

2015

African Origins of International Law: Myth or Reality?

Jeremy I. Levitt

Florida A&M University College of Law, jeremy.levitt@famu.edu

Follow this and additional works at: <http://commons.law.famu.edu/faculty-research>



Part of the [African History Commons](#), [International Law Commons](#), and the [Social and Cultural Anthropology Commons](#)

Recommended Citation

Jeremy I. Levitt, African Origins of International Law: Myth or Reality? 19 UCLA J. Int'l L. Foreign Aff. 113 (2015)

This Article is brought to you for free and open access by the Faculty Works at Scholarly Commons @ FAMU Law. It has been accepted for inclusion in Journal Publications by an authorized administrator of Scholarly Commons @ FAMU Law. For more information, please contact linda.barrette@famu.edu.

THE AFRICAN ORIGINS OF INTERNATIONAL LAW: MYTH OR REALITY?

*Jeremy I. Levitt**

ABSTRACT

This Article reconsiders the prevalent ahistorical assumption that international law began with the Treaty of Westphalia. It gathers together considerable historical evidence to conclude that the ancient world, particularly the New Kingdom period in Egypt or Kemet from 1570-1070 BCE, deployed all three of what today we would call sources of international law. African states predating the modern European nation state by nearly 6000 years engaged in treaty relations (the Treaty of Kadesh), and applied rules of custom (the MA'AT) and general principles of law (as enumerated in the Egyptian Bill of Rights). While Egyptologists and a few international lawyers have acknowledged these facts, scholarly

* Jeremy I. Levitt, J.D., Ph.D., is Vice-Chancellor's Chair and former Dean, University of New Brunswick Law School. He is also Distinguished Professor of International Law at Florida A&M University College of Law. The Author makes the following acknowledgments: I began writing this Article while serving as the 2012 Fulbright Research Chair in Human Rights and Social Justice at the Human Rights Research and Education Center (HRREC) at the University of Ottawa. I gratefully thank Lucie Lamarche and Sonya Nigam for providing me with a peaceful and intellectually rich environment to work. I am indebted to Henry J. Richardson III and Jose Alvarez for comprehensively reviewing and commenting on the Article. Their insights helped shape and reconfigure the project. I also thank Olabisi Akinkugbe and Sabrina Collins for their dedicated research assistance during its preparation. This Article draws on, in part, the following work of the Author. See JEREMY I. LEVITT, *ILLEGAL PEACE IN AFRICA: AN INQUIRY INTO THE LEGALITY OF POWER-SHARING WITH WARLORDS, REBELS, AND JUNTA* (Cambridge Univ. Press 2012).

attention to the ancient origins of contemporary international law has been sporadic and at times openly hostile to the proposition that international law may have originated in Africa and not in Europe. Challenging the Eurocentric mythology of international law’s origins upends traditional verities and forces us to reconsider whether contemporary international law owes as much to Africa as it does to far more recent developments, including the colonial encounter.

INTRODUCTION 114

I. THE ANATOMY OF INTERNATIONAL LAW IN ANCIENT EGYPT AND ITS INTERLOCUTORS 118

II. STATE FORMATION..... 129

 a. The First Nation-State 130

 b. International Rule-Making 138

III. CUSTOM AND TREATY LAW..... 141

 a. MA’AT 145

 b. Amarna Letters 148

 c. Treaty Law 152

CONCLUSION..... 158

“If the teachers allow themselves to be led toward evil principles, verily the people who understand them not will speak accordingly, and that being said to those who are docile they will act accordingly. Then all the world considers them as masters and they inspire confidence in the public; but their glory endures not so long as would please them. Take not away then a word from the ancient teaching, and add not one; put not one thing in place of another; beware of uncovering the rebellious ideas which arise in you; but teach according to the words of the wise. Attend if you wish to dwell in the mouth of those who shall attend to your words, when you have entered upon the office of master, that your words may be upon our lips . . . and that there may be a chair from which to deliver your arguments.”

—Ptah-Hotep, 2200 BCE, Ancient Egyptian Jurist

INTRODUCTION

Where did international law originate? According to most contemporary scholarship, including leading casebooks, one need not look further than the Treaty of Westphalia (1648) since, before that time, nation

states and rules governing their interactions did not exist. Europeans, namely Emer de Vattel and Hugo Grotius, who helped construct the rules for interactions among the emerging European states, are deemed the field's intellectual fathers, not ancient jurists such as Ptah-Hotep of Egypt or those antiquity lawyers that drafted and negotiated international treaties between African and near East powers. International law's contemporary historians, most prominently, Martti Koskenniemi, begin their accounts of international law at this point, suggesting that, for example, international law has been built on Eurocentric cataclysms: the 30 years' war ending in Westphalia, WWI and WWII, and the end of the Cold War.¹ Accordingly, the encounter between nations deemed "civilized" by the European powers and those which were not, has been seen as the single greatest shaper of modern international law.² This has been true with respect to views of the discipline undertaken in the West as well as those produced elsewhere. Thus, leading accounts of contemporary Chinese attitudes toward international law, describe these attitudes and views as initially hostile to "Eurocentric" legal frameworks with only incremental acceptance beginning in 1954 including, for example, China's formulation of the Five Principles of Peaceful Coexistence. A good example is Justice Xue Hanqin's magisterial history of Chinese attitudes toward international law—which argues that contemporary Chinese leaders have now come to accept this formerly alien framework for governing nations, along with the European languages (especially English) in which it has been constructed.³

As for international rules that predate the colonial encounter, Sumerian city-state law and accompanying concepts of "interstate law" in the Early

¹ See generally MARTTI KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW* (Hart Publ'g 2011); Martti Koskenniemi, *International Law and Raison d'état: Rethinking the Prehistory of International Law*, in *THE ROMAN FOUNDATIONS OF THE LAW OF NATIONS: ALBERICO GENTILI AND THE JUSTICE OF EMPIRE* (Benedict Kingsbury & Benjamin Straumann eds., 2010); MARTTI KOSKENNIEMI, *THE GENTLE CIVILIZER OF NATIONS: THE RISE AND FALL OF INTERNATIONAL LAW 1870-1960* (2001). See also DAVID BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS 2* (2001).

² See generally ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* (2005); Gerry J. Simpson, *Two Liberalisms*, 12 EUR. J. OF INT'L L. 544 (2001); Gerry J. Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, 32 STAN. J. INT'L L. 255 (1996); Makau Mutua, *Savages, Victims, and Saviors: the Metaphor of Human Rights*, 42 HARV. INT'L. L. J. 201 (2001); James Thuo Gathii, *International Law and Eurocentricity*, 9 EUR. J. OF INT'L L. 184(1998).

³ Xue Hanqin, *Chinese Contemporary Perspectives on International Law: History, Culture and International Law*, 35 HAGUE ACAD. OF INT'L L. (2011).

Dynastic Period in Southern Mesopotamia (2400 BCE);⁴ Nubian contributions to ancient international law and relations (1080-715 BCE);⁵ Carthage's influential socio-legal order during the Third Intermediate period (1069-715 BCE); and the transnational governance systems of ancient Ghana, Mali, and Songhai in the pre-medieval era (1230-1600 AD),⁶ among others, cover vast fields of inquiry that have, of course, consumed the attention of many scholars, but not the legal academy. This preliminary study does not aspire to replicate that work, its scope is considerably narrower. This Article seeks to redress the relative dearth of legal literature appraising these dynamic civilizations by contemplating the nature and character of ancient international law spurred by the Nile Valley civilization, a multi-millennial body of law to which the modern international legal order in some ways remarkably emulate.⁷ In doing this, it perhaps builds on the

⁴ Amnon Altman, *Tracing the Earliest Recorded Concepts of International Law, The Near East (2500-330 BCE)*, in LEGAL HISTORY LIBRARY 8, STUD. IN THE HIST. OF INT'L LAW 1, 1-22 (Randall Lessafer ed., Brill Publishers 2012) (noting that while the known historical record appears to indicate that Sumerian law is the oldest, Mesopotamia did not establish a system of states nor did Sumer sit at the apex of an international community of states as did Egypt. Sumer was the sole superpower in Mesopotamia and under it a system of tributaries or interdependent city-states emerged; however, such states did not evolve into independent powers. No concrete evidence show that they engaged in regular relations with mutually independent powers (parity states) based on international consent like the "Big Powers Club" led by Egypt.).

⁵ GRAHAM CONNAH, *AFRICAN CIVILIZATIONS: AN ARCHAEOLOGICAL PERSPECTIVE* 18-65 (2d ed.2001).

⁶ See Siriman Kouyatis, *The Charter of Kurukan Fuga*, W. AFR. REV. 15 (2009) (explaining how the constitution of the Malian Empire commonly referred to as *The Charter of Kurukan Fuga* (aka the Manden Charter)(1230-1600) is one of the world's oldest constitutions—perhaps the oldest federalist constitution—comprised of a preamble and seven chapters. The Malian Empire stretched from the Sahara Desert to the West African coast (500,000 square miles) during the reign of Mansa Musa and included Senegal, southern Mauritania, Mali, northern Burkina Faso, western Niger, the Gambia, Guinea, Guinea-Bissau, Cote d' Ivoire, and northern Ghana. It recognizes numerous rights and "outlaws" certain types of behavior. It acknowledges the rights, among others, to life and physical well-being and food; it recognizes children's education as a societal responsibility, women's participation in all community management and decision-making processes, consular protection, good-faith and fair dealing, the obligation to help the most vulnerable, property ownership, marriage, legislative representation, dowry, and the return of lost property. The Charter outlawed offending women and mothers, violence against women, poor treatment of emissaries, the abuse of servants, infidelity, social betrayal, the keeping of lost property, and the humiliation of enemies.).

⁷ See Olga V. Butkevych, *History of Ancient International Law: Challenges and Prospects*, 5 J. OF THE HIST. OF INT'L L. 230 (2003) (discussing how international law initially emerged as rules of conduct binding on parity states and Pharaoh or king in international

work of the few scholars who have examined the Egyptian conception of law and justice, at least one of whom has concluded, along with the Author, that those rules “stand at the beginning of the western jurisprudential tradition” and are “in fact a vital link between the ancient eastern Mediterranean world and later developments in western legal thought.”⁸ Such claims will no doubt be tenuous for some commentators; however, this observation—albeit antidotal—is backed by credible evidence.

The foregoing normative and deductive inquiry fulfills three purposes. First, it provides the first substantive account of the African origins of international law that includes all three “sources” of that law (treaties, custom and general principles of law) while identifying core characteristics of the nature of ancient international law and the taxonomy of early interstate relations. Second, the very nature of the study organically or naturally confronts traditional verities in conventional and critical international law and governance discourses and emboldens those who might want to look to pre-European and pre-colonial law and state structures to inform current societal dilemmas. Could the modern African state benefit from ancient African knowledge and approaches to governance, justice, and development? Finally, this reexamination raises important questions about the origins of contemporary legal concepts such as statehood and treaty-craft. Did the Greco-Roman conception of statehood and international law originate much earlier? If so, does this inform, explicate, or fortify our knowledge or understanding of those concepts? Stated otherwise, how, if at all, does the international law of antiquity in Africa illuminate modern interpretations, designs, and understandings of the law, or does it simply provide a more ancient pedigree for the field at odds with the traditional orthodoxy?⁹

This Article tangentially considers whether the ancient international law of Africa inspired and found permanence in the modern international law system, or whether any similarities are simply coincidental. Since African

relations (e.g. war, peace and diplomacy), transactions (e.g. trade and marriage) and problems (e.g. international cooperation in criminal matters such as extradition). Yet, this descriptive definition must be tempered by the observation that the “absence of [a] separate history of international legal doctrines is adversely manifested in inadequate understanding of mutual effect of international law, international legal concepts and consciousness with mythology, religion, other attainments of human culture.”). *Id.*

⁸ J. G. Manning, *The Representation of Justice in Ancient Egypt*, 24 YALE J. L. & HUMAN. 111 (2012).

⁹ See Makau Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT’L L. 1113, 1162 (1995).

statehood (3100 BCE) significantly predated European colonialism and its body politic, the birth of Greek civilization and its emergence from its dark ages (during the Archaic period, 750-500 BCE), and the legendary founding of Roman society by Romulus (753 BCE), this is a significant repositioning of the origins of the discipline. As Makau Mutua rightly notes, “these are not idle questions given that African statehood predated the Scramble for Africa and the imposition of the modern Eurocentric state on Africa.”¹⁰

I. THE ANATOMY OF INTERNATIONAL LAW IN ANCIENT EGYPT AND ITS INTERLOCUTORS

This study probes and decodes the legal nature, character, and taxonomy of Egypt's Pharaonic nation-state millennia before the Treaty of Westphalia and the advent of the modern nation-state in 1648. It focuses on ancient international law in Egypt or Kemet (a.k.a. “People of the Black land”), with specific reference to the New Kingdom period (1570-1070 BCE) because during this era Egypt experienced unprecedented global expansionism and wielded unparalleled influence in international relations (e.g. law, diplomacy, trade, commerce, and warfare). Interestingly, the New Kingdom period ended when the Nubian nation-state, which had been dominated by Egypt for several millennia, reclaimed and ruled it from 1080 to 715 BCE. Kemet was the predominant power in a small system of ancient states commonly referred to as the “Great Powers Club” that by the end of the Middle Kingdom period (2055-1650) included Hatti (Kingdom of the Hittites) to the east in Asia Minor, Assyria (Akkadian Empire), Babylonia in central-southern Mesopotamia and, arguably, Nubia and Kush to the south.¹¹ This burgeoning international society eventually expanded to include Mittani, and Alashiya (Cyprus) during the New Kingdom period (1570-1040 BCE).¹² The adaptability or normative elasticity of Egyptian conceptions of

¹⁰ Makau Mutua, *Book Review*, 104 AM. J. INT'L L. 532, 533 (2010) (reviewing AFRICA: MAPPING NEW BOUNDARIES IN INTERNATIONAL LAW vii, 333 (Jeremy I. Levitt, ed., 2008)).

¹¹ While the scholarly literature is ambiguous and ambivalent about the sovereign existence and status of Nubia and Kush, the Author's review of relevant archeological, anthropological, and historical evidence seems to confirm their sovereign status.

¹² Yuval Goren, Shlomo Bunimovitz, Israel Finkelstein & Nadav Na'Aman, *The Location of Alashiya: New Evidence from Petrographic Investigation of Alashiyan Tablets from El-Amarna and Ugarit*, 107 AM. J. ARCHAEOLOGY 233 (2003); Nirko Novák, *Mittani Empire and the Question of Absolute Chronology: Some Archaeological Considerations*, in *The Synchronisation of Civilisations in the Eastern Mediterranean in the Second Millennium B.C. III, Proceedings of the SCIEM 2000- 2nd Euro Conference* 389 (Manfred Bietak & Ernst Czerny eds., 2007).

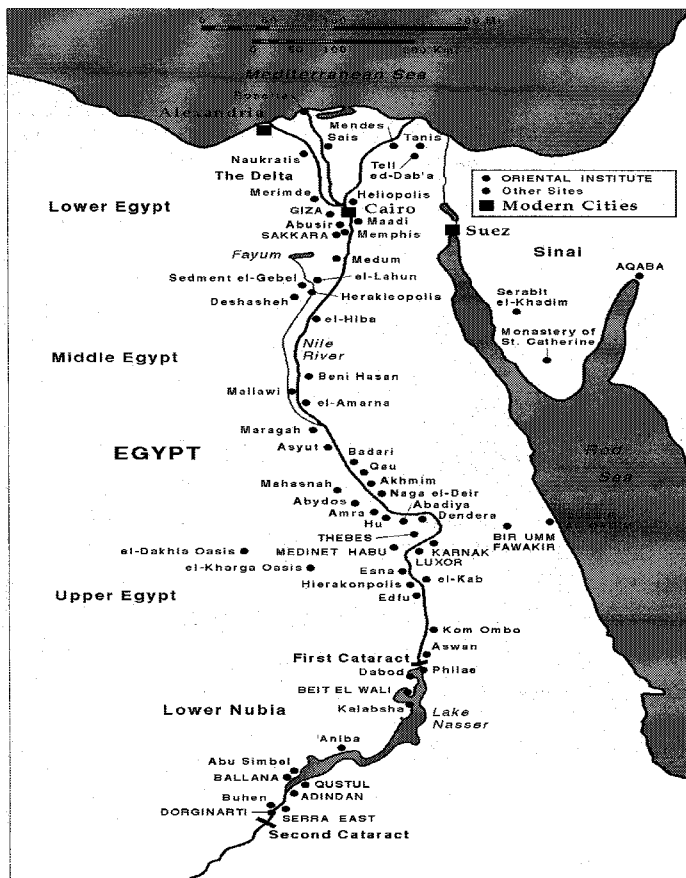
international law is extraordinary given that its imperial legacy stagnated during centuries of invasion, occupation, warfare, plunder, and domination that occurred in three major waves. The first foreigners to successfully invade and conquer Egyptian territory were the Hyksos (1640-1570 BCE) who largely dominated Upper Egypt (Thebes). They were followed by successive waves of alien occupiers, including the Assyrians, Babylonians, Alashiyans, Persians, Greeks, Romans, and British (671 BCE to 642 AD). After these periods, various Arab and Islamicized tribes and bands were predominant in Egypt's political/racial/ethnic topography.

