Matthew Akpobaro

Why have international law?

Introduction

In 1520, Babur invaded Saidpur, and at the moment of the conqueror's victory, Guru Nanak composed an indictment of him. Holding no army, no office, no forum and no jurisdiction, he filed it upwards, to an authority above which, by definition, no superior exists. It reads: "The Creator Himself does not take the blame, but has sent the Mogal as the messenger of death."[1] The complaint bypassed the only power on the field yet operated on a timescale that power could not perceive. Five centuries on, the captive's account is recited daily as an indictment, whilst the conqueror's is read as a memoir.

My answer is that international law exists so that a demand for justification can outlive the power at which it is aimed, and that Sikh jurisprudence has been demonstrating the proposition since Nanak indicted Babur. Nanak was entitled to nothing and made the charge at his own risk. That is the demand in its rawest form. The demand came before the law. What law changed was the cost of making it, and so, who could make it. The sceptic will point to the absence of a superior sovereign and call it the absence of law. In truth, what is missing is an enforcer, and what remains is law.

In this essay, Section I defines answerability, and what a jurisprudence formed without a state contributes to a question about law without a sovereign. Sections II, III and IV answer the three standing objections: that authority requires a sovereign, that obligation requires something in return, and that no norm constrains force.

[1] Sri Guru Granth Sahib, Ang 360 (Āsā, M1). Translations follow srigranth.org.

I. Answerability: Jurisprudence Without a State

By Sikh jurisprudence, I refer to a tradition of normative reasoning that is five centuries old. It draws upon scripture, the Gurus' commands, the *Rahit-Nama* (the codes of conduct) and the institutions of the *Panth*, the collective body of the Sikhs.[2] It has no codifying instrument issued by a sovereign and the closest thing to one is the *Sikh Rehat Maryada*, approved by the SGPC in 1945, carrying no sovereign author.[3]

Authority, obligation and the conditions for lawful force had all been decided where no sovereign stood above any party, which directly reflects the international condition. Domestic jurisprudence, by nature, is born from within a hierarchy and, ironically, must pretend it is not there. Sikh tradition has never had one and so has run the experiment that the sceptic claims impossible.

Power is only answerable when it must give reasons in terms it cannot wholly choose. Reasons must be given, so that silence itself is a position, with a price. The terms must pre-date the act, as rules drafted for a particular occasion impose a false constraint. And the qualification is "wholly", as although a state may help write the terms, it cannot dictate them at the moment of use.

My claim is about law, not ethics, though the link between them must be addressed. Within humans, a moral demand will always exist; Nanak made that demand at every

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[2] W H McLeod, *Textual Sources for the Study of Sikhism* (Manchester University Press 1984) 2–3, 9–10, 79.

[3] Sikh Rehat Maryada (SGPC 1945).

expense. Law does not create it. It gives it standing, names in advance who holds it, and leaves it actionable even when no-one is watching.

Legal philosopher H. L. A. Hart is this thesis's nearest thing to an opposition, and on his main point, we agree. Hart rejects the idea that law is determined by the existence of sanctions, accepting that international law constitutes law.[4] John Austin held that law is the command of a sovereign, enforced by threat, meaning international law is not law at all since no sovereign stands above states.[5] Fortunately for me, Hart disposed of this theory.

What Hart does say is narrower. He says international law contains rules about conduct, but lacks rules about these rules, reducing it to a set of primary rules rather than a system. My thesis does not require international law to be a system. Only a standard that is general, retained and transferable. Primary rules give the standard. A separate rule gives the entitlement to complain of its breach, and that is what makes it transferable.

As answerability is partly constitutive of law, I must compare law with a hierarchy above it (domestic) to law with none (international). Domestically, answerability is one function amongst many but works only due to the presence of hierarchy. Man will explain himself because a superior can compel him to. Internationally, there is no

[4] H L A Hart, *The Concept of Law* (3rd edn, OUP 2012) ch 10, 228–231.

[5] John Austin, *The Province of Jurisprudence Determined* (Wilfrid E Rumble ed, CUP 1995) (first published 1832) 12–18.

superior to compel anyone, and answerability is the only thing law does that nothing else can do instead. I cannot prove that nothing else would do the same, but I can point to what has lasted.

