2020
JOURNAL OF SECURITY STUDIES AND GLOBAL POLITICS
Volume: 5 www.sciplatform.com Issue: 1
ISSN (Online) 2519-9609 ISSN (Print) 2519-9617

THE CRISES IN THE THEORY OF LAW: MUNICIPAL, INTERNATIONAL LAW AND THE SOVEREIGNTY OF THE MODERN STATES

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The global evolution has propelled the international system into a novel stage in its development process that is completely different in the final texture from that upon which our ancestors inhabited. We have attained so powerful a scale of global interdependence that the theory of state sovereignty has consequences in international relations of an entire different character from those of the period when Grotius and his descendant laid the fundamental bases of international law. This study seeks to unveil the degree to which the international law has been able to regulate the relationships between states and the level of its binding forces in the midst of their sovereignty. Since it is inherent in the idea of law that those who dwell within its jurisdictions should be bound to obey its stipulations independent of their own will. The study however, reveals that as long as the modern states remain sovereign international law will continue to exist at the mercy of their consent. Therefore, there are no potential means of making the international law to become more than what scholars have already referred to as a species of positive morality, except by the abrogation of state sovereignty.

Key word: Nature of Law, International Law, Municipal Law, Sovereignty and The Modern States.

INTRODUCTION

In simple term law is a body of rules, guidelines, and or principles that regulate or govern the behavior of men in their interaction to one another. This implies that law can be in written and unwritten form. In the selected works of Saint Tomas Aquinas Voll 3, He succinctly highlighted four inescapable types of laws; they are (1) the divine laws, (2) the natural laws (3) eternal laws and finally (4) the man-made laws. Aquinas argued that the eternal laws subsumes or reflect those God magnificent designs for the entire universe. The divine laws connote those rules of behavior or principles that revealed in the holy scriptures, while the natural laws he pointed out are eternal laws as they applies to human conducts. However, man-made laws as he succinctly elaborated in his discourse are constructed by man to fit and contain the necessity of the natural law to the needs of different and changing societies (Lisska, 1996). The principles of natural law are not changeable and enjoy a universal application. This means that they are same for all and sundry. But the particularities of every human situation have to be taken into account by man-made laws. It must in the final analysis, adjust the natural laws to specific and frequently changing circumstances of our time. For instance natural laws did not stipulate that human beings drive on the left or right side of the road but conventional wisdom dictates that we should drive either on the left or the right side of the road towards one direction but not the two, in order to save lives. Aquinas also argued that any law or laws that contravene the natural law are '*act of violence*' and '*pervasion of law'.* Such laws he maintained do not bind the conscience. And on that very ground have no legal validity and should cease to be referred to as law by definition. What then can we exactly refer to as law so that we can start getting a window view of what international law would be like, because the nature of law has become one of the general problems that we confront in our own time? Our contemporary lawyers approach the law as a body of rules binding upon those who come within its jurisdictions. But the general explanation of its binding force is of course of a varying character, especially when the issue of national or municipal and international law are the subjects in focus.

Hobbes (1968) and Austin and Austin (1861) have referred to it as the power behind the rules. To them law is that coercive sanctions, which in the last resort can be brought into operation against those who have violated or infringed its principles and stipulations. These scholars sought to make just like in our own time a self-consistent theory of pure law in which neither ethical nor sociological consideration could be penetrated (Lasky, 2004). It can then be argued that law in their own view is completely separated from justice on the basis that these latter concepts introduce a non-juristic postulate foreign to the nature of law as we know or have seen in our own time. On this ground the authority of law ultimately derive from the finial custom in a given society, and this norm on the other hand is a postulate incapable of examination since, as the supreme source of political power or authority it cannot itself be called into question.

