

**The International Legal System
and the Institutionalization of the Rule of Law**

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Introduction

“Act only according to that maxim whereby you can at the same time will that it should become a universal law (421).” Kant’s categorical imperative, which builds on a long tradition of classical and Christian philosophy, is the source of all duties and obligations that by human nature, we share. His imperative provides a strong foundation for the universality of international human rights; moreover, it provides an understanding that such sources of international human rights cannot be individually interpreted by nation-states depending on their own subjective perception of the goodness, morality, or utility of a human right. The work of a just international legal system is augmented by the necessary institutionalization of the rule of law for the legal system’s advancement of civil and human rights. In a highly globalized world, no longer organized by traditional nation-states, we are faced with the question of how to institutionalize the rule of law with the understanding that there is a universality to certain human rights. As a part of an international community, both State and non-State actors are responsible and obligated to uphold and respect a culture of rights that can be attained through the vehicle of the rule of law.

Although there has been work done to strengthen to strengthen international legal institutions like the International Criminal Court, there is a lack of effective models based on the rule of law for countries to pursue. However, there is a growing body of work that supports the development of international legal jurisprudence through international institutions and their subsequent enforcement mechanisms. In the absence of a formal

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human rights culture, there is still much to be done in terms of guiding countries to strengthen their own local jurisprudence through the auspices of their own governments and institutions. It is those countries with weak rules of law and almost non-existent domestic legal institutions that are in most need of research that focuses on utilizing state capacity-building instruments as a method of dispute resolution with its own internal actors as well as with other external actors.

This paper will first discuss the evolution of sovereignty in relation to the nation-state, in order help conceptualize both State and non-State actors operating within the international legal regime. Then, it will discuss the historical evolution of the rule of law and how the international community understands the contemporary notion of the rule of law today. It will also provide the theoretical foundations of the rule of law, and how separate traditions have resulted in different practices of the rule of law, especially in terms of its enforcement and implementation. Then, it will provide a discussion on the United States' role in the future of the international legal regime and the institutionalization of the rule of law.

The International System: Sovereignty and the Nation-State

The Treaty of Westphalia ended the Thirty Years War against the Holy Roman Empire. The end of the Thirty Years War was significant in that it played a role in the delegitimization of the Catholic Church, and a greater push that international relations between states be analyzed through the lens that focused on the balance of power rather than religious authority. The Westphalian Peace of 1648 was significant in the conceptualization of the sovereign state governed by a sovereign that was the building blocks for a new European political order. In addition, the Peace of Westphalia helped to further detail the depth to which sovereignty entitled complete autonomy and independence of each sovereign on issues within its own borders (Leo 1948). Ultimately, the Peace of Westphalia laid the groundwork for the modern state system of Westphalian states (nation-states) operating around issues that were more specific to diplomatic recognition and state-autonomy. In addition, as opposed to an international system that outlines a culture of the promotion of shared interests and discouragement of mutual threats, the Westphalian system had created instead a collection of states that represent different interests and concerns. This legacy may also be significant in terms of the current rigidity practiced by certain states and their unwillingness to alter their paradigms in order to transcend the Westphalian state. Therefore, today, there are still States that express hesitation in terms of submitting their sovereignty, even partially, to the authority of a higher international organization.

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After the defeat of Napoleon, the world witnessed the emergence of a new international order, which was led by the Grand Alliance: Austria, Great Britain, Prussia, and Russia. Despite their divergent interests and objectives, the Grand Alliance collaborated to refine their interpretation and enforcement of the notion of sovereignty after the defeat of Napoleon (Barkin 1994). The countries agreed that the Napoleonic War's legacy entailed the balance of power that is grounded in a European society committed to the restoration of equal power and to the prevention of the spread of French radical ideas and liberal revolutions in Europe. In addition, the resulting Congress of Vienna divvied up the territories among sovereigns¹. Whenever a sovereign lost a territory, he was provided with a different territory in response. The conference's compensation of lost territories to sovereigns is significant in that it is indicative of the notion that states existed as separate from their people; therefore, territories were thought of loose organizations of land, thus easily passed between different ownership (Barkin 1994). Moreover, the conference was organized around the agreement of rulers, and not nations nor its peoples. Therefore, the development of sovereignty was still in its formative stages due to the absence of organized sovereign rulers representing a nation and its people. In addition, the Vienna settlement was also significant in that it promised

¹ The trading of territories between sovereigns was indicative of the view at the time which separated the sovereignty's connection to a national population. A few examples of the merging and mis-matching of territories to sovereigns were a result of the Congress of Vienna. A few examples include the creation of the new kingdom of the Netherlands was a merging of the Dutch Republic and the Austrian Netherlands in addition to the restoration of its lost territories, Austria also received Lombardia and Venice (Barkin 1994).