Nearly a millennium later, Africa's pliability and durability were tested again with the advent of the brutally violent European Slave Trade (1450-1865 AD) and the vicious Scramble for Africa, which reached its climax with the Berlin Conference (1871-1914 AD).¹³ These imperial episodes in Africa followed the Greco-Roman conquest of the Nile Valley civilization nearly two millennia earlier (332 BCE). Given these developments, earnest assessments of the impact of European colonialism in Africa should employ bifurcated temporal analyses that consider the ancient lineage and duality of Near East and Greco-Roman imperial domination in the continent, which were debatably more debilitating to Africa's development than modern Europe's Scramble for Africa. For example, Rome's first major military campaign in Africa produced the First Punic War, in which it unsuccessfully sought to conquer Carthage (modern-day Tunisia) in North Africa. Two other major military campaigns followed, culminating in the Second and Third Punic War (146 BCE), which some scholars argue resulted in the genocide of Carthaginians. After destroying Carthage,¹⁴ Rome established its primary base of operations in Africa *Proconsularis* or the Punic city of Utica in what would be northern Tunisia, which became the principal hub for Roman military operations against the Numidian Empire (modern day Algeria), originally established in 201 BCE. After six years of war with the Berber-king Jugurtha (112-106 BCE), Rome violently conquered Numidia,

¹³ See generally BASIL DAVIDSON, *THE AFRICAN SLAVE TRADE: PRECOLONIAL HISTORY 1450-1850* (James Curry Publ'g 1961); BASIL DAVIDSON, *AFRICA IN HISTORY: THEMES AND OUTLINES* 225 (1995); R. J. GAVIN & J. A. BETLEY, *THE SCRAMBLE FOR AFRICA: DOCUMENTS ON THE BERLIN WEST AFRICAN CONFERENCE AND RELATED SUBJECTS* (Ibadan Univ. Press 1973); PHILIP D. CURTIN, *THE ATLANTIC SLAVE TRADE: A CENSUS* (1969) (failing to address Arab colonial conquest and enslavement in Africa, which arguably was no less destructive than Europe's violent imperial subjugation of the continent); CHARLES ANDRÉ JULIEN, *HISTORY OF NORTH AFRICA: TUNISIA, ALGERIA AND MOROCCO FROM THE ARAB CONQUEST TO 1830*, (C. C. Stewart ed., John Petrie trans., 1970).

¹⁴ See NORMAN R. BENNETT, *AFRICA AND EUROPE: FROM ROMAN TIMES TO THE PRESENT* 21 (Africana Publ'g Co., 2d ed. 1984).

killing thousands, in 105 BCE.¹⁵ While it is difficult to measure the debilitating multi-generational impacts of Greco-Roman conquest in Africa, what is certain is that during this period some of the most advanced and intellectually rich cities in the world were destroyed and with them irreplaceable knowledge and information.



Map of Ancient Egypt¹⁶

¹⁵ See generally NIC FIELDS, *ROMAN CONQUESTS: NORTH AFRICA* (2010) (explaining that Germanic-Vandals (429 CE) nearly conquered all of Rome's possessions in North Africa, including Carthage, three centuries later, and were eventually ousted by the Arabs. The history and lineage of ancient intra- and interimperial conquest in Africa is a fertile area of inquiry for critical studies internationalists and Third World Approaches to International Law (TWAIL) theorists); JULIEN, *supra* note 14 Germanic-Vandals (429 AD).

¹⁶ *Mapa de Ciudades de Egipto*, <http://www.viajesporegipto.com/mapas/mapas016.htm> (last visited Jan. 24, 2015).

An appreciation of ancient international law necessitates interdisciplinary inquiry. It requires a borrowing of conceptual propositions and findings from archaeology, anthropology, art history, intellectual history, linguistics, and political science. More specifically, it necessitates joining the fields of international law, history and Egyptology to foster greater understanding and knowledge and to unlock potential normative prescriptions.

While there is an instructive body of non-legal literature on ancient Africa's founding impact on human civilization,¹⁷ discourses on ancient international law in Africa and its impact on the development of contemporary international law remain scarce.¹⁸ This is curious given the apt observation of famed Greek historian Diodorus Siculus:

For many of the customs obtained in ancient days among the Egyptians have not only been accepted by the present inhabitants but have aroused no little admiration among the Greeks; and for that reason those men who have won the greatest repute in intellectual things have been eager to visit Egypt in order to acquaint themselves with its *laws and institutions*, which they considered to be worthy of note. For despite the fact that for the reasons mentioned above strangers found it difficult in early times to enter the country, it was nevertheless eagerly visited by *Orpheus* and the poet *Homer* in the earliest times and in later times by many others, such as *Pythagoras* of Samos and *Solon the lawgiver*. Now it is maintained by the Egyptians that it was they who first discovered writing and the observation of the stars, who also discovered the basic principles of geometry and most of the arts, and established the *best laws*. And the best proof of all this, they say, lies in the fact that Egypt for more than four thousand seven hundred years was ruled over by kings of whom the majority were native Egyptians, and that the land was the most prosperous of the whole inhabited world; for these things could never have been true of any people which did not enjoy most

¹⁷ See generally BARRY J. KEMP, *ANCIENT EGYPT: ANATOMY OF A CIVILIZATION* (2006); CHEIKH ANTA DIOP, *CIVILIZATION OR BARBARISM: AN AUTHENTIC ANTHROPOLOGY* (Harold J. Salemson & Marjolijn de Jager eds., Yaa-Lengi Meema Ngemi trans., 1991); CHEIKH ANTA DIOP, *THE AFRICAN ORIGIN OF CIVILIZATION: MYTH OR REALITY* (Mercer Cook ed. & trans., 1974); BASIL DAVIDSON, *AFRICAN CIVILIZATION REVISITED: FROM ANTIQUITY TO MODERN TIMES* (1991).

¹⁸ See generally AFRICA: *MAPPING NEW BOUNDARIES IN INTERNATIONAL LAW* (Jeremy I. Levitt ed., 2008); T. O. ELIAS, *AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW* (1972) (providing the most recent examination of Africa's contribution to the development of modern international law).

excellent *customs and laws* and the institutions which promote culture of every kind.¹⁹

Diodorus' observation is instructive not simply because it provides insight into the predominant standing of Egypt's institutional and intellectual heritage during antiquity, but also because it confirms that Greece's leading prophets, intellectuals, scientists, mathematicians, philosophers, musicians and poets studied under Egyptian priests and scholars. In this regard, by 1600 BCE (18th Dynasty) "it is very probable that there was a considerable colony of Greeks in Egypt."²⁰ One is hard pressed to believe that such colossal transfers of knowledge from Egypt and the Nile Valley to Greece and Rome for over millennia did not pointedly influence Greek and Roman law, culture and society. One can only surmise about the extent to which Egypt normatively influenced Greece, Rome, and ensuing societies. Norman Bennett opines that "in Egypt the Romans built their administration upon the foundation of the existing well-elaborated bureaucracy" except that "in their effort to colonize and administer the western territories of the North African littoral", they "inaugurated imperial policies" that serves as the "precursors of techniques of ruling alien populations later adopted by more recent [European] rulers of Africa."²¹ This observation raises the question whether such methods may also have been derived from or influenced by Egyptian imperial science. While Africa's pre-medieval political and legal heritages are often the *sine qua non* for enlightened jurists and scholars who seek to promote African solutions to African problems,²² the foregoing research indicates that ancient international law may offer richer antidotes. It provides concrete insights into the theoretical foundations of international law and custom through the prism of ancient statecraft, diplomacy, governance, peace-craft, and trade-craft that may also lend insights into prescriptions for its normative revision and evolution.

Arguably, no other nation or state has prompted more originaive "deliberation" in scholarly literature irrespective of the field of inquiry than ancient Egypt, the world's oldest and most advanced ancient civilization. Not surprisingly, the preponderance of intense debate seems to emanate from Western scholars who hail from nations with a colonial heritage in Africa

¹⁹ DIODORUS SICULUS, THE LIBRARY OF HISTORY OF DIODORUS SICULUS 239-341 (Loeb Classical Library ed. 1933) (emphasis added).

²⁰ H. R. Hall, *Egypt and the External World in the Time of Akhenaten*, 7 J. Egyptian Archaeology 39, 51 (1921).

²¹ BENNETT, *supra* note 15, at 22.

²² ELIAS, *supra* note 18, at 3-33. *See also* Mutua, *supra* note 11.

and specifically in Egypt, and other researchers professionally preoccupied with ignoring Egypt and Africa's novel contributions to human civilization. In this context, it was common for colonial era scholars and their students to spend a lifetime in discovery of Egypt only to practice the imperial science of repudiation by denying Egypt her rightful place as the world's first highly advanced society. Quite often such scholarship insidiously characterizes ancient Egypt as a wicked colonizer, disassociates it from its Negro or Black heritages,²³ diminishes its role as the nucleus of human intelligence and innovation, and repudiates its standing as the world's first nation-state and superpower. It follows that despite theoretical variances, significant works on Egypt often share a racist and counterintuitive logic underpinned by deeply engrained West-centric notions of civilizational supremacy backed by antiquated, inferential, and assumptive methodological approaches.²⁴ Such theories are also backed by a battery of auxiliary and intransitive verbs (e.g. may, might, seem, and appear) rather than by hard evidence. Olga Butkevych rightly notes that "[a]part from the mere negation of the role of other countries in creating international law, Eurocentrism in this sphere is related with a range of false concepts of international law origination."²⁵ Stanley Burstein views the "unfortunate" racism apparent in the work of "Egyptologists" such as Reisner as reflective of fashionable scholarship "in the heyday of European imperial expansion in Africa and the [anti-Negro] "racial science" of Douglas Derry and Grafton Elliot Smith."²⁶ Barry Kemp

²³ In fact, Egyptology, "Nubianism" and other antiquity discourses calculatedly and normatively forge racial and civilizational dichotomies among ancient societies employing colonizer-colonized and conquer-conquered analyses. See, e.g., William Y. Adams, *The First Colonial Empire: Egypt in Nubia, 3200-1200 B.C.*, 26 *COMP. STUD. SOC'Y & HIST.* 36 (1984); G. A. Reisner, *Outline of the Ancient History of the Sudan*, 2 *SUDAN NOTES & REC.* 35 (1919); G. A. Reisner, *The Pyramids of Meroe and Candaces of Ethiopia*, 21 *MUSEUM FINE ARTS BULLETIN*, no. 124, 1923, at 12; A. J. ARKELL, *A HISTORY OF THE SUDAN* 128 (2d ed. 1961).

²⁴ In a recent work, the Author defined such approaches as *dark*, *anarchical* and *primeval* suppositions. LEVITT, *supra* note 1, at 30-32. For example, the first derives from the Henry Morton Stanley's notorious "Dark Continent paradigm, which is steeped in colonial nostalgia and racism and characterizes Africa as an unexplored 'country' or frontier land for colonial pursuits. This archetype questions whether there is a rule of law in Africa; whether Africans are capable of making rules; and in those states that have some semblance of law, whether the continent has coherent legal systems capable of ordering society". *Id.* In short, the *anarchical* supposition subscribes to the view that disorder and anarchy are the primary rule of law in the continent, and the *primeval* theory is "rooted in the monoracist presumption that African states lack institutionalized legal orders founded on established constitutional traditions". *Id.*

²⁵ Butkevych, *supra* note 8, at 214.

²⁶ Stanley M. Burnstein, *The Kingdom of Meroe, in AFRICA AND AFRICANS IN ANTIQUITY* 132, 142 (Edwin M. Yamauchi ed., 2001) (emphasis added).

openly acknowledges that the racial categorization of the Egyptians is “politically contentious” and puts one into “troubled waters which most people who write about ancient Egypt [Caucasian academics] from within the mainstream of scholarship avoid.”²⁷ The danger consequentially rests in the speculative deductions derived from inferential bias. Unfortunately, as Henry Richardson III recalls, international law scholars too often share such biases, as evidenced by the predominance of Northern Tier conceptions of, and approaches to, the study and practice of international law.²⁸ Such predispositions have been reinforced by a perverse legacy of imperial ambivalence and resilient thievery in which colonial and occupational powers stole, concealed, and destroyed ancient knowledge, inventions, and law materials (particularly hard sources such as papyri and manuscripts). They also obscured their origins in Egypt and Nubia, using xenophobic and racist ideology while enriching their own societies with such rationalities, rules, and understandings. For example, while holding up Greece and Rome as the epitomes of civilized society, the noted scholar George B. Davis argued that:

International law can hardly be said to have existed in ancient times. The absolute and crudely organized Eastern monarchies [referring to Egypt, Hatti and Assyria] were intolerant of the very existence of neighboring nations, and lived in a state of constant warfare with them. Of distant nations they knew nothing, and as there must be communication or intercourse of some kind between states in order that the rules may be deduced which shall govern their relations with each other, it was impossible that a science resembling international law could have existed among them.²⁹

Though historically inaccurate and insular, Davis’s views were not novel. Sadly, they persist and predominate in modern international legal discourse today. This study rejects unsubstantiated and hollow declarations that deny the existence of ancient international law in Africa, but acknowledges the need for further interdisciplinary inquiry to more fully understand the international law of antiquity. As Butkevych argues, the deliberate discounting of the international law of antiquity was driven by cultural bias and positivist preoccupation with hard sources, such as treaties:

²⁷ KEMP, *supra* note 17, at 46-47.

²⁸ Henry J. Richardson III, “Failed States,” *Self-Determination, and Preventive Diplomacy: Colonialist Nostalgia & Democratic Expectations*, 10 TEMP. INT’L & COMP. L.J. 1, 5-6 (1996).

²⁹ GEORGE B. DAVIS, OUTLINES OF INTERNATIONAL LAW WITH AN ACCOUNT OF ITS ORIGINS AND SOURCES AND OF ITS HISTORICAL DEVELOPMENT 3-5 (1887) (emphasis added).

As most international treaties entered into the Middle East, and later into China, ancient Greece and Rome had no written form to which positivists were accustomed, let alone an oral one. The latter would be ignored in their research, treating them rather as charters, letters, oaths, vows, etc. than as international treaties. Therefore, under the influence of positive vision of international law, only several of about a thousand treaties from Egypt and Hittites region were paid earnest heed to: the Treaty between the Mesopotamian cities of Lagash and Umma 3100 BCE, the Treaty between Suppiluliuma I, King of the Hittites and King of Mittanni Shattiwasa 1350 BCE, the Treaty of Pharaoh Ramesses II with the King of Hittites Hattuşili III 1276 BCE and some others.

Recognizing laws as the only source of law and, by analogy, the treaty as the source of international law, positivists faced a number of challenges in studying this law.³⁰

Positivists were also somewhat limited by their own values, ideas, and methodology. They seemed incapable of conceiving or understanding international law development outside of their own context and cultural frame of reference. A conscientious survey of the anatomy of international law in ancient Egypt must begin, on the contrary, by acknowledging the difficulty in identifying primary sources of evidence and law but it must not stop there.³¹ It should not conclude from the absence of elaborate written codes of law and treaties that international law did not exist. The reality is that many scholars have overlooked available sources, routinely dismissed or ignored non-written customary sources of law, or failed to consider that many written sources of law (e.g. on papyrus and leather) did not survive the foreign invasion, conquest, and plunder of Egypt and its libraries by the Hyksos, Assyrians, Babylonians, Alashiyans, Persians, Greeks, Romans, and British.³²

Conquest and plunder delivered the knock-out blow to what James

³⁰ Butkevych, *supra* note 8, at 219.

³¹ The three most reliable primary sources of evidence and information are: (1) historical documentation (e.g. treaties, diplomatic notes, government records, official correspondence, diaries, accounts and notes), (2) archaeological data, and (3) material legal culture. Primary sources of evidence help locate the conscious and unconscious objectives and purposes of their author(s) and sponsors (values, norms and global perspectives) and lend insight into the environments that produced them.

³² For example, the House of Life in the Ramesseum Temple (1300 BCE) supposedly had 10,000 papyrus scrolls. It was ransacked by the Hyksos and Hittites. The first destruction of the libraries of Alexandria and Serapeum in about 391 and 392 BCE, respectively, by European invaders is another case in point.