The General Nature of Law: Both the national or municipal law and the international law can be seen as a body of rules or principles that govern the relationship between or among two parties. But while the state is the primary concern and the subject to the international law, community of individuals is the primary concern of the municipal law. It is not contested that a society of individuals requires a definite law to govern its day to day relation and interactions. And also the modern state with its diverse economic and political background have

also created a true community of states analogous to a community of individuals, and so requires a formal and standard rules of conduct to enhance an orderly development and smooth relationship among them (Umozurike, 2010). In addition the transnationalisation processes that unfolding under globalization, which has intensified relations and increased contact globally have made it even more important for the promotion of international cooperation and development, to avoid unnecessary chaos and conflicts. Since the absence of law is an invitation of political anarchy. States are presumed equal before the international law, just like the individuals are convinced that they are in the municipal law. But no doubt, their opportunity to access or even influence these laws are completely dependent on their material base and the degree of their development, because law in every society is the expression of the thrust of the social forces within that society. And we cannot explain its substance or its operation without regard to those social forces (Lasky, 2004).

How then can the concept of law be understood? Is law in every society seen as binding because of its usefulness, or because it embodies reason? Or because it is a search for those social behaviors the attainment of which will increase the satisfaction of demand? Or because it expresses the general end of the society in a particular rule? The problematic nature of the concept of law would have been ameliorated if the answers to the questions posed above are simply positive. But to respond that the law embodies reasons is to immediately raise the question as to whose reason it embodies? Similarly, to contend that the law expresses the general end of the society is to be asked as conceived by whom? And to say that it's obeyed because it's useful is to be asked to whom is it useful/? Notwithstanding the angle from which you see it, the ideal purpose of the law at every point is not necessarily the same with the actual purpose of the law as experienced by those who receive the law (2004). Law to Austin is simply a command issued by a sovereign (Austin and Austin, 1861). Therefore, it is an expression of a desire, for instance 'I don't want you to smoke in a public place, or I will like every child of school age to be in school during school hours', backed up by authoritative use of physical force or threat of use of physical force (Austin's diary as cited in (Murphy, 2008). With the above postulates he clearly refuse to involve any normative criteria or value-laden to elucidate its key terms. The point being made here is that he did not define the term 'sovereign' that is, as someone or group who had the right to rule over others nor did he ever contends in his analysis that the use of force by the sovereign to back-up his command has to be legitimate. The sovereign as he believes is simply that legal entity or persons whom the entire populations within a given socio-economic formation habitually obey. And does not himself obey anything or anyone within that collectivity except by choice.

However, what actually informs this obedience as highlighted in Austin's study (Austin and Austin, 1861), remains cloudy, is it out of fear or habit? Consent or utility? You would agree with me that it could be all of the above. Yet we cannot present them as an explanation since they do not explain the nature of law. Understanding the nature of law is fundamental on the total comprehension of the authority upon which they rest. Although, he was not explicit in his arguments, but in the final analysis, its apparent that he is referring to the supreme coercive power of the modern states because it is this power which is activated to prevent or punish those who infringed the command of the sovereign otherwise called the law (Tamanaha, 2012). However, we must forget that since the ultimate objective of the modern states is to maintain a given system of class relations, as we have seen in our own time. The laws upon which it puts its supreme coercive power will undoubtedly enclose the same purpose.

Law disambiguation: In the Austin's *Command theory of law and separability theses*, law is seen simply as a desire backed-up by threat (Austin and Austin, 1861). But whether every law fits into this model is another issue to be discussed. There are other areas of law that have proven troublesome to fit into the above definitions. A good example is the law of contract. For instance, if a building engineer on contract with his client to finish a particular building within a given period of time, got another contract and decided to put the first one on hold. Which led to the extension of the previously agreed finishing time of the first one, he is not under any type of threat as long as he finishes both building afterwards. His perception of law in that regard would have been understood better if a singular example is drawn from criminal law. But ironically his postulate can also deal with a civil situation like this, by arguing that in such a case the contractor is after all being threatened; primarily he is threatened with the sanction of nullity; because he refuses to adhere to the law of contract. By implication he is threatened by the sovereign lack of support in the event of any dispute with his client. The sovereign will not give effect to his contract should it ever appear before a court of competent jurisprudence, because he has breached the law of contract.

