The Structural Evolution of Sovereignty and Enforcement: A Historical and Comparative Analysis of International and Domestic Legal Systems

Prof. Dr. Abdulaziz Ramadhan Al-Khtabi[1] and Prof. Dr. Ahmed Tarek Yassin[2]

[1]Professor of International Law, University of Mosul, Iraq
Dean, College of Law, University of Mosul
ORCID: 0000-0001-8938-6955
Email: Abdulaziz.alkhtabi@uomosul.edu.iq
[2]Professor of International Law, University of Mosul, Iraq
ORCID: 0000-0003-0477-0961
Email: dr.atareq60@uomosul.edu.iq

Abstract
The structural environment of international law is dynamic and evolving, creating considerable conceptual ambiguity compared with domestic legal systems. Each system derives its independent legal identity from its historical evolution, temporal depth, and the social and political environment in which it emerged. This research assumes that judging international law as weak or denying its binding nature because of political failures associated with the law governing the use of armed force (Jus ad Bellum) constitutes a methodological and analytical deficiency, as it reduces the international legal order to a narrow perspective shaped by geopolitical tensions. In contrast, the study highlights more coherent and firmly established legal frameworks within the international system, such as the law of treaties, the international law of the sea, diplomatic and consular law, and international human rights law. These areas demonstrate a high degree of binding force and sustained effectiveness, supported by legal and practical experience and the stability of relations among states, independent of the logic of armed force. The research concludes that the effectiveness of international law must be reassessed by examining this interconnected structure and deepening understanding of the voluntary and interest-based compliance mechanisms that govern the behavior of international actors. This demonstrates that international law possesses solid enforcement tools and strong legal authority, even though its mechanisms of implementation differ from the instruments of centralized authority found in domestic legal systems.

First: The Structural Nature of Domestic and International Law

The existence of the state predates both international law and even domestic law by a considerable margin. The division of society into a ruling class and a governed class emerged long before the development of international law. Historical sources indicate that the model of the Sumerian city-states was the earliest known historical example, dating back to approximately 3500 BC. Within this system, a legal division emerged between a ruling class and a governed class. Authority was held by the king, priests, senior military commanders, and officials, while the governed class consisted of the general population.

Sumer was also the place where "centralization" first appeared in human history. Legislative authority became centralized through royal decrees inscribed on clay tablets, while the judicial function was monopolized by the priests and, at times, by the king himself. Executive authority was vested in the army, which carried out the orders of the Lugal ([1]).

1. Analysis of the Centralization of Authority in Domestic Law

The state bases its legal system on a vertical hierarchy, in which individuals do not possess the authority to determine the law; rather, they are merely its addressees. This centralization is reflected in three dimensions, foremost among them the monopoly over legislation within the domestic legal order, whereby legal rules are issued from the top down.

In the earliest stages of state formation, the source of legislation was monopolized by the king or the priest, who was not regarded as a legislator in the true sense but rather as an intermediary conveying divine commands to the public. The same authority also monopolized the powers of interpretation and application. This model appeared

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[1] Westenholz, A. (2002). The Sumerian city-state. A Comparative Study of Six City-State Cultures. Copenhagen: CA Reitzels, 23-42.

in the states of Mesopotamia and the civilizations of ancient Egypt, where, according to the religious conception of authority, the king was viewed as either a god or the son of a god.

As public dissatisfaction with this absolute authority increased, the centralization of legislation evolved into the form of legal codes, as seen in the Greek city-state and the Roman state. The authority to enact laws was transferred to institutional bodies, represented by popular assemblies in the Greek experience and by senatorial councils in the Roman experience ([2]).

With the emergence of the nation-state in Europe during the Middle Ages ([3]), and the establishment of royal authority as the sole source of legal rules under the theories of direct or indirect divine delegation, the doctrine of absolute sovereignty emerged through Jean Bodin in his work The Six Books of the Commonwealth (1576). According to Bodin, absolute sovereignty was the only means of ending religious conflicts and internal civil wars. He conceived sovereignty as perpetual and indivisible.

For Bodin, the first and most fundamental function of the sovereign was “the power to give laws to all in general and to each in particular, without requiring the consent of any superior or equal.” In this way, Bodin made legislation the central instrument through which authority is exercised, thereby bringing an end to the fragmentation of feudal and ecclesiastical laws ([4]).

