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Mortimer N.S. Sellers

tional law, states presumably would follow the practice for their own convenience or due to foreign pressures, but not out of a belief that the practice is a true international legal obligation. A more specific example of the usefulness of a meta-rule in customary law formation is again the principle of reciprocity in the absence of a binding law or agreement. In the classic prisoner's dilemma game that characterizes many situations of international interaction (e.g. policies towards common resource usage or intellectual property protection), the restriction of reciprocity, coupled with repeated play, disciplines players' strategies to exclude the most Pareto-inferior outcomes (Francesco Parisi, "Customary Law", Palgrave Dictionary of Economic Terms, 1998).

Thus, ius cogens as described here serves two main purposes. It introduces a moral criterion to international law, satisfying part of the desire of natural legal theory. In addition, it acts as a set of meta-rules that excludes many undesirable agreements between states and facilitates more efficient customary law formation. However, the formation of such international social norms is has not been explained properly. Indeed, economics as a science of human behavior has not explained the formation of social and moral norms at the level of individuals, let alone societies, nations, or the world. In the Vienna Convention, Article 64 clearly indicates that such peremptory international norms can develop. Two hundred years ago slavery was not opposed by a peremptory international norms, but now it is one of the clearest precepts of ius cogens. So how did that and other norms develop, and is their development a process exogenous to law? In other words, does law at the national and international level somehow contribute over time to the formation of future peremptory intemafional norms? Answering this question in full may be unattainable, but I believe the endeavor would be a most needful and interesting research program.

Joyce Sadka
Economics Department
Instituto Tecnologico Autonomo de Mexico

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No inquiry into international law, and its place in the international order, can get very far (or make much sense) without a theory of what law is, and what makes the law worthwhile. Mine is this: that the central element of law in every legal system what makes law "law" as distinct from other systems of rules or coercion is law's claim to codify justice. All laws and legal systems claim to realize justice. Rules that do not claim justice cannot claim to be laws (Sellers 1992A). This is not to say that all laws are just, but rather that all legal systems claim to be just, or to realize justice better than other available systems for mediating conflicts and regulating human society.

Applied to international relations this means that international norms always claim to be just, when they seek recognition as "law" to govern the actions of states (or other international persons or behavior). For example, a hegemonic power might seek to impose its own worldview as "law" on other, less-powerful states, but in doing so would also claim to be enforcing "justice", which is to say, enforcing norms that ought to be obeyed, without coercion. Such norms may not be just. But they must claim to be. The frank imposition of unjust norms on subservient populations would not be law, without the claim of justice to support it.

The Rule of Law

The rule of law is the system, much praised since antiquity, in which the "*imperia legum potentiora est quam hominum*" "the rule of law is greater than the rule of men." The value of this method of government as advocated by Aristotle, Livy and their successors in Italy, England, France and the United States of America depends on the assumption that law serves justice, which is to say the common good of all those subject to its regulation (Sellers 2000). If the law serves justice, then the rule of law realizes justice, while rule by the will of individual men or women would serve private interests, against the common good of the community as a whole.

The value and desirability of the rule of law

depends entirely upon its efficacy in securing justice. While all law claims to be just, not all laws actually always are. One could easily imagine a legal regime in which laws claiming to be just in fact systematically advanced the unjust ends of a ruling elite or hegemon. This makes the actual success of any legal system's service to justice the only effective measure of its value and binding force on any supposed subjects of its legal control. Unjust legal systems do not deserve deference, although prudence may dictate circumspection in defying their power, so long as they enforce their will (Sellers 1992B).

The rule of law secures predictability, even in unjust regimes, by providing known regulations in advance. When laws rule, and not men, people can plan their actions, based on the law's known provisions, whether these are just or not. Since laws always claim to be just, the identification and application of law may tend to soften the rule of even very unjust regimes. By seeking to present their edicts as "law", and therefore deserving of respect, even despots and oligarchs must claim concern for the general welfare and common good of the people. This may encourage or at least allow some judges and others to apply the law more justly than insincere and self-seeking legislators ever in fact intended.

