Part II
THE RULE of LAW in HISTORY

Our understanding of the rule of law today is the product of centuries of historical development. This section of the Dialogue looks at important historical movements, institutions, and events that have defined, and at times threatened, the rule of law. These include the role of the English and American revolutions in defining the rule of law, the challenges that slavery posed to the rule of law in the United States, and the movement toward an international rule of law in the years surrounding the Second World War.

Before studying and discussing these historical events, Dialogue participants should have an understanding of what the rule of law means. We recommend that you first work through Part I of the Dialogue or at least share with the participants a definition of the rule of law.

One of the questions that historical study of the rule of law raises is the extent to which the meaning of the rule of law has changed over time. Participants should thus be encouraged to consider how their understanding of the rule of law might have differed if they had lived at another time. Participants might also discuss how their understandings of the rule of law today compare to earlier understandings of the rule of law.

The Rule of Law and Revolution

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. . . . [W]hen ever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government.

—Declaration of Independence (1776)

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

—Preamble to the Universal Declaration of Human Rights (1948)

Our understanding of the rule of law today was forged in a series of political revolutions in the seventeenth and eighteenth centuries. These revolutions transformed relationships between governments and the governed in England, the United States, and France. From these revolutions emerged the principle that the rule of law exists to protect certain fundamental human rights. If a government fails to uphold basic rights through the rule of law, it is the ultimate right of the people to rebel against the government.
England’s Glorious Revolution

Over the course of the seventeenth century, the people of England struggled—sometimes violently—to define the proper relationship between the monarch (the king or queen), Parliament (the English legislature), and the people. The English monarchy claimed that it ruled by divine right and was answerable only to God. Members of the English Parliament, including lawyer Edward Coke, disagreed. Coke argued that Magna Carta, the “Great Charter” signed by King John in 1215, had established the common law as the supreme authority in England, to which even the king was subject. In 1628, members of Parliament presented King Charles I with the Petition of Right, which accused the king—among other things—of imprisoning, trying, and executing English subjects without due process of law. The conflict between Parliament and the king ultimately resulted in the English Civil War and the beheading of King Charles in 1649.

King Charles’s son was restored to the throne as king in 1660. With the restoration of the monarchy, the struggle between the king and Parliament resumed. In 1688, a group of powerful English leaders invited Prince William of Orange, who was married to Princess Mary, the daughter of the English king, to take over the English throne from Mary’s father, King James II. James had suspended Parliament and had repealed several important laws without Parliament’s assent. Prince William landed in England with a force of 15,000 troops and was greeted with enthusiastic support. King James fled into exile. England’s “Glorious Revolution” had secured a new monarch.

In 1689, Parliament presented the new King William and Queen Mary with a Bill of Rights, described as “An Act Declaring the Rights and Liberties of the Subject.” The Bill of Rights detailed King James’s abuses of the law and established that Parliament, not the king, had ultimate authority to make or repeal laws. The Bill of Rights also asserted “certain ancient rights and liberties” of English subjects, including:

- The right to petition the king and his government
- Freedom of speech and debate in Parliament
- Rights of English subjects to keep arms for their defense
- Rights to trial by jury
- Prohibitions on excessive bail, excessive fines, and cruel and unusual punishments

The Glorious Revolution was not a radical revolution. Instead, it served to reaffirm the “ancient rights” of the subject and to establish Parliament’s supremacy over the law that protected those rights. Its establishment of an English Bill of Rights, however, had a great impact on how British subjects—both in England and in its American colonies—perceived the role of the king, the Parliament, and the law in upholding their rights.

The American Revolution

Less than one hundred years after the Glorious Revolution, England faced another revolution in its American colonies. Once again, charges against the British king, this time George III, were at the heart of the colonists’ complaints. But the charges against the king in the Declaration of Independence were really against the British government, including Parliament, which the king represented. In the decades preceding the American Revolution, Parliament had enacted a series of laws that imposed various taxes on the colonies. It had also sent troops to the colonies to enforce those laws.

The American colonists viewed themselves as British subjects, with the same rights as persons living in England. During the many years of colonial experience that preceded the Revolution, the colonies had formed legislative assemblies that represented local colonial interests and governed much of life within the colonies. The colonies did not have representatives in the British Parliament. When Parliament began imposing taxes on the colonies to fund British wars and the defense of Britain’s colonial frontiers, the colonists objected to what they saw as taxation without representation in Parliament. Several colonial assemblies passed resolutions against Parliament’s actions.