Bodin argued that the sovereign, as the exclusive holder of authority, possesses rights that cannot be shared with anyone else. These include the right to declare war and conclude peace, appoint senior officials, render final judgments in disputes, mint currency, and impose taxes. The limitations that Bodin considered necessary upon the exercise of sovereign authority were adherence to natural and divine law, as well as respect for and protection of private property.

With the beginning of the Enlightenment, legal scholars argued that authority did not descend from heaven but rather rose from the earth. They called for an end to the disregard of human reason and the religious justifications of political power. This marked the beginning of a process through which authority was separated from the ruler and distinguished from the state itself. The transformation was advanced by the philosophers of the social contract and the Enlightenment, who formulated the idea that the ruler is merely the “first servant of the state,” as expressed by Frederick the Great of Prussia. Sovereignty came to reside in the state, while the ruler became only its executor. It was during this period that social contract theories emerged. In his famous work Leviathan (1651), Thomas Hobbes presented a pessimistic view of human nature that made the existence of an absolute central authority necessary to prevent destruction. According to Hobbes, in the absence of a supreme authority, life becomes a “war of all against all,” and human existence is “solitary, poor, nasty, brutish, and short.” In his conception of the social contract, the parties were the people and the king. The people surrendered all their rights to the king, who stood outside the contract and monopolized all forms of authority. His absence would lead to the collapse of the state and a return to primitive conditions.

His successor, John Locke, in Two Treatises of Government (1689), offered a markedly different conception of the social contract, one that laid the foundations for modern liberal democracies. Locke maintained that human beings possess inalienable natural rights and that the state of nature was characterized by a degree of equality. However, it lacked an impartial judge capable of resolving disputes. Locke, therefore, argued that individuals leave the state of nature and establish government for one specific purpose: the protection of their private property and rights. Individuals do not surrender all their rights to the ruler; rather, they relinquish only their right to enforce the law by themselves.

Their rights to life, liberty, and property, however, remain intact and cannot be taken away by the state. The ruler is merely their agent and public servant. Locke argued that legislative authority should be vested in a representative assembly chosen by the people. If the ruler violates the social contract by depriving people of their rights or exceeding his lawful powers, the contract becomes void, and the right reverts to the people to reclaim their sovereignty and replace the ruler or the government.

Jean-Jacques Rousseau, however, took the idea in an entirely different direction in his work The Social Contract (1762). If Hobbes had vested sovereignty in the king, and Locke had constrained it through law, Rousseau restored it completely to the people. Rousseau expressed this idea in his famous statement: “Man is born free, and everywhere he is in chains.” This constitutes the central concept of his political philosophy. Rousseau viewed the social contract not as a surrender of authority to an individual ruler, but as the union of individuals into a single collective body expressing the General Will. This is not merely the sum of individual preferences; rather, it is what society determines in pursuit of the common good.

According to Rousseau, sovereignty belongs entirely to the people, who are the sole source of authority. He maintained that when individuals obey the law within a centralized state, they are in fact obeying themselves, because they are the ones who have created that law through the General Will. Rousseau, therefore, strongly

[2] Osborne, R. (2010). Athens and Athenian democracy. Cambridge University Press. P25.

[3] Zhang, Y. (2024). An analysis of social contract theory: Based on a comparative analysis of Hobbes, Locke and Rousseau. Journal of Sociology and Ethnology, 6(2), 120-126.

[4] Merriam, C. E. (1900). History of the Theory of Sovereignty since Rousseau (Vol. 12, No. 4). Columbia University Press.p13.

supported the centralization of authority through the principles of the unity of power and absolute equality ([5]). The process of separating the ruler from the personification of the state was further reinforced by the institutionalization of the state and its powers. Legislation was no longer the expression of a ruler's personal will; rather, it became an institutional process conducted through established legal channels, including parliaments, committees, and publication in official gazettes. The sociologist Max Weber argued that this process of abstraction was closely associated with the emergence of bureaucracy and the administrative apparatus, whereby centralized authority came to be exercised through offices and fixed rules.

2. Unity of the Source of Legal Rules in Domestic Law

The unity of source means that binding legal rules within the state derive their authority from a single sovereign will. In domestic law, there is no plurality of original legislative centers; the state monopolizes the creation of law through its central constitutional institutions.