From this stand point law can be argued or perceived as a body of rule which seek to accomplish or fulfill the wishes and objectives of the sovereign. Scholars have contended that this rule is always maintained in every society mainly because, more often than not, those dissents from the stipulations of the rules are always not in the position to challenge the command it imposes, or the foundation of the authority that gives it substance (Lasky, 2004). It follows that law in the wandering band system is the wishes and objectives of the strongest among the group in a given territorial society. Because any divergent idea always met with swift and violent response in the state of nature, "The might is right". The same situation can also be argued to be obtainable in the feudal society. A given practices are made to become law simply because they are useful to the landowners and not because they maximize satisfaction to the highest possible scale. And the general end of the society such law tries to fulfill is also there conception of what that general end should be. The

social behavior it will seek to enforce will derive from their conception of how demand may best be maximized (Lasky, 2004; Murphy, 2008; Brian, 2012). It also follows that in our own time which coincides with the era of monopoly capitalism the substance of law will inevitably be determined exclusively by the propertied class or the owners of capitals as they are popularly referred to by the political economy scholars.

In contemporary times, the perception of law has taken a different approach from the techniques consistent with Austin and Hobbes methods of analysis (Hobbes, 1968). The concept of law in the present time is conceived always in the background of a given state supporting a particular system of class relations. And it is believed that it is in this context that it always finds the clue to it necessary substance. Law from this angle is defined as that rule of behaviors which secures the purpose of the society's class-structure, and will be if necessary enforced by the coercive power of the modern state. They can be obeyed as long as the relation of production enable the full potentials of the society to be exploited, and will be challenged when the forces of production in that society come into conflict with the relation of production and the chain of exploitation can no longer hold (Lasky, 2004). The concept of law has also been defined as the canal, or system of rules that are enforceable through the existing socio-cultural and political institutions with the purpose of regulating the behaviors between and among groups or individuals (Anderson, 1970; Mathin, 1982). In this context we can as well add the relations and interaction between or among states; however, from this point of view, law can originate from the culture of a given society, inform of a custom. It can also be made through a collection of legislatures or by a single legislator in form of statutes, or by the executives of the modern states resulting to decrees and regulations, or even from the judges inform of binding precedents, but more often than not in common law jurisdiction. In corroboration of the above postulates Barzilai-Nahon and Barzilai (2005) in his classic work titled *Community and law: politics and culture of the legal identity*, argued that law is any binding customs or practices of a given community. He maintained that it is a rule of conduct or actions of prescribed or formally recognized by the controlling authority within that collectivity. From the above postulates the nature of law can be analyzed as a formal principle or regulations established in a given society by a definite political authority and applicable to the population within that territorial society either inform of legislations or as a custom and policies recognized and end enforced through judicial decisions. The concept of law has also been described as the norms or system of rules which a particular community, society or country recognized as regulating the behavior or activities of its members, and which may be enforced through the imposition of a penalty by a recognized public authority (Brody *et al.*, 2010).

It is here argued that the lawyers search for consistency always seek to build a legal system that is internally logical but a closer examination of the above perception controversy would always reveal that most if not all of jurisprudence surrounding the laborers' remunerations, the law of contract and most importantly the laws relating to the freedom of speech and assembly derives its meaning from the judicial believe that the existing social order must be maintained at all cost irrespective of how they affect the welfare of a common man within that society. In the final analysis law is made by the rich and for the rich, it is a body of rules or regulating instrument exclusively to checkmate or control the behaviors of men of limited means. For the interest of the propertied class within that society. In fact it is here argued that only the Marxian interpretation of law best explain its nature and substance. There cannot in any society be equality before the law, or after the law as we are led to believe by the liberal scholars, except in theory for students of law but not in practice as we have seen in many situations. Equality before the law will continue to exist as it is studied in jurisprudence in law school except there is a classless society. Because the implicit assumption of every law in any society in which the instrument of productions are privately owned are the innate necessities of maintaining the system of class relation through which the privileges of private ownership are secured to their holders (Lasky, 2004). And the state itself exists primarily to maintain a given system of class relations therefore, it cannot as we believe escape from the contradictions contained in it. So much on the issue of law and its connotations, we shall now turn to the concept of states and its sovereignty as it has become evidence in our discourse that law itself can be easily understood when the theory of state is unveil.