The Natural Law

Let us call the law that actually would be just in a given situation the "natural law." The natural law is the law that all legal systems claim to seek and impose, though few will ever really do so. Some may claim quite simply with Thomas Hobbes that natural law requires no more than to know your superior's will, and to follow it. This claim, like all other assertions that any system of norms be recognized as "law", amounts to an assertion of justice. Thomas Hobbes defined "justice" as whatever your sovereign desires (short of self-immolation) (Sellers, 1998). Few other theorists would be so bold, but anyone who speaks of "law" makes an implicit assumption that the system in question claims to realize the natural justice that all law necessarily claims to serve.

The actual validity (Sellers 1992A) and legitimate authority (Sellers 1992B) of any system of law depend on that system's usefulness in discovering and enforcing the natural law of nay given situation. Supposed standards of international law (for example) deserve deference and obedience only to the extent that they either actually implement the natural law or (and this is the important point) represent a system of legislation more likely to realize the natural law than would unregulated conflicts, in which every individual simply decided for his or herself what the natural law requires to be done.

International law differs from most other law in that its content is relatively unsettled. Most legal systems have widely accepted mechanisms for determining what law requires, when different views conflict. International law has no obvious legislature, judiciary or executive power. This means in many cases that disputes over issues in international law provoke direct appeals to natural law, because the mediating institutions that would settle disputes about the content of natural law are weak, missing or controversial. If international law is "the law of nature applied to nations" (as all law is, or claims to be) then the direct study of nature (i.e. human nature and needs) will be the best method for finding what international law requires, when other methods fail.

The Positive Law

Legal systems exist to preclude the necessity of direct appeals to natural law in resolving disputes. Given human self-interest, self-righteousness, and the natural capacity for self-deception, perceptions of the natural law will often (perhaps usually) vary, whenever conflicts arise. Legal systems and the rule of law offer objective methods for determining what the natural law requires, so that one claimant can defer to the other, without trying the relative accuracy of their perceptions with violence or battle (which the weaker or unluckier party will lose, whatever the actual merits of the claim). Legal systems produce "positive law" to clarify the content of natural law when different perceptions of justice collide.

Not all positive law will actually embody the natural law of the case, although positive law will always claim to do so. In fact, positive law may be mistaken, unjust and unfair. If so the legal system has failed, on its own terms, because all legal systems claim to find justice. The natural measure of any legal system's value, validity and worthiness to be obeyed is its efficacy in doing what it claims to do realizing the justice of the case. If a legal system finds and enforces the just result better than would have happened in the absence of that legal regime, then its rule deserves

deference, until a better system can be found to take its place.

The binding force and public interest of the "positive law" of international relations depends entirely upon its ability to implement a just world order to resolve international conflicts and controversies. Different proposed sources of law should be evaluated according to their usefulness in finding and maintaining a just would order, or as just a world as will be possible, given the circumstances. This requires taking into account the world order that already prevails, to the extent that one does. If, for example, widely recognized positive law already exists in the form of "international custom" or treaties, then this "law," and the system that supports it as "law" must endorse it as "just". Whether such international "law" deserves deference will depend on whether this claim to establish justice is actually true (or not).

Conclusion

International law, like all law, claims to codify justice. Codifying justice is desirable because it precludes or settles conflicts, and prevents the imposition of unjust desires by one state or person on another. The rule of law keeps those with power honest, by guiding their activities to serve the common good, not their own private interests or desires. This only works so long as good law rules. Not all laws serve justice as well as they claim to. The greater this gap between "natural" and "positive" law, the less the validity or legitimacy of the legal system in question, and the less it deserves to be obeyed.

International "law" is unusually vague in prescribing its positive laws. Debates about the content of international law often reduce to conflicts about natural law, or different possible conflicting sources of positive law, which may yield different results. Real benefits will follow when states establish a just system of positive law to resolve their international conflicts. No such system fully governs every conflict (yet). Until it does states and scholars should seek to encourage the development of just institutions of international adjudication (Sellers 1996), without relinquishing their direct commitment to natural law and justice. Those charged with interpreting international law should remember that all law claims to be "just" and frame their decisions accordingly, to secure the eventual rule of law in international relations.

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Mortimer Sellers
University of Baltimore

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