At this point, the objective theory emerges, advocating a plurality of sources for legal rules. The French jurist Léon Duguit argued that a legal rule is fundamentally a social rule imposed by social reality rather than by the legislator. According to Duguit, the role of the state is to "discover" the law rather than to "create" it. Consequently, the source of law is not the will of the state but rather "social necessity." Rulers are not sovereigns; they are merely "servants of the public service." Their role is limited to formulating, in legal texts, the rules imposed by social necessity.

Similarly, Friedrich Carl von Savigny, the leading figure of the Historical School, maintained that law is not the product of the legislator's will but rather the expression of the "popular consciousness." Law begins as custom (natural law), is subsequently refined and articulated by jurists (scientific law), and may eventually be codified through legislation ([6]).

In contrast, the positivist school advocates the unity of the source and its exclusive concentration in the will of the state. According to this approach, the state is the sole and ultimate source of law. No legal rule exists outside the framework established or recognized by the state.

The English jurist John Austin is among the most prominent proponents of this view. He defined law as "a command issued by a sovereign, directed to subjects, and backed by a sanction." Austin did not recognize natural law or customs as law unless they were acknowledged by the legislator. For him, there is only one source of law: the will of the sovereign. Law is the expression of the sovereign's command, and the sovereign is a person or body habitually obeyed by the people while not habitually obeying anyone else ([7]).

Hans Kelsen, on the other hand, sought to purify law from what he regarded as external influences—namely, politics, morality, and sociology—through what became known as the "Pure Theory of Law." At the apex of his legal hierarchy stands the Grundnorm (Basic Norm), a hypothetical norm that provides validity to the constitution. Kelsen viewed the legal order as a single, coherent system resembling a pyramid, in which every legal norm derives its validity from a higher norm, culminating in the Basic Norm upon which the state itself rests.

According to Kelsen, each legal rule derives its authority from a superior rule. Law is fundamentally a "coercive order," and the state and law are the same. The source of law is this coercively organized legal order, and no law exists outside this formal hierarchical structure. In Kelsen's theory, law and sovereignty are two sides of the same coin: the state is nothing more than a system of legal norms, and therefore law originates from a single source—the legal order of the state itself ([8]).

Most modern legal systems, including the Iraqi and French Civil Codes, tend to adopt the principle of the "unity of the formal source" of law while simultaneously recognizing a "plurality of substantive sources."

The unity of the legal source, regardless of its various forms, ensures legal consistency, such that the law applied in the northern part of the state is the same as that applied in its southern part. This reflects the concept of legal homogeneity, sometimes referred to as legislative coherence, which constitutes the foundation that prevents conflicts among legal rules within a single state. Without such homogeneity, the legal system would become a collection of contradictory provisions that are difficult to implement. Legal homogeneity may take the form of vertical consistency, whereby a lower legal norm conforms to a higher one, or horizontal consistency, whereby laws occupying the same hierarchical level are compatible with one another.

Furthermore, the unity of the legal source guarantees equality before the law (One Law for All). In this regard, Jean-Jacques Rousseau argued that equality is what motivates individuals to respect the law, since laws derive from the "general will" and therefore apply equally to all members of society. Hans Kelsen, on the other hand, maintained that the unity of the legal system and the hierarchical structure of binding legal norms constitute the only safeguard against arbitrariness and despotism. According to Kelsen, any rule that departs from this normative

[5] Duguit, L. (1917). The law and the state. Harvard Law Review, 31(1), 1-185

[6] Ruckert, J. (2006). Friedrich Carl von Savigny, the legal method, and the modernity of law. Juridica Int'l, 11, 55.

[7] Bihari, S. (2024). Austin's Theory of Sovereignty: An Exploration of Political Authority and Legal Order. InSight, 1(1), 8-12.

[8] Rabanos, J. A. (2024). On force, effectiveness, and law in Kelsen. Kelsen's Legacy. Legal Normativity, International Law and Democracy (Oxford: Bloomsbury Publishing, 2025).

hierarchy is "invalid" and lacks binding force, thereby protecting individuals from arbitrary rules that undermine the principle of equality. Consequently, no legal privileges may be granted to one region over another so long as the source of law remains unified.

3. Monopoly of State Authority

In the modern state, authority is distributed among three institutions: the legislative, executive, and judicial branches. When examining the state's monopoly over these powers, the legislative authority is generally regarded as the supreme function of the state, as it is responsible for enacting the general and abstract rules that regulate the lives of individuals and define the powers of the other branches of government. Nevertheless, the question of who possesses the power to legislate and whether this authority may be monopolized by a single body has long been the subject of intellectual and legal debate.

