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ON THE STATE'S DUTY TO CREATE A JUST WORLD ORDER

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ABSTRACT

What is the significance of asserting that certain agents, be they individual or collective ones, have a duty to create just institutions at a global level? It might appear none. For many agree that there is no global authority to coordinate compliance with the duty. Hence, it is up to individual agents to decide how to comply. If this is the correct account of the duty to create just institutions, then one can say that significant global justice projects depend on insignificant duty to realize them. The state's duty is indeterminate, however, only on the supposition that authoritative institutions are necessary to secure coordination among different agents. The dissertation challenges this fundamental assumption in two steps.

First, I investigate the practical relevance of conventions for solving coordination problems. By building on the works of Hume and Lewis, I show how individuals in the state of nature could have coordinated their actions by conventions up until a point when a government could have emerged. I argue that similar considerations apply to relations among states. I identify relevant similarities between conventions creating a government and international customary law. Moreover, I argue that international customary law is a global governing convention since it prescribes how rules that bind all states are to be made.

The second step in my argument concerns the normative assessment of conventions. I argue that conventions are essential for demands of justice as long as they enable compliance with the demands. Not all conventions, however, do so. I put forward the principle of salience to identify those practices that play such a role. The salient practices determine the state's duty to create a just world order. *Ceteris paribus*, the duty is not indeterminate after all. Consequently, current

coordination problems that arise among states should not be seen as a normal consequence of states' rational and self-interested behavior in the absence of a global authority; instead, the coordination problems amount to the violation of the duty to create a just world order.

The major implication of the argument is that we should replace the Hobbesian framework for thinking about the nature of states as well as how they relate to one another by the Humean one. Thus, instead of insisting on states' consent and necessity of a centralized authority to coordinate actions, we should pay more attention to the habitual behavior of states as well as the role conventions play in solving coordination problems among them. Importantly, the relevance of conventions to compliance with moral demands does not make authoritative institutions obsolete. The argument of this dissertation is modest – it only asserts that conventions can coordinate actions in the process of transitioning toward more centralized forms of global authority. As opposed to the pessimistic outlook of the Hobbesian framework, the Humean one makes room for hope that the change of the present unjust conditions is possible.

Keywords: global justice, a duty to create just institutions, states as moral agents, norm indeterminacy, perfect and imperfect duties, conventions, international customary law, a governing convention, global authority, unipolarity

ACKNOWLEDGMENT

I still clearly remember my first official meeting with my supervisor, Zoltán Miklósi. As I was enthusiastically sharing some of my random thoughts about what back then was my research project – the concept of the EU citizenship; Zoltan simply asked what are implications of my view. I remained silent. The reason why I remained silent was simple but still horrifying – I didn't know what "implication" means, but I felt too embarrassed to ask. This small anecdote nicely illustrates my absolute beginner's level in philosophical thinking as well as how challenging it must have been for Zoltán to supervise my research. I am grateful to Zoltán for many things, but two in particular. First, I am grateful for his guidance. If not for him, I am sure that I would get lost in a fascinating universe of philosophical questions. The second thing I am grateful for is the way Zoltán was nudging me towards original thinking. By his kind comments that were often cutting deeper than most of the literature I have confronted, he made me enter an open space of original questions. As painful as it was, it also made me realize what it means when philosophers do not take anything for granted. I would also like to warmly thank other two members of my supervisory panel – Janos Kis and Andres Moles. In addition to all what one PhD student can owe to her supervisors, I would like to emphasize one thing – the two of them, together with Zoltán, made me fall in love with philosophy both by example and instruction. For this, I will be eternally grateful. Finally, I would like to mention that this dissertation has been influenced by Janos's cosmopolitan thought. This is my modest attempt to make a few steps more in the same direction.

I have been lucky enough to be a part of a vibrant and dynamic philosophical community at the School of Philosophy at Australian National University in 2015. Visiting the School and closely working with Bob Goodin was probably one of the most important, albeit very challenging milestones in my philosophical development. I learned many things from Bob, but one in particular: erudition still makes for good philosophy.

Besides academics, I was learning from my peers and friends too - Angelo, Dragan, Felix, Georgiana, Man Kong, Marko, Miki, Miles, Nemanja, Ioana, Tamara, Viktor, and Zlata. By sharing ups and downs of our PhD life, they made my PhD journey more enjoyable than it could have been. I would also like to thank my global justice soul-mates Siba Harb, from KU of Leuven, and Kerstin Reibold, from University of Tromsø who engaged with my ideas early on and were patient enough to read my early drafts. Special thanks go to Marko Konjović, Adina Maricut-Akbik, Tamara Kolarić, Gorana Mišić and Dániel Antal for helping me out with technical details (including my use of articles) at the very last moment.

PhD research is surely not all about professional life, but it is a lot about the personal one too. I have been enormously lucky to have an amazing, life-saving circle of friends both in my home country and in Budapest. It is impossible to name all of them here, but I'm sure that in a case they decide to check my thesis (which they will not), they will know I was referring to them.

Finally, I would like to thank my family for always being there even when I was not myself. I would like to thank them for bearing all sacrifices I imposed on them while prioritizing reason over emotions. I would also like to thank Dániel for reminding me of the latter.

I dedicate the thesis to my mother Sunčica, whose faultless common sense has laid the ground for much of my thinking.

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I would also like to mention my personal motivation to pursue this kind of project. First, I grew up under manifestly unjust Serbian institutions, which made me realize how morally and practically important just institutions are. Second, a great deal of the injustice was done to the innocent people beyond the borders of Serbia. These two considerations have shaped my core beliefs – that just institutions are enormously morally important and that they ought to have a global scope. This thesis is my attempt to justify these beliefs as well as to suggest how they can be put into practice.

Budapest, 31 March 2018

J. B.

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I Introduction

"Imagine there's no countries, it isn't hard to do

Nothing to kill or die for, and no religion too

Imagine all the people living life in peace..."

- *John Lennon, Imagine, 1971*

"If you believe you're a citizen of the world, […] you're a citizen of nowhere."

- *Theresa May, British Prime Minister, 2017*

While John Lennon's lyrics and Theresa May's speech utter opposing views, they do refer to the same idea – the idea of a cosmopolitan world in which every one of us is its citizen in some sense[1]. Lennon and May also share the view that such a world is nonexistent, the difference being that Lennon was supportive of it coming into existence, while May, given her cabinet's present agenda, seems to think that there should be no such world whatsoever[2]. The fact that both artists and politicians think about the same idea shows that cosmopolitan ideas are present in a public sphere. Hence, the attitude toward these ideas is not one of ignorance, but of either acceptance or rejection.

The idea of cosmopolitan world order has been the subject of philosophical investigation since ancient times, but it got a new impetus with the emergence of the global justice debate[3].

[1] I deliberately use the vague phrase "in some sense" for individuals can be citizens of the world in different senses, even if they never cross borders of their states. As Waldron nicely puts it, cosmopolitan is a person that is "proud of living in the mixed up world and having a mixed up self", in Jeremy Waldron, "What Is Cosmopolitan?," *Journal of Political Philosophy* 8, no. 2 (June 1, 2000): 227–43. p. 228

[2] I take it that the forthcoming exit of the United Kingdom from the European Union, known as Brexit, is an anti-cosmopolitan political decision since it is withdrawal from the legitimate supranational cooperation.

[3] For a good introduction into a history of cosmopolitan ideas see Lea Ypi, *Global Justice and Avant-Garde Political Agency* (Oxford, New York: Oxford University Press, 2011).

Namely, at the end of the 20th-century philosophers started paying more attention to the process of globalization, which made many of them reconsider the firmly held assumption about societies as self-sufficient[4]. Instead of attempting to identify demands of justice within societies only, many started arguing that at least some duties of justice have a global scope. Phenomena such as global poverty and global inequality, migrations, civil conflicts, anthropogenic climate change, constitute various forms of injustice that should be addressed. As soon as we move to more specific issues, however, the consensus disappears.

The philosophical disagreement about global injustice can be characterized as threefold: as concerning distributive justice, decision-making procedures, and institutional design. First, philosophers disagree over which substantive distributive justice requirements have a global scope[5]. Some say that everyone should have fair equality of opportunity[6], whereas others argue that everyone should be brought to the levels of sufficiency[7]. There are also those who assert that disagreements as these cannot be resolved in the light of global pluralism of conceptions of justice[8]. For this reason, we should focus on identifying adequate decision-making procedures. Still,

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[4] For instance, the assumption played a crucial role in Rawls's account of a theory of justice. In John Rawls, *A Theory of Justice* (Harvard University Press, 1971); He somewhat relaxed the assumption in his later writings. See John Rawls, *The Law of Peoples* (Cambridge, Mass: Harvard University Press, 1999).

[5] Here I am referring to debates between different accounts of global duties of justice; there is, of course, disagreement between cosmopolitans and statists about whether or not there are such duties in the first place. I do not engage with the latter debate here, but simply assume that at least some duties of justice have a global scope.

[6] For arguments along these lines see, for instance, Charles R. Beitz, *Political Theory and International Relations* (Princeton, N.J: Princeton University Press, 1979); Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism, and Patriotism* (New York: Cambridge University Press, 2004); Simon Caney, *Justice Beyond Borders* (Oxford University Press, 2005); Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Exploration* (Oxford, New York: Oxford University Press, 2012).

[7] To name just a few accounts: Thomas W. Pogge, *World Poverty and Human Rights* (Cambridge Polity Press, 2008); Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford University Press, 2011).

[8] To be sure, this is not distinctive of the global justice debate for there is a pervasive and probably irresolvable disagreement over the correct distributive theory.

decision-making procedures are not the subject of agreement either, for philosophers also disagree over how to characterize the legitimacy of global order, and whether it should be based on democratic principles or something else[9]. Finally, there is disagreement about what kind of a global institutional arrangement can approximate global normative standards. Proposals range from dispersing political authority over different levels of governance to more demanding institutional reforms such as the creation of new transnational or global institutions[10]. Practical differences aside, the proposals share the idea that we need more regulations at a global level[11]. The need for further global institutionalization generates a duty to bring it about.

Be that as it may, what does it mean to bear the duty to reform the existing institutions or to create new ones? Probably there has been no moral principle that has been invoked as many times as this one without ever being discussed[12]. A possible explanation of such ignoring is that

[9] For different accounts see Allen Buchanan and Robert O. Keohane, "The Legitimacy of Global Governance Institutions," *Ethics & International Affairs* 20, no. 4 (December 1, 2006): 405–37; Thomas Christiano, "Democratic Legitimacy and International Institutions," in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford University Press, 2010); Joshua Cohen and Charles F. Sabel, "Global Democracy," *New York University Journal of International Law and Politics* 37 (2005 2004): 763; Daniele Archibugi, Mathias Koenig-Archibugi, and Raffaele Marchetti, *Global Democracy: Normative and Empirical Perspectives* (Cambridge University Press, 2011).

[10] Thomas W. Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103, no. 1 (October 1992): 48; Pogge, *World Poverty and Human Rights*; Luis Cabrera, "The Cosmopolitan Imperative: Global Justice through Accountable Integration," in *Current Debates in Global Justice*, ed. Gillian Brock and Darrel Moellendorf, Studies in Global Justice (Springer, Dordrecht, 2005), 171–99; Simon Caney, "Cosmopolitan Justice and Institutional Design: An Egalitarian Liberal Conception of Global Governance," *Social Theory and Practice* 32, no. 4 (November 1, 2006): 725–56.

[11] It is noteworthy that even those who understand justice as associative obligation among citizens also think that, given the present global conditions, compliance with demands of justice necessitates global institutional reforms. For arguments along these lines see Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account," *Philosophy & Public Affairs* 37, no. 3 (2009): 229–56; Miriam Ronzoni, "For (Some) Political and Institutional Cosmopolitanism, (Even If) Against Moral Cosmopolitanism," in *Cosmopolitanism versus Non-Cosmopolitanism: Critiques, Defenses, Reconceptualizations*, ed. Gillian Brock, Oxford University Press, 2013; Peter Dietsch, *Catching Capital: The Ethics of Tax Competition* (Oxford, New York: Oxford University Press, 2015); Ronald Dworkin, "A New Philosophy for International Law," *Philosophy and Public Affairs* 41, no. 1 (2013): 2–30. I will engage with such views in more detail later.

[12] This observation is broadly shared in the literature. For instance, Buchanan says that the duty is "unsatisfyingly abstract". In Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*,

the duty is in some sense derivative, so we should first clarify the more fundamental duties it derives from. If, for instance, it can be established that there is no duty to aid, as some libertarians insist, *ceteris paribus* there is no derivative duty to create conditions for its discharging. Questioning the existence of a specific fundamental duty such as a duty to aid, however, does not entail questioning the existence of fundamental duties *simpliciter*. We can all agree that at least some fundamental duties are owed to everyone, such as a duty to treat one another justly or not to do harm. To the extent such generic duties necessitate an institutional specification to be complied with globally, we can be confident that the duty concerning their institutionalization will arise.

For the purposes of the present discussion, I need not commit myself to any substantive view with regard to principles of distributive justice, desirable decision-making procedures or global institutional design. Whichever view one takes, all of them agree that the present world order falls short of them and consequently, should be reformed. While not all of them recommend the creation of global authority, I will assume that the authority is necessary to set up fair terms of social cooperation globally. Admittedly, this is the most robust formulation of an end-state. It might appear too demanding; but if I manage to show that there is a path toward a global authority, then it is easier to make a case for less demanding reforms. This suffices to proceed towards examining the duty's nature. The dissertation sets out to make a few steps in this direction.

1.1. The Problem of Global Institutional Reforms

Oxford Political Theory (Oxford, New York: Oxford University Press, 2007).p. 105; Similarly, Barry argues that the duty is "generic and unspecific", in Christian Barry, "Global Justice: Aims, Arrangements, and Responsibilities," in *Can Institutions Have Responsibilities?*, ed. Erskine, Toni, Global Issues Series (Palgrave Macmillan, London, 2003), 218–37. p. 219; Also, Ronzoni, "The Global Order." ft. 31; Pablo Gilabert, "Justice and Beneficence," *Critical Review of International Social and Political Philosophy* 19, no. 5 (2016): 508–533. For a rare discussion of the duty see Laura Valentini, "The Natural Duty of Justice in Non-Ideal Circumstances: On the Moral Demands of Institution Building and Reform," *European Journal of Political Theory*, 2017.

Suppose we somehow agree that the global institutional arrangement should be subject to the requirements of, say, a global difference principle and that this necessitates the creation of a new authoritative global economic institution that will tax and redistribute accordingly[13]. Is it the case that all that is left to do is to create such an institution? In other words, is the duty to create such an institution indeed so self-evident that philosophers need not bother with examining it?

Judged by the present state of the global justice debate, some might think so. In my view, this is mistaken. For global institutional reforms raise difficult practical and conceptual problems. At a practical level, the reforms necessitate coordinated actions. However, it is not clear how coordination can take place given that there are multiple morally equivalent ways to reform the institutions but there is no global authority to single out one of them. This takes us to a conceptual point. Those global justice proponents who advocate for global institutional reforms agree that authoritative institutions play an essential role in singling out one coordination point and securing compliance with it. If so, how can we solve coordination problems raised by global institutional reforms in the absence of a global authority? This point is surprisingly missed by global justice proponents[14]. Namely, cosmopolitans have approached the question of the relation between authority and justice as predominantly concerning the scope of duties of justice: whether or not they can exist in the absence of global authority. The problem of authority, nonetheless, is not limited to the question of the existence of duties of justice but also concerns the very possibility of

[13] For an early defense of this view see Beitz, *Political Theory and International Relations*.

[14] For a rare treatment of the problem see Valentini, "The Natural Duty of Justice in Non-Ideal Circumstances."

global reforms[15]. Even if we accept that certain duties of justice have a global scope, how can agents comply with them?[16] Given that there is no global authority to coordinate actions for global institutional reforms, it appears that individual states have discretion to decide how to comply. But do we really want to say that all those remarkable global justice projects depend on such an indeterminate duty[17]?

[15] The problem finds its most forceful formulation in Nagel's and Garcia's discussions of duties of justice; Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33, no. 2 (2005): 113–47; Saladin Meckled-Garcia, "On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency," *Journal of Political Philosophy* 16, no. 3 (September 1, 2008): 245–71; Saladin Meckled-Garcia, "Is There Really a 'Global Human Rights Deficit?' Consequentialist Liability and Cosmopolitan Alternatives," in *Cosmopolitanism versus Non-Cosmopolitanism: Critiques, Defenses, Reconceptualizations*, ed. Gillian Brock (Oxford University Press, 2013). I will deal with the objections more thoroughly later.

[16] One can blame the ongoing methodological debate for making global justice proponents blind for the problem of compliance. Namely, the question of compliance with moral principles has been taken as a dividing line between the so called ideal and non-ideal theory. (For the famous distinction see Rawls, *A Theory of Justice*. p. 9; 245 – 6; 351.) Roughly speaking, ideal theories assume full compliance with the principles they defend, whereas non ideal theories suppose to tell us how we should act under the conditions of noncompliance. In this sense, the question of the compliance with moral principles is subordinated to the question of identifying such principles in the first place. For instance, Rawls is explicit that ideal theory has a logical priority in our normative reasoning. See Rawls, *A Theory of Justice*. p. 9. While such argumentative strategy might be justified with regard to identifying higher order moral principles, it does so at the expense of misreading what the problem of compliance is about. For the problem of compliance has a force on its own, whether or not we connect it to the identification of principles of justice. To make it clearer, there are two ways in which the problem of compliance can be assessed. One way is to use it as a background assumption for identifying principles of justice. Another way to think of the problem of compliance is to connect it to the question of authority and its role in securing compliance. I take it that the two approaches are independent. For the problem of authority is not limited to dealing with noncompliance but it questions the very possibility of compliance with desirable moral principles. Put it bluntly, if there is no authority to secure compliance, it might be hard to see how any agent would comply, whether or not she would want to do so. The dissertation will largely follow this approach, while ignoring methodological debates. For the methodological debate see, for instance, Amartya Sen, "What Do We Want From a Theory of Justice?," *Journal of Philosophy* 103, no. 5 (2006): 215–238; Gopal Sreenivasan, "Health and Justice in Our Non-Ideal World," *Politics, Philosophy & Economics* 6, no. 2 (June 1, 2007): 218–36; Adam Swift, "The Value of Philosophy in Nonideal Circumstances," *Social Theory and Practice* 34, no. 3 (2008): 363–387; Zofia Stemplowska, "What's Ideal About Ideal Theory?," *Social Theory and Practice* 34, no. 3 (2008): 319–340; Ingrid Robeyns, "Ideal Theory in Theory and Practice," *Social Theory and Practice* 34, no. 3 (2008): 341–362; A. John Simmons, "Ideal and Nonideal Theory," *Philosophy and Public Affairs* 38, no. 1 (2010): 5–36; Laura Valentini, "Ideal Vs. Non-Ideal Theory: A Conceptual Map," *Philosophy Compass* 7, no. 9 (2012): 654–664.

[17] One can even say that cosmopolitans are preoccupied with concerns of justice, while ignoring the problem of authority. Perhaps this is true of political philosophy in general. Namely, many philosophers seem to treat the problem of justice as theoretically prior to the problem of authority. Yet, as Green argues, the solution to the problem of justice does not imply the solution of the problem of its authoritative imposition. In Leslie Green, *The Authority of the State*, First Edition (Oxford Oxfordshire : New York: Oxford University Press, 1988). p. 6

The state's duty is indeterminate only on the supposition that authoritative institutions are necessary to secure coordination among different agents. But we do not have to accept such a view for it is both practically and conceptually possible that there are other ways to solve coordination problems. More generally, the dissertation will show that once we turn our attention to the duty to create just institutions, many established philosophical concepts, such as the state, institutions, justice, legitimacy, distribution of power among states will be turned upside down. The whole point of such examination is not to engage in an enjoyable intellectual exercise, though this is partly true, but to address urgent practical questions.

1.2. The Summary of the Argument

The dissertation consists of seven chapters. In chapter 2, I start the discussion by examining in what sense individuals and states can bear the duty to create just institutions. I argue that cosmopolitans have to be committed to the view that the duty is shared among everyone by virtue of being members of humanity. This does not, however, imply that everyone should act collectively. We should not think of the duty as giving reasons to individuals to act in specific ways; instead, the duty is about authorizing other types of agents to act on our behalf. Since under the present conditions states are the only agents that can be authorized in this way, we should take them as direct bearers of the duty to create a just world order. I further argue that states can bear the duty on different grounds: as being derived either from universal obligations owed to everyone or from associative ones that citizens owe one another. Therefore, irrespective of different normative premises, certain statist and cosmopolitan views reach a similar conclusion – that states are the main bearers of the duty to create a just world order. This agreement makes a case for the

state's duty even more compelling. The dissertation then moves to discuss the problem of compliance with the duty.

In Chapter 3, I turn to the alleged problem of the duty's indeterminacy. Namely, it might appear that the duty is an indeterminate moral principle since there are several morally equivalent ways to comply with it. Given that there is no global authority to coordinate actions for global institutional reforms, it appears that individual states have discretion to decide how to comply. The duty so understood, however, generates a threefold problem for those global justice accounts that promote global reforms. I define the problems as the stringency objection, the assurance objection, and the paradox of natural duties of justice. The stringency objection holds that indeterminate duties cannot be duties of justice. The assurance objection claims that in the absence of a global authority to assure compliance with obligations, states tend to follow their self-interest only and mostly struggle for power rather than cooperate. Finally, by upholding the duty to create just institutions, the reformist view faces a risk of running into paradox. If institutionalization is essential to discharging at least some of our moral obligations, how can states comply with their duty to create a just world order? The claim is paradoxical since it suggests that agents both can and cannot act upon indeterminate obligations. Hence, the paradox challenges the very foundations of the reformist view. The chapter argues that we can dismiss the stringency objection since some indeterminate duties can be duties of justice. The assurance objection and the paradox, however, are not easy to dismiss for both concern the fundamental premise of the reformist view: that authoritative institutions are necessary to solve coordination problems. Therefore, to make its claims coherent, and to offer practical guidance, the reformist view should explore the possibility of nonauthoritative coordination.

The fourth chapter starts making a case for the view that authoritative institutions are not necessary to resolve coordination problems. It takes what I call an explanatory approach: it aims to explain possible ways in which coordination problems can be resolved in the absence of authority. To do so, the chapter revisits the debate about how individuals could have left the state of nature and created a government. By building on the works of Hume and Lewis, I argue that the government could have been created through a gradual emergence of conventions, including what Hampton called a governing convention. I identify three necessary conditions for the convention to emerge: a conditional preference to conform, the existence of salient options, and the limited number of coordination options. The significance of conventions is that it can shed new light on the way individuals behave and coordinate their actions. Instead of consenting to existing coordinating equilibriums, individuals often behave habitually. The chapter then argues that just as individuals could have coordinated by conventions in the state of nature, so states can coordinate by conventions globally. Moreover, I argue that international customary law is a global governing convention. It is the global governing convention since it defines how rules binding all states are to be made. This gives us a sufficient reason to reject the dichotomous view about the possible structure of the world order as either anarchy or centralized authority, and acknowledge the relevance of the intermediary stages.

Nevertheless, to say that a convention is in place and that states tend to follow it says nothing about its normative force. I address this question in chapter five. I propose that, following the Kantian approach, conventions can be normative in two senses: internally and externally. While the internal normativity of conventions, i.e. the fact that they prescribe rules and roles, is not controversial, the external one appears to be so since it is not clear what external evaluative criteria apply to conventions: justice or legitimacy. The two are usually associated with public

institutions, so it is not clear in what sense if any, they can apply to practices too. I argue that conventions are important for demands of justice as long as they enable compliance with it. Not all conventions, however, do so. I put forward the principle of salience to identify those practices that play such a role. This shows that the state's duty to create a just world order is not indeterminate, but its content is determined by salient practices. Consequently, the current coordination problems that arise among states should not be seen as a normal consequence of their rational and self-interested behavior in the absence of a global authority; instead, coordination problems arise because states fail to use coordinating mechanisms. By doing so, they effectively violate their duty to create a just world order. The major implication is that we should replace the Hobbesian framework for thinking about the nature of states as well as how they relate to one another by the Humean one. Thus, instead of insisting on states' consent and necessity of a centralized authority to coordinate actions, we should pay more attention to the habitual behavior of states as well as the role conventions play in solving coordination problems among them. The more general conclusion is that authoritative institutions, all else being equal, are not necessary to coordinate actions of states since conventions can play such a role too. This suffices to reject the assurance objection, and also dissolve the paradox of natural duties of justice. It follows that the reformist view can coherently advocate the global institutional reforms. Conventions' importance notwithstanding, it does not undermine the essential role public institutions play in our practical reasoning. Conventions are valuable only to the extent they enable the emergence of such institutions at a global level.

In chapter six I critically examine one controversial empirical case of the salient practice: when the practice is initiated by a single state. If it can be shown that states do have reasons to join a coordinating scheme initiated even by one state, then it is easier to argue for the less problematic

cases of coordination. What makes coordination by one state problematic is that such coordination takes place against the background of unequal distribution of power among states. Global justice proponents are wary of such distribution of power and many claim that it should be more equal for all sorts of reasons. In the chapter, I analyze the notion of unequal distribution of power among states and attempt to identify what makes it morally troublesome. I argue that the distribution is not unjust in and of itself, but its injustice results from the ways in which states use their power. Thus, the way to deal with unequal distribution of power is not to attempt to equalize the power among states but to further develop the principle of salience which can constrain the behavior of the most powerful states. To make my case, I focus on a specific constellation of power in international relations – what has been known as unipolarity. Unipolarity is informative for the problem of global institutional reforms since many international institutions we have today have been created under such distribution of power.

In the last chapter, I summarize the main findings of the thesis and also highlight implications.

II Whose Duty?

Different accounts of global justice agree in that the moral obligations we owe one another, such as a duty not to harm others[18] or to help them in meeting their basic needs, cannot be discharged

[18] Pogge famously argues that citizens of affluent countries harm distant others by participating in or benefitting from unjust institutions. By doing so, they violate their fundamental duty not to harm others. In Pogge, *World Poverty and*

under the present global institutional arrangement[19]. For this reason, we have duties to either reform existing institutions or to create new ones that would enable us to comply with our fundamental moral obligations globally[20]. I will subsume such views under a general approach which I will simply call *the reformist view*.

Despite playing a central role in global justice arguments, the duty to create just institutions remains surprisingly under-analyzed. I will start the discussion of the duty by attempting to identify the *types* of duty bearers. The natural candidates are individuals and states since, at the moment, citizenship link between the two is the only available mechanism for institutional reforms[21]. Citizens, arguably, can affect their state institutions through various channels of political participation, including elections. Their representatives, in turn, can affect the structure of the global order by participating in the working of transnational and international institutions. The existence of reforming mechanisms notwithstanding, it is far from clear how individuals and states can be bearers of the duty to reform or create just *global* institutions. For it is hard to claim that

Human Rights; For a similar view see Ashford, Elizabeth, "Severe Poverty as a Systemic Human Rights Violation," in *Cosmopolitanism versus Non-Cosmopolitanism: Critiques, Defenses, Reconceptualizations*, ed. Gillian, Brock (Oxford University Press, 2013); Recently, it has been argued that the more accurate definition of individual responsibility for global injustice is in terms of enabling harm, rather than causing it. For the argument see Christian Barry and Gerhard Øverland, *Responding to Global Poverty: Harm, Responsibility, and Agency* (Cambridge University Press, 2016).

[19] In some views, persons have the right that their fundamental interests be protected, which correlate with duties of others to secure it. When duty bearers are not able to directly secure rights of others, they have indirect duties to create institutions that will enable them to do so. For the arguments along these lines see Henry Shue, "Mediating Duties," *Ethics* 98, no. 4 (July 1, 1988): 687–704; Robert E. Goodin, "Demandingness as a Virtue," *The Journal of Ethics* 13, no. 1 (January 1, 2009): 1–13; Jaakko Kuosmanen, "Perfecting Imperfect Duties: The Institutionalisation of a Universal Right to Asylum," *Journal of Political Philosophy* 21, no. 1 (2013): 24–43.

[20] Valentini helpfully defines the duty to create just institutions as "the normative bridge" between the duties of distributive justice that apply to institutions and the responsibilities of individuals. In Valentini, "The Natural Duty of Justice in Non-Ideal Circumstances." p. 17

[21] This does not exclude non state agents such as international institutions, nongovernmental organizations, or corporations altogether. We can think of them as, to use O'Neill's term, "the secondary" duty bearers. But, states are the primary duty bearers for they are the only ones that have authority to define what morality demands of the secondary duty bearers. In Onora O'Neill, "Agents of Justice," *Metaphilosophy* 32, no. 1/2 (January 2001): 180.

institutions entirely depend on the aggregation of individual choices. Not only do institutions partly shape preferences of those living under them, but they are also collective agents in their own right. While individuals can surely bring an institutional change collectively, the nature of such collective obligation remains unclear[22]. Things, however, do not look much clearer when we turn to states as agents. If anything, some might be skeptical about assigning the primary duty for global justice to anti-cosmopolitan institutions[23]. One might think that it is even illegitimate for states to pursue cosmopolitan ends[24]. Furthermore, one can doubt that states have capacities to create global institutions. For instance, legally speaking, states are the primary bearers of promoting human rights; but, at the same time, they are the worst human rights violators[25]. In light of these considerations, it seems that it has to be shown, rather than presupposed that individuals and states can bear the duty to create just institutions. The chapter attempts to make this idea more intelligible.

The chapter is divided into two parts. In the first part, I assess the plausibility of taking individuals as the bearers of the duty to create just institutions. I start by outlining what I take to be the standard view of the duty. In this respect, I make two claims. First, I argue that the duty is shared among everyone by virtue of being members of humanity. Second, the duty is essentially about authorizing other agents to act on our behalf rather than giving reasons for direct actions. In the second part, I attempt to make a case for taking states as the primary duty bearer. I start by

[22] Recall that the imperviousness to change was one of the reasons why Rawls considered public institutions the primary subject of justice. For a good discussion see Samuel Scheffler, "Is the Basic Structure Basic?," in *The Egalitarian Conscience: Essays in Honour of G. A. Cohen.*, by Christine Sypnowich (Oxford University Press, 2006), 103–29.

[23] For such skepticism see for instance, Onora O'Neill, "Global Justice: Whose Obligations?," in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen K. Chatterjee (Cambridge: Cambridge University Press, 2004), 242–59. p. 243

[24] Luke Ulaş, "Transforming (but Not Transcending) the State System? On Statist Cosmopolitanism," *Critical Review of International Social and Political Philosophy* 20, no. 6 (November 2, 2017): 657–76.

[25] See O'Neill, "Agents of Justice."

showing that states are moral agents which can bear various moral duties, including the duty to create a just world order. Second, I also argue that states' duty can be grounded in either universal or associative obligations of their citizens. Irrespective of different normative premises, certain statist, and cosmopolitan views reach the same conclusion: that states have a duty to reform the current world order. This agreement makes a case for the state's duty even more compelling.

2.1. Individuals

2.1.1. Natural Duties of Justice

Even though there are no explicit characterizations of the duty to create just institutions, many tend to follow the Rawlsian account of natural duties of justice as applying to individuals' conduct. Perhaps the best way to clarify the types of duty bearers, then, is to start from these arguments. The following discussion is somewhat speculative since neither Rawls nor those subscribing to the reformist view discussed the duty in detail.

Let me start from Rawls's definition of the duty. Natural duties of justice are principles regulating individuals' conduct that in Rawls's view, would be chosen in the original position immediately after the principles of justice for institutions are selected[26]. In his often cited words:

[26] Rawls argued that the choice of natural duties of justice in the original position is pre-determined by the fact that the principles of justice for institutions have already been chosen. For a conception of justice to be coherent, principles for individuals have to be coherent with the principles for institutions. The reason for this is that the principles of justice affect an individual public conduct: when individuals act either as public officials, or as citizens. This, in his view, rules out utilitarian principles for an individual conduct. Rawls, *A Theory of Justice*. p. 114 – 120.

