

# Legalization

Concept: Legalization

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Description Legalization refers to any tendency of international relations to become more governed by international legal rules and procedures. Traditionally, international law was created by states to govern their relations with one another, but today other types of rules are recognized as important, such as those that aim to regulate directly the conduct of corporations or protect the human rights of citizens. The concept of legalization was examined in a special issue of the journal *International Organization* in 2000. The special issue sought to break legalization analytically into three dimensions: "obligation" (the degree to which states are bound to a rule); "precision" (the level of detail with which obligations in rules are set out); and "delegation" (the degree to which third parties other than states involved in disputes, such as international courts, have been given the responsibility to create or manage international rules). Particular arrangements could display any combination of these.

There is a long tradition of thinking about international law that assumes that it will grow in importance over time. Often this tradition is associated with labels such as "idealist," "liberal," or "Grotian" (after the Dutch scholar Hugo Grotius, who lived from 1583-1645 and who has been called the father of international law). Those who see international law as increasing in influence over time have tended to see a growth in international law as an expression of nature, or as an unfolding of God's will, or as part of the inexorable expansion of reason in the modern world. Many legal positivists, who see the source of international law in deliberate agreements among states, would explain a long-run growth in international law as resulting from the increased complexity of the tasks that states wished to manage jointly. Since the nineteenth century, it has been easy to find evidence of growth in the number and complexity of international laws, for instance by counting the numbers of treaties (which are the main form that international law takes) or by pointing to the creation of institutions devoted to international law, such as the International Criminal Court which entered into force in 2002. In contrast, are those who see the world as dominated by self-interested states engaging in power politics. They have tended to view international law as irrelevant, dealing with trivial issues, or even harmful if it creates the illusion that states do not need to be constantly preparing to defend their interests with military force.

The special issue of *International Organization* departed from traditional theories of legalization, viewing it as something that varies widely across issue areas rather than as an increasingly prominent feature of world politics as a whole. For instance the World Trade Organization, with its

court-like dispute resolution mechanism, is highly legalized while the G8, the leaders of the most industrialized countries who meet yearly, is informal and displays low levels of legalization.

Despite some important weaknesses of international law that should be acknowledged, in general, there is substantial evidence that increased legalization has accompanied globalization. The weaknesses include the large number of areas in which there are no international laws that constrain the actions of states. They also include the steady flow of states ignoring or undermining international law. Nevertheless, there are ongoing efforts by states and other actors to construct new rules or strengthen existing ones in order to deal with problems that have been associated with globalization, such as cross-border environmental damage.

There are sharp disagreements about whether international legalization has increased or reduced the autonomy of individuals. For instance, supporters of international human rights laws have argued that these provide important new types of protection for individual freedoms. In contrast, critics have seen the growth of international legal rules and procedures as primarily protecting the interests of powerful states and firms, including the creation in trade agreements of new rights for corporations at the expense of citizens. Probably the wisest conclusion to be drawn is that the picture is mixed, and depends on ongoing political struggles. For instance, global social movements have succeeded in protecting individual human rights in some areas of international law, while corporations have managed to strengthen their rights in other areas. The presence of this type of political and legal complexity at the international level can be seen as an aspect of globalization.

Suggested Reading: **Goldstein, Judith, et al.** 2001. *Legalization and world politics*. Cambridge, MA: MIT Press.