The concept of a monopoly over legislation oscillates between the necessity of preserving the unity of the state and the dangers of legislative despotism. In modern democratic systems, legislative authority is generally concentrated in the hands of parliament as the representative of the people. However, this monopoly is not absolute; rather, it is constrained by safeguards designed to prevent it from evolving into a form of tyranny. Among these safeguards is constitutional review, which ensures that the legislature does not exceed the limits established by the constitution.

At the same time, contemporary governance has necessitated granting the executive branch the authority to issue measures having the force of law under specific circumstances through legislative delegation. This development mitigates the rigidity of an absolute legislative monopoly in favour of greater flexibility. Furthermore, the levels at which legislative authority is exercised may vary according to the state's political system and the manner in which powers are distributed within the constitutional structure of the state.

When examining the form of the political system and the relationship between the branches of government, it becomes evident that, in a parliamentary system, the executive branch plays a significant role in shaping legislation. Most laws are proposed by the government in the form of legislative bills and subsequently approved by parliament. In practice, therefore, legislative authority is effectively shared between the government and parliament.

By contrast, in a presidential system, the constitution tends to adopt a stricter separation of powers. Legislative authority is vested exclusively in parliament, and the president does not possess the power to introduce legislation directly before the legislature. Instead, the president is generally limited to exercising the power of veto over legislation.

In a semi-presidential system, the monopoly over legislative authority assumes a hybrid character, as the power to initiate legislation is distributed among the president, the government, and parliament.

The nature of legislative authority also varies according to the form of the state. A unitary state is characterized by the unity of legislation and the centralization of authority. A single legislative body enacts laws for all parts of the state. Even where local or municipal councils exist, their authority is not legislative in the strict sense; rather, it is regulatory or administrative in nature and derives from powers delegated by the central government. Consequently, the central legislature retains the authority to revoke or override such powers at any time. In contrast, a composite state is founded upon a dual legislative structure. Legislative authority may be distributed across two levels of government: a central level responsible for legislating on sovereign and national matters, and a regional or local level endowed with original legislative competence over matters of local concern.([9]) When analyzing the monopoly of executive power, it becomes apparent that it differs fundamentally from legislative authority. Whereas legislative power tends to be distributed among multiple actors to ensure popular representation, executive power, by its very nature, tends toward unity to guarantee efficiency and the swift implementation of public policies. Nevertheless, this executive "monopoly" assumes different forms depending on the political system and the structure of the state.

From the perspective of the political system, a presidential system is characterized by a unitary concentration of executive authority, whereby executive power is vested entirely in the hands of the president. In such a system, the president simultaneously serves as both Head of State and Head of Government. Ministers function primarily as advisers, assistants, or administrative agents of the president, implementing his policies and directives without possessing independent decision-making authority.

In contrast, under a parliamentary system, executive power is characterized by a dual executive structure. The executive branch is divided between two actors: a Head of State, who "reigns but does not govern," and a Prime Minister, who exercises the actual powers of government and is responsible for directing public policy and managing the affairs of the executive branch. The Head of State performs largely symbolic, ceremonial, or constitutional functions, while effective executive authority rests with the Prime Minister and the cabinet. In a semi-presidential system, executive authority is characterized by either a division or a contest over the "monopoly" of executive power between the President of the Republic and the Prime Minister. The extent of authority exercised by each actor varies according to the constitutional framework and political practice of the state.

[9] Kincaid, J. (2023). Distribution of powers in federal systems: federalism's heart. In Teaching Federalism, Edward Elgar Publishing. (pp. 45-56).

When analyzing the monopoly of executive power in relation to the structure of the state—whether unitary or composite—the principal distinction lies in the geographical and administrative scope of that monopoly. A unitary state is characterized by the unity of the executive apparatus, whereby executive authority is exercised through a single central governmental structure. By contrast, a composite state is characterized by the plurality of executive institutions, with executive powers distributed among different levels of government in accordance with the constitutional allocation of competencies.

It should also be noted that executive authority may concentrate in exceptional circumstances where executive necessity arises. In such situations, the executive branch may effectively monopolize both legislative and judicial powers under specific conditions, most notably during states of emergency. In this regard, the jurist Carl Schmitt famously argued that "sovereign is he who decides on the exception." At such moments, the executive authority may assume extensive powers deemed necessary to safeguard the existence and integrity of the state.

