ESSAY

# The Empire of International Legalism

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In *Mr. Mothercountry: The Man Who Made the Rule of Law*, Keally McBride tells the story of James Stephen, undersecretary in the British Colonial Office, whose job in the early 1800s was to build a "rule of law" for the colonies. According to McBride, he took this as a legal, political, and theological calling—"a mission to quietly make the administration of the British empire as just as possible" by enacting "a legal code that would allow grace and prosperity everywhere by securing limitation on the powerful . . . and rights and protections for the weak."[1] As it turned out, the realities of global power, local politics, and competing interests intervened, and Stephen's efforts appear today at once naïve and overtly ideological. He is remembered less as "Rousseau's lawgiver for Britain's colonies" than as the legal face of British imperial governance.[2]

The "international rule of law" presents an interesting analog to Mr. Stephen's idea of global rules. Widely seen as a sensible system for organizing relations among governments, the international rule of law is often promoted as a progressive improvement over power-based politics. It is said to provide stable, generalized, and consensual rules to manage dilemmas of interstate interdependence and, specifically, to limit both (1) the costs that self-regarding actions by one state can impose on others and (2) the abuses that are protected by state sovereignty. The ideology of the rule of law is as taken for granted today by liberal internationalists as it was by James Stephen when he said that "the defense of our laws as often and as far as they can be defended is the best of all possible paths to follow."[3]

In this essay I consider the politics that both sit behind the international rule of law and are animated by it. I liken it to an empire in the sense that it is a worldwide framework that distinguishes legitimate from illegitimate behaviors by its subjects. Global governance through law aspires to a system of authority relations

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within which states are supposed to operate. The supremacy of law implies a global hierarchy in which governments defer to their legal obligations. This is fundamentally political, in the sense that it empowers the legal system to define acceptable policy choices. While much of the scholarship at the intersection of international law and politics treats this in legal terms by asking when, whether, and why governments choose to comply or not, I aim to highlight the relations of authority that are at the heart of the international rule of law in theory and in practice.

By using the provocative term "empire" to describe international law in global governance, I want to turn attention to the political content and implications of international legalization. I contrast it with the more conventional approach to international law that is provided by liberal-international theory. Finally, I show how thinking in terms of empire helps open up lines of inquiry in international politics and law that are worth more attention.

I distinguish among law, the rule of law, and legalism. The differences among them are important. Any specific *law* or regulation—such as on catch limits for fish in the North Atlantic or rules on the use of force in the UN Charter—is subject to the choices of governments. Governments may negotiate and then accept or decline to accept the rules, and so states author individual rules and their participation in them. The *rule of law* is broader: it is a widely shared ideology that forms the context in which individual treaties and laws are possible.[4] *Legalism* is a practice, specifically the practice of using law and legal arguments to explain, justify, or contest acts and policies.[5] The practices of legalism follow naturally from the idea of the rule of law in the sense that once the premise that lawfulness confers legitimacy is widely shared, then legal resources become useful instruments for political advantage and contestation. The political system that is thereby created requires governments to fit their policies within parameters defined by international law. To be sure, governments have a great deal of agency within that system—to evade, interpret, contest, and ignore specific laws—but they are not able to remove themselves from the international rule of law as a system of governance that defines acceptable behavior. This is what I refer to as the empire of international legalism.

## International Law as Empire

The international rule of law is a political system in which governments are committed to following the rules set out by international law. These rules are found

mostly in treaties and also in some customary practices and underlying norms. Together, they distinguish between lawful and unlawful conduct for governments. Legal processes and reasoning define the terms by which legality and legitimacy can be established. The idea of the supremacy of law gives these rules priority over governments and causes states to think carefully before signing on to new legal obligations.

This is the system that the UN Secretary-General seems to have had in mind when he defined the international rule of law in 2004:

> It refers to a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.[6]

This is a comprehensive and quite familiar set of concepts. It draws from domestic models of the rule of law and projects them to the interstate level. It connects procedural protections common to legal systems with a substantive theory of human rights through law and produces a comprehensive ordering system for international affairs under law. I want to examine the political content of this model of international order by focusing on the hierarchy that is implied by the idea of the "supremacy of law" over governments.