> "[f]rom the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with a little cost to ourselves"[27].

Before I proceed to explain the duty in more detail, two important clarifications are in order. The first clarification is terminological. Rawls differentiated between the terms "duty" and "obligation" in order to identify different sources of moral demands[28]. In his view, obligations arise from voluntary acts, whereas duties are incumbent upon individuals[29]. Individuals have duties toward one another irrespective of what they do, simply by virtue of being rational and autonomous agents. In Rawls's words, one cannot promise not to kill. It is plausible to attempt to terminologically differentiate between moral demands that are involuntary and those that arise from our voluntary acts, but the terms "obligation" and "duty" do not seem adequate for that purpose. Hence, I will also use "duties" and "obligations" interchangeably[30].

[27] Ibid., p. 334; Later on, he has reformulated as follows: "We have a natural duty *not to oppose* the establishment of just and efficient institutions (when they do not yet exist)", in John Rawls, "The Justification of Civil Disobedience," in *Arguing About Law*, ed. Aileen Kavanagh and John Oberdiek (London ; New York: Routledge, 2008), 244–53, my italic. He did not, however, explain the reformulation of the demand *to assist*, as a demand to act, to *not to oppose* as a demand to refrain.

[28] Rawls, *A Theory of Justice*; He adopted the distinction from Brandt in R. B. Brandt, "The Concepts of Obligation and Duty," *Mind* 73, no. 291 (1964): 374–93. Brandt argued that "obligation" is used in the context of promise, agreement and acceptance of benefits, whereas "duty" is associated with occupancy of an office. Rawls, more plausibly, extended the notion of "obligation" to the latter as well; but he was following Brandt in that duties are incumbent, whereas obligations are self-assumed.

[29] Some global justice proponents also endorse the distinction. For instance, Pogge takes duties as more stringent than obligations. He differentiates between positive obligations as generated by a violation of negative duties, and positive duties that are correlated with rights. Positive obligations, Pogge thinks, are not as controversial as positive duties, and as such are more acceptable to those subscribing to different moral theories. Thomas Pogge, "Severe Poverty as a Violation of Negative Duties," *Ethics & International Affairs (Wiley-Blackwell)* 19, no. 1 (April 2005): 55–83.

[30] This usage is in accordance with the definition of duty given by the Oxford English dictionary which defines "duty" as "legal or moral obligation." Available at "Definition of Duty in English," Oxford Dictionaries | English, accessed March 30, 2018, https://en.oxforddictionaries.com/definition/duty.

The second clarification concerns the philosophical foundations of Rawls's theory of justice. Rawls owes much of his theory to Kant's moral and political philosophy. Clarifying the Kantian foundations of Rawls's theory is beyond the present discussion. What we are interested in here instead is Kant's account of the duty to enter into a civil condition. Contrary to Rawls, Kant was more explicit in this respect. Hence, a brief detour to his account of the duty may provide useful insights for the present discussion. In Kant's view, the duty to enter a civil condition is justified by a particular role public authority plays with regard to enabling what Kant called "rightful interaction" between persons. As a small reminder, the rightful interaction is the interaction that enables a plurality of persons to exercise their right to freedom consistently. The rightful interaction is not possible in the state of nature since there is no public authority to secure it. In the state of nature, individuals are subject to one another's arbitrary will. It cannot be determined what is right that is valid for everyone since no one has an obligation to follow private judgments of others. In light of such disagreement, Kant says, everyone would have a right to do what seems right to her to do, which includes private enforcement of own judgments[31]. For this reason, individuals have a duty to enter a civil condition and create a public authority that would determine, secure, and enforce rights through public judgments backed up by public enforcement[32].

[31] Byrd and Hruska raise a good question: how can such disagreement about rights emerge if everyone is, following Kant, endowed with reason? The problem is that individuals might recognize Categorical Imperative, but the imperative is too abstract to yield principles to resolve concrete disputes such as those over land. In B. Sharon Byrd and Joachim Hruschka, "From the State of Nature to the Juridical State of States," *Law and Philosophy* 27, no. 6 (November 1, 2008): 599–641. Ft. 38

[32] In Immanuel Kant, "The Metaphysics of Morals," in *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1999). p. 450 - 460

We can summarize the three major points that will be useful for the following discussion. First, Kant justifies the duty to create a public authority on non-consequentialist grounds – by the determining and adjudicating role public authority plays regarding demands of justice. Second, the duty to create institutions is enforceable in a sense that those living in proximity in the state of nature can rightfully force one another to enter a civil condition. This has two important implications. First, authoritative enforcement of duties is not necessary for certain duties are enforceable in other ways. Second, consent to the creation of public authority is not necessary; instead, individuals have the duty to create it, and such a duty is a duty of justice[33]. Third, Kant made a parallel between rights and duties of individuals and those of states. Just as individuals have a duty to enter a civil condition, so do states too[34]. Let me return to Rawls's account now. I start by describing the first part of the duty, i.e. the duty to support just institutions.

The Duty to Support Just Institutions

[33] For an instructive discussion of the role of coercion in Kant's account of freedom see Arthur Ripstein, *Force and Freedom* (Harvard University Press, 2009).

[34] There has been a great deal of confusion about what kind of a global order Kant favors. In the Perpetual Peace he did favor a peaceful voluntary association ("foedus pacificum") among the states that can be dissolved anytime. Kant writes: "[W]hile natural right allows us to say of men living in a lawless condition that they ought to abandon it, the right of nations does not allow us to say the same for states. For as states, they already have a lawful internal constitution, and have thus outgrown the coercive right of others to subject them to a wider legal constitution in accordance with their conception of right." In Immanuel Kant, "Toward Perpetual Peace: A Philosophical Project," in *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1999), 311–52, p. 104; Yet, as Byrd and Hruska convincingly argue, Kant changed his mind in the Doctrine of Right (1797). There he made a stronger claim: that states should enter a civil condition of nation states that would have juridical and enforcement powers similar to the one that holds between citizens. The reason for this is that property would remain provisional until the contract extends to the whole mankind. In Byrd and Hruschka, "From the State of Nature to the Juridical State of States"; Similarly, Habermas argues that it is not clear how to guarantee a permanent alliance among sovereign states without coercive powers. For the preservation of full sovereign powers allows states to dissolve the alliance any time, which makes it unstable. In Jürgen Habermas, "Kant's Idea of Perpetual Peace: At Two Hundred Years' Historical Remove," in *The Inclusion of the Other: Studies in Political Theory*, ed. Ciaran P. Cronin and Pablo De Greiff, Reprint edition (Cambridge: The MIT Press, 2000), 165–202. p. 170. Whether or not Kant indeed changed his mind, the logic of his argument confirms the parallelism between individuals and states. I leave it here.

In *A Theory of Justice*, Rawls argued that the natural duty of justice can explain the moral basis of a widespread belief that we are bound by political institutions. Similarly to Kant, he also believed that the natural duty of justice, as an involuntary obligation, provides a moral basis for obeying political authority[35]. Those that take up public offices or significantly benefit from an institutional arrangement have a political obligation by virtue of their voluntary acts. However, political obligation so understood cannot explain a general obligation that everyone has toward political institutions for not everyone does these voluntary acts. The distinction is based on his differentiating between duties and obligations that I explained earlier.

Rawls's account of political obligation has generated the intense debate. While I cannot go into the debate's details here, let me briefly explain one aspect of it that is important for the present discussion. The aspect concerns the tension between the universal nature of the natural duty of justice (i.e. that fact that we have it by virtue of our humanity) and attempts to ground political obligation to particular states in the duty. Simmons famously objected that the natural duty, which is owed to everyone, cannot ground political obligation to particular political authority, but at most the obedience to any just institution. In his view, an account of political obligation must meet the particularity requirement in a sense that it must show why individuals have a duty to support particular institutions. The quality of institutions does not suffice to ground political obligation to a particular institution. The only way, according to Simmons, to particularize universal duty is to consent to a particular institution[36].

[35] Rawls, *A Theory of Justice*. p. 112 - 114

[36] A. John Simmons, *Moral Principles and Political Obligations* (Princeton University Press, 1981). p. 153 He does say that the application of institutions might be practically rather than morally relevant, for we are more able to support those institutions that apply to us. p. 154 - 156

One way to answer Simmons's challenge is to argue that we need not take the duty to support just institutions as fundamental; instead, political obligation is grounded in a more fundamental duty which is a duty to treat others justly. We owe support to precisely those institutions without which people cannot be just toward one another, which under the present conditions, are states[37]. It follows that consent is not necessary to particularize the universal duty, for the duty can also be particularized by contingencies. We may also have duties toward other just institutions, such as not to interfere with their functioning, but they are different from institutions that we share with our fellow citizens. I cannot adequately evaluate the answer here. It suffices to say that given that the fundamental duty to treat others justly is universal, not any state enables compliance with it. For some states might aim to secure just treatment of fellow citizens, but also engage in unjust treatment of outsiders[38]. If states are to generate political obligation, they have to be compatible with the just treatment of everyone meaning that they have to meet certain conditions of external legitimacy too[39]. The point is relevant for thinking about the state's duty to create just world order. I will come back to this.

Klosko posed an alternative objection. In his view, the problem with grounding political obligation in the natural duty of justice is not universality of the latter, but its "naturality." The

[37] Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy and Public Affairs* 22, no. 1 (1993): 3–30; Zoltan Miklosi, "Compliance with Just Institutions," *Social Theory and Practice* 34, no. 2 (2008): 183–207; Kuosmanen, "Perfecting Imperfect Duties."

[38] Global egalitarians insist on a moral arbitrariness of nationality; for instance, Tan, *Justice without Borders*; Caney, *Justice Beyond Borders*. Following the argument's logic, one could say that even living in a state as a form of political organization is morally arbitrary in some sense. To identify disadvantages, we would have to use a counterfactual baseline, since in reality everyone lives in states as a form of political organization and consequently, we cannot say that some are advantaged over others just in this respect.

[39] For the view that states have to meet external conditions of legitimacy see Janos Kis, "The Unity of Mankind and the Plurality of States," in *The Paradoxes of Unintended Consequences*, ed. Ralf Dahrendorf and George Soros (Central European University Press, 2000).

duties of justice, so Klosko argues, as natural, cannot be strong moral principle, for otherwise it would not be adopted in the original position. The reason for this is that we tend to think that it is institutions and other types of collectives that should address large-scale problems, rather than individuals. Hence, the only plausible account of the duty is, contrary to what Rawls thought, that it is as qualified as any other natural duty in a sense that the duty cannot entail excessive costs for individuals. As such, the natural duty to support just institutions is a weak moral requirement. The weak natural duty, Klosko continues, cannot serve as the ground of political obligation since the latter is a demanding moral requirement[40]. If the natural duty of justice is too weak to ground political obligation, what about a moral requirement to create new institutions? I will come back to this.

The Duty to Assist in Creating Just Institutions

As opposed to the duty to support just institutions, the second part of the natural duty of justice, i.e. the duty to create just institutions, has hardly ever been discussed[41]. Here I will try to remedy for this by drawing attention to Rawls's characterization of its features: that they are fundamental, shared, and imperfect. I will briefly examine each in turn and explain how the reformist view

[40] George Klosko, "Political Obligation and the Natural Duties of Justice," *Philosophy & Public Affairs* 23, no. 3 (July 1, 1994): 251–70. In his view, political obligation should be grounded in the principle of fairness for we benefit from a state's providing essential public goods, rather than in moral requirements (weakly) binding all human beings.

[41] Given that Rawls has assumed that societies are self sufficient and certain institutions are in place, it is less surprising that he did not give more thought to the duty to create just institutions. For the same reason, it is surprising that the reformist view, given the absence of global institutions, has not attempted so far to make the duty more intelligible.

departs from the account. The main aim of the section is to clarify how the duty to create just institutions is understood and to show how such understanding runs into certain problems.

a) Fundamental

First, Rawls argued that the natural duty of justice is fundamental as compared to other moral demands. Namely, the duty is not derived from the more fundamental obligations but stands on its own. Importantly, it is fundamental from the standpoint of justice as fairness, i.e. the part of morality that treats institutions as the primary subject of justice. If we take institutions as the primary subject of justice, then individuals, in order to act justly, ought to comply with just institutions or create them if they are missing. We could see earlier how grounding political obligation in the natural duty generates problems, and also that a possible way out is to argue that political obligation is grounded in another, more fundamental duty. Global justice proponents mostly pursue this argumentative strategy. In their view, the duty to create just institutions is derived from the more fundamental obligations[42]. For instance, Buchanan argues that a natural duty of justice, which he defines as the duty to secure access to just institutions, is grounded in the principle of basic moral equality. Treating people with equal respect, he holds, requires ensuring

[42] It might appear that formulating the relation between the natural duty of justice and more fundamental obligations as the relation of derivation conflates two kinds of moral demands, for the former are "responsibilities of justice", whereas the latter are "moral responsibility". One might think that the distinction is important for it yields different moral demands for individual agents: while the former prioritizes reforming the existing institutions, the latter suggests changing one's behavior within the existing structures. For the distinction see Barry, "Global Justice." However, it is precisely the purpose of the natural duties of justice to enable such compliance – to create institutions that will help us comply with our fundamental obligations globally. In this sense, the natural duties of justice seem to have a mixed nature: they are ethical obligations by virtue of applying to individuals' conduct, and also requirements of justice, by virtue of directing individuals' behavior toward institutional reforms. Indeed, this is how Pogge defines it in his seminal essay, Pogge, "Cosmopolitanism and Sovereignty."

that they are treated justly, and for this we need institutions[43]. Similarly, Shue argues that in situations when individuals cannot directly secure rights of others, they have an indirect duty to create institutions that will enable them to do so[44]. Therefore, the reformist view endorses the duty to create just institutions only to the extent that institutions are necessary for discharging our more fundamental duties.

b) Shared

According to Rawls, parties in the original position would adopt the natural duty of justice to regulate *individuals'* conduct. Still, it is not clear in what sense the duty applies to individuals, since its formulation includes doing one's "share in just institutions" or "assisting in the establishment of just arrangements."[45] The references to "shares" and "assisting" suggest that the duty is held collectively with others.[46] The reformist view accepts that the duty is a shared obligation in the sense that individuals are to assist in a collective endeavor of reforming the existing institutions or creating new ones. For instance, Pogge argues that citizens of affluent countries have a collective responsibility to structure the international system in a way that it secures access to objects of human rights for everyone, in particular for the global poor[47].

[43]He calls it the "Robust Natural Duty of Justice". For the account see Buchanan, *Justice, Legitimacy, and Self-Determination*. 85 – 87.

[44] Shue, "Mediating Duties."

[45] Rawls, *A Theory of Justice*. p. 334

[46] Thomas W. Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989). p. 26 – 27

[47] Similarly, Young argues that all those that participate in sustaining structural injustice share a political responsibility to address it through collective action. As opposed to Pogge, she does not argue that individuals are liable; instead, she asserts that they have what she calls "forward-looking political responsibility" to address systemic injustice. The reason for this is that the contribution to systemic injustice is often by habitual, non-reflective individual actions. Since no intention is involved, individuals are not blameworthy. In Iris Marion Young, "Responsibility and Global Justice:

Yet, who are those others? What is a relevant collective? In this regard, there is a significant difference between the first and the second part of the duty. As opposed to the duty to support just institutions whose scope, arguably, is defined by the existing institutions it refers to; the scope of the duty to assist in creating just institutions is unclear. As a natural duty, it is owed to everyone, but it is less clear what it is that is owed. Is it about reforming domestic or international institutions? For instance, Rawls thought that the object of the duty are domestic institutions. In *The Law of Peoples*, he argued that decent societies should help burdened ones to establish functioning domestic institutions in order to become self-determining[48]. Global justice proponents, by contrast, focus more on international institutions. For instance, Pogge argues that there is a need to reform the existing harmful international order as a whole[49]. Similarly, Buchanan argues that everyone has a duty to secure that everyone else has access to just institutions broadly understood[50]. I will come back to this shortly.

c) Imperfect

A Social Connection Model," *Social Philosophy and Policy* 23, no. 1 (2006): 102–130; Young, Iris Marion, *Responsibility for Justice*, Oxford Political Philosophy (Oxford, New York: Oxford University Press, 2011).

[48] In Rawls, *The Law of Peoples*.

[49] This follows from his rejection of what he calls "an explanatory nationalism": the view that global poverty can solely be attributed to malfunctioning domestic institutions. Importantly, he thinks that this does not entail the creation of shared institutions with those harmed. Indeed, he argues that his minimal standard of justice "does not require us to *create* an institutional order with people whose human rights are unfulfilled, even when we can foresee that its creation would lead to the fulfillment of their human rights." In Pogge, "Severe Poverty as a Violation of Negative Duties" p. 60 (his emphasis) in ft 7. However, if obligation not to harm others is universal and if its discharging necessitates an institutional specification, then it seems to follow that some shared global institutions are necessary. For a similar view see Ashford, Elizabeth, "Severe Poverty as a Systemic Human Rights Violation."

[50] Buchanan, *Justice, Legitimacy, and Self-Determination*.

Finally, the duty's content is indeterminate in three respects[51]. First, even if everyone has a shared obligation to undertake institutional reforms, it is not clear how the duty is allocated among particular individual agents. The second aspect of indeterminacy concerns the type of actions to take. Namely, there are multiple morally equivalent ways in which individuals can honor the duty: by questioning their moral and political beliefs in light of global interdependence and voting accordingly, supporting NGOs, disobeying unjust laws, or protesting[52]. Importantly, the compliance with the duty is not discretionary; what is discretionary are the ways to comply with it. Third, it is far from apparent how much costs individuals can be required to bear[53]. For instance, Rawls argued that costs should be "little," but never said what these costs are and why they have to be "little" (as opposed to doing "our share in just institutions")[54]. Importantly, Rawls argued that despite their indeterminate content, these are, as mentioned above, the most important natural duties from the standpoint of justice as fairness[55].

[51] Throughout the dissertation, I am using "imperfect" and "indeterminate" interchangeably. The main reason why I am introducing the term "indeterminate" is that it seems to better capture distinctive features of such duties. Even more, the term "imperfect" is already loaded with so many meanings, many of which can be traced back to Kant's particular view, that it can easily cause confusions. Still, for the sake of engaging with the existing discussions, I do not drop the term "imperfect" altogether, but I think that philosophers should do so. I will come back to this in chapter 3.

[52] Gilabert argues that even the duty to support just institutions is imperfect since it can be discharged in different ways, such as by voting, joining a political party, or participating in a public deliberation. Gilabert, "Justice and Beneficence."

[53] Valentini has recently argued that under conditions of moderate non-compliance, agents are not required to do more than their fair share of institutional reforms. Under conditions of the greater non compliance, however, individuals bear no duty to reform institutions. Instead, they have a duty of beneficence. In Valentini, "The Natural Duty of Justice in Non-Ideal Circumstances."

[54] Buchanan argues that it is difficult to identify what the costs are in the absence of institutions; all that we can say is that they should not include sacrifice of our most important interests. In Buchanan, *Justice, Legitimacy, and Self-Determination*. p. 428

[55] Rawls has explicitly rejected Kant's prioritizing of perfect over imperfect duties since, in Rawls's view, it is not clear that perfect obligations, such as obligation of fidelity, always override imperfect ones, such as obligation of beneficence. Moreover, perfect obligations may conflict, and it is not clear which takes priority. In Rawls, *A Theory of Justice*. p. 341

In sum, Rawls defined the natural duty of justice as fundamental, shared, and imperfect. The reformist view mostly follows the definition. By supporting the universal scope of the duty, nonetheless, the reformist view seems to run into a problem: if everyone bears the duty by virtue of common humanity, does it imply that all of us should act collectively? I address this in the next section.

2.1.2. Humanity as the Duty Bearer

This section will carefully examine the claim that the duty to create just institutions is shared. It is easy to see how the duty, given that it requires duty bearers to do something (i.e. bring just institutions about) can run into a problem of overload. The capacity considerations mandate that the duty must be shared with others for no individual can bear the duty to bring about institutions alone. However, who are those others and does this imply that they should act collectively?

There are two possible ways to think about the scope of those who share the duty to create just institutions. The first view is that the duty is shared among citizens of affluent countries. For instance, Pogge argues that they bear the duty to reform institutions by sustaining or benefitting from unjust institutions. In other words, the affluent violate their negative duty not to harm others by imposing unjust institutions, which generates their positive obligation to reform the institutions or even create new ones[56]. The second view is that the duty is shared among everyone as human

[56] For the distinction between duties and obligations see ft. 29

beings. For instance, Buchanan argues that everyone bears the duty to secure access to just institutions for everyone else[57]. Let me examine both in turn.

At first sight, it might appear intuitive that citizens of affluent countries share the duty to assist in creating just institutions. The reason for this is apparent: to be able to affect institutions, individuals have to have access to adequate procedures of decision making. By living in functioning democracies, citizens of affluent countries, arguably, have mechanisms to affect their governments and the global order in general[58]. Such mechanisms implicate them in harming the global poor, but can also enable them to stop the harm. The view, however, faces a twofold problem. First, it is unclear why the duty should be limited to citizens of affluent countries. If anything, the violation of the duty not to harm need not be the only ground of the duty to create just institutions. Moreover, citizens of less functioning or nondemocratic states can be duty bearers too[59]. To be sure, they have access to far fewer mechanisms to affect their governments as compared to those living in democratic countries. The lack of opportunity to affect decision-making, however, does not entail that only those having such opportunities should decide; instead, those more capable might have a duty to help those less capable to become able to assist in creating

[57] But he also says that the best way for individuals to discharge their natural duties of justice is to support those policies of their states that aim to secure justice for everyone. In Buchanan, *Justice, Legitimacy, and Self-Determination*. p. 428

[58] Pogge, *World Poverty and Human Rights*; Cf. Debra Satz, "What Do We Owe the Global Poor?," *Ethics & International Affairs (Wiley-Blackwell)* 19, no. 1 (April 2005): 47–54.

[59] The scope of duty bearers can be further expanded by reconsidering what kind of capacity is necessary to be considered an agent of global justice. For instance, Young argues that those harmed also bear certain responsibility for justice given that they have the strongest interest in change. In Young, "Responsibility and Global Justice"; Similarly, in his harsh critique of the Singer's solution, Kuper argues that poor are not moral patients, but moral agents. In Kuper Andrew, "More Than Charity: Cosmopolitan Alternatives to the 'Singer Solution,'" *Ethics & International Affairs* 16, no. 1 (August 30, 2006): 107–28; Furthermore, Deveaux argues that the moral agency of the poor stems from their capacity for moral concern and action in response to their own experience of poverty. In Monique Deveaux, "The Global Poor as Agents of Justice," *Journal of Moral Philosophy* 10, no. 4 (2013): 125–150.

just institutions[60]. This takes us to the second and more general problem with Pogge's view. If addressing global injustice necessitates reforming the global order, then it is implausible to say that it is citizens of the affluent countries that owe this to everyone else. For a global institutional arrangement affects everyone, so we cannot assign to members of a particular community to create it on behalf of everyone else[61]. From a cosmopolitan perspective, it is more plausible to think of the duty to create just global institutions as shared among everyone by virtue of being members of humanity as a whole. While state mechanisms might be, practically speaking, the best way for individuals to comply with their duty; they hold the duty together with everyone else, rather than with their fellow citizens only[62]. Does this imply that humanity is a duty bearer too?

Humanity or the international community is often invoked in public discourse as bearing a secondary duty with regard to protecting the rights of everyone. For instance, many think that humanity has a right to intervene in internal affairs of states in cases of serious human rights violations. This implies that rhetorically speaking, humanity is a duty bearer. But, this is ambiguous for it is hard to see how humanity, as a collection of individuals, can be an agent in any intelligible sense. Moreover, how can it bear a duty if it cannot act upon it? The question is too large to be addressed here in any meaningful sense. It suffices to say that in some views,

[60] Even more, we can think about individuals having not only a duty to help others to participate in reforms; but also of those others as being permitted to interfere in the developed countries in some sense (if they can). For instance, Waldron argues that it is legitimate to interfere with national institutions that administer "range limited" principles, i.e. those applying to a specific group of people, in order to promote a principle of a wider range that protects interests of everyone (e.g. a principle of global distribution). Waldron, "Special Ties and Natural Duties." Ft. 30

[61] For instance, Christiano argues that the way toward legitimate global order is to ensure that all states are democratic. In Christiano, "Democratic Legitimacy and International Institutions."

[62] This claim should be qualified for associative obligations among citizens are also global in some sense: they hold within all the existing societies. As Ronzoni argues, under the present unjust global conditions, citizens are not able to honor associative obligations they owe one another. Consequently, they bear a duty to create global institutions that will enable them to do so. Hence, the duty to create just institutions can be derived from associative obligations too. In Ronzoni, "The Global Order"; Ronzoni, "For (Some) Political and Institutional Cosmopolitanism, (Even If) Against Moral Cosmopolitanism."I will engage with her views in more details later.

unstructured collectives cannot bear obligations for they are not agents. It is only group agents, i.e. those with a clear decision-making structure that can bear obligations[63]. But, if humanity is not a group agent, perhaps its members can have a duty to act jointly? In some views, this faces problems too. Namely, individual members of humanity are not able to form a shared goal, and consequently, they are incapable of performing a joint action too[64]. Hence, critics hold that the international community cannot bear duties since it is not an agent, nor its members can bear joint duties since it is a too large unstructured group to act jointly. How can individuals then hold the universal shared obligation to create just institutions?

One way to go around the objection is to argue that agency is not necessary for holding obligations. For instance, Wringe differentiates between an addressee and a subject of obligations. Individual members of an unstructured collective are addressees, but they do not have an obligation to perform an action that only a collective can perform. Being an addressee of an obligation simply means that one can take a shared obligation as reasons for own individual actions[65]. Similarly, Bjorrnson argues that members of an unstructured collective can hold a shared obligation to do something that they do not have an individual obligation to do. The existence of a shared obligation gives a *prima facie* reason for individual members to contribute their part without requiring them to act together[66].

[63] The main difference between group agents and unstructured collectives is that a group agency supervenes on agencies of its individual members, but is epistemologically autonomous; on the other hand, the agency of unstructured collectives consists solely of agency of its individual members. For a seminal discussion Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford University Press, 2011).
[64] Anne Schwenkenbecher, "Joint Duties and Global Moral Obligations," *Ratio* 26, no. 3 (2013): 310–328.

[65] Bill Wringe, "Global Obligations and the Agency Objection," *Ratio* 23, no. 2 (2010): 217–31.
[66]Gunnar Björnsson, "Essentially Shared Obligations," *Midwest Studies in Philosophy* 38, no. 1 (2014): 103–120.

These arguments have significant implications for thinking about the duty to create just institutions. Cosmopolitans can hold that it is humanity as a whole that is the duty bearer, but this does not imply that everyone should act together[67]. Hence, taken together individuals have a duty to do what none of them individually would have an obligation to do – to create just global institutions[68]. They hold the obligation by virtue of being rational and autonomous agents[69]. Importantly, collectively held obligation does not imply that duty bearers should act together.

The view has another important implication. Duties are often taken as moral reasons indicating actions or prohibitions one is required to perform or to refrain from. While such understanding is plausible, it does not seem to fully grasp the nature of the concept of duty. Namely, when we say that duty is a moral reason for action, we usually refer to actions that a duty bearer should or should not take herself. Clearly, we want moral principles to be action-guiding. The duty, however, can also be about authorizing others to act. Recall Kant's account of the duty to enter a civil condition. The duty, in effect, implies that individuals should authorize a public authority to enable rightful interaction among them. This view can help us make the duty to assist in creating just institutions more intelligible. We should take the duty as an authorization of another agent to act on our behalf[70]. While the duty remains shared in a sense that authorization is a matter

[67] Although, there are some instances where members of humanity can act together, such as Earth Hour. "Homepage," Earth Hour, February 2, 2018, https://www.earthhour.org/homepage-0.

[68] Schwenkenbecher claims that individual members of an unstructured collective cannot bear a duty to create a group agent for it would imply that they individually have a duty to do what a future collective supposes to do. Such a duty would violate *ought implies can* principle. In Schwenkenbecher, "Joint Duties and Global Moral Obligations"; However, it is not clear that assigning individuals obligation to create an agent that can address a problem P implies that individuals have an obligation to address P themselves. For the argument see Holly Lawford-Smith, "The Feasibility OF Collectives' Actions," *Australasian Journal of Philosophy* 90, no. 3 (September 1, 2012): 453–67; Also, Björnsson, "Essentially Shared Obligations."

[69] Here I am assuming that there are such properties.

[70] Miller argues in a similar vein with regard to national duties: that citizens have collective duties which they discharge by authorizing states to act on their behalf. In David Miller, "Reasonable Partiality towards Compatriots," *Ethical Theory and Moral Practice* 8, no. 1/2 (2005): 63–81. ft 18

of collective decision, it does not necessitate individuals acting directly upon it[71]. This is significant for one more reason. Namely, if taken as reasons for action, the duty to create just institutions leaves discretion to individuals with regard to how to comply with it[72]. In this sense, one can say that it is a weak moral requirement. Still, if the argument about the duty as authorization is sound, then the duty need not be so weak after all. But, which agents are to be authorized? Under the present conditions, it is clear that we are talking about states. Indeed, the only chain of authorization that currently exists under the present conditions is the one between citizens and their states. However, how can states, as necessarily particularistic, bear duties regarding a global order? I attempt to answer the question in the remainder of the chapter.

Before doing so, let me briefly address an objection. One might say that if the duty to create just institutions is essentially about authorizing states to act on our behalf, and given that it is only citizens that can do so with regard to their states, how is it different from Pogge's account of the duty? In practical terms, there seems to be no difference since, as mentioned before, the citizenship link is the only existing chain of authorization. However, there is a significant difference in two respects. First, as I argued earlier, Pogge limits the duty to citizens of affluent countries since they violate their duty not to harm, whereas on my account duty bearers are all individuals by virtue of their common humanity. Second, and perhaps more importantly, while Pogge does not advocate

[71] This clearly hinges on what I mean by "direct" actions. For one can say that the act of authorization, such as for instance, voting is a direct action in some sense.

[72] For instance, Young argues that it is left to individual agents to judge where their actions would make the most significant contributions, and which injustices are the most urgent to address. She does not, however, argue that it is completely up to individual reasoning, for those participating in collective actions are permitted to try to affect one another by criticizing noncompliance, calling for accountability, asking for justification. Young, "Responsibility and Global Justice."

shared global institutions, it seems that cosmopolitans have to be committed to such a view. I leave it here since I am predominantly concerned with states as duty bearers.

2.2. States

So far, I attempted to clarify in what sense individuals can bear the duty to create just institutions. I argued that the duty to assist in creating just institutions is predominantly about authorizing other agents to act on our behalf, rather than giving reasons for direct actions. I also mentioned that given that global institutions can be created by states only, I will focus on states as duty bearers. However, how can states bear such obligations? It may seem that they are anti-cosmopolitan institutions; also, many of them lack adequate capacities. Here I will examine the very possibility of the state's bearing the duty to create just global institutions while leaving further problems it gives rise to for the rest of the dissertation. I start by considering in what sense states are moral agents. I then move to develop a cosmopolitan account of the state's duty to create a just world order. I further explain in what sense statists can accept a version of the duty too. Such an agreement makes a case for the state's duty compelling.