In *Nicaragua,* the United States walked out before judgment in the International Court of Justice and lost anyway. Forty years on, the holding on article 2(4) is the one anyone arguing about the lawfulness of force must deal with, including America.[6] The sceptic may object that states are the ones choosing the forums, assessors and the vocabulary itself. Whilst escape routes exist, taking one is a legal act: performed in the form that the law has prescribed. Reservations (opting out of part of a treaty when joining it) must be compatible with the object and purpose of the treaty with their compatibility assessed by others.[7]

These are rules about rules, which is the thing Hart claimed was missing. Hart named three: change, adjudication, and recognition. International law has the first two. There is a provision governing which reservations may be made, and one voiding any agreement that conflicts with a peremptory norm (a rule no state can contract out of). These are rules of change. When the World Trade Organisation's appeals body became paralysed, members moved the same disputes to arbitration under the same treaty. That is a rule

[6] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)* (Merits) [1986] ICJ Rep 14, para 188.

[7] Vienna Convention on the Law of Treaties (VCLT) (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 19(c). *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (Advisory Opinion) [1951] ICJ Rep 15.

of adjudication.[8] Two of Hart's three are present, with only recognition being genuinely missing, which is a much smaller critique than the one he is usually quoted for. A state binding itself today cannot know what will arrive in ten years. It cannot consent only to the cases it would win. Consent, through this lens, serves as a further means of answerability.

My argument, however, can be tested. It is that the demand becomes extinguished if nobody is left with the entitlement to make it. This is not to be confused with a judgment being ignored, or with a state walking out. Extinction occurs when a standard falls into desuetude (disused, until no longer treated as binding) or when it becomes terminated with no custom surviving it. The WTO serves as a prime example. Its appeal function was disabled by a member exercising a permission the treaty gave it, which broke no rules. Following this, the members retained their claims and took them to arbitration under a provision of that same treaty.[9]

Answerability is not exclusive to law. An IMF loan makes the borrowing state justify itself against terms it did not choose, and the money stops if it fails. There is no law anywhere in that.[10] Legal answerability differs in being general, retained and transferable. That also answers the sceptic who calls this moral condemnation in legal attire. Legal

[8] Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154, art 25.

[9] DSU (n 8) art 25.

[10] International Monetary Fund, 'IMF Conditionality' (Factsheet, last updated April 2025) <www.imf.org/en/about/factsheets/sheets/2023/imf-conditionality> accessed 8 August 2026.

answerability is general because the standard, once written is fixed upon all who fall within its jurisdiction. It is retainable because of a claim's ability to withstand any loss of leverage. A judgment remains an entitlement regardless of whether it is enforceable. And it is transferable because any non-impacted third-party preserves the right to invoke a breach, observed when The Gambia sued Myanmar albeit remaining unaffected.[11]

The demand for power to explain itself has also reached the domestic courtroom. In *R v Jones (Margaret)* the House of Lords held that customary international law is already part of the law of England, whilst holding that the creation of a new crime remains a matter for Parliament.[12] The first half shows an English judge treating international law as law he was bound to apply, not as diplomacy happening elsewhere. The second is where my claim stops: the court received the demand, but making a crime of it is Parliament's. That is the definition and the test. I now take the three objections that would otherwise break it, in turn.

II. Authority Without a Sovereign

Adjudicative authority can be defined as the power to sit in judgment on someone. The sceptic claims that this requires an enforcer that stands above the party being judged. The case of the *SS Lotus* embodies this ideology. The Permanent Court of International Justice held that Turkey was permitted to do so, as nothing prohibited it, as states were

[11] ILC, Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), UNGA Res 56/83 (12 December 2001) Annex, art 48.