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religious toleration for Catholics in the Netherlands. In addition, successor states of the Ottoman Empire assumed the responsibility of providing civic and political equality for its peoples (Barkin 1994).

Post World War I also had similar results from those of the Napoleonic Wars. After WWI, there was a similar redistribution of territories, which allowed again for the emergence of a new international order in Europe. Replacing the role of French liberalism in the social unrest, socialism and Bolshevism were responsible for renewed revolutionary tension. With the break up of traditional empires, the new international order witnessed the creation of a state system based on geo-politics (Hansen 2002). There was a shared understanding that one of the major reasons for World War I was the absence of a standard framework to understand the international order between nations and states. Moreover, this was articulated by Woodrow Wilson in which World War I's legacy was "...to end all wars. The purpose of fighting the war was to eliminate the very causes of war itself: the balance of power, the system of alliances, and the denial of self-determination and democracy to peoples throughout the world." Woodrow Wilson also helped outline the foundation of the principle of self-determination, which was the basis to allow for the free development of respectful, independent states. This also helped to cement the legitimacy of the nation-state as one that represents not only a territory, but also a national population; this helped to clearly define the notion of a nation-state also included the existence of a government accountable to its people. Therefore, sovereignty

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began to transform as the dialogue took place between sovereigns that represented a people united by a heritage and culture (Hansen 2002). In addition, the end of the war resulted in the shift of focus away from the sovereign to the national population was also apparent during the conference of Versailles, which was also attended by those who were dispossessed by the War that were also interested in unification². Moreover, the beginning stages of dialogue on the creation of the League of Nations and its minority rights bureau also highlighted the roots of a movement towards international equity and justice.

At the end of World War I, the reduction of Germany's territory, the territories of France and Italy subsequently grew. And with the emergence of the Weimar government, the German citizens were not as supportive of the German state. Due to a tense climate in Europe, German soldiers refused to disarm and stop fighting. The same German soldiers who refused to stop fighting later joined the Freikorps³. The growing instability and feelings of resentment were significant in catalyzing World War II. The growing nationalism that was present in its formative stages during World War I can be seen as one of contributing factors of World War II as it had influenced Germany to occupy Poland, Austria and Czechoslovakia. The expansionist nationalism practiced by Germany allowed Germany to incorporate additional territories, including those marked with

² More specifically, the Balkan Slavic groups intended to unify in addition to the Czechs and Slovaks who wished to merge.

³ The Freikorps was an organization of German mercenaries that were utilized for guerilla-style fighting on the streets. During the Weimar Republic, they served as fluid paramilitaries that fought alongside and against the State (Jurado 2001).

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multiple national identities, which helped to catalyze violence and tension. In addition, the victors of WWII helped to facilitate the process of decolonization through the demarcation of arbitrary boundaries by colonial governments. This process helped to influence the standard of legitimacy of a nation-state to include good government, but not necessarily the self-determinations of the governed (Jurado 2001). However, post WWII was significant in that it began to define sovereignty in terms of the integrity of clearly demarcated borders and the norm of noninterference and nonintervention; thus, marked by the emphasis on the inviolability of states. In addition, World War II was significant in that it places human rights over that of minority rights. This was cemented in the development of the United Nations' Charter and augmented by the classical principle of nonintervention in a state's affairs (Jurado 2001). At a first glance, it may seem as if the implementation of the United Nations' Charter conflicts with also the organization's commitment to the nonintervention in a state's affairs; however, the nonintervention principle highlights the United Nations' understanding of each member-State as an actor vital to strength and legitimacy of the organization and recognition of each member-State's autonomy and right to self-determination.

With globalization, the world has seen the growth of the role of supranational organizations, transitional governments and trans-governmental networks. With the territorial state no longer at the center of analysis, sovereignty and the international law now face new challenges in collaborating with both State and non-State actors. With states joining organizations like the United Nations and the World Trade Organization,

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they are beginning to sacrifice a bit of their sovereignty in hopes of building a stronger, and more just, international order. The contemporary understanding of the inviolability of sovereignty and the nation-state has not always been stable. For instance, there have been weaker⁴, unstable states that have not developed the adequate infrastructure to protect itself from external actors and influences and to exercise greater control and authority over the movement of people, goods, and ideas within and across its own borders. With the emergence of economic globalization and the transformation of trans-border norms, the nation state will be faced with the challenge of altering its traditional notion sovereignty to better organize the State's role within the international legal system (Krasner 2001). Jean Bodin and Thomas Hobbes first articulated the notion of sovereignty in the 16th and 17th centuries. As both Bodin and Hobbes were writing during separate environments marked with sectarian-tension, they both believed that sovereignty existed within a single vertical organization of domestic authority. They believed that with a just and legitimate sovereign at the top of the single hierarchy, the sovereign would be able to maintain order and justice without the worry of revolt (Krasner 2001). Today, the single hierarchy of authority as outlined by Bodin and Hobbes no longer exists. Although states are separate from each other, individual actors have a greater right to self-determination, to choose their own preference of government. In addition to this

⁴ The United States' engineered constitutional arrangements in Japan and Germany are historical examples of the instability of sovereignty; moreover, state-building initiatives in Iraq and peace-making efforts in Afghanistan are also contemporary examples of the instability of sovereignty (Krasner 2001).