The Modern States and Their Sovereignty: One of the basic attribute of the concept of sovereignty is its level of absolutism. Therefore, because the modern African states are presumed sovereign they are expected to be independent in their relation to other organizations, institutions or communities within a given territory. It may decide on its own to infuse its will towards them with a substance that need not be influenced or affected by the will of any other external power, either by force or persuasion. It is in addition presumed to be internally supreme within the territory over which it has claimed control. It can issue command to any person, association, institution or organization within that territory and expect that order to be strictly adhered to without question. Although it is inherent in the idea of state that those who dwell under it should be bound to obey its instructions independent of their own resolve, because the infringement of the state principle is punishable by infliction of some harm or penalties. Nevertheless, this public power called the state receive no command from any person, institutions or organization under any circumstances, however, it can receive and process request inform of input and output at its own will under no coercion of any type, that is, it cannot be commanded to do or not do. The point being made here is that, while it is understandable that the

sovereign is perpetually engaged in major functions within that society over which it claimed supremacy, those functions cannot be reducible at any reasonable time to a command of any form. Alternatively, following Austin's perception of the legal aspect of sovereignty, he contend that whatever approach is chosen in disambiguating the state and its legal attributes, it is first and foremost essential to recognize in a particular society that unambiguous superior to which habitual obedience is rendered by the entire population (Austin and Austin, 1861). And that superior must not itself obey any order higher authority except by choice. He is of the view that when this authority which gives command that is habitually obeyed is discovered, then we have the sovereign power of the state (Austin's diary as cited in Murphy (2008). He further argued that in any definite political organization, that sovereignty is determinate and unconditional, it's will is limitless because it cannot be restrained to act, for if it's so does it would cease to be supreme because it will then be subject to some restraining powers. Its strength of character is also indivisible, since if power over some organization, functions, or group of persons within that territory is absolute and irrevocably entrusted to another body, the sovereign would then cease to exercise a universal supremacy and by implication also cease to be viewed as supreme by definition. The will of a sovereign state is argued to be subject to no legal limitation of any kind, it has also been contended that what it purposes becomes right by mere announcement of intention (Lasky, 2004).

The above exposition now begs the question as to what exactly is this phenomenon called the state? As in, what's expected to occupy the minds of men when the concept of state is called into discourse? The state in Austin and Austin (1861) view is simply a legal order, exhibiting a determinate authority that acts as the ultimate source of power within a given society, secondly its authority is limitless, it may act wisely, unwisely or even dishonestly, or in ethical sense unjustly. However, for the purpose of legal theory he argued that the character of its actions are insignificant so long as they emanates from the authority competent enough to issue such order, they are the law. However, Sir, Henry Main did not completely agree with the above postulates but that should be a matter for another time. As always with concepts or constructs in the management and social science discipline the concept of state attracted many definitions from scholars of different background and social philosophy. In fact, it is here argued that over one hundred definition of the concept has been offered by concerned scholars and yet its security has not yet been secured. It might be as a result of this definition controversy that Professor Lasky in his classic work titled ***The Grammar of Politics*** argued that; No theory of the state is ever intelligibly save in the context of its time, what men think about the state are outcomes, always of the experience in which they are immersed (Lasky, 2004). The massacre of Saint Bartholomew produces *whiggism* in the author of *vindicia,* the Puritan rebellion sent Hobbes searching for the formula of social peace; the glorious revolution of 1688 enable Lock to affirm that the power of the crown is built upon the consent of its subjects (Hobbes, 1968). Rousseau, Hegel, T. H Green all sought to give the mental climate of their time the rank of universal validity, and the more critical the epoch in which we live the more profound is the emphasis upon universality. Men fights grimely for status of ideology lest the experience they seek to validate be denied by their opponents (Lasky, 2004). The above postulates only confirmed the degree of the elusive nature of the concept of state. Implying that there is no universally accepted definition of the concept but only a collection of rival definitions. But notwithstanding, we do wish to discuss them as plainly and objectively as we can, with a particular attention on the fundamental issues as they must surely emerge, while we attempt to illustrate its basic characters as is prevalent in the new world order, monopoly capitalism or globalization.