This concentration of authority may also occur through legislative delegation, whereby parliament voluntarily transfers part of its legislative competence to the government, authorizing it to issue delegated regulations or measures with the force of law. Such arrangements strengthen the executive's role within the law-making process and expand its influence over areas that would ordinarily fall within the legislative domain. ([10])

The judiciary's monopoly over the administration of justice constitutes the primary safeguard against individuals taking the law into their own hands. However, such a monopoly requires impartiality and neutrality. If the judiciary becomes a participant in political conflicts or an instrument of governmental power, it loses the very justification for its exclusive authority over the administration of justice. This, in turn, may lead to the emergence of parallel systems of dispute resolution or a decline in public confidence in the legal order.

The judicial branch is generally regarded as the guardian of the legal system. While discussions of the legislative and executive branches often focus on the concentration of authority as a means of achieving legal centralization, regardless of the form of the state, Montesquieu maintained that the judiciary should be politically "invisible" and almost "non-existent" in the sense that it must remain entirely separate from the other branches of government. In his view, this monopoly should belong to the law itself, rather than to the personal will of judges.([1112])

By contrast, Hans Kelsen argued that, in accordance with the hierarchical structure of the legal order, the constitutional court must occupy the highest position within the system. For Kelsen, such a court is indispensable to preserving the unity of the legal order, as it exclusively safeguards the coherence of the legal hierarchy. Without an institution vested with the authority to invalidate unconstitutional laws, the normative structure of the legal system would collapse, undermining the integrity of the legal hierarchy itself. ([13])

The judicial monopoly in modern states is generally manifested through two principal models. The first is the monist system of judicial organisation (Monism), under which ordinary courts possess jurisdiction over all categories of disputes, including civil, criminal, and administrative matters. The second is the dualist system of judicial organization (Dualism), in which judicial functions are divided between the ordinary judiciary, which adjudicates disputes between private individuals, and the administrative judiciary, which hears cases in which the state or public authorities are a party.

Moreover, the distribution of judicial functions between federal and local courts does not conflict with the principle of legal centralization. Rather, it reflects an institutional framework that allocates judicial jurisdiction and determines the hierarchical relationship among courts while preserving the coherence and unity of the legal system.

Ultimately, it becomes evident that the centralization of authority within domestic law derives from the unity of the source of legal norms. The transition from a stage of customary pluralism to one of legislative unity was an inevitable necessity for establishing state sovereignty and affirming the state's legal personality. The essential link between these concepts lies in the state's monopoly over the three fundamental functions—legislative, executive, and judicial—being the only effective mechanism for achieving legal homogeneity. Through its monopoly over legislation, the state ensures the unity of the legal source; through its monopoly over execution and enforcement, it guarantees the effectiveness of legal rules; and through its monopoly over adjudication, it secures uniformity of legal interpretation and safeguards the principle of equality before the law.

Accordingly, it may be argued that the unity of the legal source and the centralization of authority are two sides of the same coin, namely the rule of law. Without centralized authority, the source of law becomes fragmented. Without a unified legal source, the law loses its coherence and consistency, ultimately undermining the legal certainty upon which individuals depend. Within a state governed by the rule of law, the concentration of sovereign functions in the hands of the state is not intended to promote despotism. Rather, its purpose is to

[10] Conty, A. F. (2018). Sovereign power, sovereign justice: Carl Schmitt and Jacques Derrida on the state of exception. Philosophy Today

[11] KRAUSE, Sharon. The spirit of separate powers in Montesquieu. The Review of Politics, 2000, 62.2:

[12] -265.

[13] Mukhlis, M. M., Masum, A., Maskun, M., Arowosaiye, Y. I., & Djafar, E. M. (2025). Guardian of The Constitution: Reviewing The Role of The Constitutional Court. Diponegoro Law Review, 10(2), pp 217-233.

establish a single normative order to which all are subject, ensuring that the law serves as the supreme point of reference within which all subordinate wills are integrated into the general will of the people.

Second: The Fragmentation of Authority in International Society

The study of the fragmentation of authority in international society and the dual position occupied by the state as both a creator of law and a subject of law (Legal Autonomy vs. Legal Subjection) lies at the very heart of the philosophy of international law. This issue stands in sharp contrast to the centralization of authority within domestic legal systems discussed earlier. In the international sphere, there is no supreme sovereign authority; instead, legal order is founded upon the principle of collective or common will among states.