A good example of these resolutions is the “Resolves of the Pennsylvania Assembly on the Stamp Act,” passed in 1765. The Stamp Act was a highly unpopular tax on every piece of paper printed in the colonies. In passing the Stamp Act, Parliament had also provided that violations of the law were to be tried in courts of admiralty, which did not use the system of trial by jury typically used in English and colonial courts. The Resolves of the Pennsylvania Assembly asserted that:

- The inhabitants of Pennsylvania were “entitled to all the Liberties, Rights and Privileges of his Majesty’s Subjects in Great-Britain.”
- Every British subject had “the inherent Birth-right, and indubitable Privilege . . . to be taxed only by his own Consent, or that of his legal Representatives.”
- The removal of trial by jury for violations of the Stamp Act was “highly dangerous to the Liberties of his Majesty’s American Subjects, contrary to Magna Charta, the great Charter and Fountain of English Liberty, and destructive of one of their most darling and acknowledged Rights, that of Trials by Juries.”

The Pennsylvania Resolves were based on key aspects of the understanding of the rule of law that had developed in England from Magna Carta through the Glorious Revolution. First, British subjects were protected by specific liberties, rights, and privileges. Second, laws were valid only with the consent of the people who were governed by them, either by direct consent or by the consent
of the people’s representatives. Third, trial by jury—judgment by one’s peers, not by officers of the state—stood as an important defense of the individual subject’s liberty.

The British Parliament repealed the Stamp Act in 1766. The same year, however, it issued the Declaratory Act of 1776. This act stated “that the said colonies and plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and Parliament of Great Britain.” It further declared “that all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the parliament of Great Britain, to make laws and statutes as aforesaid, is denied, or drawn into question, are, and are hereby declared to be, utterly null and void.”

The impasse between the British government, which claimed as its right the power to rule the American colonies, and colonists who chafed at laws passed without their consent ultimately resulted in outright rebellion against British rule. The document that ultimately defined the new United States government—the Constitution—created a new rule of law that emphasized limits on government power. With ratification of the Bill of Rights (the first ten amendments to the Constitution) in 1791, Congress and the states clarified the role of this new legal order in protecting a core set of fundamental individual rights.

The rule of law defined by the Constitution in many ways grew from the British rule of law that the Glorious Revolution had established. The Glorious Revolution had removed power from a single individual, the monarch, and vested it in a representative legislative body, the Parliament. The American colonial experience had demonstrated, however, that an all powerful legislative body could be as oppressive as an absolute monarch.

The Constitution attempts to control the government’s power in two important ways. First, it gives only limited powers to the national government. As made clear in the Tenth Amendment, all powers not delegated to the national government are reserved to state governments and to the people, the ultimate source of power in the U.S. constitutional system. Second, it separates power among the three branches of government: the legislature (Congress), the executive (President), and the judiciary (Courts). The legislative supremacy of the British Parliament is thus tempered in the U.S. system by giving the executive and judicial branches checks and balances on the legislature’s power. Congress, in turn, is given checks and balances on executive and judicial power.

When the Constitution went to the states for ratification, the lack of a Bill of Rights raised immediate concerns. Here too, the influence of the colonists’ experience as British subjects is apparent. We saw in the Pennsylvania Resolves how central the notion of key “liberties, rights, and privileges” had been to the colonists’ understanding of their status. Throughout British history, major conflicts between the king and his subjects had produced assertions of the subjects’ rights: from the rights asserted by the barons in Magna Carta to the English Bill of Rights presented to William and Mary when they assumed the British throne. Securing an American Bill of Rights, which defined key liberties on which the government could not encroach, became a condition of ratification for many of the states. And here too, recent colonial experiences led to an expansion of the rights American colonists had held as British subjects. The First Amendment’s expansive rights to free speech and the freedom of religion and the Fourth Amendment’s rights against unreasonable government searches and seizures all respond to abuses Americans had experienced as British colonial subjects.

The rights-centered revolution in the rule of law that began in England and took firmer shape in its American colonies was not confined to the Anglo-American world. In 1789, the year that the Bill of Rights was drafted in America, a revolution began in France. From that revolution came a “Declaration of the Rights of Man and of the Citizen” that became the foundation for a new system of government in France. By the twentieth century, the Universal Declaration of Human Rights implicitly recognized a right to revolution if a nation failed to protect human rights with the rule of law.