Duncan Bell defines "empire" as a situation in which "a polity . . . exerts decisive or overwhelming power in a system of unequal political relations."[7] This might arise when one state (say, Britain or Belgium) dominates over a distant polity (say, India or Congo) and imposes its interests and choices on life in the colony.[8] It might also exist in non–state-centric forms, as when dominant private firms or dominant ideas shape political possibilities around the world. For instance, one might talk about the "linguistic imperialism" of American English[9] or the empire of state sovereignty as a global institution[10] or the empire of capitalism[11] or the "imperial architecture" of global military alliances, legal institutions, and international development organisms.[12] Picking up on Bell's definition, I use the term in this essay in a broad sense to refer to a global system of unequal power that defines what is permitted by the political entities under its command. This encompasses the state-centric model of territorial imperialism, but it is wider and more

generic.[13] It does not presume that global power is located in sovereign states, and is open to looking more broadly at any asymmetric political arrangements in which a dominant form governs over subjects, especially when this is cast on a global scale. In this sense, the international legal system is an empire. It subordinates governments to an overarching global political structure in the form of rules and obligations of law. Governments are expected to act in accordance with their international legal commitments. This applies to all states and comes as a constitutive element of modern sovereign statehood.[14]

I am not suggesting that international law is a continuation of the old territorial empires or that the contemporary system is something like an American empire conducted through law instead of guns. Those arguments are widely made, and I am not engaging with them here. I am also not arguing that governments comply with all of their international legal obligations or that international law is the most powerful force in the world. Instead, I am highlighting that the international legal system is also a political system based on the dominance of law over politics for governments around the world. This relationship is appropriately described as an empire.

International law rests on the principle of *pacta sunt servanda*, translating to "agreements must be honored" and expressing the idea that governments must comply with their legal obligations. This widely held principle is the sine qua non of a legal system. It stands as the first principle upon which all the rest is built, from treaties to courts to international organizations to the very idea of legality and illegality itself. The principle is agnostic about the content of these obligations and does not demand any particular policy by governments, except that they faithfully adhere to whatever substantive legal commitments they do make.[15]

*Pacta sunt servanda* is a precondition to the possibility of international law because it creates legal supremacy as a legal and political fact. It illustrates what Jacques Derrida called the "paradox of founding" that is common in constitutions. The obligation to obey treaties cannot originate in a treaty since without the concept already in place the signatories would not be possessed by a legal obligation to adhere to it. It must already exist in order for the system to launch. As Kamrul Hossain writes, "a treaty providing that *pacta sunt servanda* is mere reaffirmation. A treaty denying it is an absurdity."[16] Its existence is presumed in order to make the international legal system possible, and being subject to international law is



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understood as constitutive of being a state. The concept is the legal manifestation of a political relationship between law and politics.

As a consequence of *pacta sunt servanda*, governments are obligated to do what international law tells them. This has a legal and a political dimension: it is true in the legal sense that they are expected to fulfill in good faith all the legal commitments to which they agree; and it is true in a practical, political sense in that domestic and international forces generally reward acting lawfully and punish acting unlawfully. The latter of these has a clear material reality as governments find it easier, cheaper, and less controversial to act in accordance with international law than to act against it. The parameters of acceptable behavior are set by law. As a result, the power of international law is not a matter of believing in law or not. The legal system is reinforced by material rewards and punishments that fall on all actors regardless of their subjective orientation toward the law or the idea of the rule of law.

International law is inescapable. Because law has become part of the language of foreign policy and international affairs, governments are not able to opt out of the system at will. They cannot substitute another language in its place. A government might be able to exist outside of an individual treaty or rule by, for instance, not signing it or by persistently objecting, but there is no way to exist outside the legal framework as a whole. The legality or illegality of policies is a factor that states must consider as they weigh their options, regardless of whether they are normatively committed to believe in law or agree with the rule or not.[17] Even the retreat into secrecy, which is a popular tactic when doing something illegal, is a response to the international legal system that distinguishes illegal acts as problematic.[18]

