

Video Transcript

The History and Nature of International Law – Gleider Hernández

If you're watching this, this is probably the first film that you've chosen to watch because it introduces you to Chapter 1, which is on the history and nature of international law as a system.

I think that understanding international law and its history are essential to understanding its modern functioning. After all, international law is a product of the practices of the past. They've come to erect structures and rules and principles and practices that states follow today. And they also help to understand the European origins of international law that hopefully can be escaped to create a truly global international law. It is my conviction at least that you can, but first we need to understand its history and where it all came from.

Now, of course political communities have interacted with each other for as long as we've had political communities. And all over the world there is evidence of international relations: in India, in China, across the Americas, in Africa. But it is the European interactions that came to dominate the foundations of today's modern international law for better or for worse. This is partly because of European power and its ability through colonization to conquer and subjugate nearly the entire world at one point or another. And it's partly because, not only once that power was confirmed and consolidated was European hegemony structured, but even after European hegemony began to subside, those structures formed the basis through which newly emerging states across Asia, Latin America, Africa, North America, joined the international community of states.

So a little bit of history. In the fifteenth and sixteenth century, Europe was caught in wars of religion, between Catholics and Protestants, specifically in western Europe. Protestants sought an end to the control by the holy Roman Empire, and especially the pope, of their determination of where they could go as self-organized political communities and Catholics through the holy Roman Empire and the pope sought to impose a sort of international public order, or a European public order, based on principles of Christianity. After the 30 years war, this is an oversimplification, but after the 30 years war there is a peace called Peace of Westphalia, a series of treaties signed in Munster Osnabruck and elsewhere in that region, through which the notion that a state was independent, sovereign, and could not be interfered with, was confirmed. In essence, it was a bit of a stalemate between both Protestants and Catholics but it led to the idea that now has become part of the myth of international law, the state, the sovereign, independent state. And that for better or for worse has been enduring hallmark of international law to the present day.

The sovereign states survived the wars, the Napoleonic Wars, fifty years of bloodshed in Europe that culminated in the Congress of Vienna. The state system also survived World War I and the creation of the league of nations, which was created as a league of independent sovereign states pulling together to cooperate on

various issues. And World War II, which led to the destruction of the league and its replacement by the United Nations also preserved and entrenched the state system based on the Westphalian notions of sovereign independent states.

So Westphalia is not considered a great rupture; it is continuity with ideas of the past, of emerging political communities and their sovereignty. But it's become rarefied, it's become built up in international legal scholarship as the decisive point where those features became part of the system that we know today. And very much as you'll see within your study of international law, you'll see that the state remains at the linchpin of international law. A state sovereignty, the state's independence, a state's equality with other states from the large to small, formally speaking, all states are equal under international law and that's something that hasn't changed over time.

And finally, the consent basis for international law that international law can only be created through the consent of states that submit to it. So treaties have to be consented to, new customary rules have to be consented to. Now of course all of this is subject to evolution and change over time, but very much these are the fixtures of international law.

I'd like to conclude with one other aspect of the chapter that I think merits attention and that is that throughout the study of its history and of its nature, one sees a great degree of contestation, for example between natural law theories that presuppose a moral or ethical basis that is higher than the law created by human beings, versus a positivist basis that suggests that law is an autonomous system of which there is no higher made source than the law that is made by human kind. We also survey various powerful critiques of international law and the injustices it engenders from a feminist perspective, for example, or a post-colonial slash third world approach to international law which seeks to situate its euro-centricity and seeks to destabilize it and challenge it and break it down. And finally, a Marxist approach to international law that suggests that rather than a formal and historical development, international law is also an economic development, one where law was used to regulate economic relations between states in a capitalist liberal form and one that perhaps Marxism forms a focal point for resistance to it.

So, we seek to survey some of these theories to explain the limitations of international law as a tool for emancipation in progress and hopefully this helps to sketch out a very comprehensive framework for the student as you navigate throughout this textbook. Thank you.