Questions for Discussion

1. A key feature of the U.S. Constitution’s separation of powers is the creation of an independent judiciary. This means that, once federal judges have been appointed to office, they are free from the influence of Congress or the President when they make judicial decisions. Why do you think an independent judiciary would be important in protecting individual rights from government intrusion?

2. Trial by a jury of one’s peers was a prominent concern of both Britons and Americans in their respective bills of rights. Many modern democracies, however, do not include trial by jury as a feature of their legal systems. Why would trial by jury be an important feature under a rule of law that emphasizes limited government power and fundamental individual rights? How would our legal system be different if we did not have trial by jury?

3. The experiences of England, the United States, and France, and the language of the Universal Declaration of Human Rights, suggests that there is a right of the people to rebel against a government that fails to protect their basic rights. Revolution is, of course, a drastic remedy—the Universal Declaration describes it as “a last resort.” What conditions do you think would be necessary to trigger a right to revolution?
**Slavery and the Rule of Law**

The slave, to remain a slave, must be made sensible, that there is no appeal from his master; that his power is in no instance, usurped; but is conferred by the laws of man at least, if not by the law of God.

—Judge Thomas Ruffin, State v. Mann, Supreme Court of North Carolina, 1830

Part I of the Dialogue noted that “the rule of law is more of an ideal that we strive to achieve, but sometimes fail to live up to.” This is certainly true of the American experience. Nowhere has the disparity between ideal and reality been more explicit than in the history of slavery in the United States, especially as it pertains to the gap between law and justice.

The same Constitution that proclaimed the consent of “we the people” to a government of limited powers that protected fundamental rights of the people also provided for the legal existence of slavery in the new United States. The slave-holding states quickly developed legal codes that placed slaves largely outside the protections of the law. The federal government also passed laws that protected the interests of slave-owners against their slaves.

This section of the Dialogue considers the history of slavery in the United States. This history raises fundamental questions about the rule of law in the United States. Before the end of slavery, what claim did the United States have to be a nation defined by the rule of law? When the institution of slavery was abolished following the Civil War, to what extent were the protections of the rule of law extended to all American citizens? When can we fairly say that the United States truly became a nation defined by the rule of law?

**The Constitution**

Article I, Section 9, of the Constitution provides that Congress could not prohibit “the migration or importation of such persons as any of the states . . . shall think proper to admit” until 1808. This meant that the slave trade would be guaranteed legal protection until 1808. Article I, Section 2 provides that representatives to Congress shall be apportioned by “adding to the whole number of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, three fifths of all other persons.” The “all other persons” who were counted as three-fifths of a person were slaves. The fugitive slave clause in Article IV, Section 2, provides that “no person held to service or labour in one state . . . escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.” In other words, a slave could not gain freedom by escaping into a free state. Even if a state did not recognize slavery within its boundaries, it was obligated to return a fugitive slave escaping from a state where slavery was legal.

These provisions of the Constitution reflect a compromise between slave-holding and free states at the time of our nation’s founding that set the stage for decades of struggle. This struggle ultimately culminated in the outbreak of civil war in 1861. By permitting the continued existence of slavery in the newly formed United States, these provisions also encouraged the formation of two separate systems of law. One, available to free persons, carried with it the liberties and legal protections guaranteed by the Bill of Rights. The second, designed to manage and control the fates of those who were enslaved, created a tyrannical system that far surpassed anything experienced by the nation’s colonial forebears under British rule.
State v. Mann

State v. Mann, a decision of the North Carolina Supreme Court, is one of the clearest statements of the legal condition of slaves in the years preceding the Civil War. In 1828, a slave named Lydia, living in North Carolina, was hired out by her master for one year to John Mann. During her time with Mann, Lydia did something to offend him and he began to punish her. Lydia tried to run off, but Mann shot and wounded her. Mann was tried for assault and battery. The jury was told it should convict him if it found that his punishment was cruel and out of proportion to her offense. The jury convicted Mann and he appealed to the North Carolina Supreme Court.

The decision that resulted from Mann’s appeal starkly defined the position of the slave under the law. “The power of the master must be absolute,” the court ruled, “to render the submission of the slave perfect.” The law and the courts had no place interfering in the relations between master and slave; there was no crime, in other words, when a master beat or wounded his slave. Mann had been wrongly convicted by the jury at trial.