The supremacy of law implies the subordination of the government. As a legal-political system, this is an empire of international legalism. The politics of legal supremacy in global governance is surprisingly uncontroversial. One might have expected that giving up absolute sovereignty to a legal system would generate greater backlash, but the idea that international law is supreme over states is almost universally accepted and there really is no notable movement to change it. Even the American nationalists who lobby against obligations that bind the United States make use of international legal obligations when they find them useful for advancing their interests against others.[19] No government takes the position that it is not obligated to act within the terms set by international law. Even governments that are often cast as rogues or outlaws, such as North Korea on nuclear weapons or the United States on torture, take pains to show

that their policies fit into existing legal frames. This leads to tremendous controversy over the application of the rules to specific cases, but there is approximately zero controversy over the idea that there *are* rules and that governments should follow them.

With this in mind, it is immediately clear that the international system is not accurately described as "anarchic." Anarchy is understood in international relations (IR) as a system that contains "no common power" that supervenes over the units.[20] This does not fit our world of legal supremacy. Kenneth Waltz famously describes a world in which none is entitled to command and none is required to obey.[21] In fact, international law commands and states are obligated to obey; Waltz and others who take anarchy as the foundational fact of the international system are wrong.[22]

Not only is the global political system not anarchic but the system is more comprehensively governed than even many scholars of global governance normally admit. Much of the scholarship on global governance in IR takes the view that there are islands of governance set in a sea of ungoverned relations; Barbara Koremenos talks about the "continent of international law" in the same way.[23] Formal international organizations and informal regimes make up these islands with respect to certain issue areas (tariffs and trade barriers are regulated by the World Trade Organization, for instance); and when you are on an island, a government has certain obligations to others. Between these islands of governance lies an ocean of Waltzian ungoverned anarchy. Cyber hacking may currently exist in this ungoverned space. There is no existing regime of obligations regulating what governments may or may not do with this tool. Rules are sometimes inferred from bodies of law that are arguably analogous, such as those that govern other kinds of cross-border attacks or those on corporate secrecy, but it is clear from contemporary diplomacy over cyber issues that these have not solidified into a set of specific legal obligations.

The islands perspective is too limited. It imagines some areas where no legal obligations exist (either issue areas or geographic areas) and contrasts them with areas that have been legalized. The no-law spaces are envisioned as potentially amenable to legalization, but governments simply have not yet chosen to create law for them.[24] This view focuses entirely on governance in the form of regulation and misses the background governance that is provided by the idea of the rule of law. Even where formal international organizations or informal regimes have not been established, the legal system continues to organize relations

among governments. This governance is present across issues whether it is codified into treaties or not, and it provides the condition of possibility for the formal international organizations and informal regimes that are created to address these specific issues. To return to the example of cyber hacking, for example, this is revealed by the way in which various players attempt to use existing legal resources to construct a legal-political framework relevant for the new technology.

## The Enchanted View of International Law

The empire of international legalism is in some ways consistent with a common liberal understanding of international law and politics even though the language of "empire" is anathema to that tradition. They both share the view that international law is politically powerful and demonstrably consequential in state decision-making. They differ, however, in their faith in the inherent goodness of that influence.

The conventional perspective sees legal authority as an essential element of a well-ordered international society. It sees progress when international law is created and complied with, and reversal when it is violated or destroyed. The liberal normative presumption in favor of law means that promoting international law becomes both a political virtue and a professional obligation. It suggests that international law is naturally good because it restrains governments from behaviors that are antisocial either toward other states or toward their own people. The United Nations in this view is not just a meeting place for governments but also the living embodiment of international law's promise "for strengthening international peace and security and promoting friendly relations and co-operation among States."[25] For the United Nations, promoting international law is both a means and an end.

The rosy picture in which law is a virtue and an obligation is very popular and has an active life in both academic and policy contexts. It appears frequently as a policy prescription, where it counsels that following international law is an important feature of a responsible foreign policy;[26] and it is equally common among academics, where it appears in the claim that a rules-based international order indeed exists today and marks a progressive improvement over whatever existed before.[27] This presents an enchanted view of international law as a governance system that is either apolitical and technocratic or naturally beneficial.[28] Criticism of the international rule of law is presented as politically regressive,

putting the critic on the side of genocidists and dictators against rule-abiding people. Mary Ellen O'Connell writes that "given the nature of the problems we face in the world, undermining any tool for the maintenance of international peace and stability could not be further from any nation's interest. . . . Any effort to weaken international law only serves to undermine the prospects for achieving an orderly world and progress toward fulfillment of humanity's shared goals, including prosperity."[29] Empowering international law is apparently essential for advancing human welfare.

