

Ethics and Integrity in the Rule of Law and International Law

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By

Emmanuel Nartey

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AUTHOR STATEMENT

This book addresses two principles of my understanding of how rules and laws should work in society. Humans have evolved over the last 100 years but have forgotten the fundamental governing principle that regulates their associations and interactions with their inner lives. Many modern philosophers believe that having more rules and laws will help build the inner life of the individual person in society. However, coming from the streets of Accra in Ghana and developing my reasoning and philosophical understanding of laws and their relations with nature in the Western world, I have realised that the Western conception of law has fundamental problems, specifically when it comes to the equal application of rules and laws as the sole principle of governance. This is fundamentally based on pragmatic ideology, with little consideration of the nature of reasoning and how things should be, as well as how they are. The rules and laws have interfered with the basic nature of all things in the natural state, yet the state of their being is not aligned with the focal point of life rules and laws within the inner part of a human being. This has resulted in flaws in the application of rules and laws in society.

Modern philosophers advocate for the absoluteness of rules and laws, yet in practice ignore the very principle that is required to guide society and governance. They have not only failed to understand the compound nature of laws, but also what is to be understood by the union of the rule of law and international law. Therefore, no one can adequately or distinctively understand the compound nature of rules and laws unless he or she has adequate knowledge of the nature of virtue in human conduct and rules. What these philosophers have conceptualised is general and does not apply to the specific forms and substances of societal conduct. With regard to the concept of every law necessarily existing in virtue - or what I shall refer to in this book as the 'good' - the principle of the 'good' is the cause of every law in the same way that rules are the cause of human reasoning. Therefore, whatever we can conceptualise in the doctrines of the rule of law and international law is necessarily driven from the birth of virtue. However, we cannot deny that ideas and opinions differ among philosophers as their objects differ in conception. Accordingly, the object of the superior phenomenon is conceptualised over other forms of rules and laws. Consequently, in order to determine the levels of natural law reasoning and

the pragmatism of rules in contemporary society, it is necessary for us to know the nature of the basic rules of human conduct.

From this point of view, this book is an expression of the totality of the compound natures of the rule of law and international law in the contemporary world. This is partly because what precedes the latter must clearly follow the former since they are all necessary principles to have in order to give meaning to the rule of law and international law. Perhaps it can be said that the doctrines of the rule of law and international law according to modern scholars are neither perfect nor imperfect. I am of the view that we can only understand the true meaning of the principles of the rule of law and international law in their universality if we perceive ethics and integrity as the substances of validity. In my expression of the rule of law and international law in this book, I am convinced that the substance cannot be produced by itself, and that there must have been a cause that produced it. Therefore, its essence necessarily involves virtue or principle belonging to the realm of ethics and integrity.

Dr Emmanuel K Nartey

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Special mention goes to my family, Patrycja Sehmbay and her family, Urszula Piątek, Ekaterina Petrova, Paulina Niewiadowska and TeamBath, the International Judo Federation and the African Judo Union. Last, but by no means least, thanks go to my late dad, Richard Kwame Nartey, Lydia Akosua Boaten Darko, Dorcas Kanyi, Helene Wezeu and Séverine Nebie for almost unbelievable support. They are the most important people in my world, and I dedicate this book to them.

PREFACE

Dr Emmanuel Nartey is a rare character. He has reached the heights of his sport, judo, in representing Ghana at the Olympics. Now he considers the deepest questions of his, and our, chosen discipline of law. In this book, Dr Nartey invokes the gods of Greek mythology on Mount Olympus and the great philosophers of Ancient Greece before taking us through two and a half thousand years of reflection on virtue, integrity and law. This book is his paean of praise for international law and the rule of law, as integrated in a holistic, balanced view of human life.

Dr Nartey does not shirk the challenge of addressing some of the most controversial issues of recent decades and those of today's world. He analyses the actions of the Myanmar regime against the Rohingya, and of the Khmer Rouge. He cites these as examples far removed from those virtues of the Ancient Greeks.

Readers must judge for themselves how much his account of the philosophy behind his view, and his examples of violations of that approach, will help analysis of any current controversy, such as Russia's war against Ukraine. It might be borne in mind, however, that, unlike almost all lawyers and other experts from diverse disciplines commenting on such matters, Dr Emmanuel Nartey served with distinction and courage in what were then Her (now His) Majesty's Armed Forces.

To those of us who have had the privilege of counting Dr Nartey as a colleague and a friend, the ambition of this work is itself both Olympian and brave. The first two or three hundred pages of this book are the mind's equivalent of being invited into Emmanuel Nartey's training camp for the Olympics, where body and spirit were honed in preparation for the ultimate test. The examples in the final pages of the book encourage us all to ask whether the rule of law and international law can survive encounters with the most powerful actors in particular societies. Can reason and virtue outflank brute force?

As Dr Nartey himself observes, 'coming from the streets of Accra in Ghana' gives him a different perspective on these matters from most of those with whom he has studied and worked in the western world.