The decision in State v. Mann has drawn the attention of many historians, in part because of the opinion of Judge Thomas Ruffin. Judge Ruffin prefaced his decision by describing “the struggle . . . in the Judge’s own breast between the feelings of the man, and the duty of the magistrate.” In this statement, some have seen a conflict between an individual, troubled morality, and a professional duty to apply the law. Yet Judge Ruffin was not an opponent of slavery. His opinion is also prefaced by a statement that cases involving slavery were impossible to understand “but where institutions similar to our own, exist and are thoroughly understood.” The institution of slavery required absolute dominion of the master as “essential to the value of slaves as property, to the security of the master, and the public tranquility, greatly dependent upon [the slaves’] subordination.” By establishing the master's absolute power over the slave, the decision in State v. Mann effectively removed those in slavery from the protection of the law.

The Fugitive Slave Acts

The fugitive slave clause in Article IV of the Constitution was given support by two federal laws. The first, passed by Congress in 1793, was “An Act respecting Fugitives from Justice, and Persons Escaping from the Service of Their Masters” (1 Stat. 302). This Act provided that the master of an escaped slave could seize or arrest the slave and take the slave before a federal judge or local magistrate. Upon receiving either an affidavit (a written statement) or oral testimony stating that the slave owed service under the laws of the state from which the slave fled, the judge or magistrate was obliged to issue a certificate to the master. This certificate was sufficient for the master to claim and remove the slave.

As abolitionist sentiment against slavery began to grow in the northern United States, lawyers devised a strategy that asserted the power of the states to provide fugitive slaves with enhanced legal protections. Based on the presumption that any person in a free state is in fact free, abolitionists argued that hearings regarding the status of fugitive slaves in free states should provide what a free person would regard as standard procedural protections.

The issue came to a head in the case of Prigg v. Pennsylvania, decided by the Supreme Court in 1842. Pennsylvania had enacted procedural safeguards that created obstacles to the recovery of fugitive slaves under the 1793 Act. It required a warrant before a fugitive could be seized or arrested. It made the oath of the claimed owner or any interested party inadmissible as evidence on the fugitive’s status. It allowed the fugitive to delay a hearing, at the claimed owner’s expense, if the fugitive was not yet prepared for trial. Pennsylvania law also defined a kidnapping offense against anyone who forcibly removed a black resident from the state with the intention of selling him or her into slavery.

Edward Prigg, an agent for a Maryland slave owner, broke Pennsylvania law by seizing one Margaret Morgan (who was acknowledged to be an escaped slave) without following the procedures in the Pennsylvania law and forcibly removing her back to Maryland. He appealed to the U.S. Supreme Court, claiming that the Pennsylvania law was a violation of the fugitive slave clause in Article IV of the Constitution.

The Supreme Court held that the Pennsylvania law was an unconstitutional violation of the right to retrieve a fugitive slave protected in Article IV of the Constitution and further defined by the 1793 Fugitive Slave Act. Justice Joseph Story, in the opinion for the Court, declared that the object of Article IV was “to secure to the citizens of the slave-holding states the complete right and title of ownership in their slaves, as property, in every state in the Union into which they might escape from the state where they were held in servitude.” Justice Story also argued that “the full recognition of this right and title was indispensable to the security of this species of property in all the slave-holding states; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted, that it constituted a fundamental article, without the adoption of which the Union could not have been formed.” The recognition of slavery, in other words, and the unquestioned right of slave owners to their property, was fundamental to the formation of the United States. This right could not be interfered with by a state, even if that state did not recognize slavery within its territory.

Eight years after the Prigg decision, Congress further strengthened the right to retrieve fugitive slaves as part of the Compromise of 1850. The Compromise was intended to appease southern states concerned, among other things, about the admission of California to the union as a free state. The 1850 Fugitive Slave Act was designed to override any resistance in the free states of the North to returning fugitive slaves. Its provisions included summary procedures for establishing the status of a fugitive slave (including a denial of testimony by the accused slave) and a financial “bonus” for commissioners who returned a fugitive slave to the owner. The act also provided for steep penalties against anyone who aided or gave shelter to a fugitive slave.