The power of the enchanted view to shape foreign policy is evident in contemporary crises. Consider, for instance, current debates over U.S. military activities in Syria. Here the United States is involved in multidirectional fighting with or against the Syrian government, anti-government rebels, the Turkish military, Kurdish militias, and others in various combinations. Writing in the *New York Times*, U.S. Senator Cory Booker and law scholar Oona Hathaway warned that all of this is acceptable only to the extent that it relates to American self-defense.[30] Anything else would violate international law, which, given the ideology of the rule of law, carries serious implications:

> If the president were to order American troops to hold Syrian territory in those circumstances, he would be ordering them to act in clear violation of the United Nations Charter. In so clearly breaking international law, we would not just put our troops in harm's way; we would also be licensing malevolent leaders the world over to follow in our footsteps. . . . This course of action would significantly undermine America's hard-earned global leadership as a champion of law-bound international action, perhaps irreparably.[31]

In response, the U.S. military insists that all of its operations stay within the limits of self-defense and are therefore legal.[32]

The debate echoes many other instances in which the lawfulness of foreign policy is given center stage in discussions of appropriateness. It is familiar to find foreign policy debates animated by disputed understandings of what is lawful according to international law, where the permissibility or wisdom of foreign policy depends on finding out what is allowed by law. International law is a "vocabulary of virtue," available to states as well as to activists and others.[33] My interest in these debates is not in determining which side is "right" or what is lawful or not. I am instead interested in recognizing what both sides share in common:

that is, the premise that what is politically acceptable is determined by what is legally permitted. This is the empire of international legalism.

## Three Open Lines of Research

Once international law is understood as a political system rather than as an apolitical framework, a number of lines of inquiry open up for scholars of international law and politics. I introduce three of them here.

First, it encourages scholars to look more empirically at how international legalization distributes gains and losses. Governance necessarily involves favoring some interests over others, and the liberal presumption that the international rule of law is good for all is unrealistic. No political authority or form of governance exists without making trade-offs among competing goals, and therefore among competing interests. The liberal view often recognizes only the winners, and assumes that the losers either deserve to lose or will see their losses balanced by wins sometime in the hypothetical future. If one assumes that international agreements are by nature consensual and mutually beneficial, then it makes sense to see them as having no losers; they would not exist if the parties did not make a conscious choice to accept them, presumably after consideration of their pros and cons.

The language of empire highlights the political stakes of legal authority. David Kennedy shows one path in this direction. Of international humanitarianism, he says that "once we see international humanitarians as participants in global governance—as rulers—it seems impossible not to be attentive to the possible costs, as well as the benefits, of our work."[34] David Lake makes a similar point when he says that "as sets of rules, international orders affect individuals and groups in different ways, and these actors pursue their interests to the extent of their abilities, including legitimating the rule of some foreign country or resisting that rule. International order is not simply Pareto-improving cooperation, as often theorized in international relations, but involves hard bargaining and winners and losers."[35]

Global governance in trade, law, courts, security, and all else involves advancing the interests of some actors at the expense of others, and scholarship on global governance should be attentive to the costs as well as the benefits.[36] Doing this denaturalizes international legalization and looks at it as a form of governance in its time and place, and with its normative investments made more clear. This works against its enchantment because it looks at how international law

creates both winners and losers and distributes both costs and benefits. It suggests a more empirical project, one that looks for evidence of how international law affects and is affected by practical politics.

Second, putting politics back into international law reminds us to look for ways that legalization not only constrains states but also empowers them. The conventional discourse around international law emphasizes how it limits the autonomy of governments and restrains them from their self-serving impulses, on the assumption that law's bite is felt when it contradicts what states want to do.[37] This is of course sometimes true; but it is also true that law enhances the power of actors whose desires are in line with what the law requires.[38] And when a strong state has influence over what the law says, it can be expected to use that influence to ensure that the two do indeed converge. Law and power become entangled by this process in ways that are easy to see in practice, but hard for liberal theorists to make sense of.

