

Chapter 19: International law

- States have strong incentives to free themselves from the insecurities of international anarchy.
- States face common coordination and collaboration problems, yet cooperation remains difficult under anarchy.
- To facilitate cooperation, states create international institutions, of which three levels exist in modern international society: constitutional institutions, fundamental institutions, and issue-specific institutions or 'regimes'.
- Of existing fundamental institutions, international law is one of the most important for understanding cooperation and order among states.
- Modern international law is a historical artefact, a product of the revolutions in thought and practice that transformed the governance of European states after the French Revolution (1789).
- Before the French Revolution, in the 'Age of Absolutism', law was understood principally as the command of a legitimate superior, and international law was seen as the command of God, derived from natural law. In the modern period, law has come to be seen as something contracted among legal subjects or their representatives, and international law has been viewed as the expression of the mutual will of nations.
- Because of its historical roots, the modern institution of international law has a number of distinctive characteristics, informed largely by the values of political liberalism.
- The most distinctive characteristics of the modern institution of international law are its multilateral form of legislation, its consent-based form of legal obligation, its language and practice of justification, and its discourse of institutional autonomy.
- So long as international law was designed to facilitate international order, it was circumscribed in key ways: states were its principal subjects and agents; it was concerned with the regulation of inter-state relations; and its scope was confined to questions of order.
- The quest for global governance is pushing international law into new areas, raising questions about whether international law is transforming into a form of supranational law.
- Individuals, and to some extent collectivities, are gradually acquiring rights and responsibilities under international law, establishing their status as both subjects and agents under international law.
- Non-governmental actors are becoming increasingly important in the development and codification of international legal norms.
- International law is increasingly affecting domestic legal regimes and practices, and the rules of the international legal system are no longer confined to issues of order. As international humanitarian law evolves, issues of global justice are permeating the international legal order.
- Placing limits on the legitimate use of force is one of the key challenges of the international community, and the laws of war have evolved to meet this challenge.
- The laws of war have traditionally been divided into those governing when the use of force is legitimate, *jus ad bellum*, and how war may be conducted, *jus in bello*.

- Laws governing when war is legally permitted have changed dramatically over the history of the international system, the most notable difference being between the nineteenth-century view that to wage war was a sovereign right and the post-1945 view that war was justified only in self-defence or as part of a UN-mandated international peace enforcement action.
- Laws governing how war may be conducted divide, broadly, into three categories: those governing weaponry, combatants, and non-combatants.
- Since 2001 both *jus ad bellum* and *jus in bello* have come under challenge, as successive US administrations have pushed the limits of international law in their conduct of the war on terror, transnational insurgents have openly flaunted established legal principles, and Russia has undermined the territorial integrity of neighbouring states.
- Realists argue that international law is only important when it serves the interests of powerful states.
- Neoliberals explain how self-interested states come to construct dense networks of international legal regimes.
- Constructivists treat international law as part of the normative structures that condition state and non-state agency in international relations. They emphasize the way in which law, like other social norms, constitutes actors' identities, interests, and strategies.
- New liberals emphasize the domestic origins of state preferences and, in turn, international law. In international law, they stress the need to disaggregate the state to understand transnational legal integration and interaction, and they prioritize international humanitarian law.
- Critical legal studies concentrates on the way in which the inherent liberalism of international law seriously curtails its radical potential.
- Practice theorists challenge claims that legal obligation derives from coercion, consent, or legitimacy, claiming instead that it is a product of participating in the practice of international law.