We therefore commend the ambition of this work and salute Dr Nartey's respect for the values which we, as fellow lawyers and lifelong students of the law, hold to be fundamental to civilised society.

Professor Mark Hill KC and Professor Simon Lee

February 2023

ABBREVIATIONS

ATCA – Alien Tort Claims Act
ATS – Alien Tort Statute
CCL – Control Council Law
ECHR – European Convention on Human Rights
HITNCCC – Hybrid International Transnational Corporation Claims Court
ICC – International Criminal Court
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICJ – International Court of Justice
ICT – International Criminal Tribunal
ICTR – International Criminal Tribunal for Rwanda
ICTY – International Criminal Tribunal for the former Yugoslavia
IFOR – Implementation Force
ILC – International Law Commission
ILO – International Labour Organisation
IMT – International Military Tribunal
JCE – Joint Criminal Enterprise
MNCs – Multi-National Corporations
NATO – North Atlantic Treaty Organisation
NGO – Non-Governmental Organisation
OECD – Organisation for Economic Co-operation and Development
PICC – Permanent International Criminal Court
RICO – Racketeer Influenced and Corrupt Organisations Act
SA – Standard on Auditing
SFOR – Stabilisation Force
TVPA – Torture Victims Prevention Act
UJ – Universal Jurisdiction
UK – United Kingdom
UN – United Nations
UNDHR 1948 – Universal Declaration of Human Rights
UNGA – UN General Assembly
UNGPs – United Nations Guiding Principles
UNSC – UN Security Council
UNSG – Secretary-General of the United Nations
US – United States
WCHR – World Court of Human Rights
WWII – World War II

INTRODUCTION

Over the years, great thinkers, jurists, judges, lawyers, and politicians have talked about the concepts of the rule of law and international law as fundamental principles for upholding justice and the social structures in society,¹ without discussing the compound elements of these principles. The idea that the rule of law and international law are important components in traditional politics and the judicial systems or institutions cannot be disputed. However, the idea that the rule of law and international law bind the governing rule of society is highly contentious. Whatever principles are perceived in the rule of law and international law, there could be no legal rule or governance without them. Therefore, we can assume that before the concepts of the rule of law and international law came into existence, there must have been other rules.

In this assumption, the integration of the latter becomes the foundation of the former. This former might therefore be the term ‘ethics and integrity’. Hence, without ethics and integrity, no legal substance can be granted or conceived in law and governance. Therefore, the concepts of the rule of law and international law in themselves cannot bind everything and are conceived through their own eyes. Before the existence of the concepts of the rule of law and international law, society lived by virtue. If virtue is the substance, ethics and integrity become the extended substance, in so far as it is conceivable, and consist, as the great thinkers and scholars may observe, in parts. Denying the validity of virtue in legal principles undermines the tripartite doctrine of social norms. The conceptualisation arises here from the demystification of the notions of the rule of law and international law that have served societies through the ages. However, one must not take for granted the application of materialism and the reduction of morality in the development of virtue. Focusing too much on one single aspect dilutes the waters; therefore, the requirement is to strike a balance between the conceptual parameters of the rule of law, international law and morality.

¹Lord Bingham, ‘The rule of law’ (2007) 66 (1) *Cambridge Law Journal* 67, 85.

The present-day day explanations of the rule of law and international law are not to be discounted, but their superficiality is to be either questioned or condemned. The rule of law and international law may have value as means, but their entirety is inadequate as an end to legal principles and governance. This is because they cannot provide the totality of answers indispensable to the correct meaning of obedience to the law and social norms. Therefore, the philosophical optimism of the rule of law and international law as the ultimate of knowledge must be addressed in form and substance. Consequently, the rule of law and international law must be leavened by the ancient processes, procedures, disciplines and philosophical approaches to ethics and integrity in order to learn from the errors through which legal principles and governance perish. So, as long as the rule of law and international law assume that this principle is beyond other rules and prescribe their own domain of exclusivity, there is a false conception of the great need for legal principles and governance. Unfortunately, this is the assumption prevalent in the modern explanations of the rule of law and international law.

In this understanding, the principles of virtue, ethics, and integrity were born into the history of civilisation. This birth struck the balance between morality and the law. I can illustrate many examples from antiquity. Ethics and integrity as extended substances require a tripartite approach to our understanding of the law in its infinite meanings. This means dividing legal rules and governance into three parts, where each part has its root in societal conduct and obedience to rules. Hence, if the virtue substance is composed of two parts, which are ethics and integrity, which is plausible, then the rule of law and international law become the larger part of the legal principles of modern civilisation, which is also plausible. Ethics and integrity then become the fundamental compound elements of the governing rule of society. In this rationalisation, it is impossible for the concepts of the rule of law and international law to adequately function without being completed by ethics and integrity. Essentially, the evaluation and formulation of the legal structures and the understanding of how the governing rule of society are implemented and enforced depends on the invisible rules. Therefore, the discourse on the rule of law and international law must refer back to the principle elements of ethics and integrity. For a truly accurate picture of the rule of law and international law in modern civilisation, a line must be drawn to measure the length of ethics and integrity in the preconception of judicial judgement and governance. If this is measured accurately, the true answer will result in a tripartite structure; it will consist equally of ethics, integrity, and the rule of law and international law.