The modern state has been perceived as a society of people, who are politically organized, within a defined territory, having its own government with coercive power to enforce obedience, and which is free from external control and demand of any sort (Samond, 2008). Samond by that definition appears to be implying that state is essentially a social order established by the dominant class within that collectivity through whatever means that is necessary, at least to them primarily to maintain what they consider to be order and justice within a defined territory by way of force and, or threat of use of physical force (Samond, 2008). Though Samond definition did not give us a holistic view or insight of what the concept really is, it did highlight the important of sovereignty as a major attribute of the modern state. Just like Samond (2008), Asobie (2005) also see the state as an organized public power but he goes somewhat beyond him to assert that it stand above the society and only emerges when the society have been divided into classes, and is organized in accordance with the principles of territorialism. Note that classes as is here used are not related to sizes, as in big or small, or even reach or poor business partners. They are function of production, they emanates from the contradiction within the relation of production which are associated with man's relation to the instrument of labor, alternatively, they are social categories arising from the distribution of the agent of production according to their relationship to the instrument of labor as owners and non-owners (Ake, 1979). However, it must be pointed out that Asobie in his definition did not tell us exactly how aloof is the state in the struggle for capital accumulation within these societies over which it claim supremacy (Asobie, 2005). But he also emphasizes the sovereignty of the state, and by implication contends that it set the perspective or framework of all other organization within that territory and in addition also bring within its power, all forms of human activities the control of which it deem desirable and appropriate. It must be because of the implied logic of its supremacy that its argued that whatever remain free of its control within that enclave over which it

claim supremacy does so by its own permission (Lasky, 2004). The concept has also been defined as 'a territorial society, divided into government and subjects, claiming within its allotted physical area supremacy aver all other existing institutions, it is in fact the final legal depository of social will' a closer and meticulous examination of the above definitions would reveal that sovereignty and or supremacy kept appearing in the expositions, making it a *conditio sena qua non* for any social organization to be recognized as a state by definition. It is also same in Professor Igwe's argument when he insists that; The modern state is the creature of the bases and most decisive element of the superstructure, with class, politics, population, territory as its major attributes, and government its primary agency (Igwe, 2002). A culmination of man's struggle in a settled life and the most comprehensive political organizational the society, embodying and expressing the common interest of the dominant class within the society and of the derivative of its ruling class within the government, both of which were able to attain and sustain preeminent through various designs including authoritative application of the use of physical force (Igwe, 2002).

The issue of sovereignty and center of dominance stands out like an accusing finger in the above conception of state. Because sovereignty implies supreme coercive power. A state must enjoy monopoly over the instrument of coercion, because without it, it cannot be able to enforce a will to which it is compelled by the class relation it's established to maintain. And once it retain its sovereignty it cannot be bound by any other external rule or pressure to do or not to do, except by its own will and or, consent. Because if it were so bound it would cease by definition to be referred to as sovereign state Lasky (2004). However, it is on this very ground that the title of African states to sovereignty is now under a serious scrutiny, but we shall come back to that later.

