; See also Cutler, A.C., “Critical reflections”, p. 134, who cites Kennedy frequently in her piece and refers to the Peace of Westphalia as the origin of international law as ‘almost an article of faith amongst international lawyers’.


Ibid.

Ibid.


Cutler, A.C., “Critical reflections”, p. 136: Cutler explains succinctly that, under the Westphalian system ‘whatever rights or duties individuals or corporations have are derivative of, and enforceable only by, states who, as ‘subjects’, conferred these rights and duties upon them.’


Ibid, p. 10.

Ibid, p. 104.

Idem, p. 105.

Ibid.

Ibid, p. 106.

Ibid.


Ibid, p. 106.

In his lecture on *Governementality* Foucault uses the term ‘government’ in the sense of ‘governance’ (ex. governing a household) rather than the current popular definition of political institutions.

Foucault, M., “Governmentality”, p. 211.


Foucault, M., “Two Lectures”, p. 98-9: “The individual, that is, is not the vis-à-vis of power; it is, I believe, one of its prime effects. The individual is an effect of power, and at the same time, or precisely to the extent to which it is that effect, it is the element of its articulation.”


Foucault, M., “Governmentality”, p. 221.

Foucault, M., “Two Lectures”, p. 98.