Accordingly, an examination of this subject requires an analysis of the concept of law-making in international law, as well as the mechanisms through which international legal rules are implemented and applied. The issue of sanctions and enforcement measures, however, will be addressed separately in the second section of this study.

1. The State as a Maker of Law

The legal structure of international society differs fundamentally from that of domestic legal systems. Whereas domestic law is based on a hierarchical order and the existence of a supreme authority that legislates for individuals, international law is based on coordination among units that are equal in sovereignty. Within this sphere, the state emerges as a dual actor: it is the law-maker and, at the same time, the subject of law. This duality is the principal driving force behind the phenomenon of the fragmentation of authority in international society. This structure is founded upon a basic idea, namely that the will of the state constitutes the foundation upon which international law rests; the will creates the law and is at the same time subject to it. Without delving into the classical and contemporary theories concerning the individual or collective will of the state, or the Pure Theory of Law, the researcher finds that there are two principal sources of international legal rules. The first is the international treaty, to which a state becomes a party through its own will, either during the formation of the treaty or after it enters into force through subsequent accession. No treaty applies to a state in the absence of its express or implied consent ([14]).

Even the commonly asserted extension of treaty effects to third parties appears, in my view, to be a misconception that some seek to uphold. The essence of such extension is apparent rather than real. Upon examining the traditional examples commonly cited in this regard, it becomes evident that the most-favoured-nation clause merely constitutes the implementation of a provision incorporated in a prior treaty. Likewise, the model of a stipulation on behalf of a third party produces no legal effect unless the state on whose behalf the undertaking is made agrees to fulfil the obligation.

Similarly, what is often described as a stipulation in favour of a third party requires the beneficiary state to exercise its right to benefit from that stipulation, which implies the existence of a subsequent expression of will accepting that benefit. As for the argument that the Charter of the United Nations constitutes a treaty with effects extending beyond its parties, this is largely a philosophical proposition, since there is no state within the international community that exists outside the framework of the United Nations Charter.

What has been said regarding treaties applies equally to the second principal source of international legal rules, namely customary international law. A state, through its express or implied will, participates in the formation of international customs by accepting a particular course of conduct or acquiescing in it through practice and subsequent adherence.

From an analytical perspective, the same observation applies to other sources of binding force in international law, such as unilateral acts and peremptory norms. A unilateral act constitutes a declaration issued by the unilateral will of a state and its intention to bind itself to a specific legal effect. Such an act becomes complete upon its issuance by a competent authority. Where a unilateral act creates a right in favour of other states, the declaring state is required to honour it. Conversely, where it produces a legal effect vis-à-vis other states, the silence of those states may be regarded as implied consent to that legal effect ([15]).

As for peremptory norms (jus cogens), Article 53 of the Vienna Convention on the Law of Treaties requires that such norms be accepted and recognized by the international community. Recognition in this context does not carry a statistical meaning requiring acceptance by every state. Rather, the stability of the rule, its legal effect, and its acceptance within the international community are what render it binding upon all and endowed with legal certainty.

If we trace the origin of the conduct that gives rise to a peremptory norm, we find that it is, in essence, customary in character and emanates from a competent source within international law, such as a group of states, an international judicial body, or a normative practice emerging from a competent international organization. In other words, the role of the international will contributes to its final development and transformation from a customary rule into a peremptory norm ([15]).

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[14] Vienna Convention on the Law of Treaties, 1969.art (34.35.36)

[15] Csatlós, E. (2010). The Legal Regime of Unilateral Act of States. Miskolc J. Int'l L.pp 7-33. [15] Simma, B., & Alston, P. (1988). The sources of human rights law: custom, jus cogens, and general principles. Aust. Ybil. Pp 12-82.

A state is subject to the legal rules that it creates in conjunction with other states. It possesses the capacity to bind itself through international obligations by its own will, and it is under a duty to perform any international obligation it undertakes in good faith. The principle that agreements must be honoured (pacta sunt servanda) constitutes the fundamental cornerstone that prevents international law from collapsing and ensures the continuity and stability of international society.

A state's adherence to an international treaty creates an institutional obligation requiring it to comply with and implement that commitment, and not to withdraw from it in the future through its unilateral will. The principle of reciprocity further provides a mechanism of mutual supervision among states regarding the implementation of international obligations. Any state that fails to fulfil its legal commitments may be exposed to international sanctions and, potentially, to isolation from the international community, with consequences that may be highly detrimental to its interests.