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contemporary notion of sovereignty is the principle of nonintervention and the authority over the flow of trans-border movements. Today, with greater technological advancements in communication and technology, we have seen a decline in the traditional notion of sovereignty in which states have lost the ability to regulate the movements and activities within and across its borders. Through the historical evolution of the international system, we can see that there have been consistently challenges to sovereignty. Therefore, current trends that point to the institutionalization of human rights are not new challenges to sovereignty and the integrity of the nation-state.

In addition, the institutionalization separate sovereign States are crucial to the establishment of a coherent international legal system. Through the auspices of an international legal system, the likelihood of the reinforcement of sound legal norms would increase. In his *Sovereignty: An Institutional Perspective*, Stephen Krasner discusses the depth and breadth components of institutionalization, which provides a useful institutional framework to implement the rule of law through the vehicle of the international legal system (Krasner 1988). The depth aspect is important to value the role that individual State actors have on the creation of an international legal system based on collective agreement about each actor's obligations and responsibilities. In addition, the breadth aspect is also crucial in framing how the institutionalization of legal systems would require the alignment of different national legal polities within states; in addition, this also outlines how the norms and values that are shared by existing international regimes are perpetuated as other states look to the practices of others Krasner 1988).

The Evolution of the Rule of Law

The evolution of the breadth and scope of the rule of law is important to understand how to reconcile changing international norms with sound legal principles. In addition, State actors have assumed different understandings of the practice and function of the rule of law. In an increasingly globalized world, there has also been an increase of non-state actors, including those who operate through informal channels such as terrorist organizations and those who operate through more formal channels such as international organizations like the United Nations. With an understanding of how the current system has been developed, we can better understand how to utilize existing structures and norms to facilitate the institutionalization of the rule of law.

Under the Anglo-American tradition, the rule of law can be understood as the basic distinction from the “rule of man,” in which the former is practiced by a ruler who agrees to exercise power in a non-arbitrary manner, as opposed to the latter is practiced by an absolute power. In *The Republic*, Plato describes the best form of government was rule by a philosopher king, but provides that the rule of law was another option due to difficulties in obtaining a qualified individual to govern. Moreover, additional philosophical support for the rule of law is seen in Aristotle’s *Politics* in which the rule of law was preferable to that of any individual (Chesterman 2008).

"If the thirteenth century magnates understood little and cared less for popular liberties or Parliamentary democracy, they had all the same laid hold of a principle which was to be of prime importance for the future development of English society and English

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institutions. Throughout the document it is implied that here is a law which is above the King and which even he must not break. The reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it. The reign of Henry II, according to the most respected authorities, initiates the rule of law. But the work as yet was incomplete: the Crown was still above the law; the legal system which Henry had created would become, as John showed, an instrument of oppression (Churchill 1956-58, 256-57)." The 1215 Magna Carta was the earliest example of the rule of law mentioned in the Anglo-American tradition, in which limits were placed on the power of the king with respect to the liberties of the people (Chesterman 2008). However, the contemporary understanding of the rule of law in which no one is above the law was seen in 1607 when Sir Edward Coke, the Lord Chief Justice of the Common Pleas rejected the King's request that he have the authority to withdraw cases from the judiciary and make decisions on them himself. Sir Edward Coke began to articulate the notion of the rule of law in which the King was not only subject to his people (as observed in the Magna Carta), but also subject to God and the law (Chesterman 2008). This Anglo-American tradition of the rule of law is best understood in terms of Albert Venn Dicey's notion of the supremacy of law: no man is punishable unless he has committed a clear breach of the law that has been established by the Courts of the land; no man is above the law, and thus is subject to the law of the land relative to the jurisdiction of such tribunals; the constitution is built on the rule of law, and has been created as a result of judicial decisions that have determined the

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rights of people in cases brought to the courts (Dicey 1897). Ultimately, A.V. Dicey's supremacy of law provides a strong foundation for an understanding of how the rule of law regulates government power and requires equality before the law in addition to the primacy of fair and equal judicial processes (Dicey 1897).