2.2.1. The State as a Moral Agent

Let me start by defining what I mean by the "state." Article 1 of *the Montevideo Convention on the Rights and Duties of States* stipulates that for a state to count as a legal person, it has to have a permanent population; a defined territory; a government; and the capacity to enter into relations

with other states[73]. All of this is about the legal personality of states. But, is the state similar to natural persons too? More and more voices argue not only that certain types of collectives are capable of agency, but that they are also moral agents. A group agent is not a mere collection of individuals that changes its identity with the change in membership. Instead, some groups are organized in a way that they seek the realization of its motivations on the basis of its representations about the world. To count as an agent, a group must express "a modicum of rationality": it must be able to form rational beliefs, ensure robust performance, and be coherent.[74] The argument does not presuppose a heavy metaphysics; instead, it rests on the nonreductionist view of groups which is consistent with methodological individualism. A group agent might have judgments and beliefs different from beliefs of its members, but its agency wholly depends on organization and behavior of its individual members. In short, group agents are epistemically autonomous without being autonomous in an ontological sense.

Group agents so understood also have a normative status when they meet three conditions: they face normatively significant options, are capable of morally evaluating the options, and are in control of choosing between the options. When they meet these conditions, group agents can be held responsible in the same way individuals are responsible[75]. If we allow for the possibility that

[73] The article 1 of the "Montevideo Convention on the Rights and Duties of States," The Seventh International Conference of American States, accessed March 15, 2018, http://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml.

[74] Pettit's phrase; In List and Pettit, *Group Agency*. p. 36

[75] Erskine goes as far as to argue that many collectives enjoy greater capacities for deliberation and action than individuals since they have comprehensive access to information, sophisticated means for its collection and processing, and elaborate structure for the execution of decisions. In Toni Erskine, "Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States,'" in *Can Institutions Have Responsibilities?: Collective Moral Agency and International Relations*, ed. Toni Erskine, 2003 edition (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2004), 19–40.

group agents can exist, states, with a clear decision-making structure, qualify as such. They are not only able to make decisions, but they are deciding on moral matters too.

A forceful objection can be anticipated here. The objection can come in two variants: first, some might object that states are amoral; whereas others might say that they are immoral. Let me start with the first variant. Those sharing the realist view of international relations, for instance, accept the anthropomorphic view of states but model it as egoistic individuals. I will discuss the realist view of the nature of the state in chapter 4. Here it suffices to say that on the realist analysis, states follow their self-interest internationally, and hence, it makes no sense to assign them moral obligations. It is not that they are merely unwilling to comply, for unwillingness presupposes at least understanding of moral norms whereas states do not have such capacity whatsoever. They are in some sense "worse" than egoistic individuals, for the latter, arguably, can know what morality demands from them even when they do not want to comply, whereas the former cannot even comprehend that[76]. Some philosophers took the realist view of states for granted. For instance, Rawls argued that states follow their prudential interests which often lead them to struggle for power and attempt to influence other states[77]. The second variant of the objection

[76] Cf. Bell. In his words, "the picture of amoral realism is a caricature". In Bell Duncan, "Political Realism and International Relations," *Philosophy Compass* 12, no. 2 (February 8, 2017). p.1.

[77] Rawls, *The Law of Peoples*. p. 26 – 27; It is for this reason that he takes peoples, rather than states as parties in the second original position. In his view, peoples are capable of moral motivation in a sense that they can be motivated by public reason, including showing equal respect and offering fair cooperation to one another. It is strange argumentative strategy, however, to attempt to open the door for moral considerations in international relations by stipulating the distinction between states and peoples and arguing that the latter are morally motivated. Furthermore, why taking parties in the second original position as collectives instead of individuals? For this objection, see Nagel, "The Problem of Global Justice"; Also, Allen Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World," *Ethics* 110, no. 4 (July 1, 2000): 697–721.

would be that states are immoral. They might have a capacity to understand moral reasons, but they do not follow them either deliberately or because they have no capacities to do so[78].

Let me try to offer a joint reply. First of all, it is implausible to think of states as amoral since they do exhibit signs of moral awareness. As Kant argued, the fact that states refer to "right" even when they do not respect it, shows that they are at least aware of its importance[79]. For instance, no government will ever happily admit committing genocide or other war crimes even when they do in fact do it. Second, while practice confirms that many states often follow their self-interest, why is this relevant for assigning them obligations? It is ordinarily thought that unwillingness of individual agents to comply with moral norms cannot serve as a justifiable excuse for noncompliance, nor prevent assigning obligations in the first place[80]. Finally, if the problem with assigning global justice duties to states is the fact that many states are unjust, this would apply even to the most minimal moral demands such as to respect basic human rights of their citizens. In other words, if we insist that states are unjust it is hard to see how we can assign them any moral obligations.

I will proceed by assuming that states are capable of moral motivation in the sense of being responsive to moral reasons. They need not act on their moral motivations; it suffices that they are capable of it. Just as philosophers keep thinking about individual moral obligations despite downsides of human nature, the same holds for states – we can think about the ways they should

[78] As O'Neill vividly puts it, "[a]ssigning obligations to secure justice beyond their borders to states may be no more sensible than assigning obligations to supervise hen houses to foxes." In O'Neill, "Global Justice: Whose Obligations?" p. 243

[79] The second preliminary article of the Perpetual Peace holds that a state has a moral personality. In Kant, "Toward Perpetual Peace: A Philosophical Project"; For a similar view see Hume, David, *A Treatise of Human Nature*, ed. David Fate Norton and Mary J. Norton, Oxford Philosophical Texts (Oxford, New York: Oxford University Press, 2000). p. 568

[80] Robert E. Goodin, "Excused by the Unwillingness of Others?," *Analysis*, December 8, 2011.

behave, no matter what they actually do. Later on, I will show that it is coordination problems arising among states, rather motivation of every one of them that should come at our focus.

2.2.2. The State's Duty to Create a Just World Order

The realist view aside, it seems broadly accepted that states can bear at least some moral duties. However, can they bear a duty to create just institutions too? We could see that individuals bear the duty by virtue of their personhood and that states bear the duty by being authorized by them. But how can everyone authorize states to create a just world order? What is the ground of authorization?

The Cosmopolitan View

On cosmopolitan view, individuals owe one another certain universal obligations, and to discharge them, they should authorize their states to act on their behalf. Hence, the basis of the state's authorization with regard to a global order are universal obligations of those subject to them. Buchanan makes an argument along these lines. In his view, states should secure access to basic human rights for everyone irrespective of the interests of its citizens[81]. In his view, individuals have a limited moral obligation to help to ensure that all persons have access to institutions that protect their basic human rights[82]. The state's duty follows from the individual one. As the most

[81]He contrasts the natural duty of justice view with what he calls the "discretionary association view of states". The discretionary view is Lockean: a state exists for a mutual advantage of its citizens. Political society is discretionary in two senses: there is no obligation to form it and individuals may choose with whom they want to associate. Buchanan, *Justice, Legitimacy, and Self-Determination*.

[82]The duty follows from the more fundamental duty: to treat every person with equal respect and concern. Ibid., p. 24

efficient existing means to achieve justice, states are entirely instrumental to individuals' compliance with demands of justice[83].

Buchanan's view convincingly shows how states are practically important for complying with universal duties. Indeed, it is plausible to think of states as a practical remedy to specific problems since there is nothing intrinsically valuable about the state as a form of political organization[84]. Yet, the account is incomplete in two respects.

To begin with, the connection between the state's duty and individual duties requires a further clarification. To say that the state's duty is ultimately grounded in natural duties of justice of those subjected to them does not say how states acquire such obligations. Clearly, the obligation can be acquired in one of two ways: either voluntarily or involuntarily[85]. Some might say that individuals voluntarily transfer their duties to states. In other words, authorization of states is a matter of individual consent. The plausibility of the state's duty to create a just world order then would depend on the plausibility of the consent view. Since I discuss the consent view at more length in chapters 4 and 5, I will not go into details here. It suffices to say that the view faces serious problems. Another way for states to acquire the duty to create a just world order is Kantian: individuals have a duty to authorize states to act on their behalf. This means that such authorization

[83] In his view, the moral purpose of a state is to achieve justice. In Allen Buchanan, "Political Legitimacy and Democracy," *Ethics* 112, no. 4 (2002): 689–719.

[84] An additional argument about practical relevance of states can be that they supply a motivational framework for political transformation. While associational relations do not affect justification of the principles of justice, they are important when it comes to political agency. In Ypi's view, "an effective sense of justice does not mature exclusively by virtue of agents' commitment to first-order moral principles but is socially and politically constructed […]". In Ypi, *Global Justice and Avant-Garde Political Agency*; Cf. Ulaş, "Transforming (but Not Transcending) the State System?"

[85] For an illuminating discussion of such a transfer see Stephanie Collins and Holly Lawford-Smith, "The Transfer of Duties: From Individuals to States and Back Again," in *The Epistemic Life of Groups*, ed. Michael Brady and Miranda Fricker (Oxford University Press, 2016), 150–172.

is not optional, but individuals ought to do so. Given that the Kantian account is more plausible than the consent view, it seems that Buchanan should endorse such view too[86].

Let me turn to another way in which Buchanan's view is incomplete. Namely, the incompleteness results from its sole reliance on practicalities. If the state is merely practically relevant, why do we need a global authority at all[87]? Many global justice proponents insist that we need a global authority that will authoritatively determine moral demands and secure compliance with them. The problem with Buchanan's argument is that by focusing on the state as a form of institution, he neglects more general idea - that institutions are authoritative. Consequently, he does not seem to be able to explain why we need global authority at all. Since I have already argued that his account can benefit from Kant's view on authorization, let me mention one more aspect of possible enriching.

Recall Kant's view about the role of public authority with regard to enabling rightful interaction among individuals. It is the purpose of public authority to secure peace and justice. It is tempting to say that relations between individuals globally are not rightful in the absence of a global public authority and for this reason, individuals still have the duty to enter into a civil condition with one another globally. After all, this is what many global justice proponents claim. If the purpose of the state is to secure rightful interaction among persons, then states have to do so whenever and wherever a need for that arises. Hence, states bear the primary duty to create a global public authority to enable rightful interactions among them[88]. Before I proceed to further examine

[86] I am grateful to Zoltan Miklosi for helping me clarify this.

[87] I take this point from Varden in Helga Varden, "A Kantian Conception of Global Justice," *Review of International Studies* 37, no. 5 (2011).

[88] This raises an interesting question of whether political obligation is conditional upon states complying with their duty to create a just world order. How does a state's non compliance affect their legitimacy or justice? Does it mean that only cosmopolitan states, broadly understood, generate political obligation? I cannot pursue the matter here.

the state's duty, let me mention that a version of the duty is compatible with statist considerations too.

The Statist View

In some views, states cannot fulfill its obligations toward their citizens under the present global conditions. The argument can come in at least two variants. At a more general level, one can say that states have the duty to continually keep improving their legitimacy and ensuring that they never become illegitimate, and to do so, they have to improve the international system too. Dworkin recently defended the argument along these lines. He claimed that a state has to make sure that there are external constraints that will prevent it from turning into a tyranny. Only those states that seek external guarantees of their legitimacy are legitimate[89]. *Ceteris paribus*, the unconstrained state sovereignty system that leaves internal affairs to states themselves threatens the legitimacy of individual states. For this reason, states have a duty of mitigation which entails compliance with international law and support of those practices that are important for both national and international legitimacy[90]. I will come back to this in chapter 5. Alternatively, Ronzoni argues that the present international system is problematic to the extent that it disables states to pursue social justice within their borders. In her view, it is the present empirical conditions, rather than principled reasons that can make statists accept a more cosmopolitan world order. To honor associative obligations they owe another, citizens have a duty to create global

[89] Dworkin was concerned with constraints of government's legitimacy from both external, as explained above, and internal perspective. With regard to the latter, he is famous for defending the role of judicial review in safeguarding democracy. In Ronald Dworkin, *Justice for Hedgehogs*, Reprint edition (Belknap Press, 2013).
[90] Dworkin, "A New Philosophy for International Law," 2013.

regulative institutions[91]. The purpose of newly created global institutions is not to replace states, but to restore their capacity to secure social justice and political self-determination within their borders[92].

In sum, despite starting from associative obligations, both statist accounts conclude that such obligations generate further duties regarding the international order. While Dworkin focused on the duties of states with regard to international law, Ronzoni emphasizes individuals' duties to create global institutions. Note that both accounts are very different from another famous associative account of duties of justice - Nagel's account. As opposed to Nagel, both Dworkin and Ronzoni hold that associative obligations of states are not only consistent with their involuntary obligations globally, but the latter is even entailed by the former[93].

As we can see, the statist and the cosmopolitan accounts of the state's duty to create a just world order reach a somewhat similar conclusion despite starting from different normative premises[94]. Namely, by grounding the state's duty either in duties toward its citizens or toward

[91] In Ronzoni, "For (Some) Political and Institutional Cosmopolitanism, (Even If) Against Moral Cosmopolitanism"; Carmen Pavel, *Divided Sovereignty: International Institutions and the Limits of State Authority* (Oxford ; New York: Oxford University Press, 2014).

[92] Ronzoni seems to equivocate between two types of associative obligations. On the one hand, she argues that it is associative obligations among citizens that generate such a duty to reform the present international system. On the other hand, she also argues that global relations are characterized by an intense, albeit unregulated interactions that generates a need to establish regulative global institutions. For more on the latter see Ronzoni, "The Global Order"; It is not clear what does argumentative work in her argument. It seems to be associative obligations in the second sense, for it would be hard to say that there is a need to create global basic structure without any prior interactions. For argument showing how global interactions necessitate the establishment of just global basic structure see Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice," *Philosophy & Public Affairs* 35, no. 4 (2007): 318–358.

[93] Note that Nagel also supports some global institutional reforms. He admits that compliance with humanitarian duties might necessitate the creation of some global institutions, but they are different from institutions concerning global economic justice. Nagel, "The Problem of Global Justice."

[94] The significance of statist's defense of a duty of mitigation is that even on their account, states do not appear to be anti-cosmopolitan institutions. Cf. O'Neill, "Global Justice: Whose Obligations?"; Ulaş, "Transforming (but Not Transcending) the State System?"

everyone, they agree that states are the main duty bearers[95]. The agreement makes a case for the state's duty even more compelling. To use Rawls's term, we can say that there is the overlapping consensus about the existence of the duty[96]. To be sure, there are significant differences between the two accounts of the duty. Let me name a few.

While the cosmopolitan view is motivated by considerations of justice, the statist view is concerned with considerations of legitimacy. I postpone the detailed discussion of justice and legitimacy until chapter 5. One point is worthy of considering here. Statism and cosmopolitanism ultimately differ with regard to their views of the relation between justice and states. On the one hand, statists hold that state institutions are the existence condition of duties of justice[97]. State institutions generate such duties among those subjected to them[98]. On the other hand, cosmopolitans take institutions, including those of states as playing a determining role with regard to the content of pre-existing duties of justice. In other words, institutions specify the content of duties of justice, but the duties exist independently from institutions. This allows cosmopolitans an easy way toward argumentation in support of global reforms. Since the main purpose of states is to enable compliance with demands of justice, they have to do so whenever and wherever the need for that arises. We could see that statists are not left with no arguments for global reforms. According to Dworkin, the legitimacy of global order, in particular of international law is

[95] As argued earlier, Ronzoni seems to focus on individual duties to create global institutions, but I take it that she can accept that such duties generate states' duties to do so.

[96] On overlapping consensus see John Rawls, *Political Liberalism*, John Dewey Essays in Philosophy, no. 4 (New York: Columbia University Press, 1993).

[97] I borrow the phrase "existence condition" from Abizadeh in Abizadeh, "Cooperation, Pervasive Impact, and Coercion."

[98] This is what statism is all about: that justice presupposes public institutions *being in place* and consequently, there can be no justice beyond state borders. For views along these lines see Nagel, "The Problem of Global Justice"; Michael Blake, "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30, no. 3 (July 1, 2001): 257–96; Andrea Sangiovanni, "Global Justice, Reciprocity, and the State," *Philosophy & Public Affairs* 35, no. 1 (2007): 3–39.

necessary for a state's legitimacy. Alternatively, Ronzoni argues that global regulative institutions are necessary to restore states' capacity for social justice and self-determination. Therefore, even if they limit the scope of justice to a domestic level, statists can still argue in favor of global institutional reforms.

An additional difference worth mentioning is that the statist account of the state's duty is less demanding than the cosmopolitan one. It is possible that it is only a thin understanding of the legitimacy of the international order that would reach the threshold of the necessary external legitimacy of states. Dworkin, for instance, focuses on the compliance with international law only, whereas Ronzoni supports the creation of global regulative, but not distributive institutions. Cosmopolitans, by contrast, can go much further than this, some of them even asserting that states are required to create a world government[99].

The differences aside, it seems fairly uncontroversial that states have at least some duties to reform the current global order. Hence, the existence of the duty does not seem to be a problem. What is a problem, however, is how to comply with it. For instance, Dworkin argues that the duty is indeterminate since it can be fulfilled by different international systems and states might disagree about which one is the most appropriate[100]. In the absence of global authority to coordinate actions of states one might think that it should be left to states to decide how to comply. After all, we could see that many agree with Rawls that the duty to create just institutions is imperfect since it is not only unclear who should what, but there are no institutions to determine its content. This is as good

[99] There is a further interesting question about how the state's duty to create a just world order distributes among its individual members. I cannot take upon the question here. For a good discussion of how the state's duties distribute among its citizens see Stephanie Collins, "Distributing States' Duties," *Journal of Political Philosophy* 24, no. 3 (2016): 344–66.

[100] Dworkin, "A New Philosophy for International Law," 2013.

as it gets. However, global institutional reforms, as argued in the Introduction, necessitate collective actions. If the duty is indeed indeterminate, then it remains unclear how states can take collective actions. I address this in the next chapter.

Before concluding, a terminological clarification is in order. Until now, I used the terms duty to create just institutions and duty to create a just world order interchangeably. The main reason to use the former was that it is a broadly accepted term. However, in light of the overlapping consensus between cosmopolitan and statist views with regard to the state's duty to reform the present order, I find the term duty to create a just world order more appropriate for it can find common ground between the two approaches. For this reason, as of now on, I will be using the duty to create a just world order only. To be sure, one will immediately object that statists do not support the creation of a just world order since for them justice is an associative obligation. At the risk of making a too vague claim, here by a just world order I will mean any kind of world order that is more just than the present one. For instance, statists might accept that a just world order is the order of internally just states. In other words, a just world order need not necessarily imply that justice is global in scope.

2.3. Conclusion

In this chapter, I aimed to clarify in what sense individuals and states can hold a duty to create just institutions. When it comes to individuals, I argued that cosmopolitans have to be committed to the view that humanity is the duty bearer. It does not follow that everyone should act together; instead, it follows that the duty is about authorizing states to act on our behalf. I also suggested that states are the primary bearers of the duty to create a just world order. In my view, the existence

of the duty is no longer that controversial for even those arguing that justice is an associative obligation also accept that states have some duties with regard to transforming a global institutional order. What is a problem is how to comply with it. How to coordinate actions in the absence of a global authority? But, is this the right question to ask? The question rests on the supposition that authoritative institutions are necessary for coordination to take place. Only if we accept this, it follows that the duty to create a just world order is indeterminate. *Ceteris paribus*, if the reformist view would want to yield an account of a strong and meaningful duty to create a just world order, it will have to give up on this fundamental premise. I attempt to do this in the remainder of my dissertation.

III The Paradox of Indeterminacy

In the previous chapter, I argued contrary to the dominant view, that states rather than individuals are the primary duty bearers of the duty to create just institutions. States' duty is grounded in either universal or associative obligations of individuals subjected to their authority. This shows, in my view, that the existence of the duty to reform the current global order is not that controversial anymore. What seems to be controversial is how to comply with it. Namely, many tend to think that the duty is indeterminate given that there is no global authority to determine its content. In this chapter, I will grant that the duty is indeterminate and I will identify problems the duty so understood raises for the reformist view. I identify three kinds of problems.

The first difficulty is conceptual. Some claim that duties which are unallocated to specific agents cannot be stringent obligations, but at most desideratum for action. While there might be reasons to try to reform the existing world order, these are not reasons of justice. I will call this view *the stringency objection*.

The second difficulty is identified by Nagel in his discussion of the problem of global justice[101]. In his view, only centralized, authoritative institutions can resolve coordination problems since they can designate one coordination equilibrium as salient and secure compliance with it. Since there are no such institutions to assure compliance globally, states tend to struggle for power, rather than cooperate. Consequently, global institutional reforms can hardly take place. I will call this *the assurance objection*.

[101] Nagel, "The Problem of Global Justice."

Finally, I identify the third, somewhat related problem. If institutionalization is essential to discharging at least some of our moral obligations, as the reformist view suggests, how can states comply with their duty to create a just world order? If the duty is indeterminate, then the reformist view risks running into a paradoxical claim: that agents have indeterminate duties to bring about institutions that will determine the content of the more fundamental duties. The claim is paradoxical since it asserts that agents both can and cannot act upon indeterminate obligations. I will call this *the paradox of indeterminacy*.

In this chapter, I will discuss all three problems. The chapter will show that the stringency objection is question-begging, but that the problem of assurance and the paradox are serious problems that all those supporting global institutional reforms have to address. The main aim of the chapter is to show that, if the duty to create a just world order is indeed indeterminate, then the reformist view faces serious problems. In turn, this would affect the plausibility of its global justice proposals. Yet, we need not worry that much. The remainder of the dissertation will show that the reformist view can be reconstructed in the way that it avoids these problems.

The argument of the chapter proceeds as follows. I start by clarifying the notion of norm indeterminacy and the role institutions play in this regard. I then move to consider in what sense the state's duty to create a just world order is indeterminate. I further argue that the duty so understood raises three problems for the reformist view: the stringency objection, the assurance objection, and the paradox of indeterminacy, and show that while we can ignore the first, the other two are compelling.

3.1. Norm Indeterminacy and Institutions

To understand why indeterminacy of the state's duty to create a just world order might create difficulties for the reformist view, we should go a couple of steps back and recall the way in which the view understands the role of institutions. I already mentioned that the reformist view includes various accounts of fundamental obligations that are owed to everyone. For instance, Pogge famously argues that universal duty not to harm others entails the prohibition of imposing unjust institutions over them[102]. Alternatively, Shue argues that everyone's basic needs should be met even when persons are not able to secure them by themselves[103]. Both claims suggest that these obligations are pre-institutional, i.e. they exist irrespective of institutions and social practices. They apply to us as persons, and we owe it to all human beings equally[104]. An important feature of pre-institutional duties is that they are in some sense indeterminate – there are several morally equivalent ways in which the duties can be honored. In order to comply with such moral norms globally then, we have to determine their content somehow, and the usual proposal is to create new global institutions. In sum, the reformist view rests on two basic claims. The first claim is that moral obligations, as general moral principles, have indeterminate content. The second claim is that institutions play an essential role in determining the content of our moral obligations. Let me consider both claims in more detail.

[102] In Pogge's view, all those supporting or benefitting from the present global institutional arrangement violate their duty not to impose unjust institutions on others. The duty is derived from the more fundamental duty not to harm that, on Pogge's view, has universal scope. Pogge, *World Poverty and Human Rights*.

[103] Shue, "Mediating Duties."

[104] Here I assume that certain rights to goods and services are moral rights. That this may not be the case see Onora O'Neill, "The Dark Side of Human Rights," *International Affairs (Royal Institute of International Affairs 1944-)* 81, no. 2 (March 1, 2005): 427–39.

3.1.1. Norm Indeterminacy

Moral obligations can be indeterminate in different ways[105]. Some are indeterminate with regard to an individual behavior: it is not clear what general moral principles require in particular situations. For instance, the principle of not harming does not provide clear guidance about whether the prohibition of murder is compatible with murdering out of self-defense[106]. Norms can also be indeterminate in a sense that they give rise to coordination problems, which can take different forms. Waldron helpfully differentiates between pure coordination problems and partial conflict coordination problems. Pure coordination problems arise when there are several coordinating equilibriums and parties are indifferent with regard to which to follow[107]. For instance, there are no particular reasons to favor driving on the right as opposed to driving on the left side of a road. What matters instead, is that everyone drives on the same side. By contrast, partial conflict coordination problems arise when parties would prefer acting upon a single option, but they disagree over which option to follow. As an illustration, we can think of the famous "battle of sexes" example. Partners in a couple would prefer doing different things – e.g. watching football as opposed to going out for a drink, but they also prefer doing something together over doing the

[105] The indeterminacy of moral norms raises a metaethical problem. On one reading, moral norms are indeterminate since there is no objective moral truth. On another reading, moral indeterminacy implies that moral norms can be defined in different ways which can give rise to disagreements. The fact of disagreement, however, does not entail that there is no moral truth; the most it shows is that people disagree about it. Here I will assume that there are true moral norms, but that their indeterminacy gives rise to disagreements about their content. For an excellent discussion of the problem of disagreement about moral and legal norms see Samantha Besson, *The Morality of Conflict: Reasonable Disagreement and the Law* (Bloomsbury Publishing, 2005).

[106] The extent of moral disagreement, however, should not be exaggerated. For instance, Griffin argues that people might disagree over whether or not to characterize an action as wrong, but they might still be able to agree on what is at issue and what are relevant considerations. James Griffin, *On Human Rights* (Oxford ; New York: Oxford University Press, 2008). p. 15

[107] I adopt Lewis's definition of coordination equilibrium as a combination of strategies producing an outcome "in which no one would have been better off had any one agent alone acted otherwise, either himself or someone else."In David Lewis, *Convention: A Philosophical Study* (Oxford: Blackwell, 2002). p. 14

preferred thing alone[108]. The disagreements over a preferred option make the partial conflict coordination problems more difficult to solve[109].

In some views, all norm indeterminacy problems take the form of coordination problems since members of a society have to coordinate on a single interpretation of moral norms. It follows that the principal function of law is coordination[110]. To be sure, taken at a very general level, any norm indeterminacy can be framed as a coordination problem. Coordination problems more narrowly construed, however, concern collective actions since people have to coordinate on a single option. For example, the law might define what the proportional use of force in the case of self-defense is, but if the situation involves several agents, there will be a separate problem about how they should act collectively. While indeterminacy of those moral norms that apply to individuals' conduct and those that apply to collective actions surely overlap, there is a sense in which we can take them as two different kinds of norm indeterminacy. It follows that the principal function of the law is not limited to coordination, but also includes defining norms that apply to

[108] In Jeremy Waldron, "Legislation, Authority and Voting," in *Law and Disagreement* (Oxford, New York: Oxford University Press, 1999).

[109] Disagreement need not be a consequence of conflict of interests only, but can also concern conflicts of opinions about moral matters. Moral disagreements play a pivotal role in both Hobbes's and Kant's accounts of political authority. The ultimate cause of war in the state of nature is the right possessed by each man to decide for himself over what is his and how it is to be preserved. For instance, Hobbes argued that one of the "seditious doctrines" (those that can destroy the commonwealth) is that any private man is a judge of good and evil actions. This leads to disagreement that can be resolved only by creating the sovereign. A private man should surrender his judgment to the Sovereign. Thomas; Hobbes, *Leviathan*, ed. C. B. Macpherson (Harmondsworth: Penguin Classics, 1968). p. 365; Similarly, Kant argued that in the state of nature each person has a right to do what seems right to her to do and people will think that it is permissible to use force to defend what they see right. In Immanuel Kant, "The Metaphysics of Morals," in *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1999). p. 450 - 452

[110] For this view see Besson, *The Morality of Conflict*.

individuals' conduct. I leave it here, for the expansive view is compatible with the more narrow view I am taking[111].

3.1.2. Institutional Specification

The second claim that the reformist view rests on is that institutions help us comply with our pre-institutional duties by authoritatively defining what compliance necessitates and by making it more efficient[112]. Depending on which function they emphasize, the reformist view can be divided between two approaches which I will call - *Justice view* and *Efficiency view*[113]. Let me briefly describe both[114].

The Justice view is broadly understood as a Kantian view, which holds that institutions are constitutive of justice in a sense that they specify what justice demands[115]. They do so in several ways. First, they determine fair shares of benefits and burdens of social cooperation and allocate

[111] Another way to think about indeterminacy of moral principles is to argue that they, as general principles, do not suffice for deciding about institutional design. For instance, Scavenius argues that moral cosmopolitanism faces indeterminacy failure, for it fails to determine what political 'institutional level might be preferable. In her view, the indeterminacy failure results from the practice-independent methodology of deriving general moral principles that cannot guide action in the real world. Theresa Scavenius, "The Indeterminacy Failures of Moral Cosmopolitanism and Liberal Nationalism," *Journal of Global Ethics* 13, no. 2 (2017): 206–220. I am not interested in moral indeterminacy in this sense.

[112] By institutions, I mean, to quote Rawls, "the public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like." Rawls, *A Theory of Justice*. p. 58

[113] For a similar distinction see Miklosi, "Compliance with Just Institutions"; In some views, moral obligations can also be specified by special circumstances. For a good discussion of such specification in the context of rights of refugees see Kuosmanen, "Perfecting Imperfect Duties." Here I am focusing on determination by institutionalization only.

[114] To be sure, the views are not mutually exclusive.

[115] For instance, Christiano says that "Law settle[s] for practical purposes what justice consists in by promulgating public rules for the guidance of individual behavior." In Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008). p. 53

it among those that cooperate. For instance, individuals have a duty to be just, but we need institutions to specify its content by enacting, say, a taxation policy that citizens should comply with. Second, institutions coordinate conduct of a large number of people by law backed up by the monopoly of force. By doing so, they secure that everyone acts in the same way. As a paradigmatic example, we can think of traffic regulations. At last, given that obligations are, as we could see above, often indeterminate, institutions give them a specific meaning by disaggregating them into particular legally obligatory acts[116]. The compliance with demands of justice so defined makes duty bearers more likely to discharge their pre-institutional duties, rather than by following their own judgments[117]. Given that institutions provide an authoritative determination of moral norms, individuals have an obligation to comply with their commands.

The Efficiency view asserts that institutions are the most efficient way for individuals to discharge their pre-institutional duties. On this account, individuals bear duties to respect rights of others. When they are unable to discharge it directly, they also bear the indirect duty to help establish institutions that will enable them to do so. The institutions then increase the efficiency of individuals complying with their duties, while at the same time decreasing demandingness of moral norms. For instance, Shue claims that institutions provide "a psychological buffer" in the sense of leaving agents time off to pursue their personal ends[118]. Similarly, when individuals have a duty to pursue some good, such as helping others, they can discharge it efficiently by transferring it to a collective, such as a state. The transfer generates new duties for the collective, and the

[116] Waldron, "Special Ties and Natural Duties"; Buchanan, *Justice, Legitimacy, and Self-Determination*; Miklosi, "Compliance with Just Institutions."

[117] Joseph Raz, *The Morality of Freedom* (Clarendon Press, 1988).

[118]Shue, "Mediating Duties"; Goodin, "Demandingness as a Virtue"; Attila Tanyi, "Moral Demands and Ethical Theory: The Case of Consequentialism," in *The Bloomsbury Companion to Analytic Philosophy*, ed. Barry Dainton and Howard Robinson (Bloomsbury Publishing, 2015).

collective then discharges the duties by acting through individuals as its constituents[119]. Besides mediation and transfer, some argue that institutions also consolidate duties by collecting everything all duty bearers owe and distributing it among beneficiaries. Through institutionalization, duty bearers get perfect duties toward institutions, and beneficiaries get claimable rights against institutions[120]. In sum, while the Justice and the Efficiency views, arguably, rest on different moral theories[121], they agree in that it is public institutions, i.e. institutions that are authorized to formulate rules and enforce them, that are to determine the content of moral obligations.

One can object here that the Efficiency view adequately understood does not necessitate public institutions for one of two reasons. First, institutions need not be the most efficient way to discharge our duties. For instance, Singer argues that individual agents should address the problem of global poverty by donating to effective charities, rather than by trying to reform institutions[122]. Even if prospective institutions might be an efficient way to tackle global poverty in the future, bringing those institutions about may not be the most efficient way for individuals to use their material and non-material resources *at this point*. The objection is motivated by empirical

[119] Collins and Lawford-Smith, "The Transfer of Duties."