Breasted argued was highly advanced Egyptian knowledge. According to Breasted, Egypt possessed “a body of highly elaborated law, which has unfortunately perished entirely.”³³ A variety of surviving documents—rare legal papyri,³⁴ royal decree,³⁵ code,³⁶ contracts, treaties, manuscripts and inscriptions—addressing the practice of law,³⁷ war, peace, diplomacy and trade,³⁸ among others, coupled with archaeological and iconographic studies, provide a vivid snapshot into domestic and ancient international law, relations, and practice. This study presents a combination of direct and circumstantial evidence of the African origins of international law.³⁹

While it cannot be said that the international law of antiquity in Africa has been totally ignored, the few international law scholars that have ventured beyond Europe and Westphalia have tried not to disturb the settled narrative that international law began with that treaty. Nearly every

³³ JAMES HENRY BREASTED, A HISTORY OF EGYPT: FROM THE EARLIEST TIMES TO THE PERSIAN CONQUEST 81 (1st ed. 1905).

³⁴ The Judicial Papyrus of Turin and Papyrus of Ani serve as solid examples. A. de Buck, *The Judicial Papyrus of Turin*, 23 J. EGYPTIAN ARCHEOLOGY 152, 152–64 (1937); E. A. WALLIS BUDGE, THE EGYPTIAN BOOK OF THE DEAD: THE PAPYRUS OF ANI IN THE BRITISH MUSEUM (Dover Publications 1967) (1895).

³⁵ Important examples of Egyptian law include *Pharaoh Horemhab's Edict* (1323-1296 BCE), which was found in Saqqara in Lower Egypt, and *Set I's Nauri Decree* (1294-1279 BCE), which was found in Nubia. *Horemhab's Edict* sought to curb malfeasance and corruption and institute a new political and administrative apparatus, and the *Nauri Decree* instituted criminal law sanctions for crimes against persons and property and extended privileges and immunities to priests and templars of the Temple of Osiris at Abydos. JOHN WILSON, THE CULTURE OF ANCIENT EGYPT 237, 243 (1951); Ellen Daily Bedell, Criminal Law in the Egyptian Ramesside Period 13 (June 1973) (unpublished Ph.D. dissertation, Brandeis University) (on file with Brandeis University); see also BREASTED, *supra* note 33, at 406.

³⁶ See generally GIRGIS MATTHA, THE DEMOTIC LEGAL CODE OF HERMOPOLIS WEST 27-32, 92-103, 39-42, 115-23 (1975) (demonstrating that The *Demotic Legal Code of Hermopolis* (beginning in 650 BCE) dealt with land tenure, contracts, family law, leasing real property, and inheritance).

³⁷ See generally RUSS VERSTEEG, LAW IN ANCIENT EGYPT (2002).

³⁸ See, e.g., GARY A. BECKMAN, HITTITE DIPLOMATIC TEXTS (Harry A. Hoffner ed., 1999) (discussing texts produced by the foreign affairs apparatus of the Hittite Empire).

³⁹ This study uses circumstantial evidence to augment direct evidence of primary sources. Such evidence includes a series of historical facts and circumstances about, for example, war, peace alliances, regime change, state-making, occupation, interstate trade, knowledge transfer, and material culture. It takes this approach rather than seeking the discovery of an unbroken linear procession of law development, which by reason and experience, is so closely associated with the international law of antiquity in Africa that its existence must also be inferred simply from the existence of the aforementioned circumstantial evidence.

international law casebook begins with the Westphalia origination argument despite incontrovertible evidence to the contrary. Geographically speaking, those that have confronted the narrative have focused primarily on the near East and Asia often nebulously dismissing Africa's contribution or in similar vein, sought to narratively reposition Egypt as a Near East power. During this period Egypt was the sole superpower largely responsible for establishing a unified body of transnational rules between it and other near East powers. Temporally speaking, even though he published one of the most detailed accounts of the international law of ancient civilizations, Bederman does not clearly explain why he draws a sharp break between the ancient and post-Westphalia worlds.⁴⁰ While acknowledging that states and an interstate system of "Great Power" relations existed in the great "Near Eastern Empires" of Egypt (in Africa not the near East), Babylon, Hatti, Mitanni, and Assyria from 1400-1150 BCE, Bederman avoids—without explanation or justification—the idea that there was a "single, cohesive body of rules for a law of nations recognized by all states in antiquity" or that, in contrast to Schwarzenberger, such rules were proximate to those of modern international law.⁴¹

While Bederman's 'disunity thesis' may resonate with some scholars, this Article affirmatively claims that an ancient law of nations existed largely at the behest of Egypt. Notwithstanding, Bederman saw no alternative but to use modern referents—"states," "sovereignty," "treaties," "custom," and like the Author, was aware that no measure of care in research would shield the 'ancient international law of Africa project' from claims of "false essentialism of equating modern concepts to events transpiring two to three millennia ago."⁴² Thus, seeing "virtually no regard for human rights" in this ancient world—an imprecise observation—Bederman concluded that rules of the ancients only served the needs of predictability and stability among sovereign polities. And, although regard for human rights cannot and should not serve as the litmus test for the cohesiveness of law, Bederman was unacquainted with what the Author refers to as the "Egyptian Bill of Rights" (discussed below), formally titled "All Men are Created in Equal Opportunity", which was adopted by royal decree in 2000 BCE.

Consequently, this Article reveals that ancient international law was not simply an expression of the "ancient minds desire for order" and an instrument of state relations that had no regard for other values such as

⁴⁰ DAVID J. BEDERMAN, INTERNATIONAL LAW IN ANTIQUITY 13-16 (2001).

⁴¹ *Id.* at 6.

⁴² *Id.* at 14.

“human rights or dignity,⁴³ the protection of common resources, or the advancement of some exogenous ideology or philosophy.”⁴⁴ Quite the contrary, as the Parts that follow reveal, the domestic and international law of antiquity in Africa was a value-based law designed to bring about peace, order, balance, justice and human rights in intrastate and interstate relations. Further, neither Bederman nor George Schwarzenberger, who was one of the first legal scholars to distinguish and substantively compare ancient international law in Africa with modern international law, examined MA’AT and Egyptian ‘human rights law’ or connected them to ancient international relations or legal practice. Others, such as Raymond Westbrook, have not made such comparisons because, unlike Bederman, he believed that the ancient world was insufficiently protective of “the state” relying instead on an inter-King or household set of relations under the jurisdiction of the gods.⁴⁵ Thus, Westbrook used the Amarna Letters to argue that ancient Near East law conceived as its subject individuals, not states, since the former had recourse to the residual court of the gods.⁴⁶ Yet others, such as Russ VerSteeg, elucidate the concept of MA’AT and acknowledge that the Treaty of Kadesh was “one of the first international accords between two sovereign nations in the history of human civilization,” but focus on the richness and complexity of domestic law in ancient Egypt rather than on how such may have contributed to international law.⁴⁷ The Parts that follow examine the dynamics of state formation and the character of ancient international law in Africa and arrive at tentative conclusions that are at odds with those suggested by Bederman and Westbrook, yet complement those presented by VerSteeg and Schwarzenberger’s appraisal of ancient international law, previously mentioned.⁴⁸ Since, during antiquity, international law was principally a body of rules that governed and regulated relations between empire states, Egypt’s standing as the most powerful among them and as a principal architect of fashioning ancient international law and norms is also corroborated.

⁴³ *Id.* at 279.

⁴⁴ *Id.*

⁴⁵ Raymond Westbrook, *International Law in the Amarna Age*, in *AMARNA DIPLOMACY* 28, 30 (Raymond Cohen & Raymond Westbrook eds., 2000).

⁴⁶ *Id.* at 31.

⁴⁷ RUSS VERSTEEG, *LAW IN ANCIENT EGYPT* 203 (2002).

⁴⁸ *See id.* *See also* Schwarzenberger, *infra* note 50. The next Part generously draws on the archeological works of B. J. Kemp and Toby Wilkinson.

II. STATE FORMATION

As previously noted, state formation in Egypt (3100 BCE) seems to have spurred political development, centralization, and expansion in early eastern powers including Assyria (Akkadian Empire), Babylonia, Hatti (Kingdom of the Hittites), Mittani, and Alashiya (Cyprus) during the reign of Thutmose III in the Eighteenth Dynasty (1479-1425 BCE), eventually birthing the “Great Powers Club” lead by Egypt. In this regard, Altman notes that:

The main powers that now dominated the political scene were Egypt, Mittani, Hatti, Assyria and Babylonia. Egypt by this time took over Nubia in the south and expanded up to central Syria in the north. Mittani, a Hurrian kingdom, which was established around 1500 in the Upper Khabur region, had expanded eastward up to the Zagros mountains, and westward to northern Syria and the gateway to Anatolia where it confronted the Hittites. The Hittites, on their part, succeeded around 1350 to expand to northern and central Syria at the expense of Mittani and Egypt. In the east, the city of Ashur (Aššur) started from 1366 on to expand westward at the expense of Mittani, and eventually came to clash with the Hittites. To these main powers, we have to add Babylonia, although not really yet an empire, which had expanded over southern Mesopotamia.⁴⁹

Ironically, structural and hierarchal dimensions of modern international relations, and global governance dominated by the five permanent members of the UN Security Council (the United States, Britain, China, France, and Russia) immediately after World War II and prior to the decolonization era resemble the fundamental order of the Great Powers Club during antiquity. Ancient nations entered into treaties of friendship and cooperation, engaged in diplomacy and trade, forged defense alliances and pacts, and the ruling elite practiced transnational intermarriage to ensure unity and stability. It is worth pointing out the comparative irony of having two clubs of five—today’s permanent members of the UN Security Council and the ancient world’s enduring members of the “Great Powers Club” given that both clubs dominated their respective spheres of influence albeit 3400 years apart. In the same way that Akkadian became the diplomatic lingua franca during this era of antiquity, English and French predominate in the UN system.

⁴⁹ Amnon Altman, *Tracing the Earliest Recorded Concepts of International Law*, 11 J. HIST. INT’L L. 125, 127 (2009).

a. *The First Nation-State*

The following discussion provides a snapshot into the development of the Egyptian state. Egypt's vital role in ancient international legal history was predicated on its development as the first nation-state. In this sense, ancient Egypt served as the first and the central pillar of a maturing system of ancient states that under its tutelage fashioned legal norms, doctrine, customs and rules governing their interaction.

The historical record vividly shows that Egypt was the world's first nation-state and superpower.⁵⁰ The anatomical lineage of law, statecraft, and peace-craft originated by the Egyptians anticipates that deployed in the pre-medieval, medieval and modern international system of states. Although it may not be possible to draw a long linear line, definitive connections or causal relationships between, for example, the Treaty of Kadesh and the Treaty of Westphalia or between the ancient South and the medieval West, direct and circumstantial historical evidence confirms that there were colossal transfers of knowledge from successive Nile Valley civilizations to Greece in the wake of, for example, Alexander the Great's arrest of Egypt from the Persians and subsequent pillaging of it and Nubia in 331 BCE.⁵¹ There is also evidence that ancient Europe was not the only benefactor of Egyptian knowledge. The Arab conquest of Egypt (639-642 BCE) raises essential questions about transcivilizational crosspollination and transfers of Nile Valley intelligence to the Middle East on the one hand, and, on the other, from the Near East back to Europe after, as already noted, Alexander's conquest of Persia (an early subjugator of Egypt) in 332 BCE.⁵² King Alexander's thirst for Egyptian knowledge was likely ignited by Aristotle, his tutor and mentor. Aristotle trained Alexander in ethics, logic, rhetoric, politics, philosophy, government, linguistics, biology, zoology, physics, metaphysics, poetry, theater, music, and linguistics, which Aristotle had himself learned from Plato and other Greek philosophers and scientists that

⁵⁰ See *infra* notes 54-60.

⁵¹ See H. IDRIS BELL, EGYPT: FROM ALEXANDER THE GREAT TO THE ARAB CONQUEST-A STUDY IN THE DIFFUSION AND DECAY OF HELLINISM, 28-50 (1948). Alexander the Great's capture of Egypt summarily ended Dynasty 31 (Second Persian Period—343-332 BCE) and with it Persian dominance in North Africa. There are imitable similarities between Egyptian and Roman conceptions of law.

⁵² The Assyrians briefly seized Egypt in the latter part of Dynasty 25 (675 BCE) and after a brief return to native Egyptian rule in Dynasty 26 (Saite Period—664-525 BCE) it was again conquered by another near East nation, Persia. This signaled the start of Dynasty 27 (First Persian Period—525-349 BCE).

studied in Egypt,⁵³ including Thales of Miletus and Pythagoras of Samos. Egypt, along with Nubia, led Near Eastern powers such as Hatti by establishing the template for an advanced society in which the arts, science, government, and lawmaking developed progressively. However, the Egyptians arguably made their most definitive but largely discounted contribution to international society through statecraft, peace-craft, and international law and relations.

On this point Georg Schwarzenberger asserted that “[i]n exploring maximal comparabilities between contemporary and non-contemporary systems of international law and relations” the Egyptian Empire during the New Kingdom period “comes nearest to contemporary international law and relations.”⁵⁴ He posits that Egypt and Hatti “shared three significant features with those governing the expansion of European international law and relations into global systems: Similar fundamental principles of international law and quasi-orders as well as overriding systems of power politics.”⁵⁵ From this background, can it then be inferred that contemporary international law and the template for the modern nation-state evolved from the international law of antiquity in Africa? While the history and sequencing of state formation in Egypt has been contested and systematically revised for centuries, historians and archeologists have often engaged in intradisciplinary and cross disciplinary debate about the intersection of Egypt’s body politic(s) and political chronology. This is in part a consequence of diverse methodological and evidentiary sourcing in which historians rely on written records (e.g. the writings of Manetho) and archeologists on material culture (e.g. pottery). The political chronology of affairs in Predynastic and Early Dynastic Egypt—the ordered succession of kings and the timetable of political unification—have been among the most

⁵³ Although Aristotle was one of the few pioneering Greek philosophers to not study in Egypt, Plato, his principal teacher was perhaps the first “Egyptologist”. Aristotle’s fascination with Egypt is revealed in his classic text *Meteorologica*, which certainly influenced Alexander the Great’s appetite for Egyptian science. After Socrates returned home, Plato studied in Egypt for thirteen years and was tutored by the Horite priest Sechnuphis, an Egyptian from Heliopolis or modern Cairo. He, in turn, shared what he learned from the Egyptians in the areas of math, science, philosophy, militarism, politics, government, and law with his prize student, Alexander.

⁵⁴ Georg Schwarzenberger, *Complexities of Distinction between Old and New International Law: Empirical Question Marks*, in *INTERNATIONAL LAW IN TRANSITION: ESSAYS IN MEMORY OF JUDGE NAGENDRA SINGH* 25 (R. S. Pathak & R. P. Dhokalia eds., 1992).

⁵⁵ *Id.* at 26.

difficult to reconstruct.⁵⁶ Nevertheless, there is a general consensus that Egypt's development as a nation-state in the fourth millennium had an enormous impact on human development in Africa, the Middle East, the Near East, the Mediterranean, and beyond. King Menes (aka Narmer) established the first Egyptian dynasty of the Old Kingdom period in about 3100 BCE;⁵⁷ this essentially forged the first known template for statehood and societal organization under a centralized political authority. State construction accelerated during his reign for a multitude of social, technological, economic, and political reasons. Kemp attributes the "dynamic for the growth of the state" to "a powerful sense of territorial rights" inherent in, among other essential factors, a "settled agriculture" and the "population increase which this allows."⁵⁸ Toby Wilkinson ascribes the birth of the Egyptian nation-state to dynamic and coalescing socioeconomic forces in Predynastic Egyptian society (6000-3100):⁵⁹

[T]he various trends which led to the formation of the Egyptian State were gradual processes which began in the early Predynastic period. Increasing social stratification, the development and expression of an ideology of rule, the spread of Upper Egyptian technology and other cultural attributes throughout the country, the concentration of economic and political power in the hands of a few ruling families, the intensification of foreign trade, the invention of writing and the emergence of a literate bureaucracy: these were not sudden

⁵⁶ See generally W. Kaiser, *Trial and Error*, 149 GOTTINGER MISZELLEN (1995); B. J. Kemp, *The Egyptian 1st Dynasty Royal Cemetery*, 41 ANTIQUITY (1967); B. J. Kemp, *The early development of towns in Egypt*, 51 ANTIQUITY (1977); KEMP, *supra* note 17; H. J. Kantor, *The Final Phase of Predynastic Culture: Gerzean or Semainean*, 3 JOURNAL OF NEAR EASTERN STUDIES (1944); Helene J. Kantor, *The Early Relations of Egypt with Asia*, 1 J. OF NEAR E. STUDIES 174 (1942); Helene J. Kantor, *Further Evidence for Early Mesopotamian Relations with Egypt*, 1 J. OF NEAR E. STUDIES 239 (1952); Helene J. Kantor, *The Relative Chronology of Egypt and its Foreign Correlations before the Late Bronze Age*, in CHRONOLOGIES IN OLD WORLD ARCHAEOLOGY 1 (Robert W. Ehrich, ed., 1965); FLINDERS PETRIE, *THE MAKING OF EGYPT* (1939).