A state's commitment to international law ultimately stems from its need for such a legal order, as it cannot exist within a stable international community without protection from threats to its political or economic security.

2. The Effect of Sovereignty as a Structural Obstacle to the Creation of a Superior Authority

International law is founded upon the principle of the sovereign equality of states, as affirmed by Article 2 of the United Nations Charter. In essence, this principle prevents the establishment of a central authority superior to the state. If we look back to the period preceding the establishment of the United Nations, we find that sovereignty acted as a barrier to the development of international law. As the jurist Brierly observed, the doctrine of absolute state sovereignty historically shielded states from accountability and limited the ability of international law to hold them responsible for their actions, a situation that ultimately contributed to two devastating world wars. Sovereignty, therefore, prevents the existence of an authority superior to that of the state ([16]).

However, the transformations experienced by international society have altered the nature of sovereignty from an absolute concept to a limited one. We have thus moved closer to the notion of the legal state, which is subject to domestic law in its relations with its internal community and subject to international law—which it has helped to create through its own will—in its relations with other subjects of international law. States have restricted aspects of their sovereignty through numerous international treaties to achieve broader international interests that ultimately serve their own interests, directly or indirectly. This development has made international solidarity, founded upon the maintenance of international peace and security, a principal reference point for these interests and obligations.

The principal obstacle to the establishment of any form of world government remains the state's reliance on national sovereignty, the sanctity attached to that sovereignty, and the unwillingness of states to accept an authority superior to their own that could impose decisions beyond the scope of their will. This is further reinforced by the state's monopoly over the means of coercive enforcement and military power, together with the absence of a comprehensive international institutional entity capable of competing with the state in its monopoly over the instruments of coercion and compulsion.

Additional obstacles arise from concerns that such a superior authority, if established, could become tyrannical and interfere in domestic affairs and matters reserved to the exclusive jurisdiction of states. This position is supported by Article 2(7) of the United Nations Charter, which prohibits both the Organization itself and its member states from intervening in such matters.

For this reason, the Security Council has repeatedly failed to establish the Military Staff Committee envisaged under Article 43 of the Charter. The provision has remained largely a dead letter, as states have refrained from creating such a body for reasons related to sovereignty and concerns over the erosion of national sovereign authority. States have also been reluctant to relinquish the power to declare war, which they regard as an inherent attribute of sovereignty.

Moreover, additional difficulties relating to financing and legal responsibility—particularly in connection with international humanitarian law—have constituted significant obstacles to the creation of an effective military force operating under the authority of the United Nations and subject to the command of the Security Council. Despite the existence of profound structural concessions in areas such as the economy, health, climate, and the environment, as well as the requirements of international criminal law embodied in the Rome Statute of the International Criminal Court, the law of treaties, and the law of the sea, the belief that sovereignty remains the protective barrier safeguarding the state continues to be deeply rooted in international law. This confirms that we are dealing with a horizontal legal order governed and managed by competing units rather than a vertical and hierarchical legal system.

3. The Debate over Obligation and Sanction in International Law

The debate concerning obligation and sanction in international law is reflected in the notion of the "absent policeman," a concept that has led some scholars to deny the existence of international law altogether, particularly among proponents of domestic law. In domestic legal systems, the executive authority possesses the power to impose sanctions through coercive measures and has the means to enforce the law. According to many domestic

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[16] Brierly, J. L. (2012). Brierly's law of nations: an introduction to the role of international law in international relations. Oxford University Press. P45.

law scholars, a legal rule is inseparable from the sanction attached to its violation, as the sanction constitutes the legal consequence of non-compliance.

A legal sanction is characterized by its tangible and material nature and encompasses all measures and procedures adopted by the state, through its various authorities, either to prevent the violation from occurring in the first place, to remedy the situation resulting from the violation, or to deter and rehabilitate those who have breached the law. The binding nature of legal rules is what distinguishes them from the rules of morality and religion, and it is this element that, in the view of these scholars, international law lacks.

Another strand of legal thought, however, maintains that the effectiveness of a legal rule is linked to its existence rather than to the sanction accompanying it. Its binding force derives from the belief of those to whom it is addressed in its necessity for the stability and orderly functioning of social life. According to this view, the consequences a state faces from violating an international rule are often greater than any benefits it may gain from such a violation. These consequences include international reactions, the loss of significant diplomatic and economic interests and advantages, as well as reciprocal responses or retaliatory measures of a similar nature to the original wrongful conduct. Accordingly, international law cannot be said to lack forms of sanction ([17]).