[120]Robert E Goodin, "Duties of Charity, Duties of Justice," *Political Studies*, 2016.

[121] We can draw a very rough distinction between deontological and consequentialist theories. Even more, the Justice view is more concerned with the norm indeterminacy, whereas the Efficiency view emphasizes the notion of demandingness of moral norms.

[122] Peter Singer, "Poverty, Facts, and Political Philosophies: Response to 'More Than Charity,'" *Ethics & International Affairs* 16.1 (2002); Murphy makes a similar objection in Liam B. Murphy, "Institutions and the Demands of Justice," *Philosophy and Public Affairs* 27, no. 4 (1998): 251–291. One can argue that the same objection applies to the Justice view. For instance, Murphy argues that it is implausible to require individuals to create institutions that would pursue equality, instead of asking them to pursue it directly. Yet, following the Justice view, individual agents pursue justice in their public capacity of citizens, and they cannot do so without just institutions being in place. Therefore, for individual agents to act justly, they have to create just institutions whether or not it is the most efficient action they can take. I thank to Janos Kis for raising this point.

considerations concerning calculations of the efficiency of different courses of action. As such, it is internal to the Efficiency view and does not affect the claim I am making here. Therefore, I will focus on those accounts of the Efficiency view that insist on institutionalization as the most efficient way to discharge our pre-institutional duties.

Another worry about the Efficiency view is that individual agents are facing epistemic uncertainty about creating institutions, for members have no full control over institutions once they are in place[123]. If newly established institutions can decide differently from what its founders wanted, then it is not clear that there can be a duty to create such institutions at all. In reply, one can say that individuals have to have reasonable beliefs about the likelihood of institutions indeed complying with duties[124]. I take it that the objection is also internal to the Efficiency view. Hence, I will proceed assuming that it can resolve it[125].

In sum, whether for the reasons of justice or those of efficiency, public institutions play a prominent role in determining the content of fundamental duties. They do so by improving norms' incisiveness and so providing a "framework of practical reasoning designed to unify public political judgment and coordinate social interaction."[126] This unity in reasoning should not be

[123] For the objection see, Schwenkenbecher, "Joint Duties and Global Moral Obligations."
[124] For a variant of this view see Collins and Lawford-Smith, "The Transfer of Duties."
[125] Note that the Justice view seems to fare better in this respect for it holds, as argued above, that institutions are constitutive of justice. This implies that individual bearers, absent institutions, might have a different understanding of what justice requires. Going back to the present discussion, it cannot be argued that institutional decisions depart from individual understanding of obligations since individual agents cannot know this in the absence of institutions in the first place. For instance, citizens cannot complain about a newly introduced taxation policy for they could not know what just taxation policy without institutions is.
[126] Besson, *The Morality of Conflict*. p. 123

overstated[127], however, for even legally determined norms can still give rise to disagreements about its interpretation[128].

As we can see, both variants of the reformist view place a great emphasis on the determining role institutions play regarding moral demands. After all, this is what motivates their arguments in favor of global institutional reforms – that we need new global institutions to enable us to comply with our fundamental moral obligations owed to everyone. If this is the case, however, how can states comply with their duty to create a just world order? I explain this in the next section.

3.2. The indeterminacy of the Duty to Create a Just World Order

We could see earlier that the reformist view, following Rawls, takes that individuals share an imperfect duty to assist in creating just institutions[129]. What about the state's duty to create a just world order? It is tempting to think that if individuals' duty is indeterminate, so is the state's one. Here I will grant that this is the case. I will define the ways in which it might seem that the duty is indeterminate.

In the previous section, I argued that the norm indeterminacy concerns, among the rest, collective action problems. In this sense, one can argue that the state's duty to create a just world

[127] After all, it is not clear that a complete solution of moral disagreements is desirable, even if being practically possible. Ibid.

[128] The law itself can be indeterminate for at least two reasons. First, laws have to be general, which implies that their application to particular cases necessitates authoritative (judicial) interpretation. Second, legal norms are also indeterminate due to inherent vagueness of a natural language. That said, legal indeterminacy does not significantly affect the argument I am making here, so I will leave it aside. What I am concerned with instead is moral indeterminacy.

[129] Rawls, *A Theory of Justice*; Ronzoni, "The Global Order." ft 31.

order is indeterminate, too. For, clearly, global institutional reforms necessitate collective actions for no single state can do it alone. Collective action problems among states, however, can take several forms. Many tend to think that they take a form of a single play Prisoner's Dilemma. As a small reminder, the idea is that while cooperation is rational from a collective point of view, it is also rational for each party not to cooperate from the individual point of view. By following their self-interest, however, parties end up in a state worse than had they cooperated. Some issues among states undoubtedly involve Prisoner's dilemma. Think about state policies that aim to attract foreign direct investments by decreasing taxes on capital. Instead of introducing a common regulatory framework for foreign direct investments, states unilaterally pursue their policies hoping that others will not do so, and consequently, they will be the only ones attracting foreign direct investments. Given that many states pursue this strategy, they create a race to the bottom: as soon as a corporation utilizes benefits of a policy in state A, it will move its business to state B[130]. We can think of many global issues involving similar scenarios.

Besides the Prisoner's Dilemma, however, collective action problems among states can also involve coordination problems[131]. Following Waldron's distinction introduced in the previous section, we can characterize the problem of global institutional reforms as partial conflict coordination problems. While parties might prefer coordinating upon either of alternatives to

[130] To make it worse, in order to make up for the loss incurred by decreased taxes on capital, these states often have to increase taxes on income and consumption, thus hurting their population even more. For an argument about how tax competition harms autonomy of states with regard to fiscal and redistributive policies see Dietsch, *Catching Capital*.

[131] Here I am following Snidal's distinction between Prisoner's Dilemma and coordination problems that arise among states. While the former is mostly about self-interested behavior of states that can but need not to lead to cooperation, the latter is characterized by states' having an interest in coordination. In Duncan Snidal, "Coordination versus Prisoners' Dilemma: Implications for International Cooperation and Regimes," *The American Political Science Review* 79, no. 4 (1985): 923–42.

uncoordinated actions, they might also prefer different coordinating outcomes[132]. For instance, at least some states would prefer coordination equilibrium in which they have a leading role. We can recall the way the UN has been created. The final draft of the UN Charter had been first negotiated between four great powers, including the United States, the United Kingdom, the Soviet Union and China. The negotiations enabled them to secure for themselves a permanent membership in the UN's most powerful body – the Security Council. Alternatively, consider the history of the creation of the International Criminal Court (ICC) as the first global permanent (judicial) institution. It took 53 years for states to create the court. There are two major reasons for such a delay. First, the Cold War confrontation has made coming to a political agreement impossible, and second, states also disagreed about the definition of aggression[133]. Consider further that institutionalization for the sake of global justice can be even more challenging in this respect for states surely have different understandings of what (in)justice is. It does not follow that the disagreement is irresolvable, but only that the problem of global institutional reforms is not limited to conflict of interests, but involves moral disagreements too. Note how complicated this situation is. Namely, we need the reformed global institutional arrangement to resolve various collective action problems that currently exist among states. Reforming the present arrangement, however, triggers coordination problems in its own right. There is another important implication of the duty's indeterminacy characterized in this way.

Namely, many agree that pure coordination problems can be resolved by informal and decentralized norms, including conventions, whereas the resolution of partial conflict coordination

[132] Cf. Christiano, in Thomas Christiano, "Is Democratic Legitimacy Possible for International Institutions?," in *Global Democracy Normative and Empirical Perspectives*, ed. Daniele Archibugi, Mathias Koenig-Archibugi, Raffaele Marchetti (Cambridge University Press, 2012), 69–95.p. 86 - 88

[133] For a good introductory discussion see Arash Abizadeh, "Introduction to the Rome Statute of the International Criminal Court," *World Order* 34, no. 2 (2002).

problems has to be more formal[134]. If global institutional reforms involve partial conflict coordination problems, then it will be more difficult to resolve it. While future global institutions suppose to resolve the present (and specific) collective action problems, it is not clear what can resolve those collective action problems triggered by bringing such institutions into existence. The difficulty is not only practical, but it is theoretical, too. We could see earlier that the reformist view accepts the indispensable role institutions play in determining the content of moral norms and addressing coordination problems. Since the more formal solution is both practically and conceptually impossible when it comes to creating global institutions (for it presupposes institutions already being in place), it follows that the duty is bound to remain indeterminate. In other words, if formal mechanisms are necessary to resolve partial conflict coordination problems, and given that the global institutional reforms trigger such problems in their own right, it follows that the latter problems are irresolvable. In the remainder of the chapter I will explain this in more detail. I will argue that if we take that the state's duty to create a just world order is indeterminate, it raises a threefold problem for the reformist view. First, some might doubt that indeterminate duties are duties of justice. I call this *the stringency objection*. Second, one can argue that it is unclear how to comply with the duty absent a global authority. Call this *the assurance objection*. Finally, the indeterminacy of the duty to create a just world order also makes the reformist view potentially incoherent - for it seems to suggest that agents both can and cannot act upon indeterminate obligations. I call this *the paradox of indeterminacy*. I consider all three in turn.

3.3. The Stringency Objection

[134] Duncan Snidal, "Coordination versus Prisoners' Dilemma: Implications for International Cooperation and Regimes," *The American Political Science Review* 79, no. 4 (1985): 923–42.

In the previous section, I argued that the state's duty to create a just world order is indeterminate in the sense that its discharging generates coordination problems. In some views, indeterminate duties cannot be stringent, and accordingly, they are not duties of justice. At most, they can be desiderata for actions. If the duty to create a just world order is not a duty of justice, then it follows that no one is wronged when reforms do not take place. In this section, I will rehearse the Stringency objection and show that it does not hold[135].

Let me start with a short background explanation. The global justice debate is intricately connected to another debate concerning the nature of moral obligations. Philosophers disagree about how much weight to assign to different obligations as well as what makes some more stringent than others. Considerations of global justice brought an additional layer of the complexity into the debate since global duties, as opposed to those within states, are not institutionally specified. For this reason, some deny them the status of duties of justice altogether. The notion of justice, they hold, is internal to institutions, and since there are no centralized institutions globally, individuals worldwide owe nothing to one another as a matter of justice[136]. The Stringency objection is a variation of this view. It asserts that determination of content affects a duty's stringency. In more familiar terms, the view holds that the two moral distinctions – i.e. between

[135] For instance, Garcia argues that the present global conditions cannot be described as injustice since there is no agent to violate duties of justice; instead, they are the "unsatisfactory state of affairs". Even more, agents have imperfect duties only to address it. In Meckled-Garcia, "Is There Really a "Global Human Rights Deficit?" p. 112; For a similar view see Nagel, "The Problem of Global Justice." Both of them were critical of global duties of justice as such, but here I adapt their objections to the duty to create a just world order in particular.

[136] It is important to emphasize that statists accept that humanitarian duties have a global scope and are not conditional upon the existence of institutional relations. Blake, "Distributive Justice, State Coercion, and Autonomy"; Nagel, "The Problem of Global Justice"; Sangiovanni, "Global Justice, Reciprocity, and the State"; Miller, "Reasonable Partiality towards Compatriots."

perfect and imperfect duties[137]; and between duties of justice and those of charity overlap in the sense that all duties of justice are perfect, and all duties of charity are imperfect[138]. *Ceteris paribus,* imperfect duties, i.e. those having indeterminate content, cannot be duties of justice.

Duties of justice are perfect in the sense of "being fully defined requirements that each agent can discharge at all times towards everyone."[139] Put it more formally:

Agent A has a duty to do X in relation to the right holder B.

As we can see, perfect duties correlate with rights in the sense that right holders have claims against particular bearers to comply with duties. Another important feature is that the duties so specified can be institutionally enforced. For instance, I have a duty not to harm others, and state institutions can prevent me from doing so, or punish me if I do so. When duties are perfect to this extent, agents have to comply whenever they arise.

On the other hand, the core feature of imperfect duties is taken to be discretion it leaves to agents to decide about acts, time, and recipients in discharging these duties. This can be stated in the following form:

Agent A has a duty to do Y sometimes in relation to someone else.

Such understanding can be traced back to Kant who argued that imperfect duties, which he called duties of virtue, concern obligatory ends that agents can fulfill by means they choose. Also,

[137]The distinction between perfect and imperfect duties generates problems in itself. For instance, Rainbolt enumerates eight different ways of drawing the distinction between perfect and imperfect obligations; in George Rainbolt, "Perfect and Imperfect Obligations," *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 98, no. 3 (2000): 233–56.

[138] Certainly, there are perfect duties other than duties of justice, and there are imperfect duties other than charity.

[139] Ashford, Elizabeth, "Severe Poverty as a Systemic Human Rights Violation." P. 130

imperfect duties do not correlate with rights since no one has a claim against an agent[140]. Given that imperfect duties do not entail any specific act, and that they do not correlate with rights, they are legally unenforceable. Only I can make something my end. To force me to do so would violate my moral autonomy and as such be self-contradictory. As a paradigm case of imperfect duties, many refer to a duty to aid. I should come to aid to someone on occasion of my choice, and state institutions cannot force me to do so. Since imperfect duties do not correlate with rights and they are unenforceable, they are not duties of justice.

Let me apply these considerations to the duty to create a just world order. For ease of exposition, let me put it in the form of a syllogism.

(P1) All duties of justice are stringent.

(P2) For a duty to be stringent, it must have a determined content.

(P3) Public institutions proper authoritatively determine the content of duties.

(P4) There is no global authority.

(P5) The duty to create just world order is underdetermined.

(P6) Since the duty to create a just world order is underdetermined, it cannot be a stringent obligation.

∴ The duty to create a just world order is not a duty of justice.

[140] Kant argued that imperfect duties do not correlate with rights, but he also argued that they do correlate with another type of claim of others: a claim that their ends be taken into account. Failure to comply with imperfect duties is not culpable, but is deficiency in moral worth of the agent. Kant, "The Metaphysics of Morals." p. 520 - 527;

The stringency objection generated an intense debate about whether or not there can be global duties of justice. One of the standard replies is that even if some duties have more perfect content than others, it does not follow that they should always trump the less perfect ones in case they conflict. For instance, by letting a child drown, you do something significantly worse than failing to meet a friend you promised to meet[141]. This shows that some imperfect duties might be more stringent than some perfect duties[142]. Alternatively, one can reply that, under the present conditions, even state institutions do not determine duties. Namely, the present global institutional order significantly affects the capacity of states to deliver social justice to their citizens[143]. So, when state institutions are unjust or incapable of delivering social justice, who will allocate obligations to duty bearers? The suggestion seems to be that all duties are imperfect to some extent. Finally, why all duties of justice have to be perfect? We could see earlier that Kant argued that the duty to enter a civil condition is a duty of justice since individuals in the state of nature can rightfully coerce one another into entering the civil condition. The reason for this is that their interaction in the state of nature is not rightful since they are subjected to arbitrary will of one another. Since wanting to remain in the state of nature amounts to violating the right to freedom of others, others have a right to force non-compliers to enter into the civil condition. Therefore, some duties can be enforceable even in the absence of authority[144]. In sum, imperfect duties can

[141] Satz, "What Do We Owe the Global Poor?"; To be sure, one can argue that in this case, the duty is perfected by special circumstances. For this point see Goodin, "Duties of Charity, Duties of Justice."

[142] Recall further that Rawls takes the natural duty of justice as the most fundamental, despite being imperfect. In Rawls, *A Theory of Justice*. p. 341 - 343

[143] Ronzoni, "For (Some) Political and Institutional Cosmopolitanism, (Even If) Against Moral Cosmopolitanism."

[144] The motivation to differentiate between duties of justice and those of charity is to be able to identify what moral principles state institutions should enforce. The assumption is that such institutions are in place. This shows that the distinction itself is *status quo* biased. Moreover, it connects duties of justice to legal and authoritative enforceability only. For the view that the distinction between justice and charity cannot help us decide which principles are enforceable see Allen Buchanan, "Justice and Charity," *Ethics* 97, no. 3 (April 1, 1987): 558–75.

carry more weight than some perfect duties; it is doubtful that there are institutions, even at a state level, that make duties perfect; and imperfect duties can be enforceable in some sense[145]. It follows that their indeterminate content does not affect stringency of imperfect duties[146].

All these are plausible replies. The stringency objection, however, can be addressed at a more general level. While institutions undoubtedly play an indispensable role with regard to compliance with duties of justice, why think that they are necessary for all duties of justice to exist[147]? The stringency objection equivocates between a practical necessity of institutions for compliance with duties of justice and a conceptual necessity of institutions for the existence of duties of justice. It is one thing to say that we need institutions to be able to comply with demands of justice, and quite another that there can be no demands of justice without institutions being in place[148]. It follows that whether duties are duties of justice or not depends on moral considerations that are independent of how determined their content is. Therefore, when our weighty obligations are indeterminate, we should figure out how to define their content so that we can comply, instead of stipulating that we have no such obligations at all[149]. Given the extent of global injustice and

[145] Additionally, Griffin argues that there are rights without particular bearers. We can know that there is a moral burden, without knowing who should bear it. Griffin, *On Human Rights*. p. 100 – 110

[146] For the argument that some imperfect duties can be duties of justice see for instance, Gilabert, "Justice and Beneficence."

[147] See ft. 101

[148] Laura Valentini, "Justice, Charity, and Disaster Relief: What, If Anything, Is Owed to Haiti, Japan, and New Zealand?," *American Journal of Political Science* 57, no. 2 (April 1, 2013): 491–503.

[149]Garcia argues that we cannot violate rights of others if we do not know which actions count as violations. Meckled-Garcia, "Is There Really a "Global Human Rights Deficit?". Yet, not knowing what practical requirements follow constitutes a failure to comply in and of itself. If we have a certain obligation, we should figure out how to comply, rather than say that we have no such obligation since we do not know how to comply. The latter would be a way too permissive reason to excuse us from our obligations, for we can claim that we do not know what to do with regard to most of our moral obligations.

intuitive view that we owe one another addressing it, the burden of proving that addressing the problem is not a matter of justice is on those holding such views.

Note that the argument developed here does not affect the distinction between duties of justice and those of charity. Indeed, it is crucial to identify a class of weighty obligations. This is precisely the reason why we should get them right. My claim is much weaker – all I am saying is that we should keep the two distinctions, i.e. between duties of justice and those of charity, and between perfect and imperfect duties, separate[150].

While we might not have reasons to think that institutions are necessary for duties of justice to exist, however, we have good reasons to think that they are necessary for discharging the duties. After all, this is, as we could see earlier, the fundamental premise of the reformist view. If this is the case, then how can states comply with their duty to create a just world order? Why does it matter to show that imperfect duties can be duties of justice if duty bearers cannot comply with them? To be sure, individual states can figure out by themselves what actions to take, but, as argued earlier, they have to coordinate with other states in doing so. As opposed to the Stringency objection, this second challenge is more serious. I turn to it now.

3.4. The Assurance Objection

[150] The distinction between perfect and imperfect duties itself seems to be difficult to sustain since discretion is a matter of degree. So called perfect obligations also leave a certain amount of discretion to agents with regard to time, place, or manner to discharge duty. For instance, I might have promised a friend to look after her dog for a day, but it is up to me to decide how to do so (e.g. I can decide to stay at home with the dog or take her for a walk). On the other hand, imperfect obligations also place some limits on an agent's discretion. For instance, it is odd to say that donating money to a terrorist organization counts as discharging the duty to aid. Given these considerations, we can rightfully doubt if we need the term "imperfect obligations" at all. For a good discussion of scalar imperfection see Daniel Statman, "Who Needs Imperfect Duties?," *American Philosophical Quarterly* 33, no. 2 (1996): 211–24.

The assurance objection finds its compelling formulation in Nagel's take on the global justice problem. In his view, justice depends on "the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by the monopoly of force. […] At least among sizeable populations, [the assurance] cannot be provided by voluntary conventions supported solely by the mutual recognition of common interest."[151] To put it differently, parties in coordinating problems need assurance that others will do their part too and such assurance can be provided by coercive institutions only[152]. The view has significant normative implications. Nagel continues: "[T]he requirements of justice themselves do not […] apply to the world as a whole, unless and until, as a result of historical development *not required by justice,* the world comes to be governed by a unified sovereign power."[153]

Nagel's argument is occasionally difficult to follow; it is hard to disentangle empirical from normative claims he is making. At the risk of misinterpretation, it seems that Nagel's argument consists of two independent sub-arguments: one concerns the existence of global duties of justice, and the other is about the problem of assurance of compliance with the duties. Global justice proponents have mostly focused on the first problem by trying to prove that at least some demands of justice have a global scope[154]. The plausibility of the objections notwithstanding, it leaves the

[151] Nagel, "The Problem of Global Justice." p. 147

[152] Nagel owes much to Hobbes for his understanding of the relation between justice and authority. As a small reminder, Hobbes argued that justice emerges when a civil power is established. In his words, "[c]ovenants without the Sword are but words and of no strength to secure a man at all." Hobbes, *Leviathan*. p. 220 - 223

[153] Nagel, "The Problem of Global Justice." p. 147, my italic; "[T]he most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states." Ibid., p. 146 Nagel argues that such situation is unfortunate, but it is not unjust, since treaties are "instruments for the common pursuit of self-interest", which further implies that they are not meant to bring about justice. Only once a unified sovereign power emerges globally, the requirements of justice apply.

[154] For instance, Julius argues that the ground of justice is not an institutional coercion, but the allocation of goods. Wherever the allocation of goods takes place, it is in need of justification, whether or not those affected believe that they are entitled to such justification. In A. J. Julius, "Nagel's Atlas," *Philosophy & Public Affairs* 34, no. 2 (April 1,

second problem unaddressed. Even if duties of justice are global in scope, how to comply with them absent authority? It would be odd to argue that the possibility of compliance with the duty is less important than its existence.

Following Nagel, in the absence of global authority to secure compliance, states tend to struggle for power, rather than cooperate and it is rational for them to do so. Under the conditions of anarchy, there is a constant competition for security, which in turn decreases the possibility for order and cooperation[155]. This has important implications for the state's duty to create a just world order. Why would any state invest effort and resources into reforming the international order if it cannot be sure that other states will do their part too? Complying states might think that they place themselves at a relative disadvantage as compared to those that do not comply. Based on this, we can say that the assurance objection rests on two claims. The first claim is empirical – it attempts to explain how states behave under conditions of anarchy. The second claim is conceptual – it holds that coordination necessitates authority. I will address both in the next chapter.

If Nagel is right in that a coercive assurance is necessary for complying with demands of justice, and given that no such assurance can be provided regarding the duty to create a just world order, then it is far from clear how reforms can take place. For it is unclear how states can coordinate on a single option absent a global authority. In other words, there can be no coordination without authority. Hence, the statist challenge to the global justice arguments is not limited to the problem of the existence of duties of justice, but also concerns compliance with the duties. I will

2006): 176–92. Similarly, Abizadeh argues that any plausible interpretation of the basic structure entails a global scope of justice. In Abizadeh, "Cooperation, Pervasive Impact, and Coercion."

[155] Nagel employs some realist assumptions about international relations, including that international relations are anarchical. Still, he does not seem to fully subscribe to the realist view of international relations, for he accepts that states have humanitarian duties as well as that considerations of humanity should constrain international treaties. This implies, contrary to realists, that there are at least some moral norms regulating relations among states.

start addressing the objection in the next chapter. Before doing so, let me identify one more problem that the reformist view is facing.

3.5. The Paradox of Indeterminacy

In the previous section, I have identified the often missed part of Nagel's challenge to global justice projects which I called the assurance objection. Here I would like to point out that the assurance problem is not limited to the way Nagel defines it. Namely, the assurance problem challenges the very foundations of the reformist view. Let me explain.

We could see earlier that the reformist view presupposes a special role of institutions in our practical reasoning. As a small reminder, institutions distribute benefits and burdens of social cooperation, they coordinate actions of individuals, and give content to our obligations. If institutionalization is so essential to discharging duties how can states comply with their duty to create a just world order[156]? What creates the problem is that the duty, by virtue of preceding public institutions apparently cannot be determined by these institutions. After all, this is why many think of it as indeterminate duty[157]. By stipulating the duty to create a just world order, the reformist

[156] One may object here that the Efficiency view in fact does not face the paradox since individual agents can comply with the duty to create a just world order even if its content is indeterminate. Such compliance might be less efficient, but is still possible. Yet, it is not clear that the Efficiency view can consistently claim this. For it cannot argue that there is a duty to create institutions in order to efficiently discharge our obligations, but hold that it does not matter if compliance with the duty is efficient. In other words, the Efficiency view either values efficiency or it does not. An interesting case is when institutions are the most efficient way to comply with duties, but from individuals' perspective, it is more efficient to take some direct actions, such as donating to charities, rather than to try to reform institutions. There might be a difference between what is collectively more efficient, and what is more efficient at an individual level. For instance, see Peter Singer, *The Life You Can Save: Acting Now to End World Poverty* (London: Picador, 2009).

[157] In some sense, the paradox can arise even in the case of advocating reforms of national institutions.

view faces the risk of running into a paradox. For, it seems to suggest that agents have the indeterminate duty to create conditions for determining the content of more fundamental duties. I will call this *the paradox of indeterminacy:*

> *There are indeterminate duties to create institutions that will determine the content of other indeterminate duties.*

The claim is paradoxical for it suggests that agents both can and cannot act upon indeterminate duties. If they can act upon indeterminate duties, why determine their content at all? If they cannot act without institutions, then it is not clear how to comply with the duty to create such institutions. In other words, the view seems to suggest that we need institutions in order to comply with moral demands and at the same time it also holds that we can comply with moral demands without institutions. One might object here that the duty's content is already determined by the existing institutions. For the sake of argument here, let's accept this. Even so, it does not make a problem go away. On the contrary, it creates a new one. To make it more transparent, we can represent this in a biconditional form:

p: Institution X gives content to a fundamental obligation A.

q: There is a duty B to create X.

We get a biconditional: $(p \rightarrow q) \cap (q \rightarrow p)$

The problem is that the second conditional can also take a biconditional form:

q: There is a duty B to create X.

r: We need an institution Y to determine the content of B.

We get a more complex biconditional: $((p \rightarrow q) \cap (q \rightarrow p)) \cap ((q \rightarrow r) \cap (r \rightarrow q))$

The problem continues:

r: We need an institution Y to determine the content of B.

s: There is a duty C to create Y.

We get even more complex biconditional:

$(((p \rightarrow q) \cap (q \rightarrow p)) \cap ((q \rightarrow r) \cap (r \rightarrow q))) \cap ((r \rightarrow s) \cap (s \rightarrow r))$

We can continue adding biconditionals to the n^{th} degree. Hence, the view that the duty to create a just world order can be determined by the existing institutions can run into an infinite regress of nested biconditionals. For, there will always be one more obligation to create institutions whose content has to be determined somehow. Moreover, the problem is that biconditionals are true if and only if conditionals have the same truth value. To evaluate the truth value of the biconditional, we need to know the truth value of all the conditionals it consists of, but given that they can be infinitely many, we cannot know this. It follows that we cannot know whether or not the biconditional representation of the duty to create a just world order is true and consequently, whether or not the duty is logically and conceptually possible. So, once we distinguish the claim that institutions give content to our duties from the claim that we have duties to create these institutions, the natural duties of justice look like the Matryoshka dolls – each duty to create institutions presupposes another duty to create institutions.

At first sight, the infinite regress might seem unmotivated for if institutions already exist, why think that there is a duty to create them[158]? The point I want to make is not practical, but conceptual. Recall the debate about the transition from the state of nature to the state of states. What is the point of thinking how the first government was created? It is about the justification of public authority. Similarly, thinking backward about the intricate relation between institutions and norm indeterminacy can shed some light on the question whether or not institutions are the only ones determining content of moral norms. I discuss this in the next chapter.

Once we shift our focus from identifying duties of justice to how their content can be determined, we can see how the reformist view can run into a genuine problem. As opposed to the stringency objection which presupposes conceptual claims that are hard to accept, the paradox is a theoretical problem internal to the reformist view and in this sense a more genuine philosophical problem. If the reformist view holds that we need global institutions to determine our global duties, then it owes us an account of how duties to create such institutions can be determined themselves. In other words, if the reformist view wants to keep advocating the global institutional reforms, it will have to offer an explanatory account of how institutions emerge as well as its normative counterpart – how they should emerge. Before I embark on this, let me briefly address skepticisms about the paradox. There are three possible ways to deny it.

a) Deny p

First, one can question the first conditional p→q which holds that institutions are necessary to give content to a fundamental obligation P. So, one can say that duty bearers do not need institutions to

[158] I thank Janos Kis for challenging me on these grounds.

specify their fundamental obligations, but can directly act upon obligations[159]. To be sure, individual agents can directly comply with some of their fundamental obligations in small-scale contexts[160]. When it comes to large-scale contexts, including global institutional reforms, states can identify several morally equivalent ways to comply with their duties which can give rise to coordination problems. To solve the coordination problems, it seems that some coordinating mechanisms have to be in place. Therefore, the first conditional holds.

b) Deny r

An alternative way to challenge the biconditional form is to accept that at least some of our fundamental moral obligations necessitate institutional determination, but argue that the duty to create a just world order need not be among them. Instead, it should be left to discretion of individual states to decide when and how to comply. In other words, moral obligations are different and not all of them have to have determined content. To be sure, some obligations of justice can have more indeterminate content than others. Even more, agents surely should have some discretion when attempting to comply with them. However, as argued earlier, the creation of institutions triggers partial conflict coordination problems. So, for reforms to take place and for

[159] As Honore argues, while choice between different legal rules might be morally neutral, e.g. whether to drive on the right or on the left; the choice between having determinate rules and not having them is not morally neutral. In Tony Honoré, "The Dependence of Morality On Law," *Oxford Journal of Legal Studies* 13, no. 1 (1993): 1–17.

[160] I would go as far as to claim that it is not clear what general moral principles require even in small scale contexts. Take for instance, the least controversial duty such as a duty not to harm. Apart from a few clear cases of prohibition of physical harming, such as physically attacking a person at a street, it is difficult to say what actions agents should take in order to comply with the principle. For instance, if I am physically attacked, am I allowed to harm the attacker, and if so, to what extent? Suppose he wants to steal my wallet, am I justified in killing him? Therefore, it seems intuitive to argue that general moral principles necessitate authoritative interpretation. Importantly, this does not affect their existence, but is limited to their discharging. The fact that I do not know if I am allowed to kill the pocket thief in the self-defense does not release me of my duty not to (disproportionately) harm him.

global institutions to emerge, states have to coordinate on a single option[161]. It follows that discharging the duty to create a just world order cannot be left to a complete discretion of individual states.

c) Deny s

Finally, one can accept the role of institutions in determining the content of fundamental moral obligations as well as a need to coordinate compliance with the duty to create a just world order but question the fundamental idea that authoritative institutions are necessary to solve coordination problems[162]. Namely, partial conflict coordination problems can arise regarding different issues – some of them concern daily political and social life, but others concern the creation of institutions in the first place. While authoritative institutions are indeed necessary to determine moral norms indeterminate in the first sense, it would be odd to argue that they are also necessary to solve the second type of coordination problems[163]. For we can think of other ways states' actions can be coordinated, such as by conventions. If we accept such a view, then the duty need not be indeterminate after all. This is an original line of argumentation that suggests that the way to dissolve the paradox is to conceptualize nonauthoritative coordination – coordination by

[161] It may not be quite clear what is meant by a single option. For instance, it can mean the same action. Driving on the same side of a road is a clear instance of that claim. Yet, there are cases of coordination problems when agents need not choose the same action, but the same *option*. For instance, imagine that your phone conversation with a friend is suddenly interrupted and the two of you are thinking who should call back. In this case the two of you should not choose the same action, since you would fail to re-establish the connection. Instead, you should choose the same option: you decide to call back and your friend assumes that you will do so. I adopt the example from David Lewis, *Convention: A Philosophical Study* (Oxford: Blackwell, 2002). Therefore, while the same action may be sufficient for coordination to take place, it is not necessary. What is necessary instead, is to choose the same option that might include different actions. Lewis calls such options "equilibrium".

