

WEAK!!

Anyone who has ever sat through a lecture on international relations or policy or national security or anything in that realm knows that there comes a point in which a particular type of student thinks they are dropping a ground-breaking, earth-shattering bomb of a comeback that will end the international legal system as we know it by asking, “yes, but where is the *enforcement* mechanism?”

What they really mean is, why should I follow the law if I don’t get punished for not doing so? Terrifying attitude by the way, and I always try not to sit next to these people in the future. Yet, they are certainly not alone in this belief, and it is in fact one of the greatest problems facing international law today.

Let me ask you a question: when you walk into a big box store in the United States, there are sometimes these flashy epilepsy-inducing displays of the newest TV models all playing the nature channel. They’re sitting right there in front of you. Why do you not pick one of them up, and walk away with them? Why don’t we steal the tantalizingly available 2 million pixel TVs?

Now, some of you may answer that question with a hearty, “because it’s wrong to steal!” Or “it’s against my religion!” Or “I don’t believe in stealing, I would feel bad!” Yeah, yeah, being a good person is nice and all, but according to most modern legal research, you’re also a liar.

The Structural Model of the law is a widely accepted theory that suggests that the law was developed as a mechanism to fit the material needs of a certain population. For instance, in a capitalistic society such as that of the good ol’ U, S, of A, we *cannot* have people stealing private property like pretty, blinking televisions, otherwise we, as a society, would crumble. Structuralist hard-liners will then tell you that laws against stealing were a natural outgrowth of this need and

their attached sanctions act as a deterrence mechanism. In other words, we criminalize stealing because it's inconvenient; then, we attach a punishment to stealing a TV: let's just say, 6 months to a year. The idea is, during the cost-benefit analysis that you always conduct every single time you consider stealing, you will come to the inevitable conclusion that this TV is not worth sacrificing a year of your life to the criminal legal system. *Ding ding ding!!* The law has worked its magic, and society is saved.

However, this cost-benefit analysis is only effective because you know that stealing a TV in public in broad daylight in this age of digital surveillance means that 99 times out of 100, you will get caught. By who? Oh, by one of the various circles and levels of law enforcement in this country. But, where is the international police force? Who is going to get you when you do the international equivalent of stealing a TV, or worse?

Yeah, we don't have that. So we only have half of the structuralist equation. The law is there. It is still borne out of a need and function for international order. But because we don't have a global police force, it is very difficult to ask countries or individuals to not steal TVs because honestly, the benefits they receive from doing so outweigh the costs when the costs can't be enforced.

Such an oversight has led many to claim that the international legal system is 'too weak' to be effective. The idea is that without an enforcement mechanism, the international legal system cannot *make* anyone follow it because we cannot punish anyone who does not do so. However, this obsession with enforcement fundamentally misunderstands the purpose of the law.

As I considered in my first essay, defining the utility of the law solely by the material outcomes it produces does not fully capture its value. In a very similar way, claiming that

international law is weak because it has no enforcement is a profound mistake because it fails to take into account the various other forms that ‘enforcement’ can take.

First off, it must be understood that just because there is no traditional enforcement does not mean that international law cannot be enforced. International law is enforced all the time! Consider the case of Kuwait. Iraq invaded Kuwait, the U.N. determined this to be a violation of Kuwait’s sovereignty, the U.S. was sanctioned to intervene, and Iraq was expelled from Kuwait in one big, happy enforcement of international law. Of course, when the U.S. then later invaded Iraq, the enforcement picture looked much different. That is to say, there wasn’t any. So, international law is quite often enforced, although it is enforced most often against smaller, less powerful nations.

That’s also not to say that powerful nations are not restricted by international law. How? Remember how you weren’t allowed to steal the pretty blinking TV’s cause a capitalistic society would crumble? Turns out capitalism can also go a long way in preventing, or at least punishing, war crimes.

Thanks to a handy system called globalization, or the process by which we, as a world, became increasingly interconnected, we are all extremely dependent on each other. Including economically. When Russia invaded Ukraine in 2022, international law was the language with which the rest of the world went, “hey, that’s not right!” Because this invasion was collectively understood as illegitimate, international systems and individual nations were able to utilize their connections with Russia in order to punish this action. Such maneuvers included economic sanctions, the closing of trade routes, and the freezing of Russian assets abroad. Although the economic harms of these maneuvers are not sufficient to end the current conflict, they certainly

are doing their damage to the Russian economy and would cause another nation to think twice before engaging in a similar act.

So even in the absence of a global force, international law still has routes to enforcement. Whoo! Yay! Does it freaking matter? Earlier, I made the claim that an obsession with enforcement misunderstands the purpose of the law. One of the mistakes this obsession makes is conflating traditional and non-traditional enforcement as I explained above. Another mistake is overestimating the ways in which enforcement even matters.

International law is at its core a liberal institution. Calm down Americans, I don't necessarily mean your type of Liberalism, but rather the academic school of thought liberalism. In other words, the worldview that institutions can and do play a key role in shaping the global order. Another key feature of liberalism is that people follow the law because they believe in its power. They believe that the norms codified in the legal code are norms that should be followed, and that's the end of that.

Contrary to the Structural Model of Law (also referred to in this essay is why you shouldn't steal a TV), compliance with international law cannot be born out of a fear of the associated consequences because these *consequences usually are not real*. No, there's no global police force coming for you. Yes, it's highly unlikely that your case will be heard before the International Criminal Court. No, if you're a powerful country, you need not fear the enforcement of international law. Full enforcement has always been a largely absent entity in international law, so why the heck would its presence or lack thereof be the end all be all of a functioning system?

Every success that international law has ever had can be attributed not to the threat of enforcement, but rather the fundamental belief by global actors that a norm was violated. And in

a system designed to institutionalize our values as a global community, isn't that what we would prefer? If I have a choice between a system in which I follow the rules because there is a gun to my head or a system in which I follow the rules because it is the right and agreed upon thing to do, why on Earth would I choose to be held at gunpoint?

Bam! Just like that, we've solved one of the largest modern problems in our global order. Not really, but wouldn't it be nice if that's how it worked? Of course, a lack of enforcement still remains a significant barrier to the functioning of the international legal system. My point in this essay, however, is it remains so because that's what we expect out of the system. Analyses and political statements that fetishize enforcement are unknowingly contributing to a false understanding of international law. It was never meant to be imbued with traditional forms of power, like military might, guns, and bombs. International law was never supposed to be complied with under the threat of violence. It was supposed to be better than that.

It is beyond time that we treat international law as the system it was supposed to be: maybe not perfect, maybe not traditionally powerful, but certainly not just another system in which that ability to produce violence defines its use.