⁵⁷ See B. G. TRIGGER, B. J. KEMP, D. O'CONNOR & A. B. LLOYD, *ANCIENT EGYPT: A SOCIAL HISTORY* 50-54, 70 (1983).

⁵⁸ KEMP, *supra* note 17, at 75.

⁵⁹ TOBY A.H. WILKINSON, *EARLY DYNASTIC EGYPT* 28 (1999) (noting that "[t]he formation of the Egyptian state . . . crystallized social distinctions in a particularly marked way, placing the king at the apex of the pyramid, almost removed from the human sphere. Beneath him the ruling élite, minor officials and peasant farmers occupied progressively lower and larger tiers.").

developments, although the pace of change seems to have accelerated during the last quarter of the fourth millennium BC.⁶⁰

Nevertheless such advances signaled a growing disparity in wealth between the mercantilist and agrarian settlers of the Nile Valley civilization. While Lower Egypt was not initially shaped by varying levels of wealth among families, Upper Egypt, where the first dynasty emerged, appears to have been largely molded by prosperity and associational hierarchies. Unlike Lower Egypt and Nubia to the south, elite status was inherited in Predynastic Upper Egypt; that is, it was determined by descent rather than by actions. In Nile Valley culture, hereditary modes of social organization privileged kinship, thereby advantaging societal elites. According to Wilkinson, in many ways the “change from achieved to inherited status as the primary means of distinguishing a privileged class marks an important stage in socio-economic development.”⁶¹ This shift also accelerated the creation of rules (e.g. on land tenure, inheritance and contracts) to protect the structured interests of elites and simultaneously to manage Egypt’s burgeoning economic and political structures (e.g. Demotic Legal Code of Hermopolis). Such rules amounted to formal lawmaking by the Vizier (head administrator of government) and accompanied the modest codification of social practices based on racial, ethnic, or cultural traits that underwrote the notion of inherited status.⁶²

Consequently, kinship and congenital status produced local elites who became Egypt’s royal families. They practiced erudite religion and dominated social, economic, and political space in their respective zones of influence, including control over political organs, cultural norms, religious ideology, local and intercontinental trade, skilled labor, and construction. On this issue Kemp reports that military supremacy and commercial dominance “established an Egyptian self-image as a culturally superior group”,⁶³ and “the elite - the royal dynasty in its fullest sense and the high-ranking officials of government - enjoyed high status, substantial economic benefits and considerable potential for significant activity within the confines of the traditional political system.”⁶⁴ Budding social disparities between the elite and middle and lower classes were even evident in mortuary record; hence, “[t]he birth of the Egyptian state with its rigid

⁶⁰ *Id.* at 44-45.

⁶¹ *Id.* at 29.

⁶² See TRIGGER ET AL., *supra* note 57, at 84.

⁶³ *Id.* at 194.

⁶⁴ *Id.* at 192.

hierarchies can therefore be chartered in the growing differentiation and elaboration of mortuary provision.”⁶⁵ The iconography and ideology of rule that metastasized at the conclusion of the Naqada I period (3500 BCE) further cemented such hierarchies.⁶⁶ This was reflective of an ideology of power by hereditary elites in Upper Egypt, demarcating another vital social change that birthed the “classical kingship ideology within the space of some two hundred years.”⁶⁷ It follows that kinship ideology produced kingship identity and forged exclusive networks of power and eventually a hereditary regime(s) underwritten by social, cultural, economic, political and military supremacy over vast territories. Hereditary rule cultivated the process of state formation into a fixed system in which “by the Naqada II period (3400-3200 BCE), the local ruling class [Upper Egypt] had grown wealthy and differentiated themselves increasingly from the general population” and apparently controlled “territory of some size, perhaps amounting to a ‘kingdom.’”⁶⁸ This inclination toward a landed aristocracy bears a striking resemblance to the development of feudalism in Europe some five thousand years later, and may explain Upper Egypt’s growing hostility towards Nubia to the south.⁶⁹ State formation in Egypt normalized and perpetuated relations with other kingdoms that began to develop similar albeit more rudimentary forms of territorial government birthing fixed interstate relations with accompanying trans-territorial rules of behavior.

Classical kingship iconography reveals that by the Naqada III or Protodynastic era (3200-3000 BCE) Egypt’s kings and their kinfolks ruled powerful city-states (e.g. This, Naqada and Hierakonpolis) and controlled local and foreign commerce, allowing for the systematic and forceful consolidation of political and economic power, thereby, as previously suggested, setting the stage for the unification of Upper and Lower Egypt in

⁶⁵ WILKINSON, *supra* note 59, at 30.

⁶⁶ See WERNER KAISER, *Trial and Error*, 149 GOTTINGER MISZELLEN 5 (1995) (explaining that the Naqada era (4500-3100 BCE) reflects an archaeological culture in Predynastic Egypt comprised of several towns including Tux, Khatara, Danfiq, and Zawayda. The Naqada I era is estimated to have lasted from 3800-3600 BCE).

⁶⁷ WILKINSON, *supra* note 59, at 26.

⁶⁸ *Id.* at 37. The powerful city-states of Naqada and Hierakonpolis led by Narmer and Seth, respectively, anchored Egypt and served as the principal beacons for the unification of the state. Lower Nubia (Qustul) also bolstered a powerful kingdom and according to mortuary excavation and iconography, may have served as the birthplace of Egyptian kinship. See Bruce Beyer Williams, *The A-Group Royal Cemetery at Qustul: Cemetery L*, in 3 EXCAVATIONS BETWEEN ABU SIMBEL AND THE SUDAN FRONTIER 1 (1986).

⁶⁹ See generally Frank J. Yurco, *Egypt and Nubia: Old, Middle, and New Kingdom Eras*, in AFRICA AND AFRICANS IN ANTIQUITY 28 (Edwin M. Yamauchi ed., 2001).

the First Dynasty by King Menes (3100 BCE).⁷⁰ Some analysts attribute such “centralized control and communication” to the plentifulness of the Nile.⁷¹ While topography certainly played a role, it was the monopolization of spirituality or religion,⁷² and the ability to maintain control over resources and trade routes to the Near East that gave rulers of Predynastic Upper Egypt their political authority, wealth, and impulse to conceive “an ideology of kingship which presented the unification of the country as the fulfillment of a predestined order” with Pharaoh sitting atop the hierarchy of creation and principality.⁷³ Kemp notes that the “desire to protect trade routes and to eliminate intermediaries in Lower Egypt may also have encouraged these rulers to try to extend their power northward.”⁷⁴ It was the extension of Egyptian power through territorial acquisition precipitated by war and peace that propagated centralization and produced a normative order of diplomatic, commercial and treaty norms that form the genesis of international law.

Centralization necessitated an effective administrative structure, including accounting and record-keeping systems that required the ability to record property.⁷⁵ “National” administrative mechanisms were conceived, and with the advent of the First Dynasty (3100 BCE), there was a thriving national government that made and enforced laws, levied and collected taxes, and instituted fiscal machinery such as a “central treasury” not owned or controlled by “local or regional bodies.”⁷⁶ King Menes firmly controlled the regional elites in the Nile Valley and Delta under one government—in a territory that stretched from Elephantine to the Mediterranean coast—adopting systems and forging the legal canon to maintain order and promote

⁷⁰ See TRIGGER ET AL., *supra* note 57, at 50-51 (discussing how the control of foreign commerce played a significant role in the consolidation of power because of the significant revenue and international relations it generated).

⁷¹ Kathryn A. Bard & Rodolfo Fattovich, *Some Remarks on the Processes of State Formation in Egypt and Ethiopia*, in *AFRICA AND AFRICANS IN ANTIQUITY* 276 (Edwin M. Yamauchi ed., 2001).

⁷² In ancient Egypt, law and religion were fused and inseparable constructs that underwrote MA'AT.

⁷³ WILKINSON, *supra* note 59, at 47. See also Bard & Fattovich, *supra* note 7172, at 283 (positing similarly that state formation was, among other things, significantly shaped by regional economic interaction, long-distance trade, control of the economy, elite ideology, ascendancy in power of certain elites, and warfare).

⁷⁴ TRIGGER ET AL., *supra* note 57, at 49.

⁷⁵ WILKINSON, *supra* note 59, at 46. At this juncture, the kings of Upper Egypt began to predominate over their brethren in Lower Egypt.

⁷⁶ *Id.* See also TRIGGER ET AL., *supra* note 57, at 44-45. It was during this period that coveted trades such as accounting and writing were invented.

Pharaoh as the symbol of national unity, protector of the nation, and divine interlocutor. New Kingdom patriotism and xenophobia fostered a uniquely nationalistic Egyptian cultural identity that united early Egyptians of all social backgrounds and cemented their choice standing through wealth, force, and divine ideology that was "promulgated vigorously through iconography, architecture, ritual and royal activities."⁷⁷ On this issue Kemp states that "[a]ncient Egypt provides [the first] example of national consciousness which is sufficiently clear to create the impression that it was perhaps exceptional."⁷⁸

State formation also stimulated the development of a highly sophisticated legal culture in ancient Egypt that further advanced its method and approach to interstate relations often serving as the gold standard for best practices in, for example, diplomatic protocol and commercial relations with, among others, Nubia and Hatti. Although, as already noted, there are few written documents available; scholars have examined accessible or known sources to frame the anatomy of domestic law in ancient Egypt.⁷⁹ While topical justice emanated from the divine power of Pharaoh,⁸⁰ lawmaking by royal decree was common from the Old Kingdom period onward (2575-2150 BCE).⁸¹ Pharaoh was the head of government and regularly promulgated law through royal edicts. Also, although ancient Egypt did not subscribe to a tripartite system of governance, he/she delegated legal authority to a viable judiciary and relied on a battery of advisors, scribes and oracles rather than a legislature to assist in making and disseminating law. He/she also possessed considerable judicial authority, acting as the "final arbiter of criminal punishments and occasionally served as a judge."⁸² When necessary, Pharaoh established special commissions to

⁷⁷ WILKINSON, *supra* note 59, at 58.

⁷⁸ KEMP, *supra* note 17, at 20.

⁷⁹ RUSS VERSTEEG, LAW IN ANCIENT EGYPT (2002). See also Aristide Theodorides, *The Concept of Law in Ancient Egypt*, in THE LEGACY OF EGYPT 291, 291 (J. R. Harris, ed., 2d ed. 1971).

⁸⁰ Lanny Bell, *Conflict and Reconciliation in the Ancient Middle East: The Clash of Egyptian and Hittite Chariots in Syria, and the World's First Peace Treaty between "Superpowers,"* in WAR AND PEACE IN THE ANCIENT WORLD 98, 99 (Kurt A. Raaflaub, ed., 2007).

⁸¹ See David Lorton, *The Treatment of Criminals in Ancient Egypt: Through the New Kingdom*, 20 J. OF THE ECON. & SOC. HIST. OF THE ORIENT 2, 5-10 (1977); VERSTEEG, *supra* note 79, at 152, 157.

⁸² Russ VerSteeg, *The Machinery of Law in Pharaonic Egypt: Organization, Courts and Judges on the Ancient Nile*, 9 CARDOZO J. INT'L & COMP.L. 105, 132 (2001).

investigate and adjudge matters of national concern.⁸³ The royal Vizier(s)—initially chosen from among Pharaoh's elder sons (one in Upper and one in Lower Egypt)—served as administrative head(s) of government.⁸⁴ They presided over the Great Courts or great houses of justice and administered the community courts (local courts),⁸⁵ which played a vital role in dispensing civil and criminal justice during the New Kingdom period (1570-1040 BCE), particularly during the reign of Thutmose III (1490-1436 BCE).⁸⁶ Viziers were the "priests of MA'AT" and thus rectors of divine law; they were guardians of morality, harmony, truth, and order.⁸⁷ Versteeg notes that women served as local court judges, which provides insight into the elevated status they often held in ancient Egypt.⁸⁸ A woman could even be Pharaoh (e.g. Queen Hatshepsut) and command absolute spiritual, military, political, and economic power.⁸⁹

During this era, oracles were used as appellate judges. This ushered in a period where religion and justice were combined.⁹⁰ In ancient Egyptian society a division between church and state was inconceivable largely because both institutions were embodied in the same being, Pharaoh. Law made by judges or the Office of the Vizier established judicial precedent, which provided consistency and predictability similar to the principle of *stare decisis* in modern common law systems. Such analogies remind us of Kemp's wise observation that prior to Europe's fascination with the Nile Valley civilization, Western scholarship or "[b]ooks about ancient Egypt

⁸³ See generally T. E. PEET, THE GREAT TOMB-ROBBERIES OF THE TWENTIETH EGYPTIAN DYNASTY (1930) (explaining how the Harem Conspiracies and Great Tomb Robberies cases were adjudicated by special commission appointed by Pharaoh).

⁸⁴ See TRIGGER ET AL., *supra* note 57, at 84 (noting that ancient letters of communication between the Vizier and third parties reveal that the former was ultimately responsible for fiscal, administrative and judicial affairs).

⁸⁵ See 11 NORMAN DE GARIS DAVIES, THE TOMB OF REKH-MI-RE AT THEBES (Metro. Museum of Art ed., 1943) (demonstrating that the historical record reveals that Rekh-mi-Re, Vizier to Thutmose III, was perhaps the most prominent

⁸⁶ Russ VerSteeg, *supra* note 82, at 123-28.

⁸⁷ RUSS VERSTEEG, LAW IN ANCIENT EGYPT 20-21 (2002). See also Nicolaas Johannes Van Blerk, The Concept of Law and Justice in Ancient Egypt, with Specific Reference to *The Tale of the Eloquent Peasant* xi, 3-4 (Mar. 2006)(unpublished M.A. Dissertation, University of South Africa); Nili Shupak, *A New Source for the Study of the Judiciary and Law of Ancient Egypt: "The Tale of the Eloquent Peasant,"* 51 J. NEAR E. STUD., 1, 15 (1992).

⁸⁸ VerSteeg, *supra* note 87, at 33.

⁸⁹ See generally John Henrik Clarke, *African Warrior Queens*, in BLACK WOMEN IN ANTIQUITY 123-25 (Ivan van Sertima, ed., 1984).

⁹⁰ Aylward M. Blackman, *Oracles in Ancient Egypt*, 11 J. Egypt Archeology, 249, 255 (1926).

[took] for granted that the ancient Egyptians were already, in essence, a nation" with complex governance and legal systems.⁹¹ From this background, Wilkinson's conclusion that "the concept of the nation state, so dominant in world politics today, was the invention of Egypt's early rulers" aptly resonates.⁹²

The Egyptian state was a genuine and imagined community.⁹³ Its people spoke and wrote a common language, occupied a defined territory, and subscribed to a distinct culture and national identity governed by a dynasty,⁹⁴ making Egypt a "dynastic state." In addition, as Kemp discerned, the Egyptian state had a sociopolitical and legal "existence separate from Pharaoh" in which its "rulers were heavily obligated to maintain the [sovereign] integrity of 'Egypt.'"⁹⁵ The "Pharaonic State Model" (PSM) fused together dynastic absolutism with broader notions of consensus government, obedience to MA'AT, conformity to law, and self-help, as prescribed by God(s). Therefore, in the Egyptian pantheon, the state evolved from a territorial entity that derived cosmic and worldly legitimacy from Pharaoh, a god-king, into a sovereign state with a distinct international legal personality that was accountable to the God(s), other states, kings, and the Egyptian people. What we would today recognize as Egypt's international legal personality initially emerged through its relations (e.g. territorial disputes and diplomatic and commercial relationships) with Hatti, and later with Assyria, Babylon, and Mitanni.

b. International Rule-Making

Egypt's superior military, commercial, diplomatic and intellectual standing among burgeoning powers positioned it to initiate, lead and originate international rule-making processes. It appears that a shared recognition and acceptance of a state's rights, duties, and obligations in a comprehensive or parity treaty was one way in which ancient states recognized each other's statehood status or denoted a state as an international legal person under the international law of antiquity. All five of the aforementioned states possessed a legal name and corresponding international rights, protections, privileges, responsibilities, and liabilities that were enshrined in bilateral treaties such as the Treaty of Kadesh and in

⁹¹ KEMP, *supra* note 17, at 19.

⁹² WILKINSON, *supra* note 59, at 59.

⁹³ BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 147 (rev. ed. 2006).

⁹⁴ KEMP, *supra* note 17, at 20.