The constraining power of international law is evident when a government wants to do something that is forbidden. When the United States wants to torture people at Guantánamo or invade Iraq; when Russia wants to control Ukraine's government; when Japan wants to allow whale hunting in the Southern Ocean; when the city of Cambridge, Massachusetts, decides it will not give city contracts to firms that do business in Burma—each comes up against the fact that their preferred policy is constrained by international law. A lot can be learned by watching how these situations play out. The dynamics of power, compliance, and enforcement are interesting, and we should recognize that the full range of politics in such cases cannot be fitted into a neat dichotomy between compliance and violation.

The permissive effect is revealed when a government wants to do something that *is* permitted by international law. This side gets less attention than the first, but I suggest it is at least as politically important because it speaks to the fact that law and power often work together, in the same direction. When Canada wishes that the United States not invade Iraq; when Germany wants to keep Ukraine the way it is; when Australia wants Japan to stop whaling; when business firms want to be free to work around the world—each is empowered in some way by the fact that it can invoke international law in support of its policy preference. By acknowledging the empowering side of international law, we avoid the mistake of treating law as an alternative to politics.

With empire rather than anarchy as the key concept for understanding the international law system, it becomes easier to remember to look for the power

and the politics inside international legalization. Legalization does not resolve political disagreements; it does, however, put the political issues inside a legal framework, and this changes the terms upon which outcomes can be contested. José Alvarez illustrates how legalism shifts the terms of contestation in his account of the spread of foreign investment law. In his words, international investment treaties are a

> progressive example of the United States' turn to legalism over the sheer deployment of power. In the days of formal empire, the United States, like other colonial powers, sometimes threatened "gunboat diplomacy" to defend the rights of its private foreign investors overseas. Today, U.S. foreign investors are more likely to be protected by international investment treaties and not by lawless threats, nor even by the United States threatening to apply unilateral economic sanctions against an expropriating state.[39]

A more generic way to study international law is to recognize that it provides tools to governments in the form of legal resources and arguments. Governments will use these tools in varied ways depending on how they serve their interests. It gives them something that is useful and may increase their power.

Finally, my approach here suggests that the political effects of international law can be studied by looking at the substantive content of specific rules. Pay attention to who is empowered by legalism to do what to whom. Set aside the presumption that law is naturally progressive and instead consider empirically what these legal justifications produce for real people in the world. There are good reasons to expect that legalism will generally favor the powerful governments with the greatest capacity to write, interpret, apply, and evade the rules, but there are also reasons to expect other governments to take up these resources and put them to use for their own purposes as well. All are equally bound by the rules, but rule-following is not neutral, and a close look at the practical impact of a given rule is needed before one can make a normative case for or against it. Think of international law as you might think about domestic tax law: to be sure, the rules apply equally to everyone, but how they differentiate among levels and types of income, kinds of earners, exemptions, and more shows how they are designed to advance some interests at the expense of others.

## Conclusion

The international rule of law is a political system of governance for the globe. It defines what counts as legitimate behavior for governments and what does not,

and in so doing it enables the use of legal reasoning to advance political goals. States are expected to comply with international law. They can often tailor their specific obligations to suit their interests, but they cannot escape the encompassing hierarchy that legal supremacy represents. This is better understood as an empire of global legalism than as an anarchy of sovereign states.

Seeing the world this way opens up further insights into the intertwining of law and politics in international relations today. It identifies the political scaffolding within which foreign policy and world politics are framed, and this in turn directs attention toward the substantive content of international rules and away from the notion of "anarchy" as the heart of international relations. It makes it possible to wonder which interests are advanced as the injunction to follow international law is institutionalized as a political imperative. Finally, it sees international law as both empowering and constraining states, and this insight upsets the common association of international law with a progressive, emancipatory politics.