The historical transformation that has outlined the growth of the rule of man into the rule of law is significant in highlighting the supremacy of law that is fundamental to the healthy functioning of the rule of law. It is interesting to note that now more than ever, the function and the interpretation of the rule of law is under greater scrutiny with a movement towards its institutionalization while preserving the traditional notion of the nation-state. The rule of law exists when there is a supremacy of law that is accepted and abided by every citizen, international organizations, and the State government. Moreover, the supremacy of law provides assurances to every actor operating in the state; under the rule of law, everyone is entitled to the same legal redress and processes and is also held accountable to the same standards that have been codified in their respective customary traditions.

Theorizing the International Rule of Law

Through the study of the international rule of law, different notions of the rule of law have emerged. The conceptualization of the international rule of law can be better advanced through the natural law tradition based on the philosophy of John Locke. The existence of such inalienable rights that are self-evident and universal are central to the promotion of higher law. Therefore, the institutionalization of such higher law is vital to push State and non-State actors to the rule of law. Chesterman describes the divergence of such theories as two different categories of thin and thick (2008). Thin theories are positivist in nature, and place emphasis on the formal aspects of the rule of law, which inevitably include limitations on the exercise of State authority. Moreover, thick theories include a more substantive understanding of the resulting justice that coincides with the rule of law. A greater substantive understanding of the rule of law also includes a breadth of aspirations that are usually related to greater human rights, organized governments, and economic arrangements. However, it is interesting to note that thin and thick theories are not mutually exclusive; thin theories must exist within a political context, and thus cannot avoid including a few normative elements. Moreover, thick theories as understood as just a broad set of ideals prevents the rule of law to be understood as meaningful on its own right.

The concept of an international rule of law is most traditionally understood as the application of the rule of law to frame and analyze power relations between States and other entities within international legal sphere. The support for an international rule of

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law also outlines the submission of national law to international law; for instance, international human rights covenants would take precedence over domestic legislation. However, for States to be willing to submit to international law, and more importantly, to submit their domestic legislation to international human rights law, the international community must foster a culture of mutual respect and cooperation.

To understand the basis of the international rule of law as inherently moral would allow us to understand it as a limitation on power as opposed to a tool of power. The moral element that is linked to the rule of law is also key to understanding how it should be understood as a framework in which governments as well as private actors can pursue their goals. Because the international rule of law has been used as a tool to achieve both economic and political ideals, general international law has lost coherence due to the existence of different interpretations as to the value and function of the law. According to the political realism in international theory, the institutionalization of the rule of law cannot be attained due to the absence of a central lawmaking body capable of regulating such enforcement. Without a central authority, international law would be thus incapable of enforcing or ensuring the maintenance of the rule of law. Therefore, in such an international anarchy, States as well as non-State actors would be unable of pursuing the development of international legal jurisprudence augmented by the rule of law. Moreover, legal realists have also that the rule of law is conceptually impossible, considering that because the law is always a result or outcome of policy, the rule of law would simply be a regulation of policy and not the law.

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Dworkin's political friendship theory is also useful to understand how members of the international community would slowly feel more apt to operate in relation to each other. Dworkin articulates his political friendship theory as the "political association, like family and friendship and other forms of association more local and intimate is itself pregnant of obligation (Dworkin 1986:206)". His theory provides a strong framework for understanding how interactions with institutions foster the legitimacy necessary for the advancement of the rule of law. Through small efforts of greater collaboration, the interaction between states becomes more intimate; thus, states are slowly drawn into a relationship of mutual accountability and transparency. Therefore, although the international rule of law has yet to fully materialize, interaction between states would help to cultivate the diplomatic relationship necessary for the foundation of the creation of an international rule of law.

In addition, Donnelley's personalist theory also provides greater support for Dworkin's political friendship theory. Through the lens of personalist theory, we can see that those actors actively engaged in the creation and maintenance of their institutions are also more likely to develop a genuine respect for the institutions and also those who interact with such institutions. Through interaction between actors with institutions, actors begin to define their and the institutions' value and functions through the successful cooperation. (Donnelly 2003). In addition, personalist theory outlines the right that each person has to participate in society as well as obtain the means necessary to participate effectively. This aspect of the Donnelley's personalist theory is also important

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to fulfill, considering that for an international rule of law exist, there must be a strong rule of law at the national level. When individual actors are empowered through a stable and strong rule of law, they will be in greater support for the development of the international rule of law, as an aggregate of strong and legally sound rule of laws that exist at the national levels. Therefore, Donnelley's personalist theory coupled with the support of Dworkin's political friendship can also provide greater insight as to how the international community can benefit from a theory of rights, in which States and non-States actors could function relative to each other, and through such interaction – each actor is made more whole. Thus, in order to augment the role of international institutions in the creation of a rule of law, it is important to address the role that States play in helping institutions to garner legitimacy; moreover, through the commitment of both institutions and both State and non-State actors, the rule of law can be advanced through the creation of a culture that respects rights, duties, transparency and thus legitimacy.