[162] I take it that the existing international institutions are not authoritative in a way state centralized institutions are.

[163] It is not clear if they are (practically) sufficient either, for it still depends whether agents will comply with its commands or not.

conventions. If successful, the argument might have significant implications for the way we think about the role of institutions with regard to moral obligations. I devote the remainder of the dissertation to pursue this strategy further.

3.6. Conclusion

In this chapter, I sought to problematize the relation between norm indeterminacy and the role of institutions. I argued that the indeterminacy of the duty to create a just world order raises a threefold problem for the reformist view: the stringency objection, the assurance problem, and the paradox of indeterminacy. I also argued that the stringency objection is question-begging, but that the other challenges are compelling. To be able to make coherent claims as well as to offer practical guidance, the reformist view has to show that the state's duty to create a just word order is not indeterminate after all. To do this, it will have to engage in self-reflection and re-examine its fundamental premise: that authoritative institutions are necessary for coordination to take place. Hence, the way to address the assurance objection, as well as the paradox, is to dissolve them. To do so, I will examine the role informal conventions can play in resolving partial conflict coordination problems. I turn to this now.

IV Individuals, States, and Conventions

"The practice of the world goes farther in teaching us the degrees of our duty, than the most subtle philosophy, which was ever yet invented."

D. Hume, A Treatise of Human Nature, Book 3, Part II, section IX

In the previous chapter, I took for granted that the state's duty to create a just world order is indeterminate and I discussed the problems the duty so understood raises for the reformist view. While the stringency objection can be dismissed, I argued that the other two problems: the assurance objection and the paradox of indeterminacy seriously affect the plausibility of the reformist view. In light of these objections, I suggested that the view should reconsider whether the duty to create a just world order is indeed indeterminate. To do so, the reformist view will have to go all the way down to its fundamental premise: that authoritative institutions are necessary to resolve coordination problems. If it can be shown that coordination problems can be resolved in a different way, then the state's duty to create a just world order might not be indeterminate after all. This chapter investigates the practical role conventions can play in this respect.

The argument of this chapter unfolds as follows. First, I start by considering how coordination problems could have been resolved with regard to the creation of state institutions. By drawing on Hume's and Lewis's work on conventions, I show how individuals could have created and sustained conventions, including a governing convention establishing a government. I then move to consider implications for relations among states. In this regard, I argue that states can coordinate by conventions too. Moreover, I make a more radical claim: that international customary law is a global governing convention. This gives us a sufficient reason to reject the

dichotomous view about the nature of the world order and recognize the relevance of intermediary stages.

Before I embark on addressing the problem, let me make a brief methodological point. The emergence of institutions has to be assessed from both explanatory and justificatory perspectives[164]. First, we need an explanatory account of how new institutions and rules can emerge. Second, we also have to identify a morally desirable way of changing the current world order. The present chapter solely focuses on the explanatory component, while leaving the justificatory one for the next chapter.

4.1. Individuals and Conventions

Philosophers often make a parallel between individual actions in the state of nature and the way states behave globally. The parallel is supported by the idea that just as individuals, states also have moral agency[165]. Hence, to understand how states can coordinate their actions globally, I

[164] I take the idea of explanatory and justificatory components of a theory from Hampton. She tries to explain the creation of a state by modeling it. In her words, "[h]istories are complicated, messy, and full of irrelevant contingencies. A model of state creation allows us to cut through the historical undergrowth and see the deep structure of state generation underlying all histories of state formation." In Jean Hampton, *Political Philosophy* (Boulder, Colo: Routledge, 1998). p.71. For a good discussion of model building in philosophy, see Timothy Williamson, "Model-Building in Philosophy," in *Philosophy's Future: The Problem of Philosophical Progress*, ed. Russell Blackford and Damien Broderick (Oxford: Willey, 2017), 159–72. While Williamson supports the use of models in ethics, epistemology and philosophy of language, since they "deal primarily with the human world in all its complexity and mess" (p. 1) one might say that political philosophy can actually make the best use of it, given the extent to which a world of politics is messy and complex.

[165] I discussed the question of the state's moral agency in chapter 2. There I attempted to show that states are not only capable of agency but that they are moral agents too. If we allow for the possibility that group agents can exist, then states, with a clear decision making structure, surely qualify as such. Not only that they are able to make decisions, but they can also decide on moral matters, meaning that they are responsive to moral reasons.

briefly revisit well-known arguments concerning the ways in which individuals could have coordinated their actions in the state of nature and created a government.

The views about the state of nature are familiar. Many tend to agree that those residing in the state of nature faced different kinds of collective action problems, including a single-play and iterated Prisoner's dilemmas, coordination problems, and partial-conflict coordination problems[166]. Such problems necessitated a collective remedy to resolve them, and the remedy was the establishment of a government. The creation of a government, however, also triggers a series of partial-conflict coordination problems in its own right. For individuals could have had a common interest in creating political institutions, but they could also prefer different coordination equilibriums in which different individuals get to rule[167]. So how could they manage to coordinate upon a single option and create a government? There are two possible ways – either by explicit agreement or spontaneously.

Let me start with the explicit agreement. The standard view is that a government could have been created by individuals entering into a form of social contract. Individuals subject themselves to a rule by one or more by making an explicit agreement that takes a form of

[166] The fact that collective problems arise no matter how human nature is understood suggests that the features of human nature do not play a significant role in triggering these problems. In other words, collective action problems can equally arise among those unwilling to cooperate as well as those willing to do so. This suggests that the question of motivation of parties plays a small role in collective action problems. For instance, Kant argued that there is no need for moral improvement in order to establish a state, for even a "nation of devils" can do so. Moreover, once established, the state can contribute to moral improvement of its citizens. Kant, "Toward Perpetual Peace: A Philosophical Project."; 311–52, First supplement, p. 113

[167] Hampton is one out of few who specifically defines the problem of creating a government as a series of partial conflict coordination problems, or in her terms "conflict-ridden" coordination problems. In Jean Hampton, *Political Philosophy* (Boulder, Colo: Routledge, 1998). Yet, she ignores a moral component of coordination problems and follows instead a strictly Lockean line – that coordination problems in the state of nature arise due to conflict of interests only. Yet, as I argue above, they can also arise due to disagreement over moral matters. For a similar point, see Besson, *The Morality of Conflict*.

promising[168]. By promising obedience, they transfer their authority to a ruler and the ruler has the authority only over those that do so. While social contract theorists rarely claimed that the contract had actually been concluded, most of them used the idea of a social contract to justify political authority. The basic idea is that persons, as naturally and morally equal, can subordinate to the will of another only if they consent to it, but they have no duty to do so. The legitimate authority must derive from the consent of the governed.

The contractarian justification of government has been harshly criticized on both justificatory and explanatory grounds. Let me mention just a few. For instance, the idea that individuals incur an obligation by promising begs the question; as Hume argued, why should individuals keep that promise? The appeal to an original promise presupposes a prior reason to keep our promises. Therefore, promising itself does no argumentative work.[169] Furthermore, why would individuals keep their promises if defecting from cooperation is the main reason to create a government? Why think that those who cannot agree about what the law is, will agree about whom shall make it? Additionally, it is hard to imagine that most of people have explicitly consented to their governments. To say that they tacitly consented by not emigrating will not do either, for it is difficult to identify an intention to consent; individuals might simply be unaware that by doing specific acts they consent to political authority[170]. In short, explicit consent is practically

[168] According to Hobbes, people contract with one another who shall be sovereign, and they individually authorize that person, which makes them permanently bound to him. In Hobbes, *Leviathan*. p. 190 – 195; 221. Hampton argues that Hobbes's view is contractarian since persons make a contract with one another, but investiture itself is performed independently and non-contractually. Hampton, *Hampton, Political Philosophy*, 1998.p. 48

[169] David Hume, *Essays Moral, Political, and Literary* (Oxford: Oxford University Press, 1993).p. 288

[170] "We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean and perish, the moment he leaves her." Hume, David, *Hume, Treatise*. P. 282

impossible, and the tacit one is morally dubious. Since many of these objections originate from Hume, it is worth quoting him here:

> "Were you to preach, in most parts of the world, that political connections are founded altogether on voluntary consent or a mutual promise, the magistrate would soon imprison you as seditious for loosening the ties of obedience; if your friends did not before shut you up as delirious, for advancing such absurdities. It is strange that an act of the mind, which every individual is supposed to have formed […] should be so much unknown to all of them, that over the face of the whole earth, there scarcely remain any traces or memory of it. "[171]

Thus, had contracts been necessary for the creation of a government, that creation would have never taken place[172]. I leave the general discussion here. The point that concerns us here is the idea that individuals have to promise one another obedience, which presupposes that compliance of agents is conditional upon having the assurance that others will comply too. As we can see, the problem of assurance is central to the question of the creation of a government. Let me turn to an alternative account of the creation of government – spontaneous coordination.

The idea that a government could have been created by spontaneous coordination originates in Hume's practical philosophy. Besides ridiculing the idea of social contract, Hume also offered an alternative historical explanation of how governments could have emerged[173]. In

[171] Hume, *Hume, Essays*. p. 278.

[172] Although, it is not clear that consenting to political authority takes the form of promising. As Simmons argues, consent is always given to the actions of other person, whereas promises can never be made concerning actions of others. I can make promises with regard to my actions only. Furthermore, by promising we undertake obligations, whereas by consenting we accord a right to another to act. A. John Simmons, *Moral Principles and Political Obligations*. p. 76 - 77

[173] Hume did not deny the consensual origin of a government, but he insisted that it had nothing to do with its continuing legitimacy. What justifies a continuing authority of a government, Hume thought, is its serving individual interests, such as securing peace and commodious life. Hume, *Hume, Essays*. p. 543

his view, the governments are "human inventions"[174] that emerged through conventions rather than by concluding a contract[175]. Since Hume's explanatory account is one of the building blocks of this dissertation, I look closer into his line of argumentation[176].

Before doing so, let me finally explain what I mean by conventions. I use the terms conventions, practices, and customs interchangeably unless indicated differently. I follow Lewis in understanding a convention as "regularity in behavior produced by a system of expectations."[177] Conventions are stable patterns of behavior that provide a coordinating equilibrium. The important feature of conventions is that they are norm-generating in the sense that they define rules and roles. This brings them close to public institutions. Still, in contrast to institutions, conventions are self-enforcing. For the sake of argument, I will assume that it is relatively easy to distinguish between public institutions and conventions[178]. Let me return to Hume now.

Hume famously argued that conventions precede the establishment of government. Society and government could have emerged as part of an evolutionary process "taking place through casual and piecemeal formation of conventional practices […] founded on a progressively

[174] Hume, David, *Hume, Treatise*. p. 539; To be sure, one can say that a contract is a human invention too. The claim Hume made was more radical: that political authority as such is a human invention, whereas contractarians, most notably Locke, thought that political authority emerges by transfer from individuals. This implies that individuals have a natural authority that they transfer to a government. For a good criticism of the Lockean view see Hampton, *Hampton, Political Philosophy*, 1998.

[175] One might say that a social contract is a convention in itself. Yet, as Lewis points out, conventions are characterized by the existence of alternatives one of which arbitrarily becomes convention. The only alternative to a social contract is the state of nature as a situation of total non–conformity. Therefore, we cannot take a social contract as convention. In Lewis, *Convention*, 2002. p. 88 – 89; To be sure, one can ask why the existence of alternatives is necessary for conventions to emerge. I cannot pursue the matter further here.

[176] Historically speaking, the term "convention" was indeed used in this context. For instance, the "Constitutional Convention" took place in Philadelphia in May 1787, when the United States Constitution was adopted.

[177] Lewis, *Convention*, 2002. p. 42 - 43

[178] For arguments that this may not be the case see Cohen's critique of Rawls's concept of basic structure. In G. A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy & Public Affairs* 26, no. 1 (1997): 3–30.

discovered sense of mutual advantage"[179]. While living in a society might be advantageous, those living in a "savage condition" could not conceive of those advantages. Here we can see Hume's empiricist epistemology at work - individuals cannot be motivated to act by considerations that they have not experienced. What they could have experienced instead were inconveniencies "which proceed from the concurrence of certain qualities of the human mind with the situation of external objects."[180] It is not easy to satisfy human desires under conditions of scarce external resources[181]. Individuals realize that they need the stability of property and that this is a common interest of all, which induces them to regulate their conduct by conventional rules. Conventions acquire force slowly "by our repeated experience of the inconveniences of transgressing it."[182] Consequently, conventions do not emerge through mutual promising, but by a gradual and spontaneous emergence of regularity in behavior based on expectations that others will also behave in a similar way. To put it bluntly, I will not touch your property unless you touch mine, and I know that you think the same. Therefore, I do not touch your property[183]. How does this work? How can individuals coordinate among themselves without an explicit agreement? Hume suggests that two notions are of particular relevance here. First, conventions are generated and sustained out of common interest to regulate behavior as well as a shared preference to conform. Second, conventions emerge from following salient options. Let me look closer at each of them.

[179] Dario Castiglione, "History, Reason and Experience: Hume's Arguments against Contract Theories," in *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly (London ; New York: Routledge, 1994), 97–116. P.107 – 108.

[180] Hume, David, *Hume, Treatise*. p. 494

[181] Rawls famously used Hume's idea of circumstances of justice as generating demands of justice. The circumstances of justice are normal conditions under which human cooperation is both possible and necessary. In Rawls, *A Theory of Justice*. p. 126

[182] In Hume, David, *Hume, Treatise*. p. 490

[183] For Hume, promising is also convention. It is only convention that can explain why uttering the words "I promise" generates moral obligations. In Hume, David. p. 516 - 523 Cf. Rawls, *A Theory of Justice*.. p. 344 – 348.

4.1.1. A Preference to Conform

Hume argues that individuals in the state of nature gradually create conventions rather than enter into a one-time social contract. He gives the famous example of two men who pull the oars of a boat. They do it by convention rather than by promising one another to do so. They do not need to promise since it is in the interest of both of them that the boat moves[184]. The interest in the boat's moving is self-interest of each of them; they have the interest in the same thing which makes it a common interest. The common interest is joined with another psychological fact – that people have a conditional preference to conform. The preference is conditional upon others conforming too. Just as I expect others to conform, they also expect me to conform. I know that you will conform if you see me conforming, so I conform[185]. Furthermore, the very existence of conventions shows that at least some individuals comply with them. Otherwise, there would be no conventions in the first place. Given that at least some others already comply, other agents have a reason to comply too. Hence, while other-regarding motives might be sufficient for cooperation to take place, they are not necessary. In other words, self-interested individuals share a preference to conform which implies that they can cooperate too. This shows that focusing on the dichotomy between other-regarding and self-regarding motives is too simplistic and not that informative when we think about coordination problems[186]. Note further that the preference to conform seems to have a status of meta-preference – it can affect other preferences individuals have. For instance, one of the

[184] Hume, David, *Hume, Treatise*. p. 490

[185] In his discussion of the principle of fidelity, Rawls argues that it is very likely that others will conform once they see the first person conforming. Yet, he also argues that the first person cannot have guarantees that others will follow her unless they promise. In Rawls, *A Theory of Justice*. p. 344-348 Still, one can say that the common knowledge that human beings have a tendency to conform can also be a reason for the first person to start conforming.

[186] Moreover, coordination problems can arise even among well motivated parties. I discuss this later.

boatmen might prefer roaring from the left side only, but he also prefers roaring together. Hence, he can set aside his preference to roar on the left if that would be an obstacle to the two of them roaring together. This shows that individual motivations should not be taken as fixed.

We can see how Hume and Hobbes have drawn radically different conclusions about the creation of a government despite sharing the view about the self-interested nature of individuals [187]. On the one hand, Hobbes followed radical individualism, which unsurprisingly got him into problems when trying to explain the possibility of contracting between distrustful individuals. While compliance might be rational for individuals, the problem is, as Hobbes argued, that one cannot know if others will be rational too. His account of human nature is not only unable to explain the emergence of institutions, but also of conventions[188]. It seems implausible, however, to attribute the emergence of institutions solely to one-time contracting between individual agents void of any pre-existing rules. If anything, for a social contract to take place, at least some conventions are necessary, such as family or language.[189] Therefore, it is important to explain how they could have emerged. On the other hand, Hume thought that in the state of nature, no matter how nasty things can get, individuals can gradually form expectations about one another and act on those suppositions. They do not need to promise each other that they will comply and then expect one another to keep those promises; instead, it is more plausible to think that it is in their interest to comply and the interest in compliance is common knowledge. They acquire the knowledge about common interests through experience, and in this sense, it is the experience of

[187] Nagel interprets Hume's account of human nature as neither perfectly altruistic, nor perfectly selfish, but something in between. Limited altruism made it possible for individuals to adopt conventions that provide a stable framework for interactions and to internalize a need to conform over time. Thomas Nagel, *Equality and Partiality* (Oxford University Press, 1995). p. 40 - 41

[188] For instance, Hobbes thought that there is no private property in the state of nature. Hobbes, *Leviathan*. p. 187 – 188.

[189] For conventional nature of language see also Lewis, *Convention*, 2002. p. 2; Cf. Noam Chomsky, "Recent Contributions to the Theory of Innate Ideas: Summary of Oral Presentation," *Synthese* 17, no. 1 (1967): 2–11.

interaction rather than the promising that gives the assurances about actions of others[190]. The common interest in regulating their behavior makes their actions more predictable, and the gradual emergence of conventions reinforces this, thus making individual behavior even more predictable. The main point Hume makes in this respect is that individuals are born into informal rules, and they comply out of habit, instead of intentionally creating the rules[191]. After all, there is no zero point in history in which the world consisted of a sum of individuals without any informal rules being in place to regulate their behavior. Therefore, we should shift our focus from social contracts and an individual act of promising to the gradual emergence of informal rules and individual habitual compliance with them. To be sure, this says nothing about the normativity of such rules or the conflicts generated by different interpretations of the rules. I postpone addressing this question until the next chapter.

Two objections can be anticipated here. First, one can say that participation in conventions is not habitual, but consensual. For instance, Hampton argues that a government is created by individuals participating in the creation of a governing convention rather than contracting by promising[192]. The convention consent is implicit, nonpromisorial and directed at developing the governing convention instead of being explicit, promisorial and directed at a ruler. In her view, the

[190] Hume's argument is more complex than this. Common knowledge is acquired by experience, but it is a natural sympathy that enables agents to take a general point of view and acquire the experience in the first place. In Hume, David, *Hume, Treatise*. p. 577 - 578

[191] For Hume, even political obligation is a matter of habit. "Obedience or subjection becomes so familiar, that most men never make any inquiry about its origin or case, more than about the principle of gravity, resistance, or the most universal laws of nature." Hume, *Hume, Essays*. p. 277

[192] Hampton attempts to develop a new version of contractarian account of political obligation by combining Hume's and Locke's accounts. By building on Hume's account of conventions, she was hoping to avoid the difficulties faced by the Lockean consent account. In her view, the partial conflict coordination problems raised by the creation of the Commonwealth have been resolved by generating a complicated governing convention. In Hampton, *Hampton, Political Philosophy*. I will come back to this shortly.

convention consent is different from the endorsement consent, which is approval of the political authority. The significance of the convention consent is that it can avoid the difficulties the promissory consent is facing[193].

Hampton is undoubtedly right that promissory consent is not the only type of consent, and that other forms of consent can also be binding. For instance, we can think about permissions. If I let you cut my hair, and I believed that you are a good hairdresser, then I can have no complaint against you if I look bad afterward. However, what kind of consent is participation in a governing convention? To say that individuals consent to conventions implies that participation in conventions is voluntary: it is up to individuals to decide whether to comply or not. However, we often find ourselves complying with pre-existing conventions. In some sense, we are socialized into conventions to the extent that compliance with them is unintentional. Once conventions are in place, it is not clear at all to what extent individuals consent to them. After all, there is no situation in which individuals are asked whether or not they consent to a convention. To the extent we think that intentions are central to consenting, habitual compliance with conventions can hardly be defined as consent. As Lewis argues, only a few people play an active part in initiating a convention, while others are the "responsive audience".[194] Notice further that the significance of habitual behavior is that it shows that individuals are able to do more things than those that they intentionally consent to. This is relevant when we are thinking how far we can go in ascribing moral obligations to individual agents.

[193] According to Hampton, the conception of consent as participation in a governing convention is weaker than Lockean consent, but still strong enough to capture the agency relationship between the people and a ruler. In Hampton, *Hampton, Political Philosophy*, 1998. p. 95

[194]Lewis, *Convention*, 2002. p. 86

The second objection is that consent is morally rather than sociologically relevant, for its principal role is to evaluate institutions. Institutions and rules should be such that individuals would have consented to them. The preference to conform and habitual behavior, however, are just mere sociological notions. Even if participation in conventions is habitual, it says nothing about conventions' normative force. Moreover, habitual behavior is unintentional, which means that it is difficult to ascribe any responsibility to those upholding specific practices[195]. This raises the question of the normative significance of conventions that I will address in detail in the next chapter. It suffices to say here that conventions are not merely sociological because some of them acquire normative force by enabling compliance with pre-existing duties. The normative force of some conventions derives from the normative force of the duties.

4.1.2. Salience

The conditional preference to conform does not suffice for the emergence of conventions. After all, it is conditional upon others conforming too. What is also necessary, following Lewis, is that there is a coordinating equilibrium which is salient: "one that stands out from the rest by its uniqueness in some conspicuous respect."[196] Imagine three friends visiting a zoo. At one point they got separated. Their cell phones do not work. How do they reason about where to meet? It seems intuitive to go to the middle since it is most likely to be equidistant from where they are relative to one another. Not only do they all think that it is the most reasonable to meet in the

[195] For a good discussion on how individual habitual behavior that sustains unjust practices can be the basis of shared political responsibility, but not liability see Young, Iris Marion, *Responsibility for Justice*. Although those who unreflectively sustain systemic injustice might not be liable, Young argued that they share forward looking political responsibility to try to remedy injustice.

[196] Lewis, *Convention*, 2002. p. 35

middle, but each of them also believes that the other two think the same[197]. They coordinate by replicating one another's reasoning. What makes such reasoning easier is the existence of the salient option. The saliency is an intrinsic property of a coordination equilibrium. In our example, cages with animals in the middle of the zoo are the salient coordinating point.

Note that the salient option need not be the best one. Perhaps there is a cage with snakes in the middle of the zoo, and one of the friends is afraid of them. He would surely prefer meeting somewhere else. However, since he has to meet the other two friends, the places in the middle are salient options[198]. Thus, it is important to distinguish the salience of coordinating equilibriums from their merits. Conventions can secure coordination by their salience even when participants disagree about their merits. In other words, parties might have an interest in preferring a specific coordinating equilibrium, but they might also have a higher order interest in coordination itself[199]. The snake-hater might prefer meeting his friends in the middle of the zoo instead of giving in to his fear and going home alone. Given their preference to conform, and the existence of the salient option, all else being equal, friends can effectively coordinate even in the absence of an agreement[200]. If such coordination becomes regularity, we get a convention. If the same group of friends gets lost in the zoo again, it is even more likely that they will go to meet at the same place. In Lewis's terms, this would be a "precedent", a coordination equilibrium that led to coordination

[197] This raises difficult questions of how to analyze inductive reasoning and how much rationality to attribute to agents, but these are beyond the present discussion.

[198] Here I assume that the three people are not the best friends, so they do not know each other very well. Consequently, the two are not aware that the third one is afraid of snakes.

[199] Empirical findings confirm his view. Specifically, people use focal (salient) points to coordinate their behavior. For the findings see, Judith Mehta, Chris Starmer, and Robert Sugden, "The Nature of Salience: An Experimental Investigation of Pure Coordination Games," *The American Economic Review* 84, no. 3 (1994): 658–73.

[200] Naturally, one will ask why comply with convention if it can harm some of the parties. I address this in the next chapter.

in the past can serve as the coordination equilibrium for current coordination problems[201]. Notice further that it does not matter who had initiated it, nor what the initiator's intentions were. For instance, perhaps one of friends told the story to someone else, and when the other person found herself in the same situation, she decided to follow the precedent and meet in the middle of the zoo. It is even possible that the zoo management heard about this and decided to establish an internal rule: people who get lost should go to the middle to find each other. All that matters is that there is a coordination equilibrium that has enabled coordination in the past. Agents can see this as a precedent to follow in new but similar coordination problems unless there are strong reasons to change the course of action (e.g. the cage with snakes got broken, so it is dangerous to meet there). This is what makes conventions "meta-stable" and "self-perpetuating."[202]

For both Hume and Lewis, a conditional preference to conform and salience are sufficient for conventions to emerge gradually and spontaneously. However, imagine there were hundreds of coordinating equilibriums. In such conditions, it would be impossible for one option to stand out, to be salient. The salience of individual options is enabled by a limited number of options. It is because there are not that many coordinating equilibriums that some of them can stand out. Here I will propose that there is one more necessary condition for conventions to emerge: an inherently limited number of practical possibilities.

4.1.3. The Principle of Limited Practical Possibilities

Consider the following scenario. There are several families, each wanting to possess their own flat or even better – a house. Since none of them can afford it, the only way for them to own property is to renovate an old building together. Such renovation faces all sorts of limitations. For instance,

[201]Lewis, *Convention*, 2002. p. 39
[202] Ibid., p. 42

they cannot add an additional floor because the building is old and might collapse. This means they cannot change its size. Second, the families cannot undertake the reconstruction on their own, because there are common features of the building that have to be fixed, such as replacing water pipes and the electrical installation. Also, the families cannot reconstruct their own flats only, for it affects the neighbors in the building by making noise, producing dust, even destabilizing shared walls. Accordingly, they have to renovate the building together and at the same time. We can take the building renovation as an instance of the so-called "principle of limited practical possibilities"[203].

The principle is identified by cultural anthropologists. When it comes to cultures, Goldenwesier famously argued that their practical limitations manifest in two ways. First, there is a limitation of forms in the objective manifestation of culture. There are only a limited number of ways in which any activity can be carried out, or beliefs can be structured. All cultures display some general similarities that are independently developed. In other words, similarities between cultures, such as having religious rituals, need not necessarily result from one culture influencing another but can emerge independently. The limitations in possibilities of phenomena's manifestations make convergence between cultures likely even in the absence of any influence[204]. Second, when a particular form of social organization develops, it tends to perpetuate itself, and it affects other developments too. A general pattern gives direction for change and limits a deviation.

[203] The principle of limited practical possibilities should not be confused with another similarly sounding notion - the limits of practical possibility. In Mark Jensen, "The Limits of Practical Possibility," *Journal of Political Philosophy* 17, no. 2 (June 2009): 168–84. While the former is about the "objective" limits of the ways in which a phenomenon can manifest itself, the latter refers to defining capacities relevant to ascribing obligations – practical possibility in the context of *ought implies can* principle. While individual abilities arguably can change over time, a phenomenon's manifestations cannot.

[204] In A. A. Goldenweiser, "The Principle of Limited Possibilities in the Development of Culture," *The Journal of American Folklore* 26, no. 101 (1913): 259–90. I thank Janos Kis for drawing my attention to the principle.

For instance, there is no infinite number of ways in which old buildings can be reconstructed[205]. Families can decide to hire an architect that will redesign the building for it is a standard way to deal with these issues. It is the specific set of circumstances at one point in time that makes one coordination equilibrium salient as opposed to others[206]. Going back to political considerations, Hume argued that it is entirely natural that the first forms of political institutions were monarchies since individuals in the state of nature could see that coordination by a single person is the most efficient. For him, it was a practicality rather than divinity that made monarchies an adequate form of government in an early history[207]. While people might disagree about which person should be the monarch, the principle of limited possibilities tells us that it will be coordination by one. The objective limitations in a phenomenon's manifestations do not prove any determinism. For it does not rule out all choices[208]. As long as there are two alternative options to choose from, there is a room to choose by convention, i.e. arbitrary.

[205]To connect the principle of limited practical possibilities and conventions, think about language. I argued above that Lewis took language as conventional in his sense of conventions – not necessitating agreement, but still being dependent on individual choices. On the other hand, Chomsky argues that it is not clear to what extent language is actually conventional. In his view, phonological rules of syntax, which affect phonetic form of a sentence, operate according to certain very abstract but universal principles of ordering and organization. This implies that all languages share the same "deep structure". Even more, each child who learns a native language has to rediscover these deep structures. This is possible since certain linguistic intuitions are innate ideas. Going back to the present discussion, there are objective limitations in the manifestation of language that make different languages share the same deep structure. Still, as Chomsky points out, there is also a "surface structure" which is a matter of convention. Noam Chomsky, "Recent Contributions to the Theory of Innate Ideas: Summary of Oral Presentation," *Synthese* 17, no. 1 (1967): 2–11.

[206] Considerations as these can have significant implications for the way we think about global pluralism of cultures as a limitation to pursuing global justice projects. While I cannot develop the idea here, it suffices to say that, following the principle of limited practical possibilities, pluralism might be far less pervasive than it is usually thought.

[207]Hume, David, *Hume, Treatise*. Hume, David, *Hume, Treatise*. p. 540-541

[208] The empirical evidence suggests that the increasing number of options, even if they are good options in some sense, does not actually make agents better off, since it increases the risk of miss-coordination, and consequently, makes agents less likely to act. For instance, a big number of non-profit organizations may make donors less likely to donate. In Luca Corazzini, Christopher Cotton, and Paola Valbonesi, "Salience, Coordination and Cooperation in Contributing to Threshold Public Goods," ISLA Working Papers, May 2012.

To conclude this part, we can see that the creation of a government involves partial conflict coordination problems – while individuals might prefer coordination, they also prefer different coordinating equilibriums. The disagreement cannot be solved by making promises to one another. If a central reason for why a government is needed is that people cannot keep a contract, how will they keep (the most important) contract? Instead, Hume's analysis of the spontaneous and gradual emergence of conventions is more plausible. We have to account for the fact that certain informal rules predate the more formal ones, and that individuals who share the conditional preference to conform, will comply with the rules out of habit. Instead of Hobbes's insistence on securing the assurance either by individual promising or by a sovereign's coercion, individuals can cooperate on the basis of expectations about actions of others too. The actions are becoming more predictable and regular as conventions are slowly progressing and gaining more force. The main point I want to make here is that besides being assured by a coercive authority or through explicit agreement, the assurance can follow from experience of interaction as well. It follows that authoritative institutions that assure compliance are not necessary for coordination to take place. They are surely sufficient but coordination can take place even without them. To be sure, these considerations apply to individuals, but the objections discussed in the previous chapter – the assurance objection and the paradox of indeterminacy concern the relations among states. To reply to the objections, we have to show that states can coordinate by conventions in the way individuals do.

Before we proceed, an important caveat is in order. While Lewis was concerned with social conventions in an ordinary sense, Hume analyzed a broader array of conventions, including those establishing the government. In what sense if any, is a convention creating a government identical to conventions concerning language or currency? If anything, conventions creating institutions often get institutionalized, whereas social conventions proper remain social, informal rules. It

follows that the former have more force than the latter. Hampton tries to capture the distinctiveness of conventions creating institutions by naming them "governing convention."