Irrespective of the above expositions regarding the degree of state relation to sovereignty or supreme coercive power, we are not in any way implying that the state is unchanging organization or institution because it has been subject at every point in time to the laws of relentless unfolding of history. New forms of property, an alteration in the character of religious believe; physical condition at the moment of their coming to a situation beyond the control of men. These and things of this nature have combined to shape the substance and the character of the state. Its forms also cannot be argued to be constant, since it has been monarchic, aristocratic, democratic etc. the state as a public power as already highlighted in this study has also been in the control of the rich and poor, men have rule it by reason of their birth or by their position in a religious fellowship. However, such perception of the theory of sovereignty as first above mentioned has at least three facets from which it require a serious and meticulous re-evaluation. It requires first and foremost a historical analysis, the contemporary states has not escaped the categories of time. It has become what it is today, at its present stage by virtue of historical evolution. That evolutionary trend helps to understand the nature and character of its present power and the relentless threat its sovereignty has come to face, at least in the African context and ultimately present a glimpse of what its future might become (Ake, 1979; Lasky, 2004). It is further argued that it is also a theory of law. Since it is bent on making the expression of a particular objective right without reference to what that objective actually contains (Lasky, 2004). It is thirdly a theory of political organization because of its emphasis that, there must be in every social organization a single center of ultimate reference, that is, a kind of public power that would be able to settle or resolve any social dispute within its territory by saying the last word that must be obeyed generally under any circumstances. So much on the issue of state and its sovereignty, however, from the socio-political and economic angle such notion of sovereignty as broached in this study, at least in Africa no longer hold sway in the new world order. The techniques and methodologies in which the African states conduct their internal affairs and their day to day administrative responsibilities in relation to other states, especially from the global north are clearly and undoubtably no longer a matter in which they are entitled to be the sole judge or decider. Why is that? the answer to that is pretty clear, and can be acquired from the fact that, the political development under globalization is consisting of a highly interlaced and interactive web of collective will, operating in space outside of the national border, but still with an eye towards the welfare of the citizens within a national border (Castells, 1997).

The Sovereihnty of Modern States and the Tentacles of International Law: The central problem of contemporary international law is to be found in the economic relations in which they are involved. Especially the transnational process unfolding under global capitalist economy. Specifically, the construction of a new global production and finance system that is clearly transnational rather than international in all ramifications (Robinson, 2011). And by implication also has stretched the international law to a difference echelon. Internationalization in this regard is seen as the extension of socio-economic, political and legal activities beyond national boundaries. This process is essentially quantitative, and would lead to a more extensive geographical pattern of those activities, whereas, transnationalization implies a qualitative difference situation from internationalization proces to involve not just the geographical extension of those activities across national boundary but also the transnational fragmentation of these activities and their functional integration (Leichenko, 2004; Robinson, 2004).

The point being made here is that, contemporary economic relation in brief, has transformed the world in which we live. Though this changes appear to have emerged in circa 1500 years in Western Europe according to Wallenstein, it accelerated to its crescendo in the present century, therefore, propelled the global socio-political, economic and legal system into a novel stage in their process of development. We

have entered into a world very different in final texture from that upon which our ancestors inhabited. We no longer live in those placed communities where a visitor from another continent seems a stranger from mares. Where prayers and incantations were the weapon of the last age against diseases. It has come to a point where we no longer have to depend on the necessities of life fashion by our own labor and productive system, for the whole world have been reduce to a mare village (Lasky, 2004; Robinson, 2004). The national economies have been dismantled and then reconstructed as a component part or element of the new global system. *Ipso facto* no state in the contemporary time can ever live a life of its own, a life in which it affect itself alone. Nigeria oil policy can determine or affect the economic situation of Ghana or even the national budget of Chad in a fiscal year. We have reached to a point where in global interdependence that the theory of law has consequences in international relations, that is of complete different character from those of the period when scholars such as Grotius and his followers laid the fundamental bases of international law. International law have been seen as a set of rules generally regarded and accepted as binding in relations between states and between nations (Bentham, 1972). From the above point of view, it serves as a framework for the practice of stable and organized international relations. It has been argued that international law differed from the state based legal system or the municipal law in that it is primarily applicable to states or countries, rather than to private citizens (Waldron, 2011). He argued that national or municipal law can as well become international law when treaties delegate national jurisdiction to supranational tribunals such as the international criminal court or the European court of human right. Treaties such as the Geneva Convention may require the municipal law to conform to respective parts; however, the governance of international law is mostly consent-based. This implies that a member state is not obliged to abide by the stipulation of any international law unless it has expressly consented to the command it imposes (Waldron, 2011).