Today, the international community struggles to reconcile the differences between the formal understanding of what the rule of law implies and the functionalist understanding of the rule of law's implementation and mechanisms. There is an overwhelming support for the rule of law in theory due to different conceptions⁵ and commitment to the notion (Chesterman 2008). In order to make the rule of law a relevant

⁵ Different conceptions of the rule of law occur when States accept different interpretations of the rule of law. For instance, there are those who use it to define the status of a state's legal system (formal approach), to achieve substantive and ideological outcomes (substantive approach), and to fulfill and implement certain legal mechanisms (functional approach).

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and useful concept, it is important that a greater effort be taken to work on the creation of a coherent understanding of the rule of law at the national level. It is also important to re-evaluate the potential of aligning international organizations along with state systems in order to pursue “pluralism through the vehicle of the rule of law (Chesterman 2008).” Through greater collaboration between international organizations and state governments, there would be greater coherency and coordination for the support for the rule of law. Therefore, also including the analysis of the role of international organizations within states would help expand the rule of law’s applicability to understand and analyze power relations between States as well as individual actors within States.

In the implementation of the rule of law, it would prove useful to analyze it in terms of how it should function and thus serve a society. It must progress past purely theory into an infrastructure, or model of the sorts to help guide legal processes and not content (Donnelly 2003). With this approach, the rule of law can work beyond traditional efforts at human rights and economic development, but also serve as a working mechanism for the peaceful resolution of disputes (Bingham 2010). The growing influence and scope of non-State actors like the United Nations and other non-governmental organizations also pose obstacles to the practice of an international rule of law⁶. Therefore, because non-State actors are outside the traditional legal realm regulated

⁶ Programs of different international organizations have also been the subjects of fierce criticism. For example, in 2005, the United Nations Security Council investigated its Oil

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by codified processes, the international community will have to work on how to reconcile how to compromise an international rule of law in a community of States amidst the growing role and influence of non-State actors.

for Food Program, which was valued at \$64 billion. The panel had concluded that the Secretary General Kofi Annan's son, Kojo Annan, was guilty of taking up to \$20,000 in tax breaks through the exploitation of his father's diplomatic status (Lynch 2005).

The Practice of an International Rule of Law

Like any other bureaucratic international organization, the United Nations has met some difficulty in terms of transparency and accountability. However, since the birth of the United Nations in 1945, the international community has joined a more united effort to develop the rule of law as a useful tool for the creation of a rights-respecting State that is capable of economic growth and sound conflict resolution. The United Nations' World Summit in 2005 called for the "universal adherence to and implementation of the rule of law at both the national and international levels, including a strengthened international legal system that operates on an international rule of law (Chesterman 2008). The rule of law is a complex concept that is often subject to the unique culture and traditions of a specific country. However, the rule of law is developed as a tool used by hopeful states to build an international system based on the law and its processes. The securing of the rule of law as a norm is key to establishing peace and security as well as for augmenting the power of organizations like the United Nations in increasing transparency and accountability of governments abroad. However, the overwhelming support for the rule of law as a norm may be due to disparate understandings of what the notion entails in terms of its application to States and other actors within the international legal system and the primacy of international law over national law (Bingham 2010).

The rule of law as interpreted by the functional approach has been viewed as a political tool central to state-building and law-enhancing initiatives. To strengthen the

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capacity of the rule of law, it would be critical to highlight its strength as a means rather than an end. More specifically, it should serve as a function to make states accountable, instead of being used to discuss the legal status of a country. Therefore, as a function, the rule of law could promote internationalism and the transparent movement of power through channels of law within the international legal system.

It is important to avoid the careless generalized application of the rule of law to an undifferentiated mass that is the international legal system. Therefore, it is important to understand the structural differences that exist between international law and domestic law. Under international law lies the horizontal organization of both sovereign and quasi-sovereign entities as opposed to the vertical hierarchy of entities under one sovereign that exist under domestic law. For instance, under domestic law within the United States, there is a federal system, which outlines a vertical chain of command with the smallest city municipal at the bottom and the federal government at the top. Under international law, States operate within channels that are marked by interaction with other non-State actors on what can be conceptualized as a horizontal platform. Therefore, to further understand the uniqueness of the rule of law at both the international and domestic level, an in-depth analysis of the different historical and political conditions responsible for the rule of law's development (Chesterman 2008).

In addition, the rule of law has been used a tool for economic promotion and development. The rule of law used for development is aligned with the traditional body of international theory that outlines a periphery of developing states that operate in

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relation to the core of developed states, in which the periphery is exploited for the advancement of the core. This rigid frame of analysis has met little success in terms of importing the laws and judicial norms of the U.S. legal system to countries in Africa, Asia, and Latin America. The rule of law used as an economic development tool is further seen by the work of the World Bank's position on the rule of law as the quality of life that is achieved by the cooperation of the state and the citizens' confidence in the institutions in place to decrease the likelihood of crime and violence. In addition to the World Bank, other international financial institutions like the International Monetary Fund and the World Trade Organization have also augmented the rule of law as a relevant notion through the emergence of "good governance," to describe a set of state policies that are centered around transparency, open participation, and accountability.