The significance of a governing convention is that it captures the character of an emerging political organization. Namely, once a governing convention is in place, the situation is not anarchical anymore. Instead, according to Hampton, the existence of a governing convention proves the existence of a new, qualitatively different political formation. As opposed to other conventions that regulate specific behavior, a governing convention is a meta-rule: it is the rule about how rules are to be made. What matters for the present discussion is that a governing convention, contrary to a dominant view, solves the partial conflict coordination problems triggered in the process of creating a government[209]. Namely, I mentioned earlier that many think that partial conflict coordination problems can be resolved by formal institutions only. Coordination by conventions shows that this is not necessarily the case. There is also a more general point here. The existence of the meta-rule challenges standard views of authority as binary – that it either exists or not. However, the existence of governing convention shows that the notion of authority is a matter of degree. Moreover, coordination by conventions suggests that authority is not necessarily all about enforcement. To the contrary, authority can also be about codifying pre-existing rules which then become self-enforceable[210]. It remains to be examined what makes such a convention authoritative, given that it precedes political authority proper[211].

[209] Cf. Waldron, "Legislation, Authority and Voting.", Besson, *The Morality of Conflict.*

[210] I take this point from Snidal, "Coordination versus Prisoners' Dilemma: Implications for International Cooperation and Regimes"

[211] Indeed, Hampton herself argues that the existence of a governing convention is not sufficient for moral legitimacy of authority. In her view, a morally legitimate political authority is one that is "substantially just" and is approved by endorsement consent which is stronger than convention consent. In Hampton, *Hampton, Political Philosophy*, 1998. p. 113

4.2. States and Conventions

Thus far, we could see how a governing convention could have emerged in the state of nature. By drawing on the work of Hume and Lewis, I identified three necessary conditions for conventions, including the governing one to emerge: a conditional preference to conform, the existence of salient options, and the fact that the options are not infinitely many. Can we infer any implications for relations among states? It is precisely what I intend to do in the remainder of the chapter. First, I argue that the global institutional reforms raise the same kind of collective action problems that the creation of a government does – namely, partial conflict coordination problems. Second, I argue that all three conditions for the emergence of conventions are present globally. In the end, I make a more radical claim: that international customary law is a global governing convention.

The Global State of Nature?

The current world order is analog to the state of nature in the sense that there are no authoritative centralized institutions globally that can regulate states' actions just as there were no such institutions with regard to actions of individuals. However, it is difficult to see why the absence of a centralized authority amounts to anarchy. Anarchy is ordinarily understood as lawlessness and a political disorder but the absence of a global centralized authority does not yield lawlessness. Namely, there is a decentralized system of international institutions and norms that regulate behavior of states. Consequently, it seems more plausible to characterize the current order as intermediary stages between anarchy and centralized authority.

There are two possible ways to understand the notion of intermediary stages. On the one hand, the intermediary stage might mean the middle stage between anarchy and centralized authority. Such a stage can be stable and need not necessarily imply movement toward more centralized authority. On the other hand, the intermediary stage can also be understood as "transitional" in the sense of transitioning toward a more centralized global authority[212]. I understand intermediary stages in the second sense[213].

I take it that none of the existing international institutions possesses authority concerning demands of global justice, most of which are distributive demands[214]. To the extent we agree that such institutions should come into existence, their creation will generate what I called, following Waldron, partial conflict coordination problems. I have already explained this in chapter 3, and I will not rehearse the details again. It suffices to say that there are different ways in which global institutions can be created. While parties might prefer either of them to noncoordination, they might also prefer different coordinating equilibriums. For instance, states might have preferred the creation of international criminal court in the aftermath of the WWII, but they disagreed about the definition of aggression[215]. Institutionalization for the sake of global justice can be even more

[212] This is how transition of countries is characterized in political science literature: as having an end-point that transitional reforms should reach. The end point is usually a stable democratic regime. For a seminal discussion see Dankwart A. Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics* 2, no. 3 (1970): 337–63.

[213] For instance, Gilabert argues that transition is about generating conditions of feasible implementation of global egalitarian demands. The fact that the demands cannot be fulfilled at the moment, does not cancel the duty to do so later. In the transitional stage, agents have dynamic duties to expand a feasible set of political actions and options. In Gilabert, *From Global Poverty to Global Equality*. p. 140 – 145; For other interesting discussions of the process of transition see Buchanan, *Justice, Legitimacy, and Self-Determination*.; Attila Tanyi and András Miklós, "Institutional Consequentialism and Global Governance," *Journal of Global Ethics* 13, no. 3 (2017): 279–297.

[214] Even the ICC as the most cosmopolitan institution at present, falls short of proper competences since it has to rely on enforcement powers of states, and of course, as judicial institution, it has no distributive competences. For a good introductory discussion see Abizadeh, "Introduction to the Rome Statute of the International Criminal Court."

[215] Interestingly, the ICC has been created in the aftermath of the Cold War, without adopting the definition of aggression. The definition was adopted later through the Kampala amendments to the Statute. The point of

challenging in this respect for states arguably, have different understandings of what justice means. Even if one denies the need to create global institutions, however, reforming the existing ones will also trigger coordination problems among states. For instance, amending the UN Charter necessitates positive votes by all permanent members of the Security Council[216].

Earlier I argued that governments could have been created through the gradual emergence of conventions, including the governing one. The governing convention could have resolved partial conflict coordination problems among individuals in the state of nature. Can we say something similar about partial conflict coordination problems that arise among states? To be sure, conventions play a very important role internationally. This might make analogy with conventions among individuals difficult to make[217]. If anything, the international customary law (ICL) is one of two primary sources of international law - it binds states in the same way as treaty law does[218]. The Statute of the International Court of Justice defines an international custom as "evidence of a general practice accepted as law."[219] For a rule to attain the ICL status, there have to be two

disagreement was that the ICC is supposed to determine state responsibility, even though it has jurisdiction only over individual responsibility for war crimes. Namely, in order to prosecute individuals for war crimes, it has to identify whether or not a state on whose behalf he or she acted committed an act of aggression. In other words, in order to establish an individual responsibility for war crimes, the ICC first has to determine the collective one. See see Abizadeh, "Introduction to the Rome Statute of the International Criminal Court."

[216] "Charter of the United Nations," accessed March 31, 2018, http://legal.un.org/repertory/art1.shtml. Art. 108

[217] For instance, Lewis argues that the 3rd Hague Convention of 1907 is surely not a convention in his sense, for it failed to establish a prohibition of undeclared warfare as regularity. He further argued that its drafters, by calling it a convention, were hoping to create a new convention. In David K. Lewis, "Convention: Reply to Jamieson," in *Papers in Ethics and Social Philosophy: Volume 3* (Cambridge, U.K. ; New York: Cambridge University Press, 1999). p. 130 - 135.

[218] For a critical analysis of the idea that international customary law is the sole basis of general international law see Grigory Tunkin, "Is General International Law Customary Law Only?," *European Journal of International Law* 4, no. 4 (January 1, 1993): 534–41. For instance, he argues that starting from the end of the WWII, treaties became multilateral, and the UN Charter included all states. Its principles are thus considered fundamental principles of international law.

[219] "Statute of the Court | International Court of Justice," accessed March 31, 2018, http://www.icj-cij.org/en/statute. art. 38

elements. First, there has to be a widespread state practice (i.e. an objective element). There is, however, no consensus about how widespread the practice should be. The formation of custom can be initiated by a "custom pioneer," which may include a few states. What matters is that states mainly affected by an emerging custom are practicing it[220]. The second element is subjective – the so-called *opinio juris*, which means that there must be a belief that practice is obligatory in the sense that it is required by international law[221]. As opposed to treaties that bind signatory states only, a customary norm, once established binds all states unless they have persistently objected to its formation. Moreover, consider special kind of customary norms: *ius cogens* norms. These are norms from which no derogation by way of particular agreements is permitted. *Ius cogens* norms are often described as a set of superior norms sanctioning fundamental values, which constrain states involuntarily[222]. As we can see, the ICL seems to be a middle category of rules in between laws proper and (social) customs: it has more binding force than customs, but it falls short of the law proper. Importantly, the customary law prescribes both the rules about how customary norms are to be created as well as roles – who can initiate it (i.e. a custom pioneer) and what other states should do. Can conventions so understood play the role of a governing convention globally?

[220] Note that states are not the only ones creating conventions, for international courts as well as the UN General Assembly are getting a more critical role to play as well. Legally speaking, they cannot initiate the creation of customary rules but they can contribute to their elaboration and codification through their authoritative interpretations. See Tunkin, "Is General International Law Customary Law Only?"

[221]Scharf argues that there is the third factor which he calls a context of fundamental change that can accelerate the emergence of a customary law even in the absence of widespread state practice. In Michael Scharf, "Accelerated Formation Of Customary International Law," *ILSA Journal of International & Comparative Law* 20, no. 2 (January 1, 2014): 305–41.

[222] There is no official list of peremptory norms, but it is commonly accepted that they include the prohibition of the use of force between states, racial discrimination, the prohibition of slavery, torture and genocide, as well as peoples' right to self-determination.

In order to answer the question, we have to show that all three jointly necessary and sufficient conditions for a governing convention are in place: a conditional preference to conform, salient coordinating points, and the principle of limited practical possibilities. I turn to this now.

A Conditional Preference to Conform

Recall Hume's and Lewis's claims that individual agents create and sustain conventions even without any explicit agreement, let alone promising compliance to one another. What enables the emergence of conventions is a common interest in regulating their behavior which becomes a common knowledge through the experience of interaction with one another. Additionally, individuals have a conditional preference to conform, which I have defined as a meta-preference that can set aside other preferences. Do the same considerations apply to states? Do states also have a common interest in regulating their behavior as well as a conditional preference to conform? To answer this, we have to examine more closely the way states behave.

A state's behavior is usually characterized as self-interested. Such characterization originates in a realist school of international relations. At a risk of oversimplification, one can say that the realist view rests on two main empirical claims. First, states behave self-interestedly and follow their national interests internationally. Second, international relations are anarchical due to the lack of an overarching political authority to secure order. Such conditions induce states to care about their own security and attempt to dominate others in order to protect themselves. Based on

this, realists derive a normative conclusion – it is rational for states to follow their interests, most of which is their security[223].

However, the notion of state interest is utterly vague[224]. What is in the self-interest of the state? What does "self" in the state's self-interest refer to? Whose interest is the state's self-interest? Is it about those in power? Or about those who elected them? Or about everyone under its jurisdiction, including dissenting voices? Furthermore, it seems that the realist view presupposes a subjective account of the national interest, since the national interest is the one that state officials say it is. But, some officials might think it is in the national interest of the state they represent to conquer another state, as many thought throughout history. If the national interest is what state officials think it is, then there is no way to object to such aspirations.

Furthermore, why think that the state's self-interest is necessarily all about its survival? The realist view presupposes that the international system is anarchical, but as I argued in the previous section, we have little reason to accept such a characterization. If the system is not anarchical, states need not feel so threatened. Also, even if we accept the dominance of security concerns, why think that it necessarily leads to uncooperative behavior? Why not think that, given security concerns, states might realize that they have a common interest in regulating their behavior and making it more predictable? Think about the United States in the aftermath of the Second World War. Even if it was concerned about its own security, it did not decide to pursue it unilaterally. Instead, it facilitated the creation of the rule-based international system that is still in

[223] Bell Duncan, "Political Realism and International Relations," *Philosophy Compass* 12, no. 2 (February 8, 2017).
[224] For an excellent critical discussion of the idea of national interest see Buchanan, *Justice, Legitimacy, and Self-Determination*.

place[225]. Or, take a more contemporary example. In the context of a growing threat of terrorism by non-state agents, the security concerns might make states cooperate. Even if such cooperation is for self-interested reasons, it is still cooperation.

Finally, it is not clear whether the insistence on the state's self-interest is an empirical or normative claim. Caney masterfully shows how the two are combined. In his interpretation, the argument goes as follows. It would be wrong for a state not to pursue its own interests (normative claim) on the ground that other states will pursue their own interests (empirical claim) and hence, pursuing a non-self-interested policy would be likely to achieve nothing (empirical claim) and leave citizens of the non-self-interested state highly vulnerable (empirical claim). This state of affairs is assumed to be morally bad (normative)[226].

Earlier I argued that individuals have a conditional preference to conform, and this enables them to behave habitually. I also argued that such a habitual behavior is more relevant to coordination than consent. I will critically assess the obsession with state consent in the next chapter. Here I am interested in the possibility of states having a conditional preference to conform too. Supranational integration is a case in point. If a limited number of states start integrating, other states feel pressured to join. The integration among several states increases the costs of not integrating but joining such integration just to avoid the costs of not integrating can hardly be characterized as free consent of a state. Namely, the state had to forgo its preferred option – to remain on its own. Therefore, under certain conditions states are willing to forgo their preferred

[225] G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*, Reprint edition (Princeton, NJ Oxford: Princeton University Press, 2012). p. 166 – 170; I will discuss Ikenberry's argument at length in chapter 6

[226] Caney, *Justice Beyond Borders*. p. 7

options and conform to options other states pursue[227]. In this sense, their preference to conform is a meta-preference too: it can make them set aside their other preferences in order to conform to the actions of other states. The significance of a preference to conform is that it does not have to meet strict criteria for validity that consent has to meet. If states indeed have a preference to conform, then they can behave habitually just as individuals do. This shows that we can assign them more obligations than it is usually thought.

Salience

I also suggested that a conditional preference to conform does not suffice for conventions to emerge. What is also necessary is the presence of salient coordinating equilibriums. Recall the zoo example. The three friends who got separated could coordinate their meeting by going to the middle of the zoo. Can we say something similar about states? To be sure, the example was intended to show that individuals can coordinate even without communication. Now, states can easily communicate or find out about one another's intentions in other ways. What is of interest to us here is what Lewis defined as "precedents" – salient coordinating equilibriums that successfully coordinated actions in the past and can serve as coordinating equilibriums should similar coordination problems arise.

Recall ICL. As mentioned before, if some states start specific practices, other states tend to follow. The fact that there have been not many cases of persistent objections to the formation

[227] To be sure, one might say that the reason states conform is precisely because of their self-interest. But it seems that the preference to conform has independent force too. After all, such understanding of self-interest would be so broad that it would become void of any meaning.

of customary norms shows that custom pioneers were able to guess well what other states might support in their practice[228]. Practices they start become salient for other states to follow. For instance, in the aftermath of the WWII, the US, as the world's most powerful country, engaged in the process of institution-building globally. Many other states supported it. One can say that the US provided the focal point for coordination. I will discuss this in more detail in Chapter 6. But the emergence of practices is not all about other states conforming to a custom pioneer's initiatives. For the custom pioneers tend to conform too. The example I just mentioned also shows that the US didn't want to lead the creation of international order, but given the circumstances, it went down that road. Even more, the US was willing to forgo economic opportunities for the sake of its partnering states' economic growth such as allowing Japan to impose tariffs on its products and also providing more than a generous economic aid to the European countries, which initiated the process of Euro-integration (the Marshall plan)[229]. To be sure, the US administration correctly calculated that it will benefit from such order in the long term by getting access to bigger markets. But the point is not to deny that states behave self-interestedly. That would be a heroic claim indeed. Instead, the point is to show that their behavior is more complex than realists argue and states also have preferences to conform [230].

At this point, recall the distinction I made between the salience of coordinating equilibrium and its merits. I have argued that the snake-hater can decide to struggle with his fear and go to the middle of the zoo to meet his friends. Similarly, states might disagree about existing conventions,

[228] Michael Scharf, "Accelerated Formation Of Customary International Law," *ILSA Journal of International & Comparative Law* 20, no. 2 (January 1, 2014): 305–41.
[229] See G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*
[230] O'Neill plausibly argues that states have never been motivated by self-interest only, but are also capable of a wider range of motivations. It follows, in her view, that we should drop the idea of state motivations altogether and focus instead on their capabilities. In O'Neill, "Global Justice: Whose Obligations?"

but still follow the salient ones since they can see that others are following and it is also becoming difficult to take an alternative path. This takes us to the third condition for a convention to emerge.

The Principle of Limited Practical Possibilities

Recall the building example. It was intended to show the workings of the principle of limited practical possibilities. Creating global institutions is analog to the renovation of the old building in several respects. First, just as families have to coordinate on a single option to renovate the building, states have to coordinate to tackle matters of common concern, including the creation of global institutions. Second, just as families' choices are interdependent with regard to the building's reconstructions, states' choices are also interdependent for none of them can create new global institutions alone. Finally, just as the building is in place, so certain international institutions already exist which limit the number of options for future institutions. If anything, pursuing alternative orders might turn out to be costlier. Therefore, just as there are only so many ways to reconstruct the old building, the same applies to future global institutions – there is a limited set of ways in which they can be created.

As we can see, it seems plausible that states have a preference to conform, they often initiate practices that can be salient for other states to follow, and the principle of limited practical possibilities tells us that there is no infinite number of ways in which the global institutional reforms can take place. What is the significance of this claim? It might be tempting to say "none," since coordination problems keep reoccurring. One might say that even if states cooperate sometimes, this does not solve the assurance problem – that coordination necessitates a centralized

authority. For in its absence, states coordinate only when they estimate that it supports their national interests and likewise, withdraw from cooperation when they think it hurts their national interests. This implies that such coordination is unstable and left to whims of states. But is it so?

4.3. A Global Governing Convention

Thus far, I established two things: that global institutional reforms trigger partial conflict coordination problems and that states can coordinate by conventions too. None of this amounts to a groundbreaking conclusion. Showing that there is a global governing convention might do so.

Recall the significance of a governing convention. As opposed to other kinds of conventions, a governing convention, according to Hampton, proves the existence of a rudimentary form of political authority. What makes it authoritative is that it is a rule about how rules are to be made. Now, the international customary law is also a rule about how rules that bind all states are to be made. Recall the two elements for a practice to become a customary norm: wide acceptance of practice and belief that it is required in some sense. These are meta-rules about how customary rules are to be made. The international customary law defines not only rules but also roles that states tend to follow. This makes relations among states more predictable, and accordingly, more stable.

If a governing convention could have solved partial conflict coordination problems among individuals and enable the creation of a government, can international customary law do something

similar with regard to states?[231] This is, to a great extent empirical question. Ideally speaking, the answer would be "yes", but practically speaking, we should be more cautious. Perhaps it is more plausible to say that the significance of international customary law as a global governing convention is not that it can enable an instant reform of the world order if states want to do so; instead, its significance is that it shows what I earlier called the existence of some form of authority. As I argued earlier, authority in coordination is not all about enforcement but can also be about codifying norms that then become self-enforceable.

Nothing I have argued so far suggests anything about the legitimacy of the existing order. All it suggests is that the world is more integrated than we tend to think and that a different normative assessment of the whole process is possible. Furthermore, while the self-interest of states arguably plays an important role, it is not all there is to the problem of global institutional reforms. For coordination problems emerge whenever there are multiple equivalent ways to coordinate. Parties can be motivated to coordinate, but still fail in doing so. Likewise, they may not want to coordinate, but coordination can still occur spontaneously[232]. It is hence unclear that state motivation is the primary source of the problem of legitimately changing the world order[233].

4.4. Conclusion

[231] Note that at this point I am not specifically referring to a world government, but to any kind of global institutional reforms that necessitate coordination.

[232] I owe this point to Zoltan Miklosi.

[233]Even more, the idea that there is such a thing as a fixed, unchangeable motivation of either states or individuals is heroic one.

In this chapter, I challenged the broadly accepted view that authoritative institutions are necessary to resolve coordination problems. I argued that some conventions can play such a role too. To support my claim, I revisited the debate about the ways in which individuals could have left the state of nature and created a government. By drawing on the works of Hume and Lewis, I argued that a government could have been created through the gradual emergence of conventions, including a governing one. Consequently, partial conflict coordination problems triggered in the state of nature could have been resolved by conventions. Here I tried to show, that just as individuals could have coordinated by conventions in the state of nature, so can states coordinate by conventions globally. In other words, they can coordinate even in the absence of authoritative institutions. I also argued that we can take the international customary law as the global governing convention. It is the global governing convention since it defines how rules that bind all states are to be made. In this sense, we can define ICL not as authoritative institutions, but as self-enforcing conventions. Nevertheless, to say that a convention is in place and that states tend to follow it says nothing about its normative force. This necessitates rethinking the connection between conventions and moral obligations. That is the topic of the next chapter.

V Conventions, Legitimacy, and Justice

Since I developed several arguments up until now, let me briefly rehearse them. I started the discussion by problematizing the duty to create just institutions as applying to an individual's conduct only. I argued that states, either for reasons of natural duties of justice or associative

obligations are the main duty bearers[234]. I then turned to the problem of compliance with the duty. In some views, states should coordinate their actions to reform the existing world order, but such coordination seems impossible in the absence of global authority. I argued that the problem persists only if we accept the presupposition that authoritative institutions are necessary to coordinate actions. In the previous chapter, I started developing an alternative view by examining the practical relevance of conventions. I argued that both individuals in the state of nature, as well as states in their mutual relations, can coordinate by conventions too. The practical relevance of conventions, however, certainly says nothing about their moral desirability. Members of a criminal gang coordinate with one another by following a variety of conventions, but we do not think that such coordination is morally permissible. How can we evaluate conventions, including what I called the global governing convention from a moral point of view? How do they bind, if at all? In this chapter, I will attempt to answer these questions in the context of global institutional reforms.

The chapter proceeds as follows. I start by explaining that conventions can be normative in two senses: internally and externally. While internal normativity, i.e. the fact that conventions prescribe rules and roles is not controversial, the external one appears to be so. Namely, it is not clear which, if any, external evaluative criteria apply to practices: justice or legitimacy. I argue that it is justice rather than legitimacy that applies to practices. More specifically, I argue that the principle of salience is a demand of justice that requires states to comply with certain customary norms. In the last section, I derive more concrete criteria from the principle of salience. I conclude that salient practices determine the content of the state's duty to create a just world order in a

[234] In chapter two, I differentiated between the cosmopolitan and statist accounts of the duty. I will come back to this distinction shortly.

morally relevant sense. Consequently, the duty is not indeterminate after all. In the end, I consider implications for the assurance problem and the paradox of indeterminacy.

5.1. Normativity of Practices

Before evaluating conventions, we have to understand the nature of their normativity. Doing so to a full extent, however, would take one more dissertation. Here I would like to limit the investigation of conventions' normativity to the role they play with regard to coordination problems[235]. Thus far, I tried to challenge the view that authoritative institutions are necessary to resolve coordination problems by drawing attention to an important role conventions play in this respect too. As a small reminder, Hume plausibly argued that conventions gradually build one upon another and slowly progress toward an institutional enforcement. Their significance is in the coordinating role they play, and it is irrelevant how they came about. Conventions enable coordination by their salience and individuals habitually comply with them[236]. Hume's analysis has twofold implications for the present discussion. First, we should shift the focus from individual motivation to coordinate towards the existence of informal rules and habitual behavior that sustains them. Second, not all conventions have the same force, and those that create a government are a governing convention. The significance of a governing convention is that it proves that a

[235] Normativity of conventions is an important area of philosophical investigation. While it seems broadly accepted that conventions are normative since they prescribe certain forms of behavior, there is disagreement about what makes them normative. For instance, Lewis conducted a conceptual analysis of conventions, but was objected that he missed the fact that conventions are by definition normative: they define what behavior should be like. For the discussion see entry on "Convention,": Michael Rescorla, "Convention," *The Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, Stanford University, 2017), https://plato.stanford.edu/archives/sum2017/entries/convention/.

[236] In Hume, David, *Hume, Treatise*.

rudimentary form of authority is in place[237]. Additionally, it also shows that certain conventions, contrary to the common view, can resolve partial conflict coordination problems[238].

How does a governing convention generate obligations? Why should agents conform, if at all? There are two possible answers. One answer is Humean. We could see that for Hume, conventions play a coordinating role that progressively leads to more institutionalized forms of social organization. Thus, it is their coordinating role that makes them valuable. Admittedly, it is plausible to think that conventions have instrumental, rather than intrinsic value. They are valuable as long as they play a coordinating role. Its plausibility notwithstanding, the Humean view is incomplete for it presupposes reliance on the individual judgment in judging the usefulness of conventions. There is an even more profound problem: the view cannot explain why coordination is essential in the first place. It follows that on the Humean account it is not clear what is the connection between conventions and the duty to create just institutions. To understand the connection, then, we have to turn to the second reading – Kantian.

Recall the discussion of chapter two. There I have argued that in Kant's view, for a civil condition to emerge there has to be a convention about a provisional property in place (i.e. private right). In this respect, his view is similar to Hume's. The original acquisition of property for Kant, however, is underdetermined, which generates conflicts over its interpretation – people can dispute the possession of the same resources, most of which is land. In the state of nature, Kant argued, everyone has a right to do what seems right to him to do and to use force for that purpose. For this reason, individuals have a duty to leave the state of nature and enter a civil condition where there is a supreme judge to interpret rules authoritatively. While Hume thought that the value of

[237] In Hampton, *Hampton, Political Philosophy*, 1998.
[238] Cf. Nagel, "The Problem of Global Justice."

conventions is in their usefulness, Kant took them as practical regulations that are subject to disagreement in the absence of a supreme judge[239]. As we can see, conventions in the state of nature were normative in the sense of provisionally defining how private property can be acquired. Still, following Kant, there was no obligation to comply with such conventions. In the state of nature, it cannot be determined what is right in a way that is valid for everyone since no one has obligation to follow judgment of others[240]. The provisional rules of conventions are insufficiently binding on their own.

Based on this, I will propose a Kantian view of the normativity of conventions as twofold[241]. First, conventions prescribe rules and roles. All conventions are normative in this sense. Second, there are external principles requiring compliance with some conventions. As an illustration, we do not seem to have a particular moral reason to comply with norms of good manners, but we do seem to have a moral reason to follow traffic regulations once they are in place. For the sake of clarity, I will call the first aspect of a convention's normativity - *internal normativity*, and the second, *external normativity*. Now, the internal normativity of conventions does not seem to be controversial for it is a standard view that the very purpose of conventions is

[239] The disagreement between Hume and Kant goes all the way down to the role of reason in practical thinking. For Hume, passions motivate moral actions, whereas reason plays a secondary role: it supposes to enable such actions. He understood reason in terms of instrumental rationality – how people can get what they want, and what they want is defined by their passions. Contrary to Hume, Kant suggested that it is reason and not passions and self interest that is the basis of justice. Namely, reason can motivate moral actions and in this sense be practical. He argued that the Humean approach cannot provide an adequate account of moral obligations, for no empirical principles can ground moral obligations. For Kant, morality has to be grounded in a priori principles which can be discovered only by operation of reason rather than by experience. Moral law holds universally and unconditionally across human beings taken as rational agents, whereas empirical principles ground moral laws in feelings that are contingent. In other words, moral laws are not grounded in heteronomous inclinations, but in autonomous reason that is shared across humanity. For a detailed discussion see Eric Entrican Wilson and Lara Denis, "Kant and Hume on Morality," ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, Stanford University, 2018).

[240] I take this point from Byrd and Hruschka, "From the State of Nature to the Juridical State of States.".

[241] I say Kantian to differentiate from what Kant's actual view is.

to prescribe a desirable behavior. The external normativity, however, seems harder to accept. Not only that there is disagreement over which external criterion we should use to evaluate conventions, but there is also disagreement about whether or not there should be such an external criterion at all. On the Kantian account, if there is a duty to create a just world order, then there is also obligation to comply with a governing convention that enables it. Still, to say that justice demands compliance with a governing convention does not suffice, for the convention might be problematic in some sense. Hence, we also need an external moral criterion to judge the value of conventions.

Rawls's discussion of moral force of promises is instructive here. Rawls differentiates between rules of promising and moral principles behind them. The rules of promising are conventional – they specify activities and define actions about how promises are to be made: by uttering the words "I promise." Making promises by uttering "I promise" is not a moral principle, but a constitutive rule – it regulates how promises are to be made[242]. The rule about how promises are to be made has nothing to do with the moral obligation to keep promises. Therefore, the rules of promising should not be conflated with the principle of fidelity. The latter is a practice independent moral principle that explains why promises generate moral obligations[243]. I already suggested that customary international law serves a peculiar function: it is a governing convention for it prescribes the rules about how rules that bind all states are to be created. Just as the rules of promising prescribe how promises are to be made; international customary law prescribes how

[242] Rawls used Searle's distinction between constitutive and regulative rules. For an instructive discussion of the distinction see Adriana Placani, "Constitutive and Regulative Rules: A Dispute and a Resolution," *Phenomenology and Mind* 0, no. 13 (2017): 56–62.

[243] The principle of fidelity is derived from the more fundamental principle of fairness. In Rawls, *A Theory of Justice*. 344- 348

rules that bind all states are to be made[244]. This makes it constitutive in Rawls's sense. However, just as the rule about how promises are to be made cannot explain why promises should be kept; customary law about how rules are to be made cannot explain why states should comply with them. To understand how customary norms bind states, we need to use external criteria to evaluate practices. The usual candidates are justice and legitimacy. I consider both in the next section.

5.2. Justice and Legitimacy

To fully appreciate the normative evaluation of conventions, recall that we are examining them in the context of transition. I defined transition as intermediary stages on the way towards a more centralized global authority. The transition raises a twofold question. First, whether it is possible for states to act in ways that lead to cosmopolitan institutions; and second, whether they can do so in a morally permissible manner. I answered the first question earlier, and now I will deal with the second. To do so, we need to revisit the debate about justice and legitimacy[245].

Liberals share the view that institutions impose coercive restrictions over individual rights and as such, are in need of justification. Institutions are to be justified by appealing to the two most prominent institutional virtues in liberal thinking: virtues of justice and legitimacy. Many agree that both justice and legitimacy stem from the same fundamental principle of moral equality – to be just or legitimate, institutions must show equal respect for everyone, meaning that they must be

[244] I discussed the elements of customs in chapter 3. In short, there are two standard elements: widespread practice and the belief that the custom is required by law.

[245] It is far from straightforward what is morally permissible in the transition. For instance, Gilabert suggests that during the process of transition it may be permissible to exclude some parties from decision-making for the sake of efficiency. In Gilabert, *From Global Poverty to Global Equality*. p. 146 - 150

justifiable to all those subjected[246]. For instance, Rawls argued that both legitimacy and justice are derived from moral equality, but that legitimacy makes weaker demands than justice[247]. While a state may be legitimate but unjust, the opposite is not possible - a just institution must be legitimate. Thus, when it comes to internal properties of institutions, legitimacy is a criterion of "minimal justice."[248] However, what is minimal justice? According to Buchanan, "a wielder of political power […] is legitimate […] if and only if it (*a*) does a credible job of protecting at least the most basic human rights of all those over whom it wields power, (*b*) provides this protection through processes, policies, and actions that themselves respect the most basic human rights, and (*c*) is not a usurper (i.e. does not come to wield political power by wrongly deposing a legitimate wielder of political power)"[249]. Only minimally just institutions are legitimate – i.e. have the right to rule, which includes the right to promulgate rules and attempt to secure compliance with them. Importantly, the right to rule does not necessarily entail the duty to obey them; instead, we can

[246] I take it for granted that the meaning of justice and legitimacy is derived independently from the practice. A great deal of the global justice debate is precisely about this question: how to derive the higher order moral principles. Statists usually hold that we get the meaning of justice by interpreting the existing practices. However, as Valentini shows, defining moral principles through interpreting practice leaves the principles underdetermined, for there is disagreement about the purpose of the practice, and the principles so defined are insufficiently critical. For instance, it is hard to see how interpreting practices of a hierarchical society can yield egalitarian principles. Valentini Laura, "Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism," *Journal of Political Philosophy* 19, no. 4 (October 4, 2010): 399–418.