⁹⁵ *Id.*

ancient international custom. These rights were also codified in domestic rules. Reciprocal recognition or community acceptance of rights, duties, and obligations of states in, for example, parity rather than subordination treaties (vassal treaties) represented the Egyptian and Hittite approach to ascertaining international legal personality. Such pacts, dependent on the reciprocal acceptance of duties, were then, as now, an essential characteristic of external sovereignty and legal personality.⁹⁶ In addition, parity treaties were wide-ranging “comprehensive treaties with an overall regulation of the mutual relations between the two parties,” not “limited treaties or protocols devoted to a limited number of issues.”⁹⁷ A precondition to being recognized as a parity state, and thus to entering into parity treaties, seems to have been mutual recognition that each state maintained effective control over its territory during times of war and peace; had a well-functioning governmental apparatus, a robust military, advanced diplomatic and commercial capacities; and administered state religion—all uncommon characteristics of vassals.⁹⁸ The process and procedure for recognition as a parity state rather than a subordinate vassalage under ancient international law was unique. Formal recognition through peace and trade agreements or diplomatic notes was necessary, and, again, was largely dependent on the principle of political parity or equivalency. Egypt rarely entered into treaties with vassals, it instead required vassal kings to take a loyalty oath to never rebel against her.

In this context, the Pharaonic state was the first to develop the capacity to simultaneously govern large populations within Egypt and in territories under its control, manage defined territory, occupy foreign lands, engage in interstate relations and diplomacy, manage and predominate complex intrastate and interstate trade systems, train, equip and mobilize an extensive professional military and vassalage forces, and administer state religion. These benchmarks, which go beyond contemporary understandings of sovereignty, may explain why state recognition by Egypt and Hatti

⁹⁶ Mario Liverani, *The Great Powers' Club*, in *AMARNA DIPLOMACY*, *supra* note 45, at 15, 20.

⁹⁷ Altman, *supra* note 5, at 111.

⁹⁸ See TREVOR BRYCE, *LETTERS OF THE GREAT KINGS OF THE ANCIENT NEAR EAST: ROYAL CORRESPONDENCE OF THE LATE BRONZE AGE 39* (2003) (explaining that the term vassal, vassalages and vassal state are used interchangeably. A vassal state is a political entity that is subordinate to a major power or empire-state. Egypt's vassals provided military assistance and paid tributes to her as well as served as depots for Egyptian commerce in return for protection against internal and external threats and guaranteed the vassal king or overlord “succession to the vassal throne in his family line.”).

amounted to a synthesis of what today we would recognize as the declaratory and constitutive perspectives on recognition. It follows that parity statehood exceeded the criterion of statehood in the modern era—a permanent population, a defined territory, government and the capacity to enter into relations with other states—enumerated in the 1933 Montevideo Convention (declaratory), and necessitated mutual recognition (constitutive) as sovereign.

This finding raises an important question: when considering the Egyptian conception of statehood, particularly the principle of parity, how many modern states would qualify as an international legal person under the international law of antiquity? Inversely, would Egypt's Pharaonic state satisfy the traditional criteria of statehood under modern international law or the qualifications for determining a state as a person of international law?⁹⁹ Unlike a number of modern states, such as the Pacific Island states of Nauru, Micronesia and Palau and the city-states of San Marino, Liechtenstein and Monaco, Egypt was a leviathan that possessed these sovereign characteristics 5000 years before the birth of Europe's modern nation-state in 1648 or the Westphalian conception of state sovereignty. Hence, nearly 4000 years before Emmerich de Vattel argued that the essential criterion of statehood was that nations exist "free and independent of one another" and govern by their own authority and law,¹⁰⁰ Egypt was a hegemonic state governed by law.¹⁰¹ It not only originated the first known nation-state, but also generated the first known *body* of domestic law (Demotic Legal Code of Hermopolis West – 650 BCE) and international treaty law such as the Treaty of Kadesh.¹⁰² Accordingly, it was the Nile Valley conception of statehood, law, politics, economics and militarism that delivered regional or intercontinental dominance to the Egyptians by 3100 BCE and thereafter international hegemony through war and conquest in the near East.

⁹⁹ See, e.g., Organization of American States, Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19 (1933) (detailing how a state as a person of international law should possess the following qualifications: (1) a permanent population, (2) a defined territory, (3) government, and (4) the capacity to enter into relations with the other states. Not only did Egypt possess all of these attributes of statehood, but as already noted, it also had a large and highly mechanized military and system of organized religion).

¹⁰⁰ See Albert de Lapradelle, *Introduction to EMMERICH DE VATTEL, 1 LE DROIT DES GENS* (Carnegie Inst. of Washington ed., 1916) (1758); JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 7-8 (2d ed. 2007).

¹⁰¹ See Michael I. Rostovtseff, *International Relations in the Ancient World*, in *THE HISTORY AND NATURE OF INTERNATIONAL RELATIONS* 31, 40-41 (Edmund A. Walsh, ed., 1922). See also Schwarzenberger, *supra* note 55, at 25.

¹⁰² See *supra* notes 34-40.

In this sense, as previously noted, the Pharaonic or dynastic state model seemed to require: (1) a robust governmental apparatus; (2) a legal system; (3) strong military; (4) expansive diplomatic and commercial capacity and relations; (5) the ability to effectively occupy foreign lands and maintain firm control over foreign populations; and (6) the peaceful centralization and administration of state religion.¹⁰³ What's more, since Egypt arguably was one of the world's first colonial and imperial powers, is its approach to the colonial enterprise which differed from the excessively violent and exploitative indirect rule and acculturative systems of, for example, in the ancient era Greece and Rome, and in the modern era, Britain and France. While Egypt's model of conquest or vassalage included commerce, trade, militarism, and indoctrination as core components, it was unique because it deployed officials to 'vassal states' to co-administer rather than supplant and dominate territory and peoples,¹⁰⁴ as violence was a tactic, not a means to an end. Egypt's assimilative approach was largely based on shared spiritual norms rather than foreign cultural customs. Spiritual indoctrination was pursued through a system of recompenses rather than violence because societal adherence to MA'AT created consistency, predictability, and validation for Egypt's imperial endeavors. It also applied the equivalency logic (not status) of parity reserved for states of equal status locally by developing a model of shared administration that propped up local kings and maintained local political and economic elites and structures to the extent that they did not impede its core ambitions.¹⁰⁵

III. CUSTOM AND TREATY LAW

With the Egyptian state serving as principal catalyst, the international law of antiquity in Africa and the near East governed relations between a small cohort of states and nations and conferred certain rights upon the individual.¹⁰⁶ As previously noted, by the Middle Kingdom period (2055-

¹⁰³ See generally RICHARD GABRIEL, THUTMOSE III: THE MILITARY BIOGRAPHY OF EGYPT'S GREATEST WARRIOR KING (2009); THUTMOSE III: A NEW BIOGRAPHY (Eric H. Cline & David O'Conner eds., 2006); Michele R. Buzon, *Biological and Ethnic Identity in New Kingdom Nubia: A Case Study from Tombos*, 47:4 CURRENT ANTHROPOLOGY 683; William Y. Adams, *The First Colonial Empire: Egypt in Nubia, 3200-1200 B.C.*, 26 COMP. STUD. SOC'Y & HIST. 36 (1984).

¹⁰⁴ BRYCE, *supra* note 98, at 39.

¹⁰⁵ HORST KLENGEL, SYRIA 3000 TO 300 B.C. 99 (Akademie Verlag ed., 1992).

¹⁰⁶ E.g., ANCIENT NEAR EASTERN TEXTS: RELATING TO THE OLD TESTAMENT 8 (James B. Pritchard, ed., John A. Wilson trans., 3d ed. Supp., 1969) (discussing how fundamental rights were conferred to Egyptians by royal decree in about 2000 BC). I refer to the 'All Men Are

1650 BCE) a burgeoning international society led by Egypt developed with nation-states rising in Hatti (Kingdom of the Hittites) to the east in Asia minor, Assyria (Akkadian Empire), Babylonia in central-southern Mesopotamia and, arguably, Nubia and Kush to the south.¹⁰⁷ One of the reasons why Egypt predominated during this period was because its rulers provided it with nearly four centuries of unity, security, stability, and economic growth, which consequently afforded its kings, priests, and scientists with unfettered opportunity to innovate in trade,¹⁰⁸ diplomacy, militarism, the arts, science, religion and technology. For example, Tuthmosis I (1504-1492 BCE) positioned Egypt “centre-stage in international affairs with his triumphant military progress through Syria to the Euphrates river,” but it was Hatshepsut (1479-1458), his daughter-in law, who bolstered Egypt’s economic standing with “commercial expeditions to Phoenicia for timber, to the peninsula of Sinai for turquoise, and to the land of Punt” (Somalia and Sudan) for exotic products.¹⁰⁹

While this study is focused on ancient Egypt, it is useful to note that each one of the aforementioned ancient powers followed a variant of the Pharaonic State Model. They functioned as sovereign states possessing large and permanent populations, well-defined territorial boundaries, entrenched heredity-based governance structures, robust militaries, vibrant economies, highly effective and wide-ranging foreign affairs apparatuses,

Created Equal in Opportunity’ decree as the ‘Egyptian Bill of Rights’.

¹⁰⁷ There were other substates during this period that debatably possessed the *objective* characteristics of a legal person under modern international law, but were not considered states during antiquity. They were often highly recalcitrant vassals (Nubia was a vassal of Egypt in the Middle Kingdom era before it rose against and conquered her in 730 BCE) and considered to be appendages of major powers comprising a “commonwealth” of states. Again, subordinate states did not form a part of the “Great Powers Club” during antiquity. Even the most powerful vassals, such as Mittani before its rise to glory, were not considered parity states or subjects of ancient international law, unlike weak states such as Somalia in the modern era. Ancient international law did not appear to provide for a strict “sovereign equality” of states doctrine, but did recognize and adhere to transnational norms or customary international rules of behavior respecting the territorial integrity and political independence of *parity* states.

¹⁰⁸ William F. Edgerton, *Ancient Egyptian Ships and Shipping*, 39:2 AM. J. OF SEMITIC LANGUAGES & LITERATURES 109, 134 (1923) (emphasis added) (explaining how documentary evidence shows that Egyptian vessels traveled down the Red Sea to Punt during the “reign of Sahure, and [there was] no reason to doubt that they had been doing so centuries before that time.”).

¹⁰⁹ BRYCE, *supra* note 98, at 18, 47 (noting that “Egypt claimed sovereignty over a vast region extending from Upper Nubia in the south through Palestine and Syria to the western fringe of Mesopotamia.”).

complex intrastate and interstate trade systems, and state religion.¹¹⁰ Consequently, they adopted treaties (e.g. Treaty of Kadesh, Kurushtama Treaty and the Peace and Cooperation Treaty between Ramses II and Muwatallis), laws and customary practices to systematize diplomatic relations, engage in commerce, preserve territorial integrity, and resolve conflict. The latter two treaties are mentioned in the Treaty of Kadesh and in Egyptian art history but to the Author's knowledge, no full inscription or tablet has been discovered. Notwithstanding, Egypt's innovation of transnational law and norms should not be surprising because, as Raymond Westbrook rightly notes, "[w]here an international society exists, relations between its members will be governed not only by common political conventions but also by agreed rules of law."¹¹¹ In this sense, whether we are referring to ancient or modern international law, such rules were and are comprised of a body and system of law that first and foremost administers affairs between states or sovereign entities, and secondly, between states, vassals, other authority structures and people.¹¹²

Ancient states derived common rules—some written, some customary—to regulate the character of relations between them. Contrary to the assertion that "[a]ncient law could not conceive of the state as a legal entity,"¹¹³ the Pharaonic state was a spiritual, political, and legal entity whose legal title was entrusted by Egyptians to Pharaoh in accordance with MA'AT and by extension to his or her progeny.¹¹⁴ Legal history also confirms that Nubia, Hatti, and Assyria among others, subscribed to a similar conception of statehood in which legal sovereignty was vested by citizens in a supreme leader who was revered as the living embodiment of God or the supernatural. During this era, international law was intended to facilitate relationships and regulate conduct among kings (and accordingly their empire-states) who were answerable to the people through, as already noted, MA'AT and to the gods through a shared conviction in religious consequentialism. As Westbrook posits the "divine legal system governed human behavior no less

¹¹⁰ Bard & Fattovich, *supra* note 71, at 279 (stating that by 3300 BC Egypt's commercial interests expanded from "Mesopotamia and Syria-Palestine to Nubia.").

¹¹¹ Westbrook, *supra* note 45, at 28.

¹¹² Ancient Egypt's territorial boundaries are very similar to modern Egypt's border, with the exception of its vassals in the south after conquering Nubia and Kush and colonial territories in the Near East. Its northern border stretched from Elephantine (modern Aswan, just north of the Nubian Desert) to the Mediterranean Sea. Its eastern boundary stretched from the Red Sea to the high desert of Libya.

¹¹³ Westbrook, *supra* note 45, at 29.

¹¹⁴ See MA'AT discussion *infra* notes 122-124.

than human courts and its sanctions, if less certain in their application (but not by much) were equally feared” given the firm belief in “divine justice,” which included plague, drought, flood, and defeat in war.¹¹⁵ Moreover, a firm customary norm of reparation emerged to elude celestial justice, leading to the argument that “ancient international law was more genuinely law than its modern counterpart.”¹¹⁶

The ancient international law of Africa was thus shaped by a multitude of complex sociopolitical, spiritual, economic, and legal factors. Accordingly, its internal anatomy was polygonal. Within a polity that recognized no division between church and state, it merged positivist and naturalist precepts, logic and relational conceptions. The state was otherworldly entity entrusted to Pharaoh. There was no moral or physical authority above Pharaoh, who simultaneously served as God-king and head of state. The Egyptians seem to have conceived of the state as a sovereign entity embodied in Pharaoh, with rights, responsibilities, and duties that were claimable through domestic, celestial, and international law, though operatively MA'AT's itinerant nature cross-pollinated those three aspects of law making it difficult to neatly distinguish between them. Henceforth, the PSM that appears to be the first precursor to contemporary international law was monarchical and divine on the one hand, and public and corporatist on the other. Interestingly, this mode of imperial governance continues to thrive in several African States, in some cases providing peace and continuity in hinterlands, and in other cases thwarting democracy in the metropole. This fusion of spiritual and political power was reflected in the compositional nature of Egyptian law, whether local or international, and evidences the normative sociopolitical influence of Egypt on interstate relations, particularly peace-craft with Near East powers such as Hatti and Assyria that subscribed to various forms of idolatry rule.¹¹⁷ The Egyptian conception of law and diplomacy greatly influenced approaches adopted by Persian king Darius the Great, who, according to Diodorus, was an avid student of Egyptian law and “imitated their manner of life” or legal system.¹¹⁸ Ancient international law was thus derived from a small cohort of increasingly interdependent states with a long history of relations—trade, commerce, diplomacy, war, conquest, religious conviction, peacemaking, and matrimonial reciprocity—generating distinct law, norms, and doctrine

¹¹⁵ Westbrooke, *supra* note 45, at 31.

¹¹⁶ *Id.*

¹¹⁷ DIODORUS SICULUS, THE LIBRARY OF HISTORY OF DIODORUS SICULUS 239–341 (Loeb Classical Library ed. 1933).

¹¹⁸ *Id.*

intended to regulate state and individual action or behavior, respectively. These states embraced common rules, procedures, and standards—a common law of rules that were either in written form or customarily known—that cemented together general practices to form an amalgam of political, economic, and celestial rationale in the above-mentioned spheres in interstate affairs.¹¹⁹ Such law, rules, norms, doctrines, and structures were heavily influenced by a confluence of progressions in transnational relations, mutual perceptions, expectations, appeasement, adjustment, and modification, as well as a sustained practice of ideological fusion.

a. *MA'AT*

Before addressing these areas of confluence in further detail, it is important to discuss the cognitive origins of law and justice in Egypt and Africa generally: the Kemetic philosophy of MA'AT. In Egyptian culture MA'AT is depicted as a woman—a goddess of justice—who wears an ostrich feather of truth on her head.¹²⁰ She was among the most powerful gods because of her role of “weighing the heart of the departed” or pronouncing “judgment in the underworld; and as far as the ancient Egyptians were concerned, *this was the judgment*.”¹²¹ MA'AT was supernatural, customary, and authoritatively operative. The goddess MA'AT was the ultimate arbiter of justice—soul justice—on earth and beyond and was simultaneously an abstract metaphysical construct predicated on natural justice precepts intended to order and regulate individual and collective behavior. MA'AT is the oldest known psycho-cultural and legal philosophy and served as the moral epicenter or conscience of Egyptian society, a naturalist identity that transcended Pharaoh and the state.