I shall be mindful of the claim of the validity of the rule of law and international law and its consistency in the modern terms. I will not condemn them as irrelevant due to the limitations imposed on our understanding of the two realms of thought, but I will argue that the actual knowledge comes from revisiting their foundation and cause, so that we can deduct the totality of the errors from our knowledge and minimise the ignorant limitations of the discourse. Therefore, we must move away from the limitation that turns us from considering the whole meaning of the form and substance of the rule of law and international law so that we may advance the discourse to an acceptable level. Knowledge of the rule of law and international law means pointing out the growing flaws in our explanations for, and mastering of, the unfolding nature of legal principles and governance in the modern world. By using appropriate terminology, we will be able to conceptualise the rule of law and international law, differentiate them from wordy definitions, and comprehend their nature and strength, which are founded on ethics and integrity. This should, therefore, lead towards a correlation between moral principles such as virtue with apprehending of the meaning of the good.

The argument about the rule of law was noted at the beginning of c. 350 by Aristotle.² This was followed by the medieval philosopher Fortescue in 1471,³ who attempted to differentiate lawful dictatorship from types of kingship. Before Locke (1689) devised the modern concept of the rule of law,⁴ there were authors such as Harrington (1656) and Machiavelli (1517). Others who have followed include Montesquieu (1748) and the American Federalists. More recently, there have been, in Britain, Dicey (1885), Hayek (1944, 1960, and 1973), Oakeshott (1983), Raz (1977) and John Finnis (1980), and in America, Lon Fuller (1964), Ronald Dworkin (1985) and Rawls (1971). All these authors attempted to refine and redefine the concept of the rule of law within the settings of modern society, without contemplating the extension of global norms. However, this illustration seems to suggest that the theory of the rule of law is now accepted as the foundation of the principle of law. It also shows how over the years the concept of the rule of law has been incorporated and disseminated in the study and application of the law in modern society.

²Brian Z Tamanaha, *On The Rule of Law: History, Politics, Theory* (Cambridge University Press 2004).

³John Fortescue, *Sir John Fortescue: On The Laws and Governance of England* (Cambridge University Press 1997).

⁴John Locke, *Second Treatise of Government and a Letter Concerning Toleration* (Oxford University Press 2016).

Though the explanation offers some sort of substance on the topic of the rule of law, it has allowed this concept to become the servant of words, taking it to a level that is inadequate to the degree of fallibility. While it is fitting that we should regard this explanation as the intercourse between legal principles, is there not a better understanding in which the superior aspect (ethics and integrity) of legal principle and governance is deduced by appropriate dialogue, a dialogue which may pave the way for comprehension to emerge and bring about a communion between ethics and integrity?

Now, how can the concept of the rule of law eradicate selfishness and self-interest in society? The answer is neither dogma nor preconception. If one can conceive of selfishness and self-interested behaviour in societal conduct then the single point of focus is diminished. It means there must be a line that divides the behaviours into different compounds. This means there is a requirement for principles to evolve and develop as societies and their inhabitants orientate themselves to resolve difficult problems. This principle then becomes one of morality instead of one of a lack of effective legal rule and governance. Therefore, it flows from observing the quality of virtue in society. The quality of virtue then leads to a conclusion being drawn about the nature of ethics and integrity. Consequently, virtue becomes an integral part of achieving higher ethics and integrity in the rule of law and international law. Therefore, the silence in the concepts of the rule of law and international law on these matters is strange. With correct interpretation and dialogue, we can excel in all the other explanations so that we can achieve the substantive meaning of the rule of law and international law through the principles of ethics and integrity. Thus, if we seek obedience to the law, we must crown the notions of the rule of law and international law with ethics and integrity.

Before looking at the gap in the modern approach to the concept of the rule of law, let's first demystify the principle of the rule of law. The rule of law consists of different types of rules, which are formal and procedural in nature. These formal and procedural rules address the interactions of society and its fundamental structures. Hence, the formal rules are concerned with universal application, certainty, clarity, publicity, and the way society and its social structures are governed. The procedural rules concern the ways in which these norms are applied, and legal structures like the courts and independent judiciaries are required to apply the law. In this view, we can say the concept of the rule of law includes the ideas of liberty and respect for private life. So, if the concept of the rule of law is defined in these parameters then the possibility of disfranchising arises. I

find such an argument difficult to comprehend. However, I acknowledge that other scholars find this argument plausible. Nevertheless, it is important to further the discourse in this area if we are to arrive at a tangible and noble course of action. On the other hand, when too much time is focused on separating the phenomenon from its true value, we become ignorant of those former values that help dissect the present movement of the rule of law and international law. We cannot be ignorant of the many events that have occurred throughout human existence if we want to present a complete discourse on further action.