The Fugitive Slave Act imperiled not only fugitive slaves. Free blacks in the North, if accused of being fugitive slaves, would be denied the opportunity to testify if they were seized. Thousands of free black residents migrated to Canada in response to the Act. Canada also became the primary destination of fugitive slaves escaping through the Underground Railroad.
1. Until the Civil War, the courts generally refused to provide basic procedural and legal protections to slaves. Do you think this hastened or delayed the end of slavery? Do you think these rulings were true to the language of the Constitution? Why or why not?

2. Consider the strategy of abolitionists in the North to weaken the Constitution’s fugitive slave law. How do you think their understanding of the rule of law informed their efforts to combat slavery?

3. In *Prigg v. Pennsylvania*, Justice Story claimed that the Constitution’s protection of slavery was necessary to the formation of the United States. Do you think that the founders made an acceptable compromise by protecting slavery? Can we say that, notwithstanding its protection of slavery, the Constitution still established a valid rule of law for the United States? Why or why not?

4. Consider the history of slavery in the United States. Applying your definition of the rule of law to this history, when do you think the United States became a nation under the rule of law?
An International Rule of Law?

The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.

—Justice Robert Jackson, Chief Counsel for the United States, Opening Statement before the International Military Tribunal, Nuremberg, Germany, November 21, 1945

From 1939, when German Nazi forces invaded Poland, to 1945, when the Allied forces (led by the United States, the United Kingdom, and the Soviet Union) defeated the Axis forces of Germany, Italy, and Japan, the world witnessed the most destructive war it has ever seen. The toll from the Second World War, including both military and civilian casualties, is estimated at between 50 and 70 million dead. More than six million of these casualties were European Jews murdered in death camps run by the Nazis in an effort to annihilate Europe’s Jewish population. Other victims of Nazi atrocities included the Roma (Gypsies), civilians in occupied Poland (an estimated 1.9 million civilian Poles were killed), Soviet prisoners of war, political opponents of Nazism, persons with mental and physical disabilities, and homosexual men.

Well before the outbreak of the Second World War, many nations had participated in efforts to define an international law of war. Examples of these efforts include:

- The Hague Convention of 1907 on the Laws and Customs of War on Land. This convention defined, among other things, basic conditions for treating prisoners of war and regulations on what constitute acceptable uses of force in hostilities (e.g., forbidding the use of poison, forbidding weapons designed to cause unnecessary suffering, prohibiting the pillage of captured territory).
- The Kellogg-Briand Pact of 1928. This agreement was intended to end the use of war “as an instrument of national policy” (sometimes described as a “war of aggression”). It stated that nations who signed the agreement would seek changes in their relations with each other “only by pacific means.”
- The 1929 Geneva Convention Relative to the Treatment of Prisoners of War. This convention defined essential measures to ensure the humane treatment of prisoners of war.

These agreements demonstrate that the international community was working toward an international law of war in the first decades of the twentieth century. Some of the essentials of this effort included a prohibition on the use of war to promote national policy, a requirement for the humane treatment of prisoners of war, and a prohibition against the use of unnecessary force against civilians in enemy or captured territories. A major problem with these agreements, however, was the question of enforcement. Before the end of the Second World War, no nation or national leaders had been tried by the international community for violating the law of war. If there was no expectation of legal consequences for violating these agreements, could the terms of these agreements rise to the status of law?

What Is International Law?

International law has two primary sources: customary law and international agreements.

Customary Law is a law that is generally and consistently accepted among nations, and which nations feel obliged to uphold. In 1900, for example, the U.S. Supreme Court recognized that as a rule of international customary law, coastal fishing vessels were exempt from capture as a prize of war (The Paquete Habana, 175 U.S. 677). Certain norms rise to the level of jus cogens (“compelling law”) and cannot be violated or ignored by any country. Examples of jus cogens today include prohibitions on genocide and slavery.

International agreements include formal treaties or conventions among two or more nations. If the terms of an international agreement become generally accepted by nations, they can become customary law.

The international law of war is made up of both customary law and international agreements. Its main concerns include protection and treatment of civilian populations during times of war, protection of important cultural and historic sites, and humane treatment of prisoners of war.