[12] *R v Jones (Margaret)* [2006] UKHL 16, paras 10–11, 23.

free unless a rule said otherwise and "restrictions upon the independence of States therefore cannot be presumed".[13] This style of reasoning still surfaces in the Court's modern practice, receiving criticism from judicial figures.[14]

My response to this lies in positive law (law as it has been laid down and is in force). Responsibility can still be invoked by states that have suffered no detriment of their own.[15] This is evidenced by The Gambia bringing proceedings over Myanmar's treatment of the Rohingya (a Muslim minority in Myanmar), having suffered nothing itself.[16] This is the right to complain. Whether a state in this position may enact countermeasures (e.g. suspending treaties or freezing assets) is still a question the articles have left open.[17]

Investor-state arbitration provides an answer, taking it one step further. Here, a state must justify itself to a private company, and not to another state. It cannot say it was forced into this, having signed the treaty that allows it and helped set the tribunal up. Upon losing, the award can be legally enforced against its assets, including property in states that were never party to the dispute.[18] Here, the demand does not stop at a complaint. The respondent pays, with no sovereign above it.

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[13] *SS Lotus (France v Turkey)* (1927) PCIJ Series A No 10, 18.

[14] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403, Declaration of Judge Simma, para 8.

[15] ARSIWA (n 11) art 48.

[16] *Application of the Genocide Convention (The Gambia v Myanmar)* (Preliminary Objections, Judgment of 22 July 2022) paras 112–114.

[17] ARSIWA (n 11) art 54.

[18] ICSID Convention (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159, art 54(1). New York Convention (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3.

Sikh tradition has a doctrine for answerable power. *Mīrī-pīrī* pairs worldly authority (*mīrī*) with spiritual authority (*pīrī*) and ranks them. *Pīrī* sets the terms, *mīrī* is lawful only inside them, meaning worldly power can never write the standard by which it is judged. Guru Hargobind bore arms and came into armed conflict with officials of the Mughal empire.[19] He held real worldly power, and yet, the doctrine still placed him second. In 1609 the Akal Takht, the seat of worldly authority, was raised directly opposite the Harimandir.[20] The intentional placement can be interpreted as worldly power constantly being faced with the source of its terms.

The coins forged under Sikh polity carry a Persian inscription tracing sovereignty back to spiritual leaders, Guru Nanak and Guru Gobind Singh – not to whoever was ruling at the time. Ranjit Singh ruled the Sikh Empire from Lahore for some forty years and was the most powerful sovereign the tradition has produced. Despite this, J S Grewal records that "neither his name nor effigy appears on the coins current in his dominions."[21] Coinage is the one thing a sovereign controls absolutely. Nothing could have stopped him striking his own name on it, and he put the Gurus there instead. A ruler whose own coins credit someone else is not the keeper of the standard. He is one of the people following it.

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[19] J S Grewal, *Sikh Ideology, Polity and Social Order: From Guru Nanak to Maharaja Ranjit Singh* (rev edn, Manohar 2007) 14.

[20] G S Randhir, *Sikh Shrines in India* (Publications Division 1990) 17.

[21] Grewal (n 19) 17, 183.

The Sikh order also punishes. *Tanakhāh* is "a penance or fine imposed by a sangat on any member of the Khalsa who violates the Rahit", and the person convicted is a *tanakhāhīā*.[22] The Khalsa, founded in 1699, is the initiated community, and the Rahit is the code binding on it. The *sangat* is the local congregation. It is not above the members it punishes, and the sanctions run sideways, between equals, imposed by a body with no power to compel anyone.

The sceptic's claim was that sanctions require a superior. Here is one with none. All three of my examples run sideways: a state with no injury bringing a claim, an award enforced in a country with no stake in it, a congregation fining its own member. There is no sovereign above anyone here, and yet, it works.

These sanctions also reach outwards. The *hukamnāmā*, a written letter of command from the Gurus to the sangats, was complied with across territory the Gurus did not rule over, requiring no coercive control or force.[23] Compliance at that range, with nothing to compel it, shows plainly that a standard can hold people the standard-setter cannot reach.

The Sarbat Khalsa served as the general assembly of the *Panth* (the Sikh collective), passing resolutions “in the presence of the Guru Granth Sahib”.[24] The assembly lapsed

[22] W H McLeod, *Sikhs of the Khalsa: A History of the Khalsa Rahit* (OUP 2003) 10.

[23] Sabinderjit Singh Sagar, *Hukamnamas of Guru Tegh Bahadur: A Historical Study* (Guru Nanak Dev University Press 2002) 5.