All of this analysis serves to reveal that the liberal view that commonly understands the logic of this empire to be an apolitical good is notably narrow. Its assumptions about law, power, and politics are so constricting that it results in an enchanted view of international law that does not speak to much of the real world. In its place, I suggest a political perspective on international law and the empire of legalism. Though surrendering the assumption that law serves naturally progressive and beneficial ends may be uncomfortable, it allows a more realistic account of how international law relates to international politics and to power.

NOTES

[1] Keally McBride, *Mr. Mothercountry: The Man Who Made the Rule of Law* (New York: Oxford University Press, 2016), pp. 42, 43.
[2] Ibid., p. 159.
[3] James Stephen as quoted in McBride, *Mr. Mothercountry*, p. 42.
[4] Shirley V. Scott, "International Law as Ideology: Theorizing the Relationship between International Law and International Politics," *European Journal of International Law* 5, no. 3 (1994), pp. 313–25.
[5] Judith Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, Mass.: Harvard University Press, 1986).
[6] United Nations, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," Report of the Secretary-General, August 23, 2004, UN Doc. S/2004/616, para. 6, as cited in Tom Bingham, *The Rule of Law* (London: Penguin, 2011), pp. 110–11.
[7] Duncan Bell, "Ideologies of Empire," in Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, N.J.: Princeton University Press, 2016), p. 91. See also José E. Alvarez for "empire of law" in relation to public international law, in "Contemporary International Law: An 'Empire of Law' or the 'Law of Empire,'" *American University Law Review* 24, no. 5 (2009), pp. 811–42.
[8] "Classical territorial forms … well-demarcated territorial entities on the model of nation-states with clear boundaries." Jennifer Pitts, "Political Theory of Empire and Imperialism," *Annual Review of Political Science* 13 (2010), pp. 211–35. David Lake defines "empire, especially of the overseas form, in which one ethnically distinct polity governs another." David A. Lake, "International Legitimacy Lost? Rule and Resistance When America is First," *Perspectives on Politics* 16, no. 1 (2018), p. 9.