The central problem facing the international law remains the fact that, tough these modern states are highly interdependence in socio-economic and political terms they are also divided into sovereign entities, each of which are completely responsible for the policies it choose to pursue. These policies may include the level of its armaments, its economic and financial policies, the making of war and peace, it political and economic relation to other states or nations. All this to mention but a few important ones that come to mind are national issues upon which it recognizes no other external or internal will superior to its own (Anderson, 1970; Ugo, 1997; Lasky, 2004; Dicey, 2005). As we have already argued in this very study, as long as the modern states exist primarily to maintain a given system of class relations in every society, the laws behind which it puts its supreme coercive power will no doubt have the same objectives. This we contend is the general problem that we confront whenever the issue of international law is raised, especially regarding its meaning and connotations. To define the international law as the body of rule which are enforceable through the existing socio-cultural and political institutions with the purpose of regulating behavior between or among states, is to ask ourselves who's socio-cultural and which political institutions? And under whose authorities are these behavior regulated? The above questions will not surprise anyone who is following this discourse because of the connotative nature of the state sovereignty as we have highlighted in this study. And if we define the international law as those rule of behavior which secure order and the purpose of the societies class structure, and will be enforced with the coercive power of the state if necessary, is also to ask, the coercive power of which particular state among the states that form the subject of international community?

Since the above perceptions do not exactly capture what the international law is, and what it is not, the question of what is international law and how far is its stipulations binding upon states which are the subjects under its jurisdiction still beg for an answer. It is on this base that the contested concept was defined by Professor Lasky as the body of rules which govern the relations among states, and its binding force is dependent upon their consent to observe the rule it imposes (Lasky, 2004). The above definition may sound absurd or preposterous; because naturally, laws always ensure the existence of a defined body of rule by which every entity within that jurisdiction conceive them as bound. But a closer examination will reveal that states regard themselves as free to break the obligations to which they are committed whenever they feel that it's necessary. As Iraq has done in Iran and in Kuwait, and Russia in Ukraine. the existence of some legal documents inform of treaties, accords or conventions in which states accepts mainly because they are convenient to them at that point to do so, is not enough to offer the international law a position independent of their own will. Because in a matter of major concern as Israel has shown over the West bank and Russia over Ukraine they are not ready to scarifies what they understand to be their sovereign interest to the claims of international law no matter the punishment and trade embargos that result thereafter. States in practice do not believe that there is any other existing entity to which their own laws are subordinate or inferior. Yet the validity of international law is dependent upon their consent to accept the rules it imposes.

Unfortunately the existence of states is the preconditions for international law, including also, the readiness of these states to interact among themselves for their own good. The minimum expectation is that these political units, would give at least certain minimum respect to one another, and also their representatives while they religiously stick to the principles of *pacta sunt servanda*. It is also arguable that the exchange of goods and services can only thrive under such circumstances. Because no political organization can ever rely completely on its own but on its neighbors for the attainment

of full potentials, on that base it's supposed to be in the benefit of every state to promote such relationship and therefore to develop the international law. But the existence of state sovereignty and their freedom to pursue whatever policies they choose have made the realization of such relationship very bleak. Not even the existence of the United Nations can ensure such peaceful coexistence. Given that, what the experiences of the last twenty years have indicated is the incompatibility of the United Nations with peaceful coexistence of sovereign states, for they have shown no serious sign of their willingness to abandon their sovereignty to the claims of international law in matters they view as related to their national security. The reason for such behavior is very simple and understandable, they need their sovereignty for the protection of those interests which cannot be maintained or promoted except by the technique of war (Lasky, 2004). The ambition of Russia, Iraq, Hungary and Israel to take but a few examples has shown that there come to a point when states will make demand on others which only the technique of war can enforce, and the events of the contemporary time has made it very clear just how decisive they willing to break the legal obligations, no matter how morally profound they might be in order to realize their ambition in foreign relation.