[24] Pashaura Singh, 'Revisiting the Evolution of the Sikh Community' (2010) 17 Journal of Punjab Studies 65.

under the growing power of Ranjit Singh; however, the sanction persisted. What died was the machinery for collective decision-making. The forum failed. The standard is what survived.

III. Obligation Beyond Reciprocity

The second objection to this claim concerns obligation. On this account, state compliance is fully explained by interest, coincidence and coercion. The meaning of the word "obligation" is redundant and does no causal work.[25] I accept that states comply, at high rates too, but this reply does not concern compliance at all; it concerns cost.[26]

Self-interest alone explains why a state does what it was going to do anyway. What it fails to explain is why a state pays the price of adopting a position it can be held to afterwards. A state that justifies an act by reference to a standard narrows the ground available to it in future cases that bear similar resemblance. It risks the chance of lending its opponents the terms of the next complaint, in which it must oblige. A state indifferent to obligation would say nothing, or say something different each time. States do neither. The sceptic's theory built on interest alone cannot say why any state would pay that.

Positive law has also formed obligations that do not serve any specific bargain. Some obligations are collectively owed to the international community, and a state with no

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[25] Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (OUP 2005) 23–26.

[26] Louis Henkin, *How Nations Behave: Law and Foreign Policy* (2nd edn, Columbia University Press 1979) 47.

injury sustained may still invoke their breach.[27] This is not just theoretical. We have seen this twice: initially in *Belgium v Senegal* and again in *The Gambia v Myanmar*.[28] Treaty law says the same thing in a single clause, in which an agreement becomes void if it conflicts with a peremptory norm – a rule that no state can contract out of.[29]

In practice, the first objection will be the concept of immunity. A state cannot normally be sued in another state's courts. The Court held that this holds even where the rule broken is a peremptory one, meaning there is no forum to hear it.[30] Immunity is not a fixed line, however. In Benkharbouche the Supreme Court held provisions of the State Immunity Act 1978 incompatible with the right of access to a court and disapplied them, so claims the Act would have barred were heard.[31]

Separately, where immunity does hold, the condition of failure applies. What is relevant is whether anyone still holds the entitlement; not whether a court will hear it, as the right to invoke the standard against the wrongdoer survives regardless.

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[27] *Barcelona Traction, Light and Power Co Ltd (Belgium v Spain)* (Second Phase) [1970] ICJ Rep 3, para 33.

[28] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (Judgment) [2012] ICJ Rep 422, paras 68–70. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (Preliminary Objections) [2022] ICJ Rep 477, paras 112–114.

[29] VCLT (n 7) art 53.

[30] *Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening)* (Judgment) [2012] ICJ Rep 99, para 93.

[31] *Benkharbouche v Secretary of State for Foreign and Commonwealth Affairs; Janah v Libya* [2017] UKSC 62, [79]. State Immunity Act 1978.

Sikh tradition's doctrine of non-reciprocity is stated in daily prayer. The *Ardās*, the daily petition, closes on *sarbat da bhala*. Derived from scripture, it reads: "No one is my enemy, and no one is a stranger; I get along with everyone."[32]

In 1675 the ninth Guru, Tegh Bahadur, submitted to execution over the religious freedom of people who were not of his faith. They owed him nothing and could return nothing to him.[33] Article 48 allows a state to complain about a breach that caused it no injury, with a right that costs nothing to hold. Parallel to this, the ninth Guru held no such right and making that demand cost him his life. This cannot be explained by self-interest, and certainly not by coercion.

IV. Force Under a Norm

The realist will claim that law tracks power and that answerability tracks weakness. That the weak are held to account whilst the strong are merely described.[34] On paper, *Nicaragua* was won and nothing was ever collected. However, powerful states spend real resources attempting to evade answerability. They litigate jurisdiction for years, withdraw declarations by formal instruments and negotiate text down to its sub-clauses. All of this comes at an expense. This costly avoidance serves as evidence that the demand carries force.

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[32] Sri Guru Granth Sahib, Ang 1299 (Kānṛā, M5). For the *Ardās* closing line, see Sikh Rehat Maryada (n 3).