[9] For instance, the "linguistic imperialism" of American English in Robert Phillipson, "The Linguistic Imperialism of Neoliberal Empire," *Critical Inquiry in Language Studies* 5, no. 1 (2008), pp. 1–43.
[10] Michael Hardt and Antonio Negri, *Empire* (Cambridge, Mass.: Harvard University Press, 2000).
[11] Ellen Meiksins Wood, *Empire of Capital* (London: Verso, 2005); also Inderjeet Parmar's discussion of Karl Kautsky on "ultra-imperialism" in "The U.S.-Led Liberal Order: Imperialism by Another Name?" *International Affairs* 94, no. 1 (2018), pp. 151–72.
[12] Michael Ignatieff, "The American Empire; The Burden," *New York Times Magazine*, January 5, 2003, www.nytimes.com/2003/01/05/magazine/the-american-empire-the-burden.html.
[13] Pitts, "Political Theory of Empire and Imperialism," p. 225. Consider Immanuel Wallerstein's definition of "hegemony": "hegemony in the world-system means by definition that there is one power in a geo-political position to impose a stable concatenation of the social distribution of power." Immanuel Wallerstein, *After Liberalism* (New York: The New Press, 1995), p. 25.
[14] Ian Hurd, *How to Do Things with International Law* (Princeton, N.J.: Princeton University Press, 2017).
[15] The Vienna Convention on the Law of Treaties sets it out as "every treaty in force is binding upon the parties to it and must be performed by them in good faith" (Art. 26).
[16] Kamrul Hossain, "The Concept of Jus Cogens and the Obligation under the U.N. Charter," *Santa Clara Journal of International Law* 3, no. 1 (2005), p. 73.
[17] Cf. Mary Ellen O'Connell, who says that "international law's claim to be law is based ultimately on belief." Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (New York: Oxford University Press, 2008), p. 9.
[18] Alvarez, "Contemporary International Law." Lisa Hajjar gives an excellent account of the interlacing of law and practice, legality and illegality, justification and secrecy, in "The Afterlives of Torture," *Middle East Research and Information Project*, MER283 – America First 2.0, Vol. 47 (2017).
[19] John Bolton, for instance; also Jesse Helms, "American Sovereignty and the UN," *National Interest* 62 (2000–2001), pp. 31–34.
[20] Sarah Elizabeth Kreps and Anthony Clark Arend, "Why States Follow the Rules: Toward a Positional Theory of Adherence to International Legal Regimes," *Duke Journal of Comparative and International Law* 16 (2006), pp. 331–414.
[21] Kenneth Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979), p. 88.
[22] Lake, "International Legitimacy Lost?" p. 7.
[23] Barbara Koremenos, *The Continent of International Law: Explaining Agreement Design* (Cambridge: Cambridge University Press, 2016).
[24] I explore these issues in "The Rule of No Law: Nukes, Drones, and the Horror Vacui," ch. 5 of Hurd, *How to Do Things with International Law*, pp. 82–102.
[25] See the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, "Introduction," www.un.org/law/programmeofassistance/.
[26] "99 times out of 100, following international law is the prudent approach for avoiding provocation and [the] triggering [of] retaliation, further violence and international instability." Karen Alter, "The Only Way to Counter Russia," *US News and World Report*, March 12, 2014, www.usnews.com/opinion/articles/2014/03/11/international-law-is-the-best-tool-to-counter-russias-ukraine-invasion.
[27] "The 'wise men' of the Franklin D. Roosevelt and Harry S. Truman administrations, who laid the foundations of the contemporary world order, envisioned a world in which all peoples might pursue shared peace, prosperity, and dignity. They hoped to forge a global community under the rule of law, governed by international institutions, in which sovereign nations could cooperate to deter and defeat aggression, trade openly and fairly, and enjoy domestic liberty." Stewart Patrick, "An Open World Is in the Balance," *World Politics Review*, January 10, 2017. See also the discussion in Constance Duncombe and Tim Dunne, "After Liberal World Order," *International Affairs* 94, no. 1 (2018), pp. 25–42.
[28] Ian Hurd, "Enchanted and Disenchanted International Law," *Global Policy* 7, no. 1 (2016), pp. 96–101.
[29] O'Connell, *The Power and Purpose of International Law*, p. 14.
[30] Cory A. Booker and Oona A. Hathaway, "A Syria Plan that Breaks the Law," *New York Times*, January 23, 2018.
[31] Ibid.
[32] The U.S. military spokesperson said, "This action was taken in self-defense." Liz Sly, "U.S. Troops May Be at Risk of Mission Creep after a Deadly Gun Battle in the Syrian Desert," *Washington Post*, February 8, 2018.
[33] Ingo Venzke, "Is Interpretation in International Law a Game?" in Andrea Bianchi, Daniel Peat, and Matthew Windsor, eds., *Interpretation in International Law* (New York: Oxford University Press, 2015).
[34] David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton, N.J.: Princeton University Press, 2004), p. xviii.
[35] Lake, "International Legitimacy Lost?"

[36] Ian Hurd, "Authority and International Courts: A Comment on 'Content Independent' Social Science," in Karen Alter, Laurence Helfer, and Mikael Madsen, eds., *International Court Authority* (New York: Oxford University Press, 2018).
[37] Lake, for instance, sees multilateralism and international institutions as a constraint on U.S. autonomy and distinguishes liberals from conservatives in U.S. domestic politics as those who see this as a good thing for U.S. power and those who see it as a bad thing. Lake, "International Legitimacy Lost?" p. 14.
[38] Ian Hurd, "The Permissive Power of the Ban on War," *European Journal of International Security* 2, no. 1 (2017), pp. 1–18.
[39] Alvarez, "Contemporary International Law."

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Abstract: The international rule of law is a political system of governance. It rests on the expectation that governments will abide by their legal obligations and so defines what counts as appropriate behavior for states. The relationship between law and politics in global governance is better understood as an empire of global legalism than as an anarchic world of sovereign states. Legal justification is the lingua franca of legitimation contests among governments, as states strive to show that their preferred policies are lawful and that those they oppose are unlawful. Seeing the world this way helps to show the political content of international law: neither a neutral framework that sustains all viewpoints nor an inherently progressive contribution to global order, international law is a political system of governance that advances some interests at the expense of others, and our attention should be directed toward assessing which interests are served by the turn to global legalism and at whose expense.

Keywords: international law, rule of law, international rule of law, empire, legalism