As previously noted, Pharaoh was a living god with authority to rule the earth as the arbitrator between humanity and the gods.¹²² According to VerSteeg, “theoretically, custom derived from the world of the god-king and his three divine qualities of *Hu*, *Sia* and *MA'AT* (Authority, Perception, and

¹¹⁹ See KEMP, *supra* note 17; Liverani, *supra* note 96 (discussing how treaty law and diplomatic correspondence provide the most concrete evidence).

¹²⁰ In Egyptian mythology MA'AT was the daughter of the sun god, Re.

¹²¹ RUSS VERSTEEG, *LAW IN ANCIENT EGYPT* 19 (2002).

¹²² See also Bell, *supra* note 80, at 99. See also *THE TEACHINGS OF PTAHHOTEP: THE OLDEST BOOK IN THE WORLD* (Asa G. Hilliard III, Larry William, & Nia Damali, eds., Blackwood Press 1987) (explaining that in its original catenation in Egyptian hieroglyphics, *The Teachings of Ptahhotep*, which includes MA'AT, is estimated to have been written in 2300 BCE and is hence the oldest complete book in the world).

Justice).”¹²³ The former two traits were eventually incorporated into the latter, making MA’AT the predominant way of life. Pharaoh served as the sole intermediary between MA’AT and law, which made him/her the supreme legal authority. In this regard, the king’s primary purpose was to facilitate MA’AT,¹²⁴ which, according to the Egyptians, formed the basis of civilized society. From the Predynastic period through the First Intermediate period (5200-2100 BCE) onward, traditional Kemetic (or ancient Egyptian) society, irrespective of its physical and social diversity, was ordered by MA’AT; hence, it was the first holistic transnational justice theory that represented “the status quo of the Egyptian way of life – that distinguished the Egyptians from their barbaric neighbors.”¹²⁵ MA’AT prevailed in the public/private and domestic/international spheres. Not only did Hatti and Assyria evolve similar sociolegal doctrine, but such canonical congruence also helped to crystallize customary diplomatic norms and practices in interstate relations by the advent of the New Kingdom period (1540 BC).¹²⁶ During this era, Egyptians wholeheartedly believed that Egypt “was the center of the universe, and [that they] were the gods’ chosen people – the only true humans” or civilized persons capable of constructing civilized society.¹²⁷ Egyptian claims of civilizational supremacy are bolstered by Diodorus’ observation that:

Greeks, who have won fame for their wisdom and learning, visited Egypt in ancient times, in order to become acquainted with its customs and learning. For the priests of Egypt recount from the records of their sacred books that they were visited in early times by Orpheus, Musaeus, Melampus, and Daedalus, also by the poet Homer and Lycurgus of Sparta, later by Solon of Athens and the philosopher Plato, and that there also came Pythagoras of Samos and the mathematician Eudoxus, as well as Democritus of Abdera and Oenopides of Chios. As evidence for the visits of all these men they point in some cases to their statues and in others to places or

¹²³ RUSS VERSTEEG, LAW IN ANCIENT EGYPT 6 (2002); JOHN WILSON, THE CULTURE OF ANCIENT EGYPT 172–73 (1951).

¹²⁴ See Bell, *supra* note 80, at 99.

¹²⁵ *Id.*

¹²⁶ See *id.* (discussing how Hatti and Assyria were influenced by and subscribed to MA’AT-like doctrines in which broader notions of “truth, justice, righteousness, correct behavior, and divinely ordained cosmic order” had significant legal import in the design of interstate relations as evidenced by treaties they negotiated and entered into with the Egyptians and one another).

¹²⁷ *Id.* See also DIODORUS SICULUS, THE LIBRARY OF HISTORY OF DIODORUS SICULUS 239–341 (Loeb Classical Library ed. 1933).

buildings which bear their names, and they offer proofs from the branch of learning which each one of these men pursued, arguing that all the things for which they were admired among the Greeks were transferred from Egypt.¹²⁸

MA'AT provided the philosophical platform for ancient international law and custom. As Tobin notes, in the Egyptian mind, "ma'at bound all things together in an indestructible unity—the universe, the natural world, the state, and the individual were all seen as parts of the wider order generated by ma'at."¹²⁹ It was a "law of nature" that expressed itself through customary rules in the Egyptian pantheon. In modern international law, customary international law and *jus cogens* norms are perhaps anatomically the most similar to MA'AT: they were fundamental, universally recognized preemptory norms or principles of law from which no derogation was permitted.¹³⁰ Pharaoh's primary purpose was to "make MAAT, to make harmony, balance, reciprocity, justice, truth and righteousness."¹³¹ MA'AT was the "force" that ensured "an ideal state of the universe" and accordingly guided human and institutional behavior and informed the intellectual template from which morality, justice and rule construction, including treaties, emanated.¹³² To the extent that ancient international law was one of several doctrines intended to help order human behavior, diplomatic relations, trade, and foreign affairs between peoples and states based on the resolve of dominant powers during antiquity, MA'AT served as a preemptory source of law that ensured reverence for fundamental social values in domestic and transnational relations.¹³³ To this point, Trigger notes that the meaning of MA'AT "goes far beyond legal fairness . . . to the ideal state of the universe and society" acting " . . . as a constraint on the arbitrary exercise of power: a 'natural' morality in the place of institutional checks."¹³⁴ Interestingly, in the same way that Pharaoh's standing eventually became decoupled from the state, during the New

¹²⁸ *Id.*

¹²⁹ Vincent Ariea Tobin, *Ma'at and Dike: Some Comparative Considerations of Egyptian and Greek Thought*, 24 J. AM. RES. CENTER EGYPT 113-121 (1987).

¹³⁰ Asa G. Hilliard, III, *The African Origins of Law*, Lecture presented to the Georgetown University College of Law (Spring 1993) (on file with the Author). See John A. Wilson, *Authority and Law in Ancient Egypt*, Supplement to 74:3 J. AM. ORIENTAL SOC'Y (1954). See also, IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 515 (5th ed. 1998).

¹³¹ *Id.*

¹³² TRIGGER ET AL., *supra* note 57, at 74.

¹³³ KEMP, *supra* note 17, at 7, 98.

¹³⁴ TRIGGER ET AL., *supra* note 57, at 74.

Kingdom period a naturalist shift occurred in which Pharaoh was no longer the exclusive arbiter of MA'AT;¹³⁵ rather, he became subject to it with the spread of monotheism and the belief that God alone dispensed MA'AT.¹³⁶

It was during this era that Egypt conceived of "natural justice" with God rather than Pharaoh sitting atop the hierarchy of morality and authority, dispensing justice metaphysically and physically. In essence, MA'AT formed its own normative conscience and imposed an international moral substructure and legal standards on state action to ensure reverence and adherence to essential ethical values.¹³⁷ Its utility was first confirmed when peace, order, and justice were effectuated, and second when states derived internal and external legitimacy by adhering to it. For example, MA'AT seemingly provided the moral sub-structure for the humane treatment and protection of messengers and merchants, fugitives, immigrants, and their families from official or state abuse in the Amarna Letters and Treaty of Kadesh discussed in the Part that follows.¹³⁸

b. *Amarna Letters*

The existence of MA'AT is concretely confirmed in the spirit of the Amarna Letters, which are vital sources of information about ancient international law, custom, and relations during antiquity.¹³⁹ For example, in about 1338 BCE, after invoking an age-old "mutual declaration of friendship" or bilateral treaty between Egypt and Babylon, Babylonian king, Burna-Buriash, firmly requested that Pharaoh Amenhotep IV dispense justice or MA'AT to men in his territory that robbed and murdered Burna-Buriash's merchants by "bring[ing] them to account and make compensation for the money that they took away. Put to death the men who put my servants to death, and so avenge their blood" or they will rob and kill again.¹⁴⁰ The invocation of the declaration lends insight into African and Asian conceptions of justice that, in this case, included claims for high order punitive justice and reparation.

The Amarna Letters were written during the first part of the New

¹³⁵ Van Blerk, *supra* note 87, at 4.

¹³⁶ *Id.*

¹³⁷ See TRIGGER ET AL., *supra* note 57, at 75.

¹³⁸ *Merchants Murdered, Vengeance Demanded (EA8)*, in THE AMARNA LETTERS 16, 16 (William L. Moran ed., 1992).

¹³⁹ Raymond Cohen and Raymond Westbrook, *Introduction: The Amarna System*, in AMARNA DIPLOMACY, *supra* note 45, at 1, 6.

¹⁴⁰ *Merchants Murdered, Vengeance Demanded (EA8)*, *supra* note 138.

Kingdom era (18th Dynasty – 1550-1290 BCE) in one of the most profound periods in Egyptian and human civilization. It was during this period that the burial-tombs of the Valley of the Kings in Upper Egypt were built and the institutionalization of law was solidified under the authority and direction of Pharaohs such as Hatshepsut, Akhenaten, Tutankhamen, Tuthmosis III, and Ramses II.¹⁴¹ The tombs or mortuary record confirm that international relations between Egypt, Hatti, Babylon, Mittani, and Assyria were guided by settled rules or ancient international custom in the areas of commerce, diplomatic protection, treatment of foreign nationals, and the extradition of criminals.¹⁴² Custom was “a major source of ancient international law” and fortified “intricate rules of procedure” and the “principle of maintaining obligations.”¹⁴³ Other written sources such as treaties, texts, Egyptian royal inscriptions and diplomatic correspondence verify that international rules and custom also regulated international relations, war and peace, interstate trade, treaty-making, marriage, and the exchange of gifts.¹⁴⁴ Diplomatic envoys were received by host states with full tributes (e.g. security, housing, maintenance and entertainment) and it was unlawful to restrict the free movement of, or indefinitely detain, envoy.¹⁴⁵ Similar to modern diplomatic norms, ancient envoy also enjoyed a form of inviolability or diplomatic immunity for public and private action; however, heinous crimes or those deemed offensive by host states could result in penal sanction upon formal protest. Even then, penal action was usually the prerogative of the diplomat’s home state; this is not dissimilar to contemporary diplomatic norms. Meaning, harmony, or consent were essential because the mistreatment or abuse of diplomats was considered an affront to the state as a whole and to this day arguably serves as a lawful basis for the use of military force under international law.

Like the Amarna Letters, the Laws of Hammurabi (1750 BCE), named after Babylonian King Hammurabi, provide another example of ancient international custom (albeit codified) that would be considered prescient,

¹⁴¹ Gary Beckman, *International Law in the Second Millennium: Late Bronze Age*, in 1 A HISTORY OF ANCIENT NEAR EASTERN LAW 753, 753-74 (Raymond Westbrook ed., 2003).

¹⁴² *Id.* at 754-69. See also *Merchants Murdered, Vengeance Demanded*, *supra* note 139.

¹⁴³ Butkevych, *supra* note 8, at 201.

¹⁴⁴ GARY A. BECKMAN, HITTITE DIPLOMATIC TEXTS (Harry A. Hoffner ed., 1999); Rodolfo Ragonieri, *The Amarna Age: International Society in the Making*, in AMARNA DIPLOMACY, *supra* note 45, at 42, 52-53. See generally BECKMAN, HITTITE DIPLOMATIC TEXTS, *supra* note 38.

¹⁴⁵ Westbrook, *supra* note 45, at 33; *Message Lost (EA163)*, in THE AMARNA LETTERS, *supra* note 138, at 250-251.

namely, the requirement of physical protection, fair and equitable treatment and reparations for foreign nationals, including private citizens, by a host state. As Westbrook notes, during antiquity, “[t]here is substantial evidence of a rule of customary law imposing liability on the host government to compensate foreign nationals who had been victim of serious crimes [such as robbery or murder] on their territory” and local officials were responsible for ‘insuring’ the well-being of foreign nationals.¹⁴⁶ This duty appears to have been greater to foreigners than to citizens of the locality, shedding light on the sacrosanct position that foreigners, whether lay visitors or diplomats, were accorded by ancient powers. MA’AT inspired legal precepts in the Amarna Letters provide insight into the multifarious ways in which Egypt influenced the template for treaty construction in younger nations such as Babylon and, perhaps even their respective laws (e.g. Laws of Hammurabi). In fact, as Bryce notes, “what clearly emerges from the Amarna letters is that foreign kings—particularly those of Hatti, Mitanni, Assyria and Babylon—were eager to maintain close diplomatic relations with Egypt throughout the Amarna period” and “[e]ven the great Hittite warlord Suppiluliuma was anxious to assure the pharaoh of his friendship, his respect for Egyptian territory and his desire to maintain peace with Egypt.”¹⁴⁷ Suppiluliuma’s open recognition and respect for Egypt’s sovereignty in peace treaties and diplomatic correspondence demonstrates that there were clear territorial boundaries between ancient states and that the notion of state sovereignty and territorial integrity were sacrosanct principles of ancient international law.

Finally, the Amarna Letters among other sources confirm that a firm customary international law norm on extradition existed during antiquity.¹⁴⁸ David Lorton notes that in the wake of the recent discovery of a “published papyrus of Dynasty XII,” which elucidates “five laws dealing with fugitives,” it is clear that “law codes did exist in Pharaonic times.”¹⁴⁹ Also, to the extent that the notion of ancient extradition imputed state-to-state relations, Egypt’s codes were transnational and customary in nature. Through bilateral treaties and diplomatic practice, states or kings of equal status or standing acknowledged the authority of one another to grant asylum to refugees and fugitives. As Ivan Shearer asserts, “[t]he origins of

¹⁴⁶ Westbrook, *supra* note 45, at 34 (emphasis added).

¹⁴⁷ BRYCE, *supra* note 98, at 19.

¹⁴⁸ S. Langdon & Alan H. Gardiner, *The Treaty of Alliance between Hattusili, King of the Hittites, and the Pharaoh Ramesses II of Egypt*, 6 J. EGYPTIAN ARCHAEOLOGY 179, 192-98 (1920).

¹⁴⁹ Lorton, *supra* note 81, at 5.

international cooperation in the suppression of crime goes back to the very beginnings of formal diplomacy,” namely, “the peace treaty between Ramesses II of Egypt and the Hittite prince Hattusili III (c. 1280 B.C.),” popularly known as the Treaty of Kadesh.¹⁵⁰ International cooperation, reciprocity, good faith and fair dealing underwrote customary and treaty-based extradition arrangements among equals, and requests for the extradition of fugitives were routinely granted. Harboring fugitives in the wake of a formal request for extradition was considered an act of aggression in the ancient world, not unlike the present. The same cannot be said between “suzerain [Great Kings] and vassal [lesser kings], the former had no [legal] duty to extradite, but the latter did.”¹⁵¹ Ancient custom seems to have validated the normative expectations and aspirations of the ancient Great Powers Club (Egypt, Hatti, Mittani, Assyria, and Babylon). Such norms were underwritten by what Alexander Wendt refers to as the corporate identity of the state, including physical security; ontological security, i.e. predictability in civilizational and state-to-state relations; recognition by other nations outside of the realm of war; and human development.¹⁵² However, ancient custom was also cemented into the international legal order through treaty. The oldest and most concrete example of the customary practice of extradition of fugitives, among other norms, was their crystallization in the Treaty of Kadesh.¹⁵³ For example, in the following excerpt from the Egyptian version of the Treaty of Kadesh the great kings of Egypt and Hatti agreed to deny refuge to and deport fugitives:

[If any great man flee from the land of Egypt and he come to the lands of (?)] the great chief of Hatti; or a town (22) {or a districtFalse . . } [belong]ing to the lands of Ra'messesemi-Amūn, the great ruler of Egypt, and they come to the great chief of Hatti: the great chief of Hatti shall not receive them. The great chief of Hatti shall cause them to be brought to Usima're'-setpenrē', the great ruler of Egypt, their lord, [on accou]nt of it.¹⁵⁴

This provision, which I refer to as the “fugitive deportation clause”, necessitated a high-level of trust, cooperation and mutual appeasement. The Part that follows examines the anatomy of ancient treaty law with specific

¹⁵⁰ I.A. SHEARER, EXTRADITION IN INTERNATIONAL LAW 5 (1971).

¹⁵¹ Westbrook, *supra* note 45, at 36.

¹⁵² Ragionieri, *supra* note 145, at 52-53; Alexander Wendt, *Collective Identity Formation and the International State*, 88 AM. POL. SCI. REV. 384, 385 (1992).

¹⁵³ Langdon & Gardiner, *supra* note 148. See also Shearer, *supra* note 150.

¹⁵⁴ Langdon & Gardiner, *supra* note 148, at 192.

reference to the Treaty of Kadesh, which codified MA'AT, ancient custom, and decree, and provides a hard treaty basis to the African origins of international law.

c. *Treaty Law*

Through the microcosm of the Treaty of Kadesh, this Part explores the juridical nature, characteristics, and terms and conditions of ancient treaty law and seeks to illuminate how ancient peoples and nations in Africa (Egypt, Nubia, Kush and eventually west to Ghana, Mali and Songhai) concretized their commitments in international relations.¹⁵⁵ As a subspecies of the international law of antiquity, ancient treaty law is probably the most forceful evidence of the African origins of international law. In accord with Egyptian practice, international treaties between parity states were agreed upon in written declaratory instruments that codified mutual commitments between contracting parties and confirmed by mutual oaths and explicit references to divine consequentialism that constituted the international obligation. In this regard, they would appear to more than satisfy Article 2 of the Vienna Convention on the Law of Treaties (1969) which requires that an international agreement to be between states and concluded in written form.