The Promotion and Enforcement of an International Rule of Law

“It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,” Universal Declaration of Human Rights, 1948. For the rule of law to exist, it must be capable of creating a legal order without legislation and a centralized authority that emphasizes the observance of such law. In addition, states must be willing to be subjects bound by international law as well as authors in the defining and building of international law. Therefore, although not codified by enacted law, international law would be made up of the agreements and practice of states in which States and non-state actors are willing to abide by as ‘legal persons’ with rights and obligations under such international law.

The United Nations has spearheaded many efforts to rally support for the utilization the rule of law as a meaningful vehicle for the creation of a rights-respecting state, the promotion of economic growth, and the development of a transparent legal system. Therefore, through the collaboration of member-States, the United Nations has provided technical and financial assistance to countries to help reform their legal institutions through enhanced knowledge and access to educational resources in hopes of securing a healthy functioning rule of law. The organization’s commitment to the enforcement and maintenance of the rule of law is indicative of the international belief in the rule of law as the key to the protection of human rights and dignity. And although the United Nations is bound to its own Charter, it is still representative of a progressive step

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forwards in creation of an international legal system made up of actors willing to enhance the implementation and practice of a rule of law.

Under the leadership of the Secretary-General of the United Nations, the Rule of Law Coordination and Resource Group has worked arduously to make the rule of law more coherent and applicable within the international community. The group has worked on multiple branches of the rule of law, including justice, security, prison and penal reform, and legal reform (United Nations Rule of Law). Under its 1992 Human Development Report, it helped to create a streamlined understanding of the rule of law, measured by five possible indicators: fair and public hearings in criminal cases; a competent, independent, and impartial judiciary; availability of legal counsel; provision for review of convictions in criminal cases; whether government officials or other actors are prosecuted when they violate the rights and freedoms of other persons (United Nations Rule of Law). In addition, constitution building is also an important tool utilized by the group to enhance the rule of law at the domestic level. The United Nations' believes that a strong constitution codifying the power of the government and its responsibility to keep itself accountable to its people is fundamental in creating a legal culture that operates on the rule of law. Most recently, constitution-building processes in Afghanistan, Cambodia, Iraq, Nepal and Timor-Leste have allowed for constitution-making processes to help facilitate peaceful transition of power in addition to post-conflict peace building and reconstruction (United Nations Rule of Law). In addition,

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efforts to create new constitutions or to reform existing constitutions have also been designed in hopes of creating a rights-respecting culture in States.

The promotion of an international rule of law has provided the foundation for the creation of implementation mechanisms to help foster an international rule of law. In *The Globalization of Human Rights: Consciousness, Law and Reality*, Douglas Cassel describes the four types of global enforcement mechanisms. Overtly-political mechanisms include the UN Human Rights Commission's work which has shed light on human rights violations in hopes of stimulating some improvement; however, powerful violators like China continue to be immune from such criticisms (Cassel 2004). Quasi-judicial mechanisms include the treaty-mandated monitoring committees and their respective complaint procedures to aid in the establishment of systems of accountability; however, such mechanisms have proved ineffective, considering the worst human rights violators are unwilling to accept such complaint procedures, and those who do agree to participate often are not in compliance of such demands. Diplomatic mechanisms involve high-level visits by the High Commissioner for Human Rights and even workshops by low-level staff members; however, such methods have not been very successful beyond providing a useful infrastructure (Cassel 2004). Moreover, Security Council enforcement mechanisms have come in the form of ad hoc international criminal tribunals as well as its military interventions; however, its work has operated on the "general rule [of] impunity for war criminals (Cassel 2004:14)" as well as an inability to ever develop

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international legal jurisprudence, which was a deliberate intent by member-states to retain their sovereignty.

Despite such inefficient mechanisms – the European model of Human Rights enforcement mechanisms has provided us with insight as to the infrastructure of a sustainable legal system capable of enforcing human rights obligations (Alter 2003); the European Court of Human Rights has proved itself to be an effective system of enforcement due to the existence of a European culture of human rights, as well as a mutual resolve to submit their sovereignty and independence to a greater regional authority. On the other hand, the Inter-American Court has not met the same amount of success considering most of its resolutions are often quickly dismissed by member-states, and so their attempts to develop jurisprudence has yet to come to fruition (Boggio 2006).