It is not inherent in the nature of law that those who dwell within its jurisdiction are bound to obey its stipulations independent of their own will? And their violation of its principles should e punishable by infliction of penalties? It here argued that no such situation exist in international law except as the concerned state choose to assume and to be bounded by such obligations. This is because the sovereign attributes of the modern states strike them with impotence as soon as they seek to assume the full character of the law. The reason for this inadequacy is of course clearly understandable, since the modern states exist to maintain and protect a given system of class-relation, it cannot escape from the contradictions contained in it. As soon as this becomes the case the incompleteness of the sanctions behind the international law emerges with a profound clarity. They are operative as long as the modern states choose to make them operative, and this willingness depends upon other factors so powerful as to prevent the international law from being like the municipal law, that is, a self-sufficient and complete legal system (Lasky, 2004; Umozurike, 2010). As a result of the sovereign attribute of the modern states, it has become very difficult if not impossible to make or elevate the international law beyond what John Austin has already called *a species of positive morality* except by abrogation of the state sovereignty (Austin and Austin, 1861). And this would imply the reorganization of the whole global economic foundation from which the legal and political superstructure derives.

CONCLUSION

We have in this study argued that Marxian interpretation of the international law best explain its nature, structure and substance, as we have seen that there can never be equality before the law except in a classless society. Law itself have human eyes and just like the humans are always influenced by their environment. Though none of its characteristics land mark has gone unchallenged as we have also seen in this study, it is most significantly remarkable that the liberal theory of law are not less helpful than the older theories to grapple with the central problem. They see law as a system of rules which a particular country or community recognized as binding and regulating the actions of its members and which it may if necessary enforce by the imposition of penalties. But they did not mention what informs the accepted and unaccepted behaviors or actions of these countries or communities and whose interest it ultimately serve. International law on the other hand was also seen by Bentham as a set of rules that are universally accepted and regarded as binding in relations among or between states or nations (Bentham, 1972). This variant of rules is argued by some scholars to be different from the state based legal system, because its primary concern is states rather than private citizens. Therefore, it follows that to qualify as a subject of international law, just like it is traditionally define above, such political organization must be sovereign, it must have populations, territories and government including the ability to engage in foreign or diplomatic relations. Hence, states within larger sovereign state such as Lagos State or Kano State are not considered subjects of international law, because they do not have the legal authority to engage in diplomatic relations with other states.

It is here argued that the sovereign attributes of the modern states remain the bane of international law. Fact is that, law con not go beyond a definite relation it is intended to enforce, its final claim are never self-determined, they are given to it by the economic relations upon which it is the expression. As Professor Lasky has already made known, as long as the driving strength of an economic system is heavily dependent upon the profit resulting from the private ownership of property, or the means of productions within a given state, the sovereignty of that state must organized the relation of production surrounded by the structure born of that principle (Lasky, 2004). As a result of such economic system, all other recognizable habits of the political society that is dominated by the state, will be unavoidably attuned both in the global and municipal sphere. Still to change those habits in favor of international law, there must be a complete revamp also in the relation of production upon which they depend. This situation only means the abrogation of the state sovereignty, which we certain they will never subscribe to, just like we know that night will come this very day. Because to dispossess the modern state of its sovereignty, in one word, is to deprive it of the authority to implement those logics that is intrinsic its economic system. Because sovereignty means the ultimate coercive power, without which the state cannot put into effect those objectives to which it is obliged by the class relation it exists to maintain.

The above conclusion is not in any way whatsoever

undermined by the admirable efforts of the Austrian School of International Lawyers to reinvigorate and reconstruct the ailing foundation of the international law. By campaigning for its supremacy over the state based legal system or municipal law. We must agree that their effort in superficial point of view is logically sound on doubt, but fact remains that they are un realistic. Because as long as the component states remains sovereign the issue of primacy will continue to be an issue in which the component states are free to decide, and as we have seen in our own time, such primacy will be enthusiastically disregarded by any of the component states if they think they can afford to do so, as soon as it feels that such recognition will endanger any interest it regard as essential to the national security.

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