In 3100 BCE, Egypt was the predominant global power and was eventually joined by Hatti some 1,500 years later. Egypt and Hatti were superpowers that established their own standards for statehood (e.g. PSM), standards that seem to have been more stringent than the Montevideo-based traditional elements of statehood under modern international law. As already noted, by 1800 BCE, several "independent states arose" and began shifting the balance of power, including "the Hittites in Asia Minor, the Cretan maritime power in the Mediterranean, the powerful states of Mitanni on the upper course of the Euphrates, Assyria," and Elam, which represented a new "system of states."¹⁵⁶ One strategy employed by Egypt to preserve its place as the dominant power was to institute a vassalage system by entering into tributary agreements or feudal treaties with rising powers. Egypt also entered into mutually advantageous commercial treaties to pacify its

¹⁵⁵ See generally WILLIAM J. MURNANE, *THE ROAD TO KADESH: A HISTORICAL INTERPRETATION OF THE BATTLE RELIEFS OF KING SETY I AT KARNAK* (STUDIES IN ANCIENT ORIENTAL CIVILIZATION, BOOK 42) (2d ed., rev. 1990) (explaining how from the onset it is important to note that the history of international relations between Egypt and near East powers such as Hatti is enormously complex and the modest background information provided in this Article is intended only to provide context to the Treaty of Kadesh).

¹⁵⁶ Michael I. Rostovtseff, *International Relations in the Ancient World*, in *THE HISTORY AND NATURE OF INTERNATIONAL RELATIONS*, 31, 40-41 (Edmund A. Walsh ed., 1922).

neighbors. Bederman noted that the “Egyptians appear to have had a set of commercial treaties with major trading states in the eastern Mediterranean, regulating such issues as extraterritorial privileges and the protection of assets of deceased traders.”¹⁵⁷ Consequently, the Treaty of Kadesh was established at the initial stage of what would become an explosion of nations preoccupied with geopolitical rivalry, global trade, and military adventurism.

The Kadesh Treaty is the world’s oldest known and complete peace treaty and parity agreement.¹⁵⁸ It was concluded between King Ramses II of Egypt (a.k.a. Ramses Meri-Amon) and King Hattusili III of Hatti (the land of the Hittites) in 1280 BCE,¹⁵⁹ after nearly a decade of intermittent war over control of Palestine and Kadesh (today referred to as western Syria), which were vital strategic military and commercial centers. It is also the only ancient Egyptian treaty “for which we have reciprocal versions - one in Egyptian hieroglyphs and the other in Akkadian.”¹⁶⁰ The Battle of Kadesh took place in the ancient city of Kadesh along the Orontes River in Greater Syria or Levant. Egypt and Hatti were among the most powerful states in the thirteenth century BCE. Although Egypt narrowly won the war against the Hittites, its battered forces lacked the capacity to firmly dominate Kadesh and the areas in and around northern Syria. As a result, they created two mutually agreed-upon spheres of influence that literally divided Syria and Palestine. This geopolitical repositioning caught the attention of other burgeoning powers. Bederman asserted that the “Egyptian occupation of Syria placed it in inevitable diplomatic and military competition with other great powers in the region. Syria and Palestine were the great geo-political

¹⁵⁷ BEDERMAN, *supra* note 40, at 146.

¹⁵⁸ See Lucio Milano, *Ebla: A Third-Millennium City-State in Ancient Syria*, in CANE 1219, 1219-30 (J.M. Sasson ed., 1995) (discussing how there were at least two prior friendship and cooperation treaties between Egypt and Hatti dating back to the reign of Thutmose IV during the New Kingdom era (1400 BCE). It is also worth noting that the first “city-state treaty” for which textual evidence exists is arguably between the king of Elba in Northern Syria and the king of Ashur in the area of Khabur in about 2400 BCE.). See also Karl-Heinz Ziegler, *Conclusion and Publication of International Treaties in Antiquity*, 29 *Isr. L. Rev.* 233 (1995).

¹⁵⁹ The Kingdom of Hatti (located in the area of central Anatolia, Turkey) was originally inhabited by “Hattians,” an ancient people that date back to at least the empire of Sargon of Akkad (2300 BCE), and were closely related to the Akkadians. Hatti was eventually conquered by the Hittites, an Indo-European ethnic group, in about 2000 BCE. Thereafter, Hatti became known as the “land of the Hittites”.

¹⁶⁰ BEDERMAN, *supra* note 40, at 147. ARTHUR NUSSBAUM, *A CONCISE HISTORY OF THE LAW OF NATIONS* 2-3 (rev. ed., 1954) (explaining how the Egyptian version was found in the Temple of Amon at Egypt’s dynastic capital of Karnak, and the other at Ramesseum in Asia Minor).

prizes of international relations in this period,” and the Assyrians were keen to conquer them.¹⁶¹

Similar to modern peace treaties and agreements, the Treaty of Kadesh was shaped by four factors: (1) a military stalemate (between Egypt and Hatti); (2) troop attrition and exhaustion (nearly 70,000 fought in the Battle of Kadesh); (3) preexisting treaty agreements;¹⁶² and (4) external threats to Egyptian and Hittite hegemony. During this period, Hatti was challenged by hostile nations from Assyria and Mesopotamia, and Egypt was threatened by Libyan aggression. The Kadesh Treaty was highly unique. It symbolizes the breadth of African and Mediterranean intellectual traditions and is written in masterful Egyptian and Hittite prose in which positivist structure organically incorporates naturalist logic with one central aim: to regulate interstate behavior and relations and create just peace. Its foundational logic and organizing supposition were eloquently woven together nearly four millennia before their modern articulation by pioneering jurists such as Alberico Gentili and Hugo Grotius.¹⁶³ The Kadesh Treaty was not the first between Egypt and Hatti, but was certainly the most comprehensive.

In fact, preexisting treaty agreements between Egypt and Hatti were renewed in the Treaty of Kadesh. The first of these treaties is referred to as the Kurushtama Treaty (about 1400 BCE), which is the “earliest known treaty” between Egypt and Hatti.¹⁶⁴ It was principally a treaty of friendship and cooperation that focused on deportation and immigration of Hattians to Egypt, border security, and territorial boundaries between the two states.¹⁶⁵ The second treaty, the Peace and Cooperation Treaty between Ramses II and Muwatallis II (Muwatallis was the Great Prince of Hatti and brother of Hattusili), specifically indicates that two Hatti kings/princes, Subbiluliuma (grandfather of Hattusili III) and Muwatallis II (brother of Hattusili III), had entered into “regular” treaties with Egypt prior to the Kadesh Treaty.¹⁶⁶

¹⁶¹ BEDERMAN, *supra* note 40, at 25.

¹⁶² The Treaty of Kadesh explicitly recognizes the sanctity and binding nature of pre-existing peace agreements between Egypt and Hatti.

¹⁶³ See 2 ALBERICO GENTILI, *DE IURE BELLI LIBRI TRES* (John Rolfe trans. 1933) (1612); HAMILTON VREELAND, *HUGO GROTIUS: THE FATHER OF THE MODERN SCIENCE OF INTERNATIONAL LAW* (reprint 1986) (1917).

¹⁶⁴ MURNANE, *supra* note 155, at 31-34.

¹⁶⁵ *Id.* See also Garry Shaw, *Treaties, Pharaonic Egypt*, in *THE ENCYCLOPEDIA OF ANCIENT HISTORY* 6841, 6841 (Roger S. Bagnall, Kai Brodersen, Craige B. Champion, Andrew Erskine, & Sabine R. Huebner, eds. 2012); Dietrich Sürenhagen, *Forerunners of the Hattusili-Ramesses Treaty*, 6 *BRITISH MUSEUM STUD. IN ANCIENT EGYPT AND SUDAN* (BMSAES) 59 (2006).

¹⁶⁶ Langdon & Gardner, *supra* note 148, at 188-89 (noting that the archeological and

This treaty, for which no complete version has been discovered, immediately preceded the Kadesh Treaty. It was customary in Egypt that pre-existing or former treaties remained legally binding until they were intentionally modified by a subsequent treaty of equal status. Taken together, these peace and cooperation treaties provide evidence of international cooperation and lawmaking between these ancient powers about two centuries before the Treaty of Kadesh (1500 BCE).

These remarkable civilizations and the rules that they conceived have been routinely ignored by most international law scholars who have, for the most part, failed to attribute let alone contemplate Africa's role in contributing to the logic, substance, and structure of modern statecraft, international law and peace-craft. In fact, the Treaty of Kadesh is rarely recognized or acknowledged as a pioneering pillar of modern treaty-craft. It has received hardly any scholarly attention compared to the Treaty of Westphalia despite its aged articulation of foundational international relations and peacemaking principles and consequent contribution to international law and relations approximately 3000 years before the Peace of Westphalia. In comparison to the Treaty of Westphalia, which is considered the force behind the birth of state sovereignty and the modern nation-state in western civilization, analysis on the Treaty of Kadesh are virtually non-existent. Nonetheless, the Kadesh Treaty should be hailed as the archetypal treaty responsible for confirming the existence of ancient empire-states, and for birthing the foundational rationale and template for statecraft, peace-craft, and treaty-craft that was eventually embraced by Western civilization (Roman Empire) and typified in the Westphalian system. Indeed, the Treaty of Westphalia bears a close resemblance to the Kadesh Treaty, which similarly ended a multigenerational war and forged a pioneering alliance between the most powerful states.¹⁶⁷ An often overlooked signal contribution of the Kadesh Treaty is that it was the first peace treaty to include and confirm that sovereignty, recognition, consent, good faith, responsibility and self-defense are coveted ancient international legal principles; thereby verifying that highly advanced ancient African states existed and originated law before states were found elsewhere.

Georg Schwarzenberger is one of a select group of international law

linguistic literature on the Battle of Kadesh and Kadesh Treaty does not conclusively indicate whether Muwatallis was the father or brother of Hattusili; however, the historical record seems to indicate the former).

¹⁶⁷ The Peace of Westphalia commonly refers to the two treaties (Osnabrück on May 15, 1648, and Münster on October 24, 1648) that ended the Thirty Years' War (1618-1648) in the Holy Roman Empire.

scholars to recognize and document the treaty's inimitable features, and particularly to accept the conclusion that Egypt and Hatti were in fact, the functional equivalent of modern states. As he noted, when one compares the (1) "substantive contents of their normative rules and principles," (2) "characteristics of their normative infrastructure," and (3) "distinctive character of their areas at the time," it is difficult to conclude that Egypt and Hatti were not states.¹⁶⁸ He posited that "by all three tests the 14th century BCE diarchy between Egypt and Hatti comes nearest to contemporary international law and relations" as "six of the seven fundamental principles on contemporary international customary law are . . . codified in the Kadesh Peace Treaty," including sovereignty, recognition, consent, good faith, responsibility, and self-defense.¹⁶⁹ Moreover, the Treaty of Kadesh included fifteen broad peacemaking principles, seven of which continue to serve as the cornerstone of modern international law, peace treaties and agreements, including: (1) prohibition on invasion, plunder, and occupation;¹⁷⁰ (2) recognition of and respect for preexisting agreements and the rule of law;¹⁷¹ (3) cessation of hostilities or cease-fire;¹⁷² (4) mutual assistance and defense

¹⁶⁸ Schwarzenberger, *supra* note 54, at 25.

¹⁶⁹ *See id.* Freedom of the seas is the only principle not addressed in the treaty. This is likely because the Battle of Kadesh was limited to land warfare over contested land boundaries; maritime-related issues were not relevant.

¹⁷⁰ *Treaty between the Hittites and Egypt*, in ANCIENT NEAR EASTERN TEXTS, *supra* note 106, at 199-203 (demonstrating that the Treaty of Kadesh includes the following mutual renunciation of invasion provision: "The Great Prince of Hatti shall not *trespass* against the land of Egypt forever, to *take anything from it*. And, User-maat-Re Setep-en-Re, the great ruler of Egypt, shall not *trespass* against the land [of Hatti, to take] from it forever.").

¹⁷¹ The Kadesh Treaty includes provisions on former relations between Egypt and Hatti with respect to spiritual and legal commitments. It states that "[n]ow from the beginning of the limits of eternity, as for the situation of the great ruler of Egypt with the Great Prince of Hatti, the god did not permit hostility to occur between them, through a regulation [referring to a an earlier treaty during the reign of Hor-em-heb] . . . a regulation for making permanent the situation which the Re (Sun-god) and Seth (Storm-god) made for the land of Egypt with the land of Hatti, in order not to permit hostility to occur between them forever." In addition, the Treaty includes a specific provision on the reaffirmation of former treaties that confirm the "traditional regulation [former treaty] which had been here" during previous Pharaohs, kings and princes. In this treaty "Ramses Meri-Amon, the great rule of Egypt" and the "Great Prince of Hatti" individually and collectively "seize hold" of previous regulation and law and "act in this traditional situation." *Id.*

¹⁷² *Id.* at 200. The former relations provision and well as the "present treaty" provision concretely proclaim generational brotherhood and an end to hostilities forever. The Treaty states, for example, that "the Great Prince of Hatti, am with [Ramses Meri-Amon], in good peace and in good brotherhood. The children of the children [of] the Great Prince of Hatti *are* in brotherhood and peace with the children of the children of Ramses Meri Amon, the great

against external and internal threats (particularly coups d'état);¹⁷³ (5) denial of entry and deportation of fugitives and immigrants;¹⁷⁴ (6) extradition of fugitives;¹⁷⁵ and (7) humane treatment of persons, particularly immigrants and fugitives, after deportation or extradition.¹⁷⁶ The Treaty neatly bonds together principles of law, politics, diplomacy, and religious consequentialism. Its acknowledgment of the supremacy of law, recognition of preexisting rules and agreements, inclusion of a treaty-based right of intervention to preserve legitimate political authority, and illumination of human rights protections (i.e., codification of humane treatment and the protection of criminals and fugitives, immigrants, and their families from official or state abuse) constitute the ancient intellectual pillars of international law that have provided largely unacknowledged normative infrastructure to the international system of states for millennia. Bederman was therefore correct to conclude that the Kadesh Treaty was the classical archetype that had an "enduring influence on later traditions of treaty-making in the ancient world . . . [whose] inspiration would first be felt in

ruler of Egypt, for they are in our situation of brotherhood and our situation [of peace. *The land of Egypt*], with the land of Hatti, [*shall be*] at peace and in brotherhood like unto us forever. Hostilities shall not occur between them forever." *Id.*

¹⁷³ *Id.* The Treaty of Kadesh included unique mutual assistance and defense provisions stating that "[i]f another enemy come against the lands of User-maat-Re, the great ruler of Egypt, and he send to the Great Prince of Hatti, saying: 'Come with me as reinforcement against him,' the Great Prince of Hatti shall [come to him and] the Great Prince of Hatti shall slay his enemy. However, if it is not the desire of the Great Prince to go (himself), he shall send his infantry and his chariotry, and he shall slay his enemy. Or, if Ramses Mer-Amon, [the great ruler of Egypt], is enraged against servants belonging to him, and they commit another offence against him, and he go slay them, the Great Prince of Hatti shall act with him [to slay] everyone [against whom] then shall be enraged." *Id.*

¹⁷⁴ The denial of entry and deportation of fugitives and immigrants is clearly dealt with in the Kadesh Treaty indicating that "[i]f a great man flee from the land of Egypt and come to the Great Prince of Hatti, or a town belonging to the lands of Ramses Meri-Amon . . . the Great Prince of Hatti . . . shall not receive them" but rather "cause them to be brought to the User-maat-Re Setep-en-Re" [Ramses] . . . their lord, [because] of it." The provision continues stating that "if a man or two men—no matter who—flee, and they come to the land of Hatti to be servants of someone else, they shall not be left in the land of Hatti; they shall be brought to Ramses Meri-Amon, the great ruler of Egypt." *Id.*

¹⁷⁵ See *id.* at n. 176.

¹⁷⁶ *Id.* at 201. The Kadesh Treaty provides for the humane treatment of immigrants and fugitives, after deportation or extradition mandating that neither Ramses Meri-Amon nor the Great Prince of Hatti—or for that matter Egypt and Hatti—"do no cause that his [fugitive] crime be raised against him; do not cause that his house or his wives or his children be destroyed; [do not cause] he be [slain]; do not cause that injury be done to his eyes, to his ears, to his mouth, or to his legs; do not let any [crime be raised] against him."