[33] Louis E Fenech, *Martyrdom in the Sikh Tradition: Playing the "Game of Love"* (OUP 2000).

[34] John J Mearsheimer, 'The False Promise of International Institutions' (1994) 19(3) International Security 5, 7. Michael J Glennon, *The Fog of Law: Pragmatism, Security, and International Law* (Stanford University Press 2010) 53.

The climate advisory opinion of 23 July 2025 was generated by Vanuatu, a small Pacific Island state with little to no leverage over anyone, and yet, it culminated the largest participation in the ICJ's history.[35] The demand arose from weakness, not vice-versa.

The United Nations Charter prohibits the threat or use of force against the territorial integrity or political independence of any state, and admits self-defence against an armed attack as the exception.[36] That prohibition is not only a treaty rule. It exists in customary international law as well, so a state remains bound by it whether it stays party to the Charter.[37]

A state claiming self-defence must report it to the Security Council, though that duty is procedural and failing it does not make the act unlawful by itself. What the silence does is serve as evidence that the state never believed it was defending itself in the first place.[38] Even in the deep end, a state must give its reasons in terms it did not set. Silence itself bears a cost.

We end in 1705, when Guru Gobind Singh wrote to the emperor Aurangzeb. The *Zafarnāma*, the letter of victory. The last-resort idea is nothing remarkable. Thomas

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[35] *Obligations of States in respect of Climate Change* (Advisory Opinion, 23 July 2025).

[36] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) arts 2(4), 51.

[37] *Nicaragua* (n 6).

[38] Ibid para 200.

Aquinas said it in the thirteenth century followed by Hugo Grotius in the seventeenth. The letter has it at verse 22: "When all strategies brought to bear are exhausted it is then lawful to take steel in hand."[39] That is not why the letter matters.

What matters is that it holds the emperor to account, for a siege conducted in his name. We can take one thing from the oath sworn by the besieging commanders. A promise becomes the standard you are judged by later. His commanders promised safe conduct in his name, which put the emperor on record about how his own war was to be fought. The people he broke it against kept the record.

The historian Louis Fenech notes that the letter is written in the emperor's own courtly Persian, drawing on the *Shāh-nāma* and Sa'di, the literature his own court was built on.[40] Aurangzeb could not dismiss it as foreign or beneath him. It arrived in his own language, and in that language, there was no answer available to him. My definition asks for terms the powerful cannot choose. Here, the Guru used terms Aurangzeb had chosen himself, and they bound him anyway.

Conclusion

International law exists because it is the only instrument by which a demand for justification can be made to outlive the power at which it is aimed.

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[39] Louis E Fenech, *The Sikh Ẓafar-Nāmah of Guru Gobind Singh: A Discursive Blade in the Heart of the Mughal Empire* (OUP 2013) 55 (bait 22).

[40] Ibid ch 3, 'The Text of the Ẓafar-Nāmah: Guru Gobind Singh, Ferdausi, and Saʿdi'.

Section I described a standard nobody stands above. Section II found punishment imposed by equals rather than by a superior, which possesses no domestic equivalent. Section III described an obligation that nobody needed to be owed, and Section IV described a use of force that must be justified in terms the state using it did not write. Each was tested against its strongest objection, and each time, a forum failed whilst a standard persisted. An assembly lapsed and a sanction endured.

At Nuremberg, prosecutor Robert Jackson called the trial the tribute of four great nations, “flushed with victory and stung with injury”, choosing to “stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law”.[41] A milestone, but not the beginning.

Babur held everything the sceptic believes the law requires. The army, the office, the forum and the sword. Nanak held none of it and made the demand anyway, upwards past the only power on the field, in terms the conqueror could not choose. He paid the full price as there was no other way. The empire that could not be sued is gone. The demand outlived it.

Time has since decided what the two records of that campaign are. The conqueror’s is read as a memoir. The other is recited, every day, as an indictment.

Word Count: 3,342

[41] Opening Statement for the United States (21 November 1945), in Trial of the Major War Criminals before the International Military Tribunal (IMT, Nuremberg 1947) vol 2, 98.