When analyzing customary practice before the emergence of organized international institutions, it becomes evident that the use of various forms of armed and non-armed measures constituted the principal means of enforcing the rules of international law. Apart from war, which was regarded as a means of implementing a state's foreign policy and, indeed, its primary instrument when diplomatic efforts failed, states relied on other measures that required legal justifications and procedural formalities rooted in customary international law.

Accordingly, states employed hostile measures short of war, such as reciprocity, reprisals, military blockades, bombardment, and boycott. These measures were used as punitive responses to violations of international rules that affected the interests of the state itself or of an allied state. During the era of the League of Nations, such measures continued to be regarded as an aspect of state sovereignty ([18]).

With the transition to the system established by the United Nations Charter, Article 2(4) prohibited all forms of the use of force, whether armed or unarmed, except in cases of self-defence and instances where the Security Council authorizes force through the implementation of coercive measures under Chapter VII of the Charter. Consequently, the Charter prohibited any unilateral sanction involving the use of armed force, and even the use of non-armed force where it would endanger the territorial integrity or political independence of a state.

Despite the strict framework established by the Charter, states have retained several individual legal sanctions recognized by international law. These include measures provided for in the 1969 Vienna Convention on the Law of Treaties, such as the suspension or termination of treaty obligations and the plea of non-performance. They also include legal sanctions arising from the execution of judgments rendered by competent international courts, such as orders to cease an internationally wrongful act, awards of compensation, or other forms of reparation.

In addition, there exists a range of diplomatic sanctions derived from customary international law and applied within the framework of international relations, including the severance of diplomatic relations, the reduction of the level of diplomatic representation, and similar measures. There also remain certain remnants of customary international law in this area, particularly sanctions of an economic nature, such as trade embargoes, the freezing of financial assets, and targeted or “smart” economic sanctions.

Reference should also be made to the development of international criminal law following the entry into force of the Rome Statute of the International Criminal Court in 2002. The Statute identified categories of the most serious international crimes and established criminal sanctions for their perpetrators, including penalties involving deprivation of liberty and orders for reparation. It should be noted, however, that the International Criminal Court is founded upon the principle of individual criminal responsibility rather than the responsibility of states.

In conclusion, international law does not lack sanctions. However, it is incorrect to compare these sanctions directly with those found in domestic law, given the fundamentally different environments in which each operates. The nature of this difference is reflected in the identity of the subjects addressed by each legal system. States possess equal legal sovereignty, whereas individuals are subject to state law in a compulsory manner.

Moreover, there is a significant difference in enforcement mechanisms and the possession of means of coercion between international society and the state. This necessitates a different legal understanding of the effectiveness of sanctions. International sanctions are influenced by considerations of states’ vital interests and the requirements of foreign policy, whereas sanctions in domestic law tend to be more effective due to the hierarchical structure of authority within the state and the existence of centralized enforcement mechanisms. Conclusions

1. It is neither fair nor accurate to compare a centralized and hierarchical legal system, represented by domestic law, with an international legal system that is founded upon competition among the subjects that create it.
2. The binding force of domestic law is grounded in submission to a superior authority, whereas the binding force of international law is grounded in consent and the mutual need for stable and continuous international relations.

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[17] Kunz, J. L. (1960). Sanctions in international law. American Journal of International Law, 54. pp 324347.

[18] Knudson, J. I. (1938). A History of the League of Nations. Atlanta, Georgia: TE Smith. p114.

3. Sovereignty has evolved from an "absolute" concept that shielded the state from external constraints into a "limited" concept that enables the state to fulfil the obligations that it has helped to formulate.
4. The state's monopoly over public authority constitutes the only guarantee against the fragmentation of legal rules, whereas the fragmentation of authority within international society results in a slower process of legal development that remains subject to political considerations.
5. Despite the absence of a central coercive authority, international law possesses effective sanctions that encourage states to comply with its rules.
6. The domestic legal order remains governed by a "basic norm" (Grundnorm) that provides validity to the rest of the legal system, whereas the international legal order remains governed by the principle of pacta sunt servanda ("agreements must be kept"), which prevents states from evading their international obligations.