[247] For Rawls's definition of liberal principle of legitimacy see Rawls, *Political Liberalism*. p. 137

[248] More and more philosophers insist on the view that people reasonably disagree about what justice demands. For this reason, we should not only re-focus on the legitimacy as the chief virtue but also define legitimacy independently from justice. For instance, Valentini agrees that both justice and legitimacy stem from the equal respect for persons, but asserts that they are distinctive in the sense of being applicable under different circumstances. Given global pluralism about justice, legitimacy should serve as the criterion to assess the global institutional order. In Laura Valentini, "Assessing the Global Order: Justice, Legitimacy, or Political Justice?," *Critical Review of International Social and Political Philosophy* 15, no. 5 (December 1, 2012): 593–612. Others take a more realist view and argue that legitimacy and justice do not follow from the same moral principle, but are detached altogether. For instance, Sleat argues that legitimacy is not related to any external moral criterion but is about internal normative properties, including order and stability. In Matt Sleat, "Justice and Legitimacy in Contemporary Liberal Thought," *Social Theory and Practice* 41, no. 2 (2015): 230–252. The challenge is not pertinent to the present discussion, so I will leave it here.

[249] In Buchanan, "Political Legitimacy and Democracy."

have moral, content-independent reasons to follow them and/or to not interfere with others' compliance with them[250].

What different accounts of justice and legitimacy have in common is that they limit the virtues to assessing public institutions. The reason for this is that institutions are coercive in some sense, and consequently, in need of justification. Such view has been challenged on different grounds. For instance, some object to understanding coercion as state coercion only since there are morally relevant not state-based forms of coercion too[251]. Others objected that legitimacy and justice should not be limited to justifying coercion only.[252] Going back to the present discussion, if legitimacy and justice are limited to evaluating public institutions only, then we are left with no criteria to evaluate a governing convention and more broadly, transition itself[253]. For global justice arguments to succeed, it has to be shown not only that the present international order is unjust, but also that there are acceptable ways to change it. What makes this task more difficult is a dominant view that customary law is voluntary. If so, and following the standard view, it would imply that justice and legitimacy do not apply to conventions globally. This suggests that in order to decide

[250] Buchanan helpfully differentiates between the concept of political authority which includes both political legitimacy as the right to rule and the government's right to be obeyed, and the weaker but more important concept of political legitimacy which does not entail the right to be obeyed. He further argues that the first concept is "unimportant" and "irrelevant" since no government possesses political authority. In Buchanan, "Political Legitimacy and Democracy."

[251]For instance, Valentini argues that coercion can be exercised through a system of formal and informal rules enacted and supported by a sufficient number of agents. The international order can be characterized as systemic coercion which existence rests on support by many agents. In Valentini, *Justice in a Globalized World*.

[252] For instance, Buchanan argues that the idea that principles of justice suppose to justify coercion presupposes that liberty without coercion is the most fundamental value. In Buchanan, *Justice, Legitimacy, and Self-Determination*. Also, Miller argues that there is no tight conceptual link between justice and coercion since justice can arise in non coercive forms of associations too. In David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2012)., p. 277; For another good critique see Sangiovanni, "Global Justice, Reciprocity, and the State."

[253] Note that the question of evaluating the existing practices has already been raised within the so-called "site of justice" debate. For the famous objection see Cohen, "Where the Action Is."

which external evaluative criteria apply to conventions, we need to address a prior question: are customary norms indeed as voluntary as many tend to think? I turn to this now.

5.3. The Principle of Consent

Many tend to think that international customary law is voluntary in the sense that states are not bound by those customary norms whose emergence they persistently objected to[254]. The insistence on the voluntary nature of international customary law is part of a broader approach to treating international relations as voluntary. Since states are equally sovereign, the only way for them to subject to international law and institutions is by consent. Legally speaking, states indeed undertake obligations by concluding bilateral or multilateral treaties. The UN Charter, the Rome Statute, the Breton Woods agreement are all multilateral treaties that states as signatories, arguably, voluntarily entered into and by doing so, they acquired both rights and obligations with regard to international institutions so established[255]. The basic idea is that international norms, including customary law, bind those states that consented to them. Since the international order is voluntary in this sense, it is not in need of justification. If states happen to create new, more centralized international institutions, demands of legitimacy and justice kick in[256].

[254] The states do not have to do anything to become bound by customary norms. They need not participate in its creation, nor accept it in any sense. This means that there is a presumption of consent to newly emerging customs, unless states explicitly object to its formation.

[255] Treaties can bind non participating states if its provisions get a status of customary law. This, however, does not apply to treaties establishing international institutions, for customary norms cannot bring non-participating states under the new institutions' jurisdiction.

[256]In Nagel's words, international institutions are not collectively enacted and coercively imposed in the name of all individuals whose lives they affect; instead, they result from bargaining among mutually self-interested sovereign parties and the institutions act in the name of states. While fellow citizens have involuntary obligations toward one another by virtue of being subjected to the shared coercive institutions, states act voluntarily and consequently, the existing world order is not in need of justification. In Thomas Nagel, "The Problem of Global Justice".

Here we can see a striking similarity with the consent-based view of the justification of political authority of states. Since I discussed the view in the previous chapter, here it suffices to briefly recall that the basic idea is that individuals are morally equal, and they can subordinate to another only if they consent to it, but they have no duty to do so. Citizens acquire political obligation by consenting, and only those governments that are consented to by all their citizens are legitimate[257]. I also mentioned the problems consent-based views face. In short, explicit consent is historically implausible, while the tacit one is morally dubious since it is difficult to identify an intention to consent[258].

Given the difficulties consent-based accounts of political obligation face, how come that many still think that the principle of consent is at the basis of the international system? To be sure, the principle of consent internationally seems to avoid some of the pitfalls its national counterpart faces. For instance, as opposed to the practical impossibility of all individuals consenting to a government, it is relatively easy for states to express their explicit consent when they want to by, say, signing an international treaty. Even more, a state's tacit consent seems to be easier to establish through, say, not objecting to the emergence of a new customary norm. Nevertheless, the view that the principle of consent is the fundamental principle of the international system faces great difficulties. Let me name a few.

First, as Buchanan argues, it is difficult to establish the validity of state consent. Even if states would freely consent to global order, many of them are illegitimate themselves. The consent of illegitimate states does not count for much for it is unclear on whose behalf illegitimate states

[257] A. John Simmons, *Moral Principles and Political Obligations*. p. 71-73

[258] For the objections see Hume, David, *A Treatise of Human Nature;* A. John Simmons, *Moral Principles and Political Obligations*; Jean Hampton, *Political Philosophy*

are consenting. It follows that a state consent cannot be a necessary condition for the legitimacy of global institutions. At most, it can be consent of democratic states only[259].

Second, Dworkin argues that the principle of consent is "flawed beyond redemption."[260] If anything, states must have a reason for consenting to certain norms. It is the underlying reason that explains the moral basis of international law, rather than consent itself. Also, it is questionable to what extent tacit consent to newly emerging customary norms is actually consent. Indeed, when it comes to customary law, tacit consent is limited in several respects. As opposed to treaties that bind signatory states only, a customary norm once established binds all states unless they have persistently objected to its formation. A newly created custom binds even those states that did not exist at the time of its formation, such as colonies. The fact that they did not have an opportunity to object to its formation cannot exempt them from the application of the customary law. Additionally, there can be no objection to *ius cogens* norms as non-derogable customary norms; they bind all states irrespective of their consent. Dworkin reaches a more radical conclusion than Buchanan: consent, no matter how democratic a state can be, is neither necessary nor sufficient as a moral basis of international law since some customary norms bind irrespective of consent.

The principle of consent is also inadequate when it comes to evaluating transition. If states are to consent to changes in the world order freely, then someone has to secure fair bargaining among them since consent under the present conditions of unequal distribution of power among states cannot be characterized as free. The most powerful states dictate conditions of negotiations, and the less powerful ones often have no choice but to consent[261]. Thus, for consent to be valid,

[259] In Buchanan and Keohane, "The Legitimacy of Global Governance Institutions." pp 405–37.
[260] Dworkin, "A New Philosophy for International Law," 2013. p. 13
[261] Given that the imbalance of power has been a persistent characteristic of international relations, are we to say that no international treaty is legitimate and consequently, state parties, at least those less powerful ones, have no

there has to be fair bargaining among states; and for fair bargaining to take place there have to be some international institutions to secure it[262]. In other words, to change the world order legitimately, at least some legitimate international institutions have to be in place to secure more balanced distribution of power among states. If the principle of consent is true and the state consent is necessary for the legitimacy of the international order, then not only is the present order illegitimate, but it is also impossible to legitimately reform it[263]. Note further complications. Even if conditions would be such that states can freely consent, nothing guarantees that states will do it, since they have no obligation to do so. So, the order can be illegitimate even if a single state does not consent. To make it worse, nonconsent of a single state would invalidate consent of others for they cannot consent to an illegitimate order[264].

In sum, the principle of consent generates problems for the concept of global legitimacy; it cannot serve as the moral basis of international law; and if taken as a principle of change, it would condemn the world order to the *status quo*. However, I have tried to show that we have good reasons to doubt the validity of the principle of consent as the sole basis of states' obligations. Moreover, we should start thinking about how states act habitually too. The moral significance of habitual behavior is that it need not meet the strict validity conditions for consent. In light of the

obligations since they did not freely consent to the treaties' terms? Just as no present state would be legitimate on the consent based view, no existing treaty is legitimate either.

[262] There are difficulties with the concept of consent as such. For instance, it is at least an open question if the lack of options amounts to consent under duress. In principle, it is possible that parties can voluntarily consent even if there is one option on the table for that option might be good for them in some sense.

[263] Christiano argues that cosmopolitans have to be committed to the legitimate creation of an international order since individuals worldwide must have a chance to participate in creating treaties that bind them. In his view, this implies at least two things: that states have to be democratic and that negotiations between them have to be fair. He further argues that these conditions are impossible to meet under the present conditions of unequal distribution of power among states. In Thomas Christiano, "Is Democratic Legitimacy Possible for International Institutions?" p. 80 – 81

[264] This is Simmons' critique of the consent based justification of political authority which I adapt to the consent based view of global legitimacy. In A. John Simmons, *Moral Principles and Political Obligations*. p. 71-73

difficulties the principle of consent seems to face, we cannot evaluate the world order in terms of voluntariness. The point is not to miraculously redefine the current world order as fully voluntary; instead, the point is that adjectives voluntary/involuntary are simply inadequate to characterize it. Note, however, that this does not make state consent altogether obsolete. Many obligations of states are after all, voluntarily incurred. Also, an international order in which democratic states consent is surely better than the order of nonconsensual impositions. All that follows from the argument developed in this section is that the principle of consent cannot serve as the evaluative criterion for a governing convention.

5.4. The Principle of Salience

This section examines an alternative principle as the moral basis of international customary law: the principle of salience. The principle of salience is put forward by Dworkin. In his view, the principle of salience supposes to help us identify those practices that states have a duty to join in order to comply with their more general duty of mitigation[265]. Similarly to the argument I have developed here, Dworkin also argued that states' duty of mitigation is indeterminate in the sense that it can be fulfilled by different international arrangements but states can disagree about which one to pursue. In the absence of authoritative mechanisms of coordination, so Dworkin argues, it is the principle of salience that determines states' duty of mitigation by identifying one coordination equilibrium. If a significant number of states representing a great deal of the world's

[265] Ronald Dworkin, "A New Philosophy for International Law," I have already mentioned Dworkin's view that a state has a duty to improve its legitimacy, and the duty entails a moral obligation to try to improve the legitimacy of the international system as well. Only those states that seek external guarantees of their legitimacy are legitimate. I have called this the statist view of the duty to create a just world order. It is statist in the sense that the duty follows from special obligations the state has toward its citizens.

population have developed an agreed code of practice, other states have a *prima facie* duty to subscribe to the practice; but only if such practice would improve the legitimacy of states as well as of the international order as a whole. This can have the snowballing effect: the more practice is accepted, the greater "its moral gravitational force."[266] It follows that not all practices can play the determining role, but only those compliant with the principle of salience. Thus, states' customary obligations are not created by their consent to customs; instead, states have a duty to comply with salient practices. The principle of salience determines the content of states' pre-existing duty of mitigation.

The idea that there is a moral principle which is more fundamental than the principle of consent and can explain why states comply with conventions is plausible. If anything, this is supported by the existing practice. The fact that there have been no persistent objections to the emergence of a vast number of customary norms also shows that states do think that they should go along with the emerging practices. Its practical plausibility notwithstanding, Dworkin's view faces difficulties on the principled grounds. I will focus on two in particular.

First, one can doubt that the duty of mitigation follows from a state's associative obligations. If a state's legitimacy is all about the interests of its citizens, then states might have incompatible expectations, even if they are legitimate. . Namely, states might attempt to create practices that benefit their citizens only. Why should other states support them in doing so? It follows that the salient practices, i.e. those that states have a duty to support concern a very limited range of issues[267].

[266] Ibid., p. 20

[267] Indeed, Dworkin focuses on gross human rights violations such as genocide. Dworkin, "A New Philosophy for International Law," 2013.

Also, on Dworkin's account, the principle of salience is about joining the existing practices. The idea that practices are already in place seems to reintroduce the principle of consent that he rejects. For, the emerging practice still presupposes that states that initiate the practice are free to do so, whereas others have a duty to join. In other words, it seems voluntary for those starting, but involuntary for the remaining ones. Indeed, this is how customary law has been created. On the one hand, affected states may or may not decide to pursue a certain practice. On the other hand, states that have been established after the practice has been created such as former colonies, have to accept the practice even if they did not have an opportunity to object to its formation[268]. I will discuss this difference in the status of states in the next chapter. One can object here that the requirement to join existing practices need not collapse into the principle of consent. For once the practice becomes salient, the custom pioneer acquires salience-based duties too[269]. This raises an interesting question of how practices, once they become salient, affect the normative status of those that initiated them. Intuitively, it seems that as the number of states complying with the practice is growing, the custom pioneer seems to be more bound by the practice since its actions affect the growing number of states. In this sense, once practices become salient, they generate the salience-based duties for the custom pioneers too. The plausibility of the view notwithstanding, it seems intuitive that in a case no state starts some practice even though there is a need for it, we would want to say that they should do so. I will come back to this shortly.

Second, Dworkin identifies the principle of salience by interpreting the international customary law[270]. Such understanding follows from his method of constructive interpretation of

[268] Scharf, "Accelerated Formation Of Customary International Law," January 1, 2014.
[269] I thank to Zoltan Miklosi for raising this point.
[270] For instance, he argues that the UN Charter can be interpreted in a way that humanitarian interventions do not necessitate the Security Council's authorization for what matters is that human rights violation is stopped. Importantly, the view does not support illegal actions, but is about an alternative interpretation of what the law requires. This shows

practice: identifying moral principles by interpreting the purpose of practice they aim to regulate. However, it is unclear that the principle can be identified in this way. The interpretation of practice can surely help us understand how customary norms are created – when a significant number of states comply with a practice, the practice acquires the status of customary norm. Still, this does not say why states should join and sustain such practices. All it says is that salient practices acquire the status of customary norms.

In the end, let me make a more general point. It is unclear in what sense Dworkin's account of the principle of salience is related to international legitimacy. I argued earlier that the legitimacy concerns internal properties of institutions – what grounds their moral right to rule. Since state governments claim the right to rule, it is plausible to attempt to connect the states' legitimacy with the principle of salience and argue that states should make sure that there are external guarantees of their legitimacy. Things, however, are not that simple when it comes to international legitimacy. Dworkin reduces international legitimacy to the extent international institutions can ensure that states themselves are legitimate. By doing so, he ignores the possibility that international institutions should be legitimate in their own right. We have good reasons to think of the world order as illegitimate. But it is unclear in what sense considerations of legitimacy apply to the customary law in particular and transition in general. If legitimacy is about the moral right to rule, it is unclear in what sense conventions can claim such a right. If anything, conventions are not about institutions, but about states' behavior. To say that the illegitimacy of the system entails compliance with the principle of salience is question begging. For why attempt to make the illegitimate system more legitimate? Thus, it seems more plausible to think that customary law is

that even practice-dependent views can have far reaching implications. Dworkin, "A New Philosophy for International Law," 2013.

about demands of justice rather than legitimacy. While the international system, which includes a whole host of international institutions, can be assessed as illegitimate, it is the reason of justice that tells us why the system should become legitimate.

We have reached an important conclusion: when it comes to the transition, it seems that legitimacy and justice fall apart. While the legitimacy is an exclusive property of public institutions, the value of justice has a broader application. Indeed, we often think what "justice demands," but we never think what "legitimacy demands." This is compatible with evaluating the existing institutional order in terms of the legitimacy; the point I want to make is that it makes no sense to apply it to the transition too. After all, it is trivially true that if the existing institutions are illegitimate, so will be their reforms. Therefore, the notion of legitimacy is reserved as the evaluative criterion of the existing institutional order, whereas justice can help us make sense of practices that can coordinate reforms. The principle of salience is a demand of justice for justice necessitates coordination, and salient practices can coordinate actions for the sake of reforming the illegitimate order.

The more general point I want to make is that we can think of the relation between conventions and justice in a similar way we think about the role of institutions with regard to justice. Just as we take institutions to enable compliance with our pre-existing obligations, the same holds for conventions. Duties are not only pre-institutional but also pre-conventional. Conventions are enabling, rather than the existence conditions for demands of justice; they enable states' compliance with such demands. States better comply with their duty to create a just world

order f they follow salient practices[271]. In the remainder of the chapter, I will develop more concrete criteria to identify salient practices.

5.5. Defining Salient Practices

The principle of salience tells us that states have normative reasons to follow specific practices, but it does not say which ones. Not all coordinating practices generate obligations to join. We surely would not want to say that states had an obligation to support and join slave trade. The principle of salience has to be substantiated by more concrete criteria.

Let me start with the number of participating states. We could see that for Dworkin this criterion plays a crucial role. In his view, states should support the emerging practices that already involve a significant number of participating states and contribute to both national and international legitimacy. This suggests that it is the number of participating states that makes certain practices salient. However, how do individual practices acquire wide acceptance in the first place? Legally speaking, this is not how customary rules have been developed. While there is no rule about how many states have to support a certain practice for it to become a customary norm, it leaves open a possibility that not that many states are necessary to initiate it[272]. Practices can become salient for reasons other than the number of participating states. For instance, Scharf argues that under certain conditions, which he calls "Grotian Moment," a customary rule can

[271] This is similar to Raz's account of political obligation. Raz, *The Morality of Freedom*.

[272] Think about the Nuremberg trials. They marked a paradigm shift in defining responsibility internationally by introducing an individual criminal responsibility and also adjudicating on the way states treat their citizens. Shortly after the trials, the UN General Assembly adopted the resolution about the Nuremberg Principles. Even though it was not binding, other judicial bodies, including ICJ, the ICTY and the ECtHR were referring to it. Legal scholars argue that in spite of a very scarce practice, the Nuremberg principles became the customary law. In Michael Scharf, "Accelerated Formation Of Customary International Law".

emerge even without a wide acceptance. Namely, the exceptional circumstances can make the practice salient and consequently, accelerate its transformation into a customary norm[273]. Thus, while a widespread practice is sufficient for a customary norm to emerge, it is not necessary. It is possible that even practices started by a single state are salient for others to follow. We should not be outraged by this claim for it is not the number of participating states that generates the duty to join, but the duty to join follows from the more fundamental duty of states: the duty to create a just world order. Hence, if the practice even if initiated by a single state is the best way for other states to comply with their duties, they should do so. Notice, however, that this does not imply a complete irrelevance of the number of participating states. If there are two competing schemes, states should go for the one that enjoys the greater support[274]. In sum, contrary to Dworkin, I suggest that a salient practice can be initiated by a small number of states, including one.

The second criterion is that practices are already in place. Dworkin defines the principle of salience as requiring states to join ongoing schemes of cooperation. This is plausible, for we want to support stable practices – those that exist over time. But this condition should be qualified. As I suggested earlier, states are not only obliged to join the existing morally desirable practices but also to start creating them in their absence. If no one started negotiations about the climate change, for instance, we would surely think that states should start negotiating it. In other words, if there is no particular coordination scheme, states have a duty to propose one and others have a duty to support it.

[273] For instance, at the time of its creation, the principle *uti possidetis* (that a newly independent state has to respect pre-existing external borders) was supported only in the practice of Spanish American and African States.

[274] For a similar view that the size of support matters for deciding which coordinating scheme to follow, see also Waldron, "Special Ties and Natural Duties." Kis even adds that the number of supporters is more important than justice of the scheme. I have a duty to support the scheme with the larger number of supporters, even if it is less just. In Kis, "The Unity of Mankind and the Plurality of States."

The third criterion is the capacity of custom pioneers. It is vital that states which are initiating a practice be capable of sustaining it. If there are two competing schemes, states should support the one led by the more efficient states. This raises an interesting question of whether salience is about efficiency rather than about the number of participating states. After all, maybe some options are salient precisely because they are the most efficient[275]. And schemes can be more efficient even if initiated by a smaller number of states. This suggests that the principle of salience is not only about reasons for other states to join, but it is also about conditions that a custom pioneer has to meet. I develop the conditions in the next chapter.

In the end, one can ask the following: if salient conventions can play a coordinating role among states, what do we need new institutions for? Why not simply endorse the form of decentralized governance, where different institutions have different competences? After all, coordination by conventions has many advantages. States prefer the decentralized system that does not significantly encroach upon their authority. Conventions are self-enforcing, and there is no need for a complicated system of global enforcement. Finally, states have no interest to depart from an established convention[276]. Why is this not sufficient?

The advantages of the decentralized system notwithstanding, we should be cautious about it. The reason for such caution is that the existing international system can be characterized as decentralized. And, still, we should not forget that the system has allowed for people worldwide living and dying in extreme poverty, and it also allows for the exponential growth of economic

[275] Recent findings suggest that agents might not choose salient options if they are less-efficient, but might instead go for one of no distinguishable but more efficient ones. In Luca Corazzini, Christopher Cotton, and Paola Valbonesi, "Salience, Coordination and Cooperation in Contributing to Threshold Public Goods," May 2012.
[276] Snidal, "Coordination versus Prisoners' Dilemma."

inequality that is becoming almost impossible to comprehend. The problem with decentralized governance is that public authority of states is increasingly eroding, while there is no public authority emerging globally[277]. This reveals another feature of the existing order that Nagel has rightfully emphasized and which I have ignored for the sake of clarifying some conceptual issues - the issue of persistent inequality of power among states that is embodied in the existing system, and would probably persist in the newly formed institutions as well[278]. How to tackle the problem of power inequality and how, if at all, to assign obligations under such conditions is the topic of the next chapter. Here I would like to make a conceptual point.

The point is this. To say that authoritative institutions are not necessary for coordination to take place does not entail that their role is altogether obsolete or fully replaceable by conventions. To the contrary, as I suggested before, the role of authoritative institutions is not limited to coordination. Instead, they determine content of moral norms and secure compliance with them in many other ways too. Perhaps the most important role of authoritative institutions is securing what Rawls called just background conditions and also determining fair shares of benefits and burdens of social cooperation[279]. Conventions cannot do this. All they can do is enable the creation of such institutions. This suggests one more criterion to identify salient practices – states have a duty to initiate or join those practices that are institution building. In other words, the salient practices that

[277] In Nardin's view, the major problem with the decentralized system of global governance is that it is less transparent and less democratic. In Terry Nardin, "Justice and Authority in the Global Order," *Review of International Studies* 37, no. 5 (2011): 2059–72.

[278] This is the so- called "hijacking" problem. For the discussion see Richard W. Miller, "Global Institutional Reform and Global Social Movements: From False Promise to Realistic Hope," *Cornell International Law Journal* 39 (2006): 501.

[279] See John Rawls, *A Theory of Justice*

increase the legitimacy of the existing order are those that concern the creation of rules and institutions.

In sum, salient practices can be initiated even by one state; states should joint existing salient practices or initiate them if they are lacking, salient practices are pursued by efficient custom pioneers, and they are those that are institution-building. Even if there are no relevant practices to enable global institutional reforms, there is the governing convention prescribing how such practices can come into existence. It follows that the current coordination problems among states arise not because there are no coordinating mechanisms, but because states fail to use them. By doing so, they effectively violate their duty to create a just world order[280]. That said, we are finally able to answer both the assurance problem and the paradox of indeterminacy.

5.6. Objections

We have passed a long way from considering how conventions can coordinate actions both among individuals in the state of nature, and states in their mutual relations to the conventions' moral significance. Here we could also see that salient conventions are morally significant since they, all else being equal, enable compliance with demands of justice. If salient conventions are both practically and morally relevant, then they can determine the state's duty to create a just world order in a morally authoritative way. Consequently, authoritative institutions, all else being equal, are not necessary to coordinate actions of states. Once we reject this fundamental assumption, we are able to address both the assurance objection and the paradox of indeterminacy.

[280] Goodin argues that parties have a duty to join a coordinating scheme if it is the only way for them to discharge their duties. In Robert E. Goodin, *Utilitarianism as a Public Philosophy* (Cambridge University Press, 1995).

The assurance problem, according to Nagel, is that in the absence of global authority, states are motivated by their self-interest only and tend not to cooperate. Coordination among states cannot take place without a global authority. To rebut Nagel's objection, it does not suffice to question his view of the scope of duties of justice, but it also has to be shown that states can comply with them too; that they can coordinate their actions even in the absence of authority. I have already mentioned possible ways to rebut the objection. First, it is more plausible to think of the existing world order in terms of intermediary stages rather than anarchy. Furthermore, coordination problems can arise even among well-motivated agents. It follows that the way states are motivated is not relevant for coordination problems. Contrary to Nagel and the Hobbesian paradigm of international relations he assumes, we can think of the present world order within the Humean framework. The Humean framework can help us appreciate the existing coordination mechanisms, as well as the fact that states can comply out of habit too. Hence, instead of centralized authority to assure compliance, it is the existence of conventions which are not easy to change as well as repeated interactions among states that give assurance that once certain practices emerge, other states tend to follow them. It suffices that there is the rule about how rules that bind all states are to be created.

Let me turn to the paradox now. I argued that the reformist view is paradoxical for, on the one hand, it holds that authoritative institutions are necessary for compliance with demands of justice; but on the other hand, it stipulates that there is a duty to create such institutions. The view seems to suggest that duty bearers both cannot and can act upon indeterminate obligations. In light of the preceding discussion, we now have two ways to address the paradox. First, one can say that authoritative institutions are not necessary for coordination to take place, for even conventions can do so sometimes. Alternatively, it can be argued that authoritative institutions need not be

necessary for at least some conventions have a degree of authority in coordinating actions. In short, either we can accept that nonauthoritative practices can play a role that is broadly understood as being limited to public institutions only, or that such practices are not that informal after all – they also have a degree of authority. The dissertation supports the first reply for I think that autority is an essential feature of institutions, and international customary law is not an institution in a proper sense. If the duty to create a just world order can be determined by specific conventions, it follows that it is not indeterminate after all. Consequently, the paradox does not arise. But the question remains – if nonauthoritative conventions can determine content of at least of some of our moral obligations, what are implications for the role authoritative institutions play?

In the end, let me mention the stringency objection. Even though I have argued that it should be ignored as resting on conceptual claims that are hard to accept, here we can answer even that one. If we accept the plausibility of the objection, the duty to create a just world order passes its test of stringency. For as repeatedly argued, the international customary law determines the content of states' duty to create a just world order. If the perfect content is necessary for a duty to count as a duty of justice; then states' duty to create a just world order is the duty of justice. One might object here that the duty to create a just world order cannot be a perfect duty for it is not enforceable. It is not enforceable, again, because there is no global authority to enforce it. Again, why limit enforceability to coercive authority? The duty can be enforced in different ways. For instance, the Roman law did not have a centralized enforcement mechanism and yet it was implemented during the first couple of centuries of the Roman Empire. Moreover, international courts judge whether or not states comply with the customary law and rulings are significant even

if not fully enforceable. Finally, the concept of the rule is prior to the concept of sanctions; a non–coercive law is entirely conceivable[281].

5.7. Conclusion

To summarize, this chapter attempted to normatively evaluate conventions. While in the previous chapter I established that conventions play the practical role in securing coordination among individual and collective agents, in this chapter I sought to examine if such a role is morally desirable too. I have argued that it is if certain conditions obtain. First, I suggested that we should follow the Kantian view and evaluate practices by practice-independent moral criteria. The governing convention mirrors a constitutive rule – it defines how rules are to be made, but its moral force is external. When it comes to international customary law, we should evaluate it by the criterion of justice rather than legitimacy. Just as Rawls argued that fulfillment of promises is required by the practice-independent principle of fidelity, I have argued that the principle of salience is a demand of justice that requires states to comply with salient practices. Put it simply, justice demands that states comply with salient practices – those that enable the global institutional reforms. Thus, states' duty to create a just world order is not indeterminate, but its content is determined by salient practices. Consequently, the present coordination problems that arise among states should not be seen as a normal consequence of their rational and self-interested behavior in the absence of a global authority; instead, coordination problems amount to a violation of the duty to create a just world order.

[281] I take the last point from Ripstein in Ripstein, *Force and Freedom*. p. 53 - 55

One might be disappointed with such conclusion. What's the significance of identifying yet another way states do not comply with their moral obligations? Yet, we do consider what morality demands even from those that have committed war crimes. In other words, we do not leave out of the scope of moral assessment even the worst violators of human rights. There is surely a difference between asserting that states have an indeterminate duty which is up to them to decide how to comply, and arguing that states violate their determined duty to create a just world order. The first approach would leave global institutional reforms to the discretion of states; the second approach that I am defending here aims to limit such discretion. While it is surely a problem that states do not comply with the duty, at least we should not leave them off the hook on the grounds that they have the discretion to decide about how to comply.

VI *Primus Inter Pares*: A Normative Assessment of Unipolarity

In the previous two chapters, I analyzed the global governing convention from both the explanatory and justificatory point of view. My main aim was to examine if conventions can contribute to global institutional reforms. My answer is "yes". Those practices that comply with the principle of salience play a determining role with regard to states' duty to create a just world order. It follows that the duty has a determined content, and states should join the existing practices or initiate the creation of new ones. The conclusion I reached is that the reformist view, by accounting for the normative significance of the salient practices can successfully address both the assurance problem and the paradox of indeterminacy. Therefore, it can coherently advocate global institutional reforms.

The analysis has been mostly conducted at a very abstract level. In this last chapter, I would like to critically examine a controversial example of salient practice. We could see earlier that, contrary to Dworkin's view, the wide acceptance of a practice does not seem to be necessary for it to become a customary norm[282]. The practice can become binding for others even if a limited number of states start practicing it. What about those practices that are initiated by a single state? Does the principle of salience require supporting such practices as well? If it can be shown that states do have moral reasons to follow even one state in its reforming attempts, then it is easier to argue for the less problematic cases of coordination – those involving a greater number of states. What makes the coordination by one state controversial is that it takes place against the background of unequal distribution of power among the states. Up until now, I have neglected this important,

[282] Cf. Dworkin, "A New Philosophy for International Law," 2013.

perhaps the most important feature of the current world order. Namely, more powerful states often seek to entrench the existing power imbalance within international institutions. Some might worry that they would want to do the same regarding newly created global institutions. Given such unjust conditions, are we to say that states have a duty to follow the most powerful states in reforming the existing world order? Many would surely say "no".

This chapter approaches the problem of unequal distribution of power among states from a different perspective. It aims to identify what is it that makes an unequal distribution of power among states morally troublesome. I will focus on a specific constellation of power in international relations which has been known as unipolarity. Unipolarity was an exceptional phase in the world history, when one state, i.e. the United States, had far more military and economic power than any other state in the world, and was willing to use it to affect the structure of the world order. Unipolarity is informative for the problem of global institutional reforms since many international institutions we have today have been created at that time.