Ultimately, current enforcement mechanisms to international human rights obligations continue to be undermined by states operating in their own self-interest. With the hope that undermining such efforts at an international rule of law, States are less willing to submit their national sovereignty and domestic autonomy to a higher international order. Therefore, such a rigid inability or unwillingness to submit themselves to a greater international human rights regime with stronger enforcement mechanisms has posed an obstacle for the possibility of the growth and development of an international legal body's legal jurisprudence to further nation-states accountability to such obligations.

An International Court?

The United Nations' Security Council created ad hoc criminal tribunals for Yugoslavia and Rwanda due to the absence of legitimate domestic processes for such trials; however, since the creation of such ad hoc tribunals has led to fierce criticism of the high amount of resources and costs involved in the prosecution of very few individuals (Bassiouni 1996). In addition, the UNSC also created hybrid tribunals for Sierra Leone and Cambodia, which was to have combined international jurisprudence to strengthen national capacity to try criminal cases; however, such hybrid trials have failed to produce lasting results as well (Higgins 2003). In addition, the International Court of Justice as the principal judicial body of the United Nations has received much criticism. Its lack of support is due to its inability to successfully deliver judgments in cases submitted by two sovereign states, and the lack of binding force of its advisory opinions that are issued at the request of U.N. organs and agencies (Bassiouni 1996).

The International Criminal Court was designed to have complementary rather than primary jurisdiction, as an incentive to encourage countries to strengthen their own legal jurisprudence as well as their capacity of their courts to uphold the rule of law (Chesterman 2008). Since its creation, the ICC has primarily gained authority for three sets of crimes: crimes against humanity, war crimes and genocide. However, there has been much criticism as to its success in efficiently ensuring international justice. According to the Kampala Conference in May of 2010, the ICC has been slow to bring cases to trial. The court has issued 13 warrants, including one for the arrest of Sudan's

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president, Omar al-Bashir for alleged war crimes and crimes against community. However, out of the total warrants and arrests issued, only four successful arrests have been made and only two cases are in the trial phase. With the controversial nature of the arrest of Omar al-Bashir, there are a few African members who continue to pledge their support for the Sudanese president through opposition to the court's request. Therefore, the inability of the ICC to bring in the accused can also be linked to the unwillingness of members to support the court (Olupot & Osike 2010). Currently, the United Kingdom is the only state that has formally adopted all of its obligations under the 1998 Rome statute; however, a majority of the 111 total members and a few observers have used the ICC's authority to augment their capacity to combat human rights abuses and the role of the rule of law.⁷

With greater international integration based on the collaboration between local institutions, the strengthening of independent judiciaries coupled with a commitment to an international rule of law – the international community can more effectively utilize legal mechanisms in order to influence state behavior in terms of their international human rights obligations (Donoho 2006). When there is a strong foundation for the rule of law, governments are not above the law. Therefore, in addition to the government, public actors are also held accountable to third-party interpretations of the rules, and

⁷ After the 2007 Kenya elections, the International Criminal Court was charged with the responsibility to investigate those responsible for the thousands that were killed and displaced. Through the use of the ICC as a transnational justice mechanism, Kenya's African neighbors may be able to overcome the traditional propensity for a culture of impunity through greater consequences for those who pose obstacles to accountability and legal reform (Wanderi).

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these interpretations are not simple reflections of governments' wishes and opinions (Alter 2003). Therefore, an international dispute resolution system as a legal body charged with the responsibility of hearing cases of human rights violations would prove useful in terms of bringing international obligations into force. Central to the possibility of creating such a system would be the foundation of the international rule of law -- would allow actors (state, sub-state, and non-state) to bring disputes of human rights violations to the international legal body (Broomhall 2000). By empowering citizens with the opportunity of being a litigant, this would exponentially increase the number of cases the international legal body would rule over; a large body of cases would then augment the ability of the resolution system's legal jurisprudence (Alter 2003). In terms of increasing the ECJ's jurisprudence -- empowering private litigants was extremely useful in order to bring up cases of non-compliance on the part of their governments (Alter 2003). This would prove useful considering that private litigants are not subject or sensitive in regards to the political concerns that often hinder governments from being objective; moreover, private litigants are more useful in terms of challenging state authority.

Without the existence of a central source of international legal jurisprudence -- there have been conflicting interpretations of certain international human rights obligations. It is important to create an effective legal system that would serve as the basis of an objective interpretation of the law in order to prevent the misinterpretation of the law used to justify non-compliance (Wotipka & Tsutsui 2008). Slowly, such

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objective interpretations of the law would foster the international legal body's jurisprudence, and such a strengthened jurisprudence would aid in strengthening the support of the international human rights regime by citizens and governments abroad (Roth 2001).

In an effort to strengthen such a legal body's authority, it would be important that national courts also be strengthened and that the international community seek to create independent judiciaries as the collective norm (Alter 2003). With independent national courts, there would be a greater accountability mechanism in hopes of keeping national governments in line with international human rights obligations. Moreover, national courts would operate as a type of judicial review, checking not only the policies of their national-government but as well as the international legal body (Roth 2001).

Increases in transnational litigation has been seen as a step forward on the path towards the creation of an international legal body as the ultimate source and authority of international human rights law. Increasingly, individuals who cannot access basic human rights have sought legal redress by filing transnational human rights claims; these individuals often live in countries where the rule of law and adequate legal institutions are absent (Boggio 2006). Transnational litigation ultimately displaces the responsibility onto foreign judges on making normative judgments of other legal systems by using different sources of international law in an attempt to find an effective legal resolution to the human rights obligation. This is an instrumental step towards acknowledging the

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importance of providing access to such legal remedies to such individuals, potentially through an international legal body.

Again, Kant's categorical imperative again lays out the importance of creating an international legal body that would prevent nation-states from operating and on their own interpretations of international human rights law. Ultimately, the international legal body would operate on what would be the "law of nations, the system of rules, deducible by natural reason, and established by universal faith, in that intercourse which must frequently occur between two or more independent states, and the individuals belonging to each (Boggio 2006)..." This system would harness and augment the independence of national judiciaries as systems of accountability against their governments in hopes of strengthening the supremacy of international human rights law.

United States' Compliance to the International Rule of Law

In 2004, the International Court of Justice determined that the United States was in violation with the Vienna Convention's provision on Consular Relations' requirement which requires that those arrested have the right to contact their consulate for instance. However, the Avena case involved the United States' failure to inform 52 nationals for capital crimes. The United States Supreme Court treatment of the ICJ's Avena case was indicative of traditional US policy in which it only provides the consideration of an interpretation of an international agreement by an international court. Although the United States' has moved towards a greater effort of supporting the international rule of law, especially with respect to human rights and dignity abroad – its failure to comply with the Convention Against Torture (CAT) and the Geneva Convention have signified an unwillingness to completely submit itself to an international authority.

In "Toward an International Rule of Law: Distinguishing International Law-Breakers from Would-Be Law-Makers," Robert E. Goodin discusses the issue that international superpowers play in the institutionalization of the rule of law. To understand the role the United States' plays in the international legal system and the rule of law, he replaces the traditional notion of the "rule of law, not men" with the "rule of law, not states." With reason, the United States' has very little incentive to submit itself to an international legal system. Therefore, this allows for what Goodin describes as the "rule of the stronger," in which the United States' benefits from international lawlessness: the condition which allows states to act without any concern for any

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normative constraints on international behavior (Goodin 2005). However, Goodin provides an analysis into how superpowers like the United States' may find it in their interest to internalize such legal norms. He first outlines how the formative stages of the growth of international law is international lawlessness and how eventually soft laws can harden to help guide the behavior of both State and non-State actors. Ultimately, international soft law is created through a process of small gains made by States when "cooperation and mutual restraint are practiced." Such small gains are manifestations of the institutionalization of norms, by which States slowly begin to codify through treaty or norms. However, Goodin's analysis of when States violate a principle of customary international law helps us to understand such a violation as an attempt re-engineer or amend the existing body of law. Therefore, it is quite possible that despite what has been viewed as American hegemony and unilateralism, it is still likely that the United States fundamentally accepts the body of international norms, in which it is trying to amend (Goodin 2005). In addition, the United States' could be challenged by what Goodin describes as a coalition of states capable of countering its hegemonic power, and through such a collective effort, the successful constraint of U.S. hegemony could be sustained.

Conclusion

The success of the European Union is testament to the possibility of the creation of an international rule of law. The European Covenant on Human Rights supported by the European Court on Human Rights has paved the way for the slow integration of the covenant into domestic law. This European model for the institutionalization of the rule of law further demonstrates the importance of strengthening the capacity of regional courts to build jurisprudence. Therefore, by increasing the attractiveness of the decision-making strength and force of regional courts, disputants would be more likely to bring their disputes to court, further strengthening the creation of the rule of law.

The development of the rule of man into the rule of law is significant in using the supremacy of law as a means to help institutionalize the rule of law within the international legal system. The rule of law as a meaningful concept at the international level is dependent on the existence of a coherent understanding of the rule of law at the national level, and the capacity to make it an applicable framework to understand power relations between States as well as actors within them. For the standardization of the norms and practices that are to emerge from such an international rule of law, it is crucial to reconcile existing normative interpretations of its function, such as a vehicle for the attainment of democracy, human rights and economic progress. However, central to the advancement of the rule of law as a meaningful tool is the movement to restrain and regulate sovereign power that liberal democracies are using to claim increasing executive authority. By framing the rule of law as a meaningful tool would allow for a model of the rule of law, which could effectively sustain international justice and accountability within the international community.

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