

THE WEEK

International law won't save us

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International law will not save us from stupidity or hubris in the conduct of American foreign policy.

That much should be obvious to everyone 15 years after George W. Bush launched a war against Saddam Hussein's Iraq that was justified as an effort to enforce international law while being simultaneously denounced at home and abroad as such an egregious violation of international law that leading members of the Bush administration deserved to be hauled before The Hague as war criminals.

But alas, it isn't obvious — or at least not as obvious as it should be. Just look at the reaction of leading members of Washington's foreign policy establishment to the decision of the Trump administration (along with the governments of Great Britain and France) to launch a punitive strike against Syria in retaliation for the government of Bashar al-Assad allegedly using chemical weapons against his own people in his country's interminable civil war.

Many of the people cheering on this show of force have taken this tension or contradiction to a whole new level — somehow embracing both positions at once, maintaining that the American-led attack probably violated international law (whether under the 1997 Chemical Weapons Convention or the vaguer humanitarian imperative to protect the victims of violence and injustice) but was nevertheless welcome and perhaps even long overdue in order to uphold and enforce ... international law.

The instinct to appeal to an extra-political, universal legal standard to hem in the actions of states is very deeply embedded in the thinking of Western elites. As a recent, illuminating book explains, it has roots in early modern just-war theory, picked up momentum in the years following World War I, when several writers, thinkers, and political actors attempted to pass laws that would effectively outlaw war at the international level, and then gained decisive traction after World War II, with the creation of the norms and institutions of the liberal international order. Today the legitimacy and wisdom of the attempt to devise and enforce a body of international law is taken for granted across the West by almost everyone on the center left and center right.

Yet this project is also riddled with conceptual confusions that render it far less salutary than is commonly recognized and could well doom it to eventual irrelevancy. Those who would like to

forestall that fate would be well advised to take note of these defects so they can respond with eyes wide open.

Although international law was first devised to bind the actions of states on the world stage and make them less likely to start wars, in reality international law is often invoked as a justification for launching military attacks. Hence the arguments in favor of bombing Assad's forces in Syria in order to enforce international laws against the use of chemical weapons and in favor of protecting civilians in the name of humanitarianism.

That's because international law is modeled on the only kind of laws with which human beings are familiar: the laws that abide within particular states. And those laws obviously work in both ways as well. They do not simply outlaw certain actions on the part of individuals and groups. They also punish those who transgress the law, uphold certain ideals of justice, and seek to realize the common good of the political community, including the maintenance of order. Under certain circumstances, all three can require the use of force by the government.

Similarly, international law doesn't just outlaw certain kinds of wars. It also establishes conditions under which war is authorized and required. And that's where the trouble starts.

The citizens of a particular political community frequently disagree with each other about the nature of justice and what it demands in particular circumstances. That disagreement helps to set politics in motion, as different factions seek political rule, including the power of settling the question of justice (at least for the time being — until another faction takes power). Liberal democratic government is an elaborate institutional mechanism for regularizing to this clamor for power on the part of competing factions.

If international law is going to authorize and require war to enforce the law, including the meting out of punishment to states that wage the wrong kind of wars or wage them in the wrong ways, then the question immediately arises of who is writing the laws and making the decisions in particular cases — and whether both are being done justly.

Those are political issues. To get a sense of how quickly they can become intractable in an international context, consider a tweet by foreign policy analyst Emma Ashford that posed a series of pointed questions shortly after the bombing of Syria commenced: "Why Syria, not Yemen? Why Libya, not Myanmar? Why chemical weapons, not barrel bombs?" The answer, of course, is that international law is primarily written and enforced by Western powers, and Western powers (like all state actors) have distinctive interests that shape their priorities in international affairs.

But then the enforcement of international law isn't truly international at all. It's an expression of the outlook of one part — the most powerful part — of the global community of nations. This sets up the conditions for justified accusations of double standards, as critics of Western, and especially American, foreign policy accuse the West of turning a blind eye to Israel's violations of international law, or ignoring the criminal acts of senior members of the Bush administration, or engaging in hero worship of the mass murderer Winston Churchill.

This implies that the problem could be solved by enforcing international law more consistently and fairly. But the problem runs deeper than that.

Liberal politics has stringent standards for establishing the legitimacy for law: The governed must give their consent, public opinion must be consulted through the medium of elections for representative offices, and the people must also be given a say in who gets to serve as judge, jury, and executioner of violations of justice. But of course the international system doesn't work like this at all. As the world's most powerful nation and primary founder of the international system itself, the U.S. has assigned itself the role of authoring the laws and enforcing them as it sees fit, with a little help from a few relatively powerful friends.

And that brings us to a final, potentially fatal paradox in the international system.

Even when the United States and its allies act to enforce international law — as NATO did in Libya in 2011 — the results are often disappointing and sometimes outright horrifying, with people formerly living under an abusive despot faced with the prospect of life in a Hobbesian civil war, defending themselves any way they can in the ruins of a crumbling state. This isn't what the U.S. aimed to achieve in Libya, or Iraq, or Afghanistan. But it's what we've bequeathed to each of them — because breaking a nation is far easier than building one.

The idea of international law only makes sense in the context of a single political community of worldwide extent. Yet if the international order as it currently exists were a single political community, it would be a failed state led by a powerful, well-meaning, but extremely capricious and often clueless tyrant who governs without consent, metes out punishment inconsistently, and loves to make sweeping moral pronouncements that raise expectations for justice while failing to secure it for most of those living under its rule.

"International law" sounds good. But that doesn't mean it makes sense.