The question of enforcement is a constant issue in international law. Nations have the power, acting individually or in concert with other nations, to punish a nation that violates international law by imposing economic or military sanctions.
Once the Second World War had begun, the leaders of Allied nations began to discuss what they would do if they were victorious. In October 1943, the Allied leaders issued the Moscow Declaration. In that declaration, U.S. President Franklin D. Roosevelt, United Kingdom Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin vowed that German officers and members of the Nazi party who had participated in atrocities, massacres, and mass executions would be “pursued[d] . . . to the uttermost ends of the earth” and brought to justice. The Moscow Declaration also warned that “German criminals whose offenses have no particular geographical localization”—leaders of the Nazi party, that is, whose actions had widespread effects—would be punished by joint decision of the Allied governments.

After the unconditional surrender of Nazi Germany in 1945, the Allied leaders met to determine the fate of Nazi leaders. Some, including Prime Minister Churchill of the United Kingdom and U.S. Treasury Secretary Henry Morgenthau, advocated summary execution (execution without trial) of captured leaders. Others in the United States government urged public trials. The Allies ultimately agreed upon trial. In August 1945, the governments of the United States, United Kingdom, Soviet Union, and France issued a charter establishing an International Military Tribunal for the trial and punishment of major Nazi German war criminals.

The charter for the International Military Tribunal established three categories of crimes:

1. **Crimes Against Peace** These crimes included waging or conspiring to wage a war of aggression or a war in violation of international treaties.

2. **War Crimes** These crimes included violations of “the laws or customs of war.” Examples included murdering civilian populations or forcing them into slave labor, murder or ill-treatment of prisoners of war, and acts of destruction not justified by military necessity.

3. **Crimes Against Humanity** These crimes included murder, extermination, deportation, and enslavement of civilian populations, and persecutions on political, religious, or racial grounds. The charter expressly stated that these crimes would be tried and punished regardless of whether they had violated the domestic law of the country where they were perpetrated.

In his opening statement before the International Military Tribunal in Nuremberg, Germany, Justice Robert Jackson of the United States (serving as the U.S. Chief Counsel for the tribunal) acknowledged that he was opening “the first trial in history for crimes against the peace of the world.” He also addressed “some general considerations which may affect the credit of this trial in the eyes of the world.” First, both prosecution and judgment would be “by victor nations over vanquished foes.” But the worldwide scope of the war that Germany had initiated left few neutral nations. The accused were “the first war leaders of a defeated nation to be prosecuted in the name of the law.” But they were also, Justice Jackson noted, the first to be given a chance “to plead for their lives in the name of the law.”

Twenty-two accused German war criminals were tried before the International Military Tribunal in Nuremberg. Nineteen were convicted and three were acquitted. Of the nineteen convicted criminals, twelve were sentenced to death, three to life imprisonment, and four to prison terms of ten to twenty years.

The precedent established by the Nuremberg trials has been unevenly applied in the decades since the Second World War. Massacres of civilians in places such as Cambodia (an estimated 1.5 million casualties under the Khmer Rouge regime in the 1970s) and Uganda (an estimated 300,000 victims of dictator Idi Amin) have gone unpunished by the international community. In recent years, however, the international community has demonstrated a greater willingness to intervene in humanitarian catastrophes. The Security Council of the United Nations has established international criminal tribunals to try perpetrators of human rights violations in the former Yugoslavia and Rwanda. The United Nations has also established an International Criminal Court to serve as a court of last resort (when, for example, a national court is unwilling or unable to prosecute a crime) for crimes of major concern to the international community. These crimes include aggression, serious war crimes, genocide, and other crimes against humanity. The treaty establishing the International Criminal Court has been signed by 105 countries. Several key nations in the international community—including China, India, Russia, and the United States—have not yet agreed to ratify (formally accept) the treaty.

**Questions for Discussion**

1. Consider the three categories of crimes for which Nazi leaders were tried at Nuremberg. Do you think the Allies had an adequate legal basis for putting Nazi leaders on trial for these crimes, or did the trials simply represent “victor’s justice”? 

2. What message about the rule of law do you think the Allies sent by putting Nazi leaders on trial instead of summarily executing them?

3. One purpose of the International Criminal Court is to provide a regular forum for the trial of major violations of international law. As noted above, several major world powers—including the United States, China, India, and Russia—have not agreed to accept the treaty establishing the International Criminal Court. Why do you think a nation, especially one with significant power in the world, might be reluctant to accept the jurisdiction of the International Criminal Court? What objections might a nation have to the idea of an international rule of law?