Israelite practice, and then in Greek and western Mediterranean treaty models.”¹⁷⁷

CONCLUSION

This Article contemplates the nature and character of ancient international law, a multi-millennial body of law to which the modern international legal order remarkably compares and arguably emulates. It provides the first substantive account of the African origins of international law that includes all three “sources” of that law (treaties, custom and general principles of law) while identifying core characteristics of the nature of ancient international law and the taxonomy of early interstate relations. The very nature of the study organically confronts traditional verities in conventional and critical international law discourses and emboldens urgings or studies for the utility of pre-colonial prescriptions for current legal dilemmas. Finally, this reexamination raises important questions about the origins of legal concepts such as statehood and treaty-craft.

This study reveals that the African origins of international law find expression in three ancient sources of international law that either continue or bear uncanny resemblance to the present, including international treaties, as illustrated by the Treaty of Kadesh, the world’s first known and complete bilateral parity (peace) agreement; international custom as exemplified by MA’AT as well as ancient diplomatic and trade practices and norms;¹⁷⁸ and general principles of law as enumerated in the Demotic Code and royal decrees such as the ‘Egyptian Bill of Rights’. Again, this does not exclude broader notions of good faith and fair dealing in domestic and international affairs that might have been underwritten by MA’AT, among other doctrines. The modern epitomes of these ancient sources of law—from ancient Egypt, Nubia, Kush and Punt to medieval Ghana, Mali, and Songhai—remain rooted in the international system of states and institutions for which African states are key players. Through these examples one either can find symmetry and connection between ancient and modern international law or once more, write them off as coincidental. Whatever the case may be, this Article strongly suggests that there is glaring symmetry and connection

¹⁷⁷ BEDERMAN, *supra* note 40, at 150.

¹⁷⁸ It is important to reemphasize the universal application of MA’AT, which served as normative psycho-cultural glue that influenced societal and government affairs in near East nations such as Hatti and Assyria. These states were influenced by and subscribed to MA’AT-like doctrines where broader notions of truth, justice, righteousness, harmony, and divinity had significant legal import in the design of and adherence to interstate relations.

between international law forged by ancient Egypt and the “Great Powers Club” and modern international law traditionally credited to the Westphalian encounter. The piecing together of evidence (e.g. historical documentation [treaties, diplomatic notes, government records, official correspondence, diaries, accounts and notes], archaeological data; and material legal culture) of ancient Egyptian international law and relations through comparisons, allusions and regularities with modern international law strongly suggests immutable symmetries.

The primary subject of this study, Africa and the origins of international law provided a unique occasion to reassess ahistorical hypotheses about the Westcentric origins of international law. This was done by grappling with conveniently ignored and neglected questions of history and by reassessing hard and evidentiary sources of information. This study vividly shows that Africa is a birthplace of statecraft, peace-craft, treaty-craft as well as an innovator of international law, and strongly suggests that the ancient Law of Nations was the natural offspring of Egypt’s interstate relations with Hatti and other members of the “Great Powers Club,” as well as was its interstate dealings with Nubia. Therefore, as Diodorus rightly observed, the Greco-Roman conception of statehood and international law embraced by ancient, medieval, and modern Europe was either substantially influenced by Egypt and the Nile Valley Civilization, or as some may choose to believe, it evolved organically without reference to Egyptian statecraft. The former assertion is based on a combination of factors including a history of interstate interactions (trade, conquest and colonization) between ancient Egypt, Greece and Rome, and later European states and vassalages in the Mediterranean and perhaps most important, the scholarly works of Greek notables such as Aristotle, Diodorus, Herodotus, Plato, Pythagoras, Socrates and Samos. Egypt and its state structures, treaties and other international rules predated the birth of Greece and Rome; pre-Greek and pre-Roman societies in the Mediterranean interacted with ancient Egypt; Greece and Rome’s leading scholars were trained by Egyptian intellectuals and pioneered in the study of Egyptian math, science, law, and art long before and after Greco-Roman conquest; Roman law serves as the immediate template of all Western legal traditions; and West-centric approaches to international law seemingly emulate those forged in ancient Egypt.

While further inquiry into the modern utility of ancient international law is necessary, what is abundantly clear is that in exploring maximal comparability’s between treaty law and international custom, the basic configuration and characteristics of Greco-Roman and modern international law closely resembles and even emulates the international law of antiquity in

Africa. This finding raises several complex questions about the hereditary nature of international law while simultaneously reinforcing the utility and resilience of Egypt, the Nile Valley Civilization and or simply Africa's template for state construction and international relations. Egypt's Pharaonic State Model was inimitable. It introduced the notion of parity in treaty-making and conjoined dynastic absolutism with larger ideas of consensus government, obedience to MA'AT, conformity to law, and self-help as prescribed by God(s). To what end have Eurocentric preconceptions about the origins of international law flouted ancient precepts that could enrich and fortify modern designs of law (e.g. human rights, sovereignty, international cooperation, reciprocity, self-defense) societal organization (e.g. MA'AT), governance and state construction (e.g. PSM)? This Article aims to illuminate rather than contemplate all of these questions with the hope that other scholars will engage them.

While the Pharaonic and Westphalian state models share the common thread of territorial sovereign entities with a monopoly on the use of force and government structures capable of entering into diplomatic relations with other states, this study reveals key structural and normative distinctions. The value of briefly highlighting them is to accentuate Egypt's PSM and approach. Egypt forged a national culture and identity whose predominant consciousness was directed by law, norms, and doctrine, and Egyptians openly accepted divine consequentialism at the individual and state levels for breaches of individual contracts or state-to-state treaty obligations, respectively. This explains why the principles of good faith and fair dealing that were sacrosanct in Egyptian society took on a transnational identity, and also elucidates why its peace treaties with neighboring states lasted for centuries at a time. The PSM operated under naturalist logic—that there is a moral authority above the state (MA'AT and Pharaoh)—and according to a parity system that required a strong military, expansive commercial relations, the ability to effectively occupy foreign lands and maintain firm control over foreign populations, and the peaceful centralization and administration of state religion. Further, its imperial approach differed from the excessively violent and exploitative indirect rule and acculturative systems of Greece and Rome on the one hand, and Britain and France on the other. It sought indoctrination over domination and deployed officials to vassal states to co-administer territory and peoples. Its assimilative methods were based on celestial or spiritual customs rather than on the imposition of specific foreign cultural norms.

Accordingly, this Article injects a corrective antidote, a *remedium robustum*, into ahistorical international legal theory. In uncovering Africa's

remarkable role in its creation and evolution, the Article dispels myths of international law's *raison d'être*. While there can be no disagreement about the racist, violent, colonial and imperial heritages of contemporary international law in the wake of the colonial encounter, the imperial lineage or inclination of the modern international system may not have entirely originated in Europe despite her obsession with perfecting them. Ancient international law in Africa contained both imperial and counter-imperial dimensions. Perhaps most importantly, that law predates the underlining logic and rationale of European hegemony and attendant discourses serving to dominate the global south and antedates critical studies theory bent on exposing modern international law's role in this regard. Simply put, Egypt was an imperial power with a range of strategic interests in Africa, the Middle East, Near East and beyond that it sought to safeguard through war, peace, diplomacy, conquest, assimilation, incorporation and international lawmaking (treaties and sovereignty claims).¹⁷⁹ In all likelihood, Egypt "established a colonial system rather than simply a commerce-based trading system."¹⁸⁰ For example, in ancient Egypt:

Great Kings were expected to demonstrate their prowess on the field of battle and to acquire booty, in goods, livestock and human beings, as payment for their troops, as thank-offerings for their gods and as a means of refilling the state's coffers, restocking its agricultural estates, replenishing its labour forces. To emulate the military achievements of one's illustrious predecessors was an integral part of the ideology of kingship. Wars were fought to extend territorial boundaries, sometimes purely in the spirit of aggressive imperialism, sometimes to gain access to or control of valuable trade routes, sometimes to defend frontier zones and food-producing lands against a hostile neighbor.¹⁸¹

If one accepts the notion that Egypt established a colonial system, then, again, the prototype of statecraft, colonization, peace-craft, and international law and relations eventually adopted by ancient and medieval Europe was

¹⁷⁹ BRYCE, *supra* note 98, at 45-47. See also James M. Weinstein, *The Egyptian Empire in Palestine: A Reassessment*, 241 BULL. OF THE AM. SCH. OF ORIENTAL RES. 1 (1981); Paul John Frandsen, *Egyptian Imperialism*, in 7 MESOPOTAMIA, POWER AND PROPAGANDA: A SYMPOSIUM ON ANCIENT EMPIRES 167, 167-90 (Mogen Trolle Larsen, ed. 1979); B.J. Kemp, *Imperialism and Empire in New Kingdom Egypt (c. 1575-1087 B.C.)*, in IMPERIALISM IN THE ANCIENT WORLD 7, 7-57 (P.D.A. Garnsey & C.R. Whittaker eds., 1978).

¹⁸⁰ Bruce Bower, *Ancient Egyptian outpost found in Israel*, 150 SCI. NEWS 215, 215 (1996).

¹⁸¹ *Id.*

not wholly unique, or even European, despite her appetite for evolving and incentivizing a new archetype that necessitated violence and positivism as the cornerstones of a Westphalian society. As such, the internal logic of such prototypes may have been in part African and Near Eastern and, like the Pharaonic State Model appears to have been shaped by the imperial vocations of conflict and conquest except that violence was simply a tactic to compel compliance, it was not the engine of the imperial project where perpetual conflict and conquest were interdependent features. In essence, “all out warfare between the Great Kingdoms was a relatively rare phenomenon—this in a world [Europe] where warfare was endemic, where peace, not war, was an aberration from the norm.”¹⁸² This seems to suggest that Egypt’s “Great Powers Club” generally adhered to a set of international norms that favored indoctrination over domination; shunned the use of force and acts of aggression against parity states; and necessitated respect for state sovereignty and territorial integrity. How might this approach inform state construction, law-making, and peace-building in Africa today? On the other hand, how much does this ancient structure for international relations continue to reflect existing international law, especially in Africa?

One can only speculate as to possibilities for comparison; however, there are imitable similarities between, for example, the Treaty of Kadesh and those that followed from late antiquity (Thirty Years’ Peace – 445 BCE) and the Medieval Period (Treaty of Verdun – 843 CE) through to the modern era (Treaty of Versailles – 1919).¹⁸³ Such features included, among others, the cessation of hostilities, respect for preexisting agreements, delimitation of territory, and the humane treatment of refugees and prisoners of war. In addition, the provisions in the Treaty of Kadesh on mutual assistance and defense against external and internal threats (particularly coups d’état) lend ancient authority to what is largely considered a new regional norm,¹⁸⁴ namely, the Economic Community of West African States’ (ECOWAS) and the African Union’s codification of a right of intervention to thwart threats to

¹⁸² BRYCE, *supra* note 98, at 6, 44 (emphasis added). One reason war among the “Great Powers Club” was rare was that peaceful relations allowed for the development of a vibrant international trade and commerce network and hence the generation of individual and collective wealth.

¹⁸³ Despite the fact that scholars are aware that the Treaty of Kadesh is the oldest known peace treaty, they nonetheless continue to locate the birthplace of treaty-craft in the European legal tradition. See, e.g., Randall Lesaffer, *Peace Treaties and the Formation of International Law*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 71, 71-94 (Bardo Fassbender & Anne Peters eds., 2012); PEACE TREATIES & INTERNATIONAL LAW IN EUROPEAN HISTORY: FROM THE LATE MIDDLE AGES TO WORLD WAR ONE (Randall Lesaffer ed., 2004).

¹⁸⁴ See *infra* note 188.

legitimate order.¹⁸⁵

In that vein, this preparatory study predominates and transcends hypotheses and dichotomies concerning African theories of international law invented by critical logicians.¹⁸⁶ Despite its Pan-African mien, it does not purport to romanticize Africa's glorious past or engage in Afrocentric or Third World theoretical prospecting. As already noted, this study's core subject predates the underlying logic and rationale of European hegemony, ensuing anti-imperial liberation discourses, and those works that are intended to expose modern international law's role in dominating the global south. In this sense, it offers tentative responses to several important questions raised by Mutua, among others:

To what extent did the norms of international law developed by Africans—or with their participation—find centrality in the system? . . . What precisely were Africa's contributions to international law before its conquest? More specifically, what legal order or nomenclature governed relations between African states—and between African states and states outside the continent—in earlier times?¹⁸⁷

¹⁸⁵ LEVITT, *supra* note 1, at 134-41. See also, Jeremy I. Levitt, *Pro-Democratic Intervention in Africa*, 24 WIS. INT'L L. J. 785 (2006).

¹⁸⁶ For example, in the following works my friend and colleague James Gathii attempts to single-handedly "coin," encamp, and dichotomize discourses on Africa and international law. I question the efficacy of his characterization and categorization of T.O. Elias and the author's body of works on Africa and the development of international law as "contributionism" or as a "primitive" form of TWAIL, and I respectfully disagree with Gathii's inventive designation of contributionism as a theory or typology of international law. "Contributionism" is neither a theory nor typology and its usage in this sense diverts attention from traditional Pan-African centered inquiry. Legal science, and scientific inquiry into the development, origins, or contributions of African people, peoples, nations, and nation-states to human civilization, including international law, falls squarely within the rubric of Pan-African discourse. Jeremy I. Levitt, *Pan-Africanism*, in 3 (N to T) ENCYCLOPEDIA OF GLOBALIZATION 931, 931-36 (2007). Gathii's autarchic opinions are illuminated in the following works. See James T. Gathii, *TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography*, 3 TRADE, L. & DEV. 26 (2011); James T. Gathii, *Review of Jeremy Levitt, (ed.) Mapping New Boundaries in African International Law*, ALBANY L. SCH. LEGAL STUDIES RES. PAPER SERIES NO. 49 OF 2011-2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2028999; James T. Gathii, *Africa and the History of International Law*, ALBANY L. SCH., LEGAL STUDIES RES. PAPER SERIES NO. 48 OF 2011-2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029019; James T. Gathii, *A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias*, 21 LEIDEN J. OF INT'L L. 317 (2008).

¹⁸⁷ Mutua, *supra* note 10.

This study seeks to answer the latter two questions while calling for further inquiry into the need to determine the extent to which ancient international law found permanence or centrality in modern international law. Mutua's reflections also suggest the need for further analysis into how the global dynamics of African civilization might have differed had these intellectuals attributed Egyptian priests and virtuosos for pioneering the template of law, science, medicine, and religion from which Greece and Rome have eternally benefited. Would Africa and the African Diaspora enjoy a different global position today had Africa's contributions to humanity been appropriately acknowledged?

Similarly, a vital question must be substantively answered by conventional and critical international theorists:¹⁸⁸ how will traditional and critical approaches to international law be influenced, if at all, by the finding that international law's imperial heritage derives, at least in part, from Africa, given arguments that, today, "international law has legitimized Africa's marginality in the world" and that "Africa's historical engagement with international law cannot be rendered in singular or consensual terms"?¹⁸⁹ Moreover, Pan-African-centered scholarship and critical theorists must assess whether aspects of Africa's pre-Europe and pre-colonial imperial and monarchical traditions can help to rehabilitate and/or transform international law and inform modern prescriptions for statehood, peace, security, and development in the continent. For example, what can be learned from the Pharaonic State Model, which fashioned international norms that embraced consensus government, MA'AT, conformity to law, self-help and indoctrination on the one hand, and shunned acts of aggression against parity states, respected territorial sovereignty, and preserved state religion on the other? Why has West-centric or Northern-tier scholarship systematically ignored ancient international law in Africa generally, but also when contemplating the history of international law?

¹⁸⁸ At a minimum, it is vital that Eurocentric-minded international law scholars and critical theorists inoculate their analyses with greater historical nuance and precision concerning Africa's juridical past. A greater reliance on what the Author refers to as historical experientialism may be useful. Historical experientialism philosophically connotes that law's internal logic is derived from historical experiences of people, states, or institutions, which in turn generates knowledge of its central purpose. For example, the adoption of the Genocide Convention on December 9, 1948, by the UN General Assembly was a consequence of the Holocaust perpetrated by Nazi Germany during World War II. Consequently, it is important to understand the historical rationale for rule existence or history of law to ascertain its lineage and the probable impact of ignoring it.

¹⁸⁹ James Thuo Gathii, *Africa, in* THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 407, 407-28 (Bardo Fassbender & Anne Peters eds. 2012).

The utility of such research cannot rely on false constructs or intellectual encampment, nor can it be dichotomized by overly ambitious critique. Rather, rigorous inquiry must forthrightly determine whether ancient and pre-medieval systems of law and state construction provide escape from the troubled shores of fragility, lawlessness, and underdevelopment, or entertain the fortification of ultramodern prescriptions that embrace imperial heritage.