The present chapter is divided into two parts. In the first part, I conduct a general discussion of unipolarity as unequal distribution of power among states. I begin by comparing liberal internationalism and global justice liberalism. I then move to explain what unipolarity is, and how it is different from imperialism. I then engage with two claims: that unequal distribution of power among states is unjust in itself; and that it leads to unjust consequences too. I argue that the first claim is false, whereas the second can be mitigated. In the second part of the chapter, I investigate whether a coordination scheme proposed by the hegemonic state complies with the principle of salience. I argue that other states have moral reasons to follow the hegemonic state provided that it meets three conditions. I end the discussion by making some general remarks about liberalism and the state system.

6.1. Which Liberalism is International?

I would like to start with a very general theoretical question that has been surprisingly neglected by global justice proponents. The question concerns the relation between liberal internationalism, as a theory of international relations, and global justice liberalism, as a global extension of liberal political theory[283].

Generally speaking, liberal internationalism rests on the belief that international progress is possible, whereby the progress is understood as an increased cooperation among states[284]. The major concern of liberal internationalism is how to best organize the international system. The answer is the rule-based international order, backed by the right configuration of power. The liberal order is characterized by open markets, international institutions, cooperative security, democratic community, collective problem solving, shared sovereignty, the rule of law, and so on. Such an order can emerge, so liberal internationalists argue, if states pursue multilateral policies and create international and supranational structures. International rules socialize states and enable a gradual emergence of shared and stable expectations among them, thus making their mutual relations more stable and predictable. Liberal internationalists argue that there are two major driving forces of the transformation of the world order: international trade and international law. The free trade leads to increased levels of interdependence among the states, which in turn decreases chances of conflict since everyone benefits from it[285]. The economic cooperation then serves as the basis of the

[283] Duncan has recently raised a similar question with regard to political realism in the disciplines of political theory and IR. In his view, it is regrettable that the two are parallel universes unaware of one another. In Bell Duncan, "Political Realism and International Relations."

[284] This section heavily draws on G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*, Reprint edition (Princeton, NJ Oxford: Princeton University Press, 2012).

[285] Both Hobbes and Kant thought that economic production within state borders makes wars less likely among (republican) states, for citizens do not want to waste resources on war. For instance, Hobbes argued that absolute sovereigns might be "jealous" at one another, but as long as they secure "industry" of their subjects, the subjects will not support sovereigns' aspirations to start a war. In Hobbes, *Leviathan*. p. 286 Notice that this is the rudimentary

political one[286]. We can distinguish between a normative and empirical component of liberal internationalism. The normative one is that states should cooperate and the international order should be interdependent since it increases chances of peace among states. The empirical component is that free trade and international law create ties of interdependence which in turn decrease the chances of conflict. Let me turn to global justice liberalism now.

Global justice liberalism is essentially concerned with the fairness of social cooperation including fair distribution of benefits and burdens of global cooperation. As opposed to liberal internationalism, global justice liberalism is fully normative – it argues that cooperation at a global level should be based on normative standards that protect fundamental interests of individuals worldwide. Global justice liberalism comes as a result of the evolution in liberal thinking. A detailed description of the evolution would take for one more dissertation. Here it suffices to say that an important shift in liberal thinking resulted from Rawls's *A Theory of Justice* which brought the problem of equality and distributive justice into the center of liberal thought. Thanks to Rawls, liberalism has moved away from its classic variant concerned with limiting state's encroachment upon individual freedom and private property, towards the idea that state institutions play a central role in securing justice[287]. The next transformative phase of liberalism were attempts to extend Rawls's theory to a global level[288]. The main focus is on identifying which obligations have a global scope and defining what kind of global institutional order is compatible with it.

origin of democratic peace hypothesis that has often been attributed to Kant. For such an attribution see for instance, Rawls, *The Law of Peoples*.

[286] Although free trade need not be a necessary condition for peace. For instance, the initial European integration was not about free trade, but it was about a joint production of the materials (steal and coal) which are essential for war. Hence, other forms of economic activity can be the basis for peace too.

[287] Rawls, *A Theory of Justice*.

[288] Two pioneers of such extension were Beitz, *Political Theory and International Relations*; Pogge, *Realizing Rawls*.

Now, how similar or different are liberal internationalist's and global justice liberalism's visions of a better world? To begin with, both of them are international theories concerned with global issues. Furthermore, they are normative by virtue of being focused on the role of norms globally, and they assume that certain norms should constrain behavior of a variety of agents, including states. This leads to the third major similarity – both approaches have a common enemy in realism. By doubting the role of moral considerations globally, realism challenges the foundations of both approaches[289]. Liberal internationalism and global justice liberalism also share the idea that cooperation among states is valuable. Despite all these similarities, the two approaches do differ. Namely, liberal internationalism attempts to explain the process of increasing global interdependence as well as its contribution to securing peace. Global justice liberalism, by contrast, is critical of interdependence insofar it has unjust effects on life chances of a great deal of the world's population. From the global justice perspective, free trade need not necessarily contribute to peace, since it increases global inequality and consequently, a possibility for conflicts[290]. Perhaps the best way to characterize their alternative visions of a better world is to say that on the one hand, liberal internationalism places emphasis on the value of peace and arguably, human rights, and it sees free trade and interdependence as instrumental for a peaceful world order. On the other hand, global justice liberalism is fundamentally concerned with economic justice, and

[289] I say doubting, rather than rejecting since as Bell argues, the contrast between realism and global justice should not be overstated. He argues that realism in international relations is not limited to explanatory inquiry but also derives normative implications. In Bell Duncan, "Political Realism and International Relations." Similarly, Hutchings argues that realism is "inherently prescriptive" since it holds that decisions in international relations motivated by realist considerations are preferable. Kimberly Hutchings, "Political Theory and Cosmopolitan Citizenship," in *Cosmopolitan Citizenship*, ed. Kimberly Hutchings and Roland Dannreuther (Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 1998). p. 20-23

[290] For instance, Buchanan argues that it is unjust global institutional arrangement that is undermining equality among societies. Yet, he thinks that the solution is not to dismantle the arrangement for this is not feasible, whether or not it is desirable. In his view, the global economy has generated preferences that people are not likely to abandon. In Buchanan, "Rawls's Law of Peoples."

it evaluates free trade and interdependence from this perspective[291]. Perhaps the major point of differentiation is the way they approach the question of unequal distribution of power among states. Liberal internationalists support such distribution to the extent it can secure stability and peace in the liberal world order[292]. Global justice liberals, by contrasts, blame unequal distribution of power among states for many existing injustices.

As mentioned earlier, liberal internationalism is not fully normative for it also aims to explain the way world order works. In this sense, its findings can inform global justice liberalism. In the next two sections, I will rehearse liberal internationalist's analysis of the so-called unipolarity. I will start by describing a historical period that serves as an approximation of the liberal internationalist's vision of the international order – post-WWII order.

6.2. The Unipolar World

one state has a far greater military and Following Ikenberry, unipolarity is a particular type of the world order characterized by the unequal distribution of power among states whereby economic power than other states[293]. Roughly speaking, the unipolar world order existed after the WWII and after the end of the Cold War. During both of these periods, the United States, as the most powerful state in the world at the time, was in a unique historical position to significantly affect the structure

[291] I am grateful to Zoltan Miklosi for helping me clarify this.

[292] For the famous argument that the existence of the hegemonic state is conducive to a stable and peaceful world order see Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, N.J: Princeton University Press, 2005).

[293] I understand power as a capacity to yield certain outcomes. For the definition see Ypi, *Global Justice and Avant-Garde Political Agency*. p. 109 Interestingly, she defines state power as a positional good – some states having more power necessarily makes other states having less. In her view, this is why power among the states should be equalized. I will come back to this.

of the world order. It has done so by employing two different foreign policy strategies that Ikenberry helpfully defines as "rule-based" and "relationship-based" strategies. In a nutshell, the rule through rules is built around multilateral rules and institutions which set up the terms of cooperation among states. A powerful state can increase its influence and ability to shape outcomes in the international system by voluntarily restraining and institutionalizing its power[294]. By contrast, the rule through relationships is characterized by establishing a series of bilateral arrangements with "weaker" states, which leads to a form of political dependency of the latter on the former. The powerful state provides protection and benefits including economic aid, military assistance, access to the market in exchange for cooperation and political support of weaker states. Roughly speaking, the United States employed both strategies in different parts of the world[295]. Let me explain.

Between 1944 and 1951 the United States has facilitated the establishment of several international institutions that, even though somewhat transformed, continue to exist till a present day - most notably the United Nations and the Bretton Woods system (the International Monetary Fund; The World Bank). Given the Cold War bipolarity, the United States has also built a regional, Western liberal order consisting of the European Community, NATO, the United States-Japan alliance. Ikenberry uses an illuminative metaphor to describe the role of the United States as Liberal Leviathan. It acted as Leviathan in the sense that other states in effect contracted out to the United States to provide certain public goods, including security and open markets. What made it

[294] Ikenberry calls this "the paradox of power", in Ikenberry, *Liberal Leviathan*, 2012. ft 4. According to Ikenberry, the same logic applies within societies. The rise of modern Western states involved gradual steps by absolutist rulers to delimit the powers of the state and embed its authority within legal and political institutions. Institutionalizing state power within constitutional structures had the effect of making state power more authoritative, lasting, and plenary within society. Ibid. p. 85

[295] Additionally, it also employed open domination mostly in Latin America. Ibid.

liberal was operating within multilateral institutions. Indeed, the United States was willing to give up a part of its policy autonomy in order to make others operate in more predictable and desirable ways. The world order that resulted and is still in place is "hierarchy with liberal characteristics" – a liberal hegemonic order. Once bipolarity disappeared, and the Cold War ended, the liberal order went global. Importantly, the liberal order is no longer an extension of the United States power and interests, but "has taken a life of its own" in the sense that international institutions have established their role in international relations.[296]

Now, the current picture is very complex and morally troublesome. Two aspects of the problem are particularly relevant here. First, there is a tension between the United States' behavior and international order it helped create. As Ikenberry argues, the present liberal order is facing a crisis of authority – that the hegemonic state has the power to dominate, but has no legitimacy to govern the world. Also, it is retracting from multilateral cooperation, and focuses instead on bilateral relations with other states[297]. Second, there has been a tendency of deregulation starting from the end of the Cold War (the Washington consensus) which has led to decreasing states' ability to deal with socio-economic issues within their borders. When it comes to securing peace, the focus has been on the so-called weak or "rouge" states that generate sources of violence, including terrorism. This has placed the question of intrastate intervention and the idea of building stable domestic institutions highly on a political agenda (e.g. invasion of Iraq). Such troubling

[296] Ikenberry, *Liberal Leviathan*, 2012.p. 332

[297]Ibid., p. 277; The crisis of authority manifests in two ways. First, the Bush's administration pursued a strategy of turning unipolarity into empire by retreating from multilateral rules and institutions towards bilateral relations. As a paradigmatic case, think about the United States resistance to sign international treaties such as the Kyoto Protocol about climate change and the ICC Statute. The second aspect is that the international institutions, in particular the financial ones, turned to a global level building "freewheeling neoliberal market system" and consequently, started undercutting the states' abilities to fulfill their domestic social and political responsibilities.

developments made many think that a liberal hegemony is nothing else but the disguised Western imperialism. I turn to this now.

6.2.1. Unipolarity and Imperialism

As we could see, unipolarity is the specific type of the world order characterized by the unequal distribution of power among the states where one state has the far greater military and economic powers than other states. Such distribution of power then enables the most powerful state to affect the structure of the world order far more than other states. As such, it is often equalized with liberal imperialism. To get clearer on what unipolarity is about, let me try to differentiate it from imperialism.

Imperialism is not about the world order as such, but about what states having a greater power than other states do with their power. Imperialism carries negative normative meaning since it is about an imperialist state imposing its power over other states. Certain aspects of the recent affairs support such view. The more powerful states have been indeed attempting to entrench the power imbalance within the structure of international institutions by giving themselves, say, more voting rights. For instance, the states that had initiated the creation of the UN have also secured a permanent membership for themselves in the Security Council[298]. This, in turn, results in advantaging citizens of some countries over those of others by giving them more say on international affairs. Even more, liberal values, such as human rights have been used for the sake

[298]By way of counter-example, we can think about the way in which the EU has been created. The United States initiated the process of the European integration by conditioning the Marshall plan (economic aid) upon the Western European countries' joint allocation of the aid, which supposed to serve as the impetus for transnational integrations. Despite such a great influence, the US did not get a formal say in the newly emerging structure.

of interests of the hegemonic state. For instance, we can recall the cases of selective humanitarian interventions when the powerful states would intervene only in those cases of gross human rights violations that significantly affect their own interests.

Even though these are clear instances of the wrongful conduct, the charge of liberal imperialism is utterly vague thus making it more difficult to identify what is morally problematic with situations like these. For instance, a version of the charge of liberal imperialism is that Western liberal democracies interfere with non Western societies for the sake of imposing their own values. Liberal values, including human rights, are just a cover for power politics. This presupposes that a morally desirable situation is the one without any influence whatsoever. Practically speaking, it is difficult to see how no influence can be implemented without cutting all possible connections between societies, and building walls around each of them. A deeper problem is that the charge also implies that imperialism is distinctive of liberal values, given that they rest on universalist premise. However, this is implausible. Liberalism indeed rests on universal principles - i.e. moral equality and individuals as units of moral concern, but even principles without the universalist premise can be expansionary. Hence, the charge against liberal imperialism has to either say that liberalism is in some sense worse as a system of values than illiberal values; or that any value influence is imperialistic, and hence there should be no influence whatsoever. It is hard to see which of the two responses is more implausible. While there might be good reasons to criticize specific practices of promoting liberal values, it does not suffice to reject

the values as such. After all, political actors also invoke the idea that moral principles are relative in order to support illiberal policies they pursue[299].

Notice further that in light of the global justice debate, the charge of liberal imperialism might seem misplaced. For global justice proponents argue in favor of global redistribution of resources and opportunities. It is hard to see in what sense poorer countries would resist global justice proposals given how beneficial this is for their citizens. To the contrary, it is the most developed states that would very likely resist such changes.

The objection that unipolarity is nothing more than the disguised Western imperialism conflates the background conditions of unequal distribution of power, and the actual behavior of the hegemonic state. As mentioned above, the unequal distribution of power does not necessarily lead to a complete domination, but can also lead to multilateralism and mutual constraining among the states, irrespective of how much power they have. We could see that unipolarity is compatible with different types of the hegemonic state's behavior, which Ikenberry defined as the rule-based and the relationship based. The former, arguably, is less troublesome than the latter. This shows that, contrary to realist thinking, the structure of the international order is not sufficient to decisively determine states' behavior. Hence, while unipolarity can lead to imperialism, it need not to. A serious normative assessment of the existing world order will have to distinguish between the unequal distribution of power among the states, and the way the more powerful states behave. This is an important lesson that global justice liberals can take from liberal internationalists.

[299] As Caney argues, we should be suspicious each time political actors invoke moral principles. In Caney, *Justice Beyond Borders*. p. 52 – 53. For another critique of the charge of moral imperialism see Buchanan in Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, p. 105 – 115

Even if we accept that unipolarity is not identical to imperialism, it still leaves open a possibility that the unequal distribution of power among the states is unjust for not imperialism related reasons. In the remainder of the chapter, I attempt to do two things. First, I will examine if global justice liberals can bite the bullet and approve of unequal distribution of power in the transitional stage. Second, I attempt to identify global justice criteria for the hegemonic state. In the end, I will connect this to the principle of salience.

6.2.2. Unequal Distribution of Power

In the previous section, I tried to differentiate between unipolarity as unequal distribution of power among the states, and imperialism as a morally problematic way to exercise the state's power. Still, to differentiate it from imperialism surely does not make unipolarity good in any sense. If the problem with unipolarity is not that it is necessarily imperialistic, what is it then? Ikenberry defines it as "hierarchy with liberal features"[300]. Is this contradiction in terms? How can a liberal order be compatible with hierarchy? How can liberals support an unequal distribution of power among the states and a resulting hierarchical order? The problem is an international instantiation of a fundamental problem liberals have been struggling to resolve: how to reconcile political authority, as hierarchical by definition, with the principle of moral equality. The problem is usually discussed in the context of political authority of states' institutions and citizens' duty to obey them. How persons, born free and equal, come to be governed by others? At a global level, however, the question arises not with regard to authoritative global institutions, but with regard to inter-state relations.

[300] Ikenberry, *Liberal Leviathan*, 2012. p. 37

There are two possible reasons, i.e. theoretical and practical, to worry about the unequal distribution of power. The first is that unequal distribution of power among states is unjust in and of itself. Another reason to worry about the unequal distribution of power is more consequentialist – that unequal bargaining powers lead to "hijacking" international institutions by the most powerful states, which then use the institutions for their own interests. I will consider both in turn.

Let me start from the claim that unequal distribution of power among states is intrinsically unjust. For instance, Hurrell argues that unequal distribution of power is a "deformed political order"[301]. The basic idea is that unequal distribution of power among the states is bad in itself. However, it is hard to make sense of such a claim. First of all, consider conceptual difficulties of the concept of power. The concept is utterly vague and can mean many different things. In this sense, it is not obvious that power has a negative meaning. Not all power aims to dominate over others. Therefore, it seems more useful to use the concept of domination rather than power to denote morally problematic relations among the states[302]. Compare this to unequal distribution of power among individuals. When we think about differences in individual abilities and powers, we rarely complain that it is bad that some are more powerful than others, and that their abilities should be somehow equalized. Instead, we assign more obligations to the more capable agents. After all, this is what *ought implies can* is about: the degree of obligation increases with the increasing capacity to comply with it. The same holds when it comes to unequal distribution of power among the states – the fact that there is the hegemonic state can mean that the state might have more obligations than other states. For instance, when it self-selects itself for specific actions, it might mean that all else being equal, it is fulfilling its duties. Even more, by doing so, it enables the less

[301] Andrew Hurrell, "Global Inequality and International Institutions," *Metaphilosophy* 32, no. 1/2 (January 2001): 34. p 35

[302] I take this point from Caney, *Justice Beyond Borders*. p. 57 – 58

powerful states to do their shares. For instance, when the hegemonic state proposes an option for creating global institutions, as was the case with the UN, it seems that all else being equal, other states should have supported such an option, as they did back in 1945.

Perhaps the wrongness of unequal distribution of power among the states can be coined in terms of imposition of the hegemon's values and interests over others. For the most powerful states dictate conditions of negotiations, and less powerful ones often have no choice but to consent. Such consent can hardly be characterized as free and valid. While we have good reasons to worry about some states imposing their decisions over other states, the problem is, as we could see in the previous chapter, that it is hard to take the principle of consent as the basic principle of the international system. After all, if the free consent of states is what we value the most, then it is hard to see what kind of a global order can meet the strict validity conditions of the principle of consent. To be sure, this does not make the unequal distribution of power justifiable. All that follows is that the principle of consent is inadequate to evaluate it. So, one can say that just as consent theories cannot explain and justify political obligation citizens owe to their states, the same applies globally – the lack of valid consent does not entail intrinsic wrongness of unequal distribution of power for the principle of consent is problematic in itself.

In addition, more powerful states typically represent more people, so it is not clear that them having more power is necessarily wrong. For instance, one can argue that the permanent member states of the UN Security Council represent a large part of the world's population. Hence, the problem need not be that citizens of certain countries are overrepresented, but that citizens of other countries are altogether excluded. Moreover, there are still large countries excluded, such as

India[303]. This is a serious problem, that is only partly mitigated by the rotating temporary membership in the UN Security Council.

Note also practical difficulties with the idea of equal distribution of power. The idea that power among the states should be equalized presupposes that power can serve as distribuenda. But, what does it mean to equally distribute power? How to quantify it? Surely, one will say for instance, that states should get equal voting rights in international institutions. But, states already have equal voting rights in many international institutions. The problem is not formal equality, but what happens prior and after voting in those institutions. It is this informal and untransparent power that is bothering global justice proponents. But, it is unclear how to distribute it. The basic problem seems to be something other than the unequal distribution of power among states. In sum, it seems difficult to establish that unequal distribution of power is unjust in and of itself.

Let me turn to the worry about negative consequences of unequal distribution of power among the states. The worry hinges on empirical claims that I cannot fully assess here. The basic idea is that under the conditions of unequal distribution of power, powerful states have a better bargaining position in their relation to the less powerful ones. Therefore, there is a great risk that power inequality will be entrenched in new international institutions. For instance, Miller argues that a further strengthening of international institutions may incentivize powerful states to subjugate it to own interests even more. This is the so-called "hijacking problem"[304]. In a similar vein, Christiano argues that unequal bargaining powers often lead to substantially unfair agreements[305]. Furthermore, Ypi argues that the state's power is a positional good which is

[303] I owe this point to Zoltan Miklosi
[304] Miller, "Global Institutional Reform and Global Social Movements."
[305] Christiano, "Democratic Legitimacy and International Institutions."

causally linked to the absolute deprivation of many worldwide. For this reason, meeting basic needs of everyone necessitates equal distribution of power among the states[306].

Nevertheless, the distribution of power does not in itself determine how the power is exercised. For instance, Arneson asserts that there is no evidence that any type of reforms is prone to hijacking. Interests of powerful countries sometimes ally with the interests of humanity[307]. Furthermore, one can say that national institutions are prone to hijacking by domestic politicians too, but we still want to reform them[308]. Notice further that despite unequal distribution of power among the states, all states, including the hegemonic one, are equally vulnerable in some sense. Recall Hobbes's point about individuals in the state of nature. He argued that they are naturally equal in a sense that the weakest can kill the strongest either by machinations or by making alliances with others[309]. One can say that the hegemonic state is similarly vulnerable. For the less powerful states are many and can form coalitions within multilateral institutions to outvote the hegemonic state[310]. Furthermore, even the hegemonic state benefits more from the rule-based liberal order instead of dominating others in one-on-one relationships. To this extent, the others also have some bargaining power. So the hegemonic state cannot pursue order without regard for the others completely[311].

After all, just with many other empirical claims, it is not that clear what leads to what. Perhaps it is an unequal distribution of other distribuenda that decreases the power of so many states. For instance, Gilabert argues that the poorer countries are, the less bargaining powers they

[306] Ypi, *Global Justice and Avant-Garde Political Agency*.
[307] Arneson, Richard "Global Institutional Reforms and Global Social Movements are Complementary, not Opposed",
[308] For the argument see Barry, Christian Barry, "Is global institutional reform a false promise?",
[309] Hobbes, *Leviathan*
[310] Thomas Christiano, "Is Democratic Legitimacy Possible for International Institutions?"
[311] I owe this point to Zoltan Miklosi

have. This suggests that it is the distribution of resources that is more basic than the distribution of power[312]. In the end, since we are discussing instrumental arguments, one can say that unequal distribution of power among the states causally contributes to the world stability. After all, this is one of the standard liberal internationalist thesis[313]. To the extent the empirical claim is true and to the extent we value stability of the world order, it seems that it is unclear that the unequal distribution of power has negative consequences only.

6.3. Conditions for the Hegemonic State

In the previous chapter, I spelled out several reasons for states to join the existing or start new salient practices. I argued that they should support stable, efficient and institution-building practices irrespective of how many states have initiated them. Here I will focus on identifying conditions that a custom pioneer state has to meet in order to generate reasons for other states to follow it. Two conditions seem particularly important.

First, a custom pioneer should be "reasonably just" meaning that it should have a reasonably just internal constitution. For instance, if the custom pioneer has a free press and party competition, it makes its motivations and intentions more transparent and accessible to those beyond its borders. This is based on the Kantian view about the interdependence between internal and external aspects of state institutions: internal constitution affects the possibility of peace among the states, and peace, in turn, is necessary for the just internal constitution[314]. Hence,

[312] Gilabert, *From Global Poverty to Global Equality*.
[313] Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*
[314] Kant argued that the republican states must establish lawful external relations in order to realize freedom of their citizens. Indeed, no republican state is secure unless there is a lawful relation between them. In Kant, "Toward Perpetual Peace: A Philosophical Project." p. 100 - 103

contrary to realist's separation of the domestic and international spheres, and the claim that it is an international condition of anarchy that determines states' foreign policies, we have to account for the influence of internal regimes over foreign policies as well. After all, we could see that unipolarity, as an external condition of hierarchy was not sufficient to determine the hegemonic state's behavior alone – the United States was following both rule-based and relationship-based strategies. After all, if the hegemonic state is to significantly affect the world order, then its internal values and rules surely matter.

Second, a custom pioneer has to show a commitment to rule-based foreign policy. In other words, it should comply with rules it helped create. It might be useful to think of this in terms of Rawls's strains of commitment principle. The principle holds that parties in the original position have to account for the fact that it is one-time binding agreement. The terms of agreement depend on them, but once they make it, they can rely on one another to adhere to it[315]. For instance, many tend to criticize the withdrawal of states from certain schemes of international cooperation. We can recall the United Kingdom's forthcoming withdrawal from the EU or the United States' withdrawal from the Paris agreement and more recently from UNESCO. Many are critical of these political decisions for two reasons: first, the EU integration, as well as the Paris agreement and UNESCO are good in some sense, and second, countries that commit to that kind of international cooperation should not withdraw.

One might object that I am presupposing that the hegemonic state is indeed providing a way to create global institutions, but what if it is not? Indeed, we can think about the United States'

[315] Rawls, *A Theory of Justice*. p. 175

current ambivalent attitude toward multilateral cooperation[316]. Unipolarity, critics might continue, was just a short period in the world history and the present world order is more multipolar. Hence, what is the relevance of considering cases of coordination by a single powerful state? I offer two considerations in response. First, the unwillingness of the hegemonic state to provide the option for creating global institutions can be taken as its failure to discharge its obligations. Second, given that such failure further disables the less powerful states to discharge their own obligations, it raises a question of what other states are permitted to do with regard to the hegemonic state. But this is the topic for further research.

6.4. Liberalism and the State System

In the end, one might object that the principle of salience is *status quo* biased since it focuses on the role of states and so appears to favor not only the state-system but also unequal distribution of power among the states[317]. However, this is not the case. The principle of salience defended here is open-ended in the sense that it is not limited to cooperation within the existing world order. Instead, it recommends continuous state cooperation that eventually can lead to a genuine cosmopolitan order. After all, the principle of salience recommends supporting those practices that are institution-building at a global level. Therefore, the very logic of the principle is to work towards a deeper integration among the states. States should cooperate with the hegemonic state

[316] As a paradigmatic case think about examples of the US obstructing the ICC by enacting the American Servicemen's Protection act in 2002 and through bilateral immunity agreements asking individual countries to exclude the US's citizens and military personnel from extradition to the ICC. I take these examples from Pavel, *Divided Sovereignty*.

[317] Buchanan helpfully defines such approach as "progressive conservativism" that intuitively asserts that when we think of reforms we should start from the most morally acceptable principles of the existing international legal system. In Buchanan, *Justice, Legitimacy, and Self-Determination*.

because the present order provides a salient path to the desirable end state. They have a duty not simply to sustain it, but to develop a deeper union.

The criticisms of *status quo* bias seem to rest on a too narrow understanding of what the state's duties are with regard to the present world order. Alternatively, it might rest on an empirical assumption that the present world order is incapable of evolving into a cosmopolitan one, and so we should not attempt to do so. But this empirical assumption is in need of substantiation.

All this shows that the salience based coordination is not only not *status quo* biased, but might have radical implications. We could witness the tremendous changes the state system has gone through in the course of the 20th century. We should not forget that these changes came from within – they were initiated and put into practice by states themselves.

6.5. Conclusion

This chapter examined the controversial empirical case when salient practices are initiated by a single state. What makes the case controversial is that the state is hegemonic – it has far greater economic and military power as compared to other states. Global justice proponents tend to wary of such distribution of power among the states and advocate more balanced distribution of power. Here I tried to show that liberal internationalist's take on the problem seems to be plausible. Namely, it is hard to define in what sense unequal distribution of power among the states is unjust in and of itself. Moreover, while it surely has negative consequences, the consequences can be mitigated not by equalizing power among the states, but by constraining the behavior of the hegemonic state. I attempted to show that the principle of salience is resourceful in this respect too – it can help us clarify under what conditions states might have reasons to follow even the

hegemonic state in providing salient options for global institutional reforms. If states indeed have a reason to follow even one state in creating and sustaining salient practices, then they have even stronger reasons to support salient practices already supported by more than one state.

VII Conclusion

7.1. Summary

In the thesis, I have defended the claim that states have a perfect duty to create a just world order. Contrary to the dominant view, I argued that authoritative institutions are not necessary to resolve coordination problems for individuals and states coordinate by conventions too. I have reached this conclusion by making the following claims.

I offered several reasons for why we should consider states as the main bearers of the duty to create a just world order. I compared statist and cosmopolitan accounts of the duty and concluded that despite starting from different normative premises, they reach a somewhat similar conclusion – that states have a duty to reform the existing world order. Hence, the duty itself does not seem to be a matter of controversy. What is more controversial is how to comply with it.

The duty might appear indeterminate in a sense that there are different morally equivalent ways to comply with it. One might think that, in the absence of global authority, it is up to individual states to decide how to comply. I identified three problems the indeterminacy so understood seems to raise: the stringency objection, the assurance objection, and the paradox of indeterminacy. While those thinking about the global justice problem are fiercely debating the nature of duties of justice, I tried to show that the other two problems are more difficult to address. If authoritative institutions are indeed necessary for coordination to take place, then there can be no coordination to tackle the problem of global institutional reforms. I have argued that we need not accept this view.

By building on the works of Hume and Lewis, I showed how individuals in the state of nature could have coordinated by conventions up until a point when a government could have been created. I suggested that similar considerations apply to coordination among the states too. In this respect, I analyzed the role of international customary law, and I argued that we can take it as a global governing convention. As such, it can resolve coordination problems that arise among the states.

I have further argued that conventions are important for justice since they enable compliance with it. Not all conventions do so, however. I proposed the principle of salience as a way to identify those practices that states should support. States best comply with their duty to create a just world order by joining and supporting salient practices. It follows that the duty to create a just world order is, after all, determined. Consequently, the assurance problem and the paradox of indeterminacy do not arise at all.

In the end, I applied these highly abstract considerations to an empirical case of creating international institutions under conditions of unipolarity. Contrary to a common view, I suggested that the problem is not in unequal distribution of power among the states but in what states make out of it. I further suggested that the principle of salience can impose moral limits on powerful states. Thus, when powerful states initiate practices that comply with the principle of salience, other states should follow them.

The whole point of the discussion was to show how global institutional reforms are possible and to offer an alternative way to think about how states relate to one another. Despite of taking the state-system for granted, the view I have defended here is not *status quo* biased. For the principle of salience is open-ended in the sense that it is not limited to cooperation within the

existing world order. Instead, it recommends continuous state cooperation that eventually can lead to a genuine cosmopolitan order. The very logic of the principle is to work towards a deeper integration among the states. I should like to use the remainder of the conclusion to spell out the broader implications of my argument.

7.2. Implications

The argument I defended here raises numerous further questions, or at least it seems so to me. Instead of attempting to spell out all of them, here I will mention three major implications.

a) Moving forward the global justice debate

The global justice debate seems to have reached an *impasse* about the question of the scope of duties of justice. While statists insist on a domestic scope of the duties, global justice proponents attempt to show that the scope is in fact global. Even if we accept that the scope of duties of justice is global, however, it remains unclear how agents can comply with them. By ignoring the problem of compliance, global justice proponents fail to fully address the statist challenge. Furthermore, the debate over the scope of justice is losing its relevance in light of the fact that even some proponents of statist views acknowledge the need to reform the present global institutional order. Moreover, they also agree that states bear a duty to do so. To be sure, the statist version of the duty is less demanding than the cosmopolitan one, but they do overlap in important respects. This suggests that the duty of states to introduce certain changes in the existing global order is not

controversial anymore. What is controversial is how to comply with it. Global justice proponents should be able to say something about this too. Here I have tried to make a couple of steps in this direction by showing that the duty is not indeterminate, but is determined by international customary law.

b) Global Justice and Conventions

The international customary law is an interesting phