

Universality and Functionality

What the hell is International Law?

It's a good question. Law, understood. International, check. Unfortunately, the two words combine to form a rather nebulous concept. As individuals, we do not often come into contact with International Law, and there's no 16-season drama about it on ABC, so there's no real reason for the average person to know about it beyond its general existence. Yet, International law shapes our reality and is playing an increasingly important role in forming our future. Ignoring it is not an option. Luckily, I have developed a brief scenario to illustrate the complex and nuanced nature of this field. Observe:

I am in the United States. I punch an individual in the face. I get charged with assault. Behold, the power of domestic law. I commit a crime, I suffer the consequences, and the criminal legal system extracts its will according to the agreed upon social norms codified into its legal code.

I am in Canada. I am a citizen of the United States. I punch a Canadian individual in the face (Sorry, Canada). Do I still deserve to be punished? The hope is that you responded with an "of course!" or otherwise I have more work to do in this essay than I thought. This reaction is prompted by the belief that it actually doesn't matter where you are when you punch someone in the face, some actions are universally frowned upon.

It is a relatively simple concept. National legal codes do differ from each other, and they reflect the different values of their respective societies. Europeans have less of a problem with smoking in public areas than Americans do, and Americans have less of a problem with high-powered assault weapons than most of the rest of the world. The domestic legal codes

reflect these values, and as long as you are existing within that society, you are expected to follow them.

However, years ago, on the heels of World War II, we, as a global community, decided that there were some actions that were so universally egregious that their legality should not depend on something as arbitrary as a border. This includes not assault, but actions like war crimes, genocide, and other violations of human rights. The basic idea was that if everyone has equal human rights, then everyone has an equal responsibility to uphold those rights, thus embodying a principle of law that existed before the nations that wrote it into their domestic systems: the law should apply to everyone equally. Rich, poor, Northern, or Southern, the law is the law.

Statesmen back then must've been pretty darn arrogant because they were sure that they had solved the world with that one. Unfortunately, we are still human and this utopia of world peace lasted Not Long. The institution of international law and rise of global governance did decrease violence globally. Traditional warfare became uncommon, less powerful nations were given a voice in international disputes, and for better or worse, what was once a nation's private business became *everybody's* business. Yet, violations of International Law when they did occur were blatant and perpetuated exclusively by nations that had been traditionally militarily powerful. This pattern has unfortunately been exacerbated in recent years, from the Russian invasion of Ukraine to China's threat of invading Taiwan. There have even been assertions from major world leaders that international law should be disregarded entirely, which begs the question: does international law even work?

Of course, there are a great many ways in which a thing can and cannot work. When responding to such a claim, it becomes necessary to ask, "it doesn't work at *what*?"

And therein lies the problem. A good deal of the squabbling occurring about and around the functionality of international law can be brought to a screeching halt as soon as this question gets asked. It is astounding that in a field populated by so many smart people, rarely do people check to ensure that they are arguing at each other instead of past each other. What passes for an academic debate instead looks a little bit like this:

Person 1: "International Law does not work because it is not effective at achieving justice for victims"

Person 2: "International Law does work because it provides an avenue (the first of its kind) by which victims *could* achieve justice."

Squabbling ensues. What is missing here is the recognition that *both statements can be true at the same time*. Failing to listen to a sentence beyond its first clause may make it seem like there are two diametrically opposed sides to the question, but the reality, as it often is, is much more complicated. The truth value of these statements depend entirely upon how one defines working, and unfortunately, the Working Group on the Exact Definition of 'Working' is not in session.

Some academics and lawyers are outcome-motivated. For them, if the offending party is not sufficiently punished and justice achieved for all victims, then there is no functionality. That's it, everyone can pack up and go home, the Law did not work and anarchy has won this round. Conversely, there are those who place heavy value on the symbolism of law. If we, as a society, have put on paper that we aren't the biggest fans of war crimes, that we have succeeded as a civilization. Never mind the fact that justice is almost never achieved for victims of war crimes, we have a paper expressing our severe disapproval! The Law is alive and kicking. And

then there are all those poor, confused people in between who refuse to identify with one of the extremes and instead live their life in the sad hell of nuance. Poor sods.

There are also, of course, the various ways in which international law may not produce material outcomes, but still contribute heavily to the global order as we know it. International law is the language used in treaties. It is featured in trade and peace negotiations. It is how international actors understand each other, and how domestic individuals understand international actors. Even in instances in which the law is actively being violated, international actors may use legal language to justify their actions. For instance, according to a Russian submission to the International Court of Justice, Russia didn't invade Ukraine in 2022. They simply are attempting to liberate it from an ongoing genocide of ethnic Russians occurring within its borders. Could these too be considered functions of international law?

Thus, I'd hate to over-simplify what we take sick delight in treating as a complicated question, but your stance on the functionality of International Law really boils down to this: is your glass half empty or half full? Because no matter how you look at it, the truth is that full justice is rarely achieved for victims of the atrocities that often fall under the prohibitions of International Law. The only question left is if you're willing to accept the half cup or if you're willing to undertake the Sisyphean task of trying to fill it.