According to the argument in this book, the compound substance of the rule of law goes beyond the ideas of liberty and the right to life. The application of and respect for the law should not be based on formalities and structures. For society to be bonded by the rules developed to regulate its conduct requires the sowing of a seed at the core of societal conduct. This seed is a compound element of the rule of law and international law but has its state outside the sphere of law, though they are interconnected. What is essentially being said here is that the rule of law and international law cannot in themselves resolve the issues of fragmentation and disorder in society. Once fragmentation and disorder take place in society, we can no longer rely on legal rules and governance systems to guide individual conduct. Therefore the rule of law and international law are instead the infinite diversity of ethics and integrity, an idea that is unknown to many modern scholars. The rule of law and international law live in the diversity of ethics and integrity, and morals and virtue continually intervene to become the agencies of harmony between legal rules and governance.

Some may say that in this case the concepts of the rule of law and international law are inadequate principles, and cannot resolve the deficiencies that persist in the common human endeavour. Partly this is because such approaches have failed to address the fragmentation and disorder in society. Thus, to take the substance that can be conceived as the principle governing rule and the one that is inconceivable as a non-principle governing rule is like trying to sail across an ocean without a boat. Though this can be conceived by the human mind, it does not make it a plausible argument to be presented in its natural sense. Therefore, it is necessary to multiply the part and divide it by its core to arrive at a tangible answer. Thinkers and judges must assess whether the line is composed of different points, or if these different points can produce many arguments to prove the metaphor. Otherwise, the argument that the rule of law and international law are the binding forces becomes nothing as important as the dead lion. Then it is worth saying that one needs to strike

a balance between the ever-present virtue and the circumstance surrounding its origin. Hence, the error that crept into the explanations of the rule of law and international law is the direct cause of the decadence of the discourse on these legal doctrines. This means the notions of the rule of law and international law are deprived of their inspirational leadership in our understanding of obedience to the law and, therefore, become simply like trade on empty vessels.

My justification for this approach rests on the fact that the long chain of human thoughts and reasoning by means of complex mathematical models tends to reach a conclusion akin to the most difficult experiment one could ever imagine. Even though this has led to the development of competent knowledge, these competent knowledge experiences are not distinctive from the sources, and are all mutually connected for one to arrive at a tangible conclusion. I shall show that we are able to separate what is false from the objective truth. Hence, it is not difficult to determine the components of all objects that are necessary for our understanding of human conduct and the progressive nature of the violations of international law.⁵ A good way to understand this paradox is to take an example of how species change over time irrespective of an organism always being the same species as its parent. Another example can be found in the colours of the rainbow. When you look at the colour patterns in a rainbow, there are far more colours than Newtonian scientists predicted as the arbitrary seven. Expand the colours in the rainbow and you will find millions of subtly different colours; for instance, a computer can display almost over 16 million. When you compare the two opposite colours, it is possible to find a correlation. This means every one of the 16 million colours being observed resembles the parent colour next to it. However, across the board, too, you will notice a pattern from red to orange to yellow to green, etc. This is exactly what happens when we pay close attention to the compound elements of the rule of law.

Take, for instance, the fact that the concept of the rule of law relies heavily on people in positions of power exercising their authority in an appropriate and just manner.⁶ To go further, that power must be exercised within the framework established in society, meaning the rule of law has the faculty

⁵Emmanuel K Nartey, *Accountability and Corporate Human Rights Violations in Tort and International Law* (Cambridge Scholars Publishing 2021).

⁶José María Maravall and Adam Przeworski, *Democracy and the Rule of Law* (Cambridge University Press 2003).

to stop abuses of power.⁷ As an ideological concept, this point may hold water. However, in a practical sense, this point is redundant, partly because humanity does not always have the faculty to restrain itself from the abuse of power and the influence of the environment,⁸ the exception being those individuals who possess the faculties within themselves to stop themselves from engaging in behaviours that are detrimental to the greater good of society. This disposition, therefore, is intolerable to the concepts of the rule of law and international law. Thus, one cannot rely on the concepts of the rule of law and international law to stop *ultra vires* behaviours. Therefore, the discussion here must bring to mind the subjects of ethics and integrity in the conception of the rule of law and international law. It may also be summarised that in the simple term of obedience to the law, the modern explanations of the rule of law and international law are indebted to nearly all the great elements of ethics and integrity. From this point of view, it is evident that explanations or definitions of the rule of law and international law will ultimately only be possible in terms of the negation of the latter. In other words, every explanation or definition must eliminate the deficiencies in the rule of law and international law, and that which remains when all else is removed will be the true meaning of both legal doctrines.

The rule of law states that governments should work within the parameters of the law in everything they do, and that they should be held accountable through law when there is an abuse of power. This point is also contentious, for where there is a lack of ethics and integrity, respect for the law is diminished, and there is no accountability, and therefore the abuse of power takes possession of the law. So, why are we to observe and divide the components? The answer is that obedience to the law is a quality that must be possessed by society and its structures. Therefore, the rule of law and international law become abstract and superficially distorted if the other compound elements are not presented. As we imagine and discuss the compound elements, we will start to conceive the ideas and reasons behind the abuse of power in the modern world. If so, we can also regard ethics and integrity as the qualities that the law must possess in its nature and value. Therefore, when considering the natures of the rule of law and international law, we must assume the first cause (morality) or we will lose the whole explanation of how the rule of law and international

⁷Lord Bingham, 'The Rule of Law' (2007) 66 (1) *Cambridge Law Journal* 67, 85.

⁸Dan Lockton, 'Cognitive Biases, Heuristics and Decision-Making in Design for Behaviour Change' (2012) *Heuristics and Decision-Making in Design for Behaviour Change*.

law may be forces for legal principles and governance. Accordingly, the first course (morality) becomes the fundamental attribute of the rule of law and international law. Nevertheless, for me, however it is conceived, the result should either produce a negative or positive outcome in individual conduct. This means that the rule of law and international law must result in a permanent change in the condition of individual behaviour and its relation to the law.

Take, for instance, that all human beings have a common goal that is created by the lower mind (the conscious mind); this unclassified goal of understanding the world is the experience that influences human decision-making. This means we have developed several ways of describing our experiences in our minds. The descriptive, analytical form of seeing the world through interdependent consciousness, morality and immorality determines the outcome of the world we are experiencing today. It is thus striking, looking at the amount of time and money spent on data collection and data analysis in an attempt to address the trends in human rights violations, that none have come to a meaningful conclusion. In the end, the current study of human existence and decision-making is like a dog chasing its tail. Perhaps this quest is taken in the expectation of finding some sort of “answer” to the unknown. However, the “answer” we have to see to believe and if once found may allow us to solve the problems we are facing, is far from what we perceived as the problem of the rule of law and international law. So, the fundamental question becomes about both conception and practice. Without both, the quest to understand and implement an effective legal system will be an inconceivable dream.

Also, in recent decades we have tried to solve problems such as the economy, crime, national health and politics, but so far, we have solved none of them. The problem is not a lack of legal rules or governance; in fact, we are virtually drowning in so many rules.⁹ The problem here is not the amount of law we have, but the lack of ethics and integrity in contemporary society. Therefore, if we have the right tools and mindset to interpret the significance of the law then we can recognise that the law cannot exist without ethics and integrity. This is the point that has been missing from the puzzle of the quest to understand the concepts of the rule of law and international law. For lack of a better explanation, we might have conceived of the rule of law and international law as simple doctrines without any qualification, as doctrines which are neither right nor wrong in

⁹David R Hawkins, *Power vs. Force: The Hidden Determinants of Human Behavior* (Hay House Incorporated 2014).

conception, but exist in the absence of any tangible rules or conditions in society. Therefore, the condition of absolute rule of law and international law can only be achieved by the inclusion of both ethics and integrity in their conception.

When one views the dilemma in this conceptual mindset, then we can conclude that we are yet to ask the right questions because we have not measured the accuracy of the questions that are appropriate to the problems we are trying to solve. Therefore, the necessity of the rule of law and international law must follow an invisible principle of conduct that is all things which can fall within its conceptual sphere of moral behaviour. This proposition should be clear to every thinker and scholar who seeks to advance the obedience of law in society. Ethics and integrity then become the modes which express in a certain determinate manner the essence of the rule of law, in so far as we consider it to extend beyond societal conduct. In this conceptual view, I consider ethics and integrity as belonging to the essence of the thing that is necessary to give meaning to all behaviours and rules. Hence, if and when it is diminished the obedience of the law is removed, and it will be considered as nothing, and thus can neither be valid nor be conceived as a true principle.

Another example of the human problem has always been our inability to measure our own intellectual artefacts. In attempts to rationalise these intellectual artefacts, we say they occur because of the way we have arbitrary input into our brain in an intellectual case. We have created an intellectually constricted world, where our perceptions reflect the cage we have put our brains in. We deviate from finding an answer to the problem because our perception has created inadequacy in the way we view the law and the way we ask questions. As a result, we have created limitations implicit in the way we understand the issues surrounding our behaviour and the law. Our metaphor creates errors in the development of questions, and these errors lead to an error in our thinking and the result is gross errors in the way we attempt to answer the questions of the rule of law and international law. Solving the legal problems in the world does not simply mean an application of the rule of law and international law, but rather asking the right questions. The answer comes from examining ethics and integrity in specific law and philosophical contexts.

To put it simply, all the law we have gathered is pointless until we know what it means to us. We need to understand the meaning of the law we have, and then make sense of it. We need to ask the right questions and we also need to have the right tools to measure them. Examining the rule of

law and international law and the process of sorting laws and applying them may help reconstruct the social dilemma of society. By this idea, I mean we have to outgrow our intellectual constraints and mental conceptions, which are formed by our perceptions. I use 'mental conceptions' to express our passive attitudes with respect to the rule of law and international law; thus, our conception is generated by our mind and our attitude toward the expression of an object. Therefore, we must create a faculty that is capable of contemplating every dimension of legal principles and governance. Legal reasoning must be organic and must arrive at its conclusions on the basis of the created faculty. Hence, our efforts to understand the rule of law and international law mean circumscribing the entirety of the comparable moral theories to enclose the vast knowledge within our remit.

Therefore, human decision-making has remained a mystery even though we have made attempts to understand the underlying motives behind all outcomes. Hence, the rule of law and international law are a mystery until we resolve their other compound elements. Not only has the understanding of our behaviour and conduct been a mystery, but it is also an illusion in the sense that the system that is created to provide an in-depth explanation of the consequences of our actions lacks an intellectual motive. Because of this, we turn a blind eye to the limitations of the foundations of our studies of the rule of law and international law, as well as to the theories that have been developed to explain and solve the very problems we face. According to scientific studies, the human mind instinctively covers its own mystery in the reaction to experiences from the environment. Therefore, even before our thoughts occur in the sequence of the external environment the person has already contemplated their conduct or behaviour. What science is trying to tell us is not that thoughts are always a reflection of the environment, but, rather, that they occur in a sequence of forms that take place within the person. In other words, thoughts are the association of the environment and the sequence within the person. So, if we are to influence and change a person's conduct, law alone is not enough, and ethics and integrity must dominate the inner nature of the person. This sphere of dominance will permit the outer nature of the person to change. What this means in terms of the rule of law and international law is that ethics and integrity must abide in the individual in order for the obedience element of the law to be achieved.

The problem originates in the way we understand the interaction between law and conduct. As we look at the foundation of our problems, it will become clear that our explanations of the rule of law and international law have never been reliable when measured against human behaviour and

motivations. Through adequate investigation, we will be able to consider the concepts of the rule of law and international law as not distinctive from behaviours and motives. Without the correlation to behaviours and motives, all the properties or intrinsic natures of obedience to the law cannot be true. Therefore, in order to include the compound elements of the rule of law, which is intrinsic to behaviours and motives, a link between ethics and integrity and the rule of law and international law must become apparent. This is partly because when behaviours and motives are not an intrinsic aspect of human nature, one's submission to the rule of law and international law is imperfect. This means ethics and integrity generate a sphere within that person whereby this perfection can be achieved.

Take, for example, The European Court of Human Rights (ECtHR)¹⁰, which affirmed that 'the very essence of the European Convention on Human Rights (ECHR) was respect for human dignity', as evidenced by the application of Article 3 of the ECHR.¹¹ Human dignity is also explicitly present in other regional human rights documents.¹² The notion of human dignity not only provides for a measuring of, or interpretational tool for, the application of civil rights, but also has a role to play in respect of economic and social life in answering the question of the benefits needed for a dignified life.¹³ However, within these conceptual parameters, we can say human dignity is not determined through its own existence, or by efficient principle or cause, which must necessarily give meaning to the

¹⁰Alastair Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Bloomsbury Publishing 2004).

¹¹2 ECtHR (Merits), 29 April 2002, *Pretty v The United Kingdom*. App. No. 2346/02, para. 65; ECtHR (Judgment) 8 November 2011, *VC v Slovakia*, App 18968/07, para. 105.

¹²African Charter on Human Rights and Peoples' Rights, OAU Doc CAB/LEG./67/3/Rev 5 reprinted in 21 ILM 59 (1982), preamble; Revised Arab Charter on Human Rights, May 22 2004, unofficial English translation 12 Int'l Hum Rts Reps 893, preamble, arts 3, 17, 20, 40; ASEAN Declaration on Human Rights, 18 Nov 2013 <www.asean.org/news/asean-statement-communicues/item/aseanhuman-rights-declaration> Accessed 3 June 2018.

¹³*The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, No. 155/96. Furthermore: German Federal Constitutional Court, 9 February 2010, BverfGE 125, 175 at 222 with comment by Inga T Winkler, and Claudia Mahler, 'Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?' (2013) 13 (3) Human Rights Law Review 388, 401.

obedience of the law. Thus, intrinsic factors such as ethics and integrity give human rights their accurate meaning and purpose. By this, I mean all law that has its reality and perfection is informed by ethics and integrity and has its conditioned existence in human dignity and morality. If then ethics and integrity and the rule of law concur in one principle action, so as to give effect to one cause of judgement, we can say the rule has its meaning and purpose. Thus, ethics and integrity have certain conditions that are capable of stimulating the behaviours and motives of a person, in relation to the perceptions of the rule of law and international law. In this sense, we can say the rule of law and international law are in harmony with ethics and integrity, and can be preserved in their conception.

Scholars and thinkers have attempted to explain the relationship between our decision-making and behaviour without any relative values. All the methodologies and values created are either arbitrary or have no factual base. Partly, this is because they have tried to explain the rule of law, international law, human behaviour, and motives as simple rights and wrongs. However, our behaviours and motives go beyond what we perceive as right and wrong in our conceptual metaphor. These are the problems created in our interpretation of the law and societal conduct. This metaphoric conundrum can only be resolved by attempting to redesign how the system we depend on functions. This is the problem faced by judges in their attempts to improve laws and governance without ethics and integrity as conscious and unconscious phenomena. Whether these are caused by experiences or the influence of the conscious mind and societal conduct, it is important to determine what norms and habits affect one's outcomes. Within this conceptual parameter, then, we can say the rule of law and international law are not determined through their own existence, or by efficient principles or causes, which must necessarily give meaning to the obedience of the law.

Therefore, with regards to ethics and integrity, their relationship with the rule of law and international law is much easier to identify when it is not described in some abstract equation. For example, we can look at a human and say straightaway if he or she is alive or dead. It means we are able to separate the present life of a person, a dog, or a pigeon from a lifeless stone, sand, or pieces of metal. However, this distinction is not always obvious to us. How to distinguish life from a lifeless object is a matter of philosophy rather than application. Take, for example, if you cut off part of a living organism, will the other part stay alive? What about the single cell, the sub-unit of the living organism? Will it survive? Rebecca Skloot's famous book *'The Immortal Life of Henrietta Lacks'* made it clear that

while cells were not a person,¹⁴ they were alive. What makes them alive? The difficulty comes when we try to examine the definition of life, and what gives an organism life. What is being alive? Life is no more than a separate force or fluid that is connected to oxygen. What makes humans is a combination of light force energy and atoms (the human body). Therefore, the same can be said for the rule of law and international law. What makes the rule of law and international law effective is a combination of other virtues.

Moving on, it is believed that the rule of law means people should obey the law and be ruled by it.¹⁵ However, when this is applied to political and legal theory, it is given a restricted interpretation. In this sense, it only means that the government should be ruled by the law and should be held accountable by the law. So, the rationale behind the rule of law in relation to government is constructed in the phrase 'government by law and not by me'. When one demystifies this construction then the obscurity becomes clearly expressed in its context and concept. This legal deficit opens the door to the abuse of power. Indeed if the rule of law should hold water without its compound elements then the government should surely be both law and men or women.

Also, the rule of law posits that government action must be judged by the law and the law must be the sole authority for government action. Is this statement accurate? Can government act without the consent of the law? Can a decision-maker be their own judge? If so then the concept of the rule of law becomes contentious again. Partly, this is because the conduct of the government would be without legal effect and thus unlawful. As the government is influenced by environmental factors and external pressures, it is therefore inconceivable for the concept of the rule of law to be the sole instrument to hold the government accountable. Ethics and integrity are attributed to the rule of law, or ethics and integrity are the foundations of the rule of law. Therefore, for the government to be held truly accountable, ethics and integrity must be expressed in the actions and conducts of the government. In this case, the rule of law will thus possess the faculties to keep the government's action and conduct in check.

¹⁴Brendan P Lucey, Walter A Nelson-Rees and Grover M Hutchins, 'Henrietta Lacks, HeLa Cells, and Cell Culture Contamination' (2009) 133 (9) *Archives of Pathology & Laboratory Medicine* 1463, 1467.

¹⁵Ivor Jennings, *The Law and the Constitution* (University of London Press Ltd 1972).

Within the parameters of ethics and integrity, it is no use to advise or teach people by advocating 'Be correct' or 'Make a good decision'. This would be the same as telling a good citizen not to evade tax, but to avoid tax. The implication of this advice may open the door for people to achieve their goals legitimately, regardless of the harm it may cost society. This way of rational thinking is a theoretical deficit in the concept of the rule of law and international law, which has contributed to fragmented legal theories over the last number of centuries. The deficit has also neglected the other aspect of teaching people how to comply with policy or law. Though this may sound contradictory in its practical terms, the best way to teach people how to comply with the policy and law is to advise them and instil ethics and integrity into their behaviours.¹⁶ Understanding how ethics and integrity influence the rule of law and international law and processes is an important part of designing an effective and efficient legal and governance system. This is because the legal and governance systems may not generally evaluate risky prospects by using the objective probability of an event. This view is also evident from the fact that we are able to conceive of ethics and integrity in our daily behaviours. When we conceive of ethics and integrity as part of our behaviours and conduct, we will be able to achieve the perfection of the rule of law and international law in society.

In practical terms, it means that ethics and integrity might help decision-making, using the subjective probability that can be separated from the objective probability. A possible explanation of this might be that the concepts of the rule of law and international law cannot be calculated as simple individualistic gambles. This means that an empirical study is required to predict the levels of ethics and integrity in the rule of law and international law, which is consistent with the philosophy of morality and justice. Therefore, this book will examine the ethics and integrity approach to modelling the rule of law and the international law process and will investigate different factors that influence legal and governance systems in society. This will help to explore the foundations of the rule of law and international law, or show how we can overcome the undesirable deficiencies in legal and governance systems. The approach of this book is carefully designed to briefly demonstrate how ethics and integrity in the rule of law and international law could lead to effective legal and governance systems. Therefore, ethics and integrity can be thought of as the infinite members of all legal rules and governance systems. Hence, it is, necessarily, in respect of societal conduct and obedience to the law. I

¹⁶Edward J McCaffery and Jonathan Baron, *Thinking About Tax* 12 Psychology, Public Policy, and Law 1 (2006).

conceive that the rule of law does not stand alone. I conceive of ethics and integrity as the lifeblood of all legal rules and governance systems. The extension of the rule of law and international law are ethics and integrity.

Furthermore, the rule of law demands that government follows the principle objective of the law. However, government conduct is political *per se* instead of legal. The government, therefore, becomes the location of power in society. Therefore, when we try to compel the imposition of government behaviours in society, it is perfectly adequate to say that politics rules government action instead of the rule of law.¹⁷ What this means is that government has the ability to alter the law by a majority in Parliament, and therefore can circumvent the law.¹⁸ In this sense, the concept of the rule of law holds no substance in the conduct of the government that has a majority in Parliament.¹⁹ Likewise, one can say the rule of law has its limitations in a democratic society or country. This also means we are confronted with a puzzle. If the government by its authority legislates by law then it seems the rule of law in a democratic society is pointless. In addition, there must be underlining rules or principles that can guide the conduct of governments. Thus, the actual idea of the rule of law has its cause, only as far as it is considered as one of the elements in the evolving aspect of government conduct. That is, the idea of the attribution of ethics and integrity to government conduct and particular behaviours is because government actions do not have their own efficient cause as far as morality is concerned.

This means there is something unique but at the same time something strange about the concepts of the rule of law and international law and the perception of what is referred to as a democratic society. It is very strange because the rule of law and international law appear to be the compound elements of legal rule across modern civilizations; yet they are real while present in legal and governance systems, and we have no access to where and how they are circumvented by powerful entities. We have no knowledge of where they appear from and how they appear because they come from the unphysical (moral) dimension that cannot be measured by contemporary theories and experiments. However, in the legal and governance systems, we are able to develop laws and policies on this concept. Thus, the appearance and disappearance of the rule of law and international law

¹⁷Joseph Raz, 'The Politics of The Rule of Law' (1990) 3 (3) *Ratio Juris* 331, 339.

¹⁸Tom Bower, *Boris Johnson: The Gambler* (Random House 2020).

¹⁹Richard A Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (UNC Press Books 2017).

correlate with our consciousness of ethics and integrity in society. Our conscious sense is our awareness of ethics and integrity and the knowledge of knowing that our conducts are the reflection of the law and policy we experience in society. Ethics and integrity should be the making of the rule of law and international law if we are to establish and reveal the inner perceptions of the principle of the universal order of law and governance. Establishing and revealing these principle aspects of the rule of law and international law that are so vast will become the very backbone of the state. Therefore, I conceive of ethics and integrity as the awareness of what it means to be a person of virtue and to live in accordance with the laws of society.

So this sense of awareness of ethics and integrity gives us the extra insight we need to understand the mechanisms of the rule of law and international law, and amplifies our understanding of what goes on in our internal and external obedience to laws. Take for instance how when we think of something pleasant like our homes we start to feel the sensation of eating nice homemade food and lying in a comfortable bed.²⁰ The concepts of ethics and integrity exist, but we have no knowledge of how heavily they can affect the motions of the rule of law and international law. Why, then, do I conceive of ethics and integrity as important components of the rule of law and international law, where all legal principles can be revealed? The true answer is again evident. The natures of the rule of law and international law are only truly visible if they can be deduced through the lens of ethics and integrity. This is partly because the natures of the rule of law and international law can only be perceived and regarded as the compound of legal principles and governance if we see them as the pedals of the extremities of the law.

If this suggestion holds water, then the idea that our mental lives arise from the operation of trillions and trillions of unthinking parts is very worrying. It is very worrying because while we are completely identified with our thoughts, feelings and behaviours, we rarely bother to question the origin of these thoughts, feelings and behaviours. Many of us think that the rich and subtle cognitive spectrum experienced by humans cannot be captured solely in the operation of the biological part. So the question is how could the movement of an athlete, the brush strokes of an artist, or the abstract ideas of a philosopher result from the operation of the mindless

²⁰Hugo D Critchley, Jessica Eccles and Sarah N Garfinkel, *Interaction between Cognition, Emotion, and the Autonomic Nervous System Handbook of clinical neurology* (Vol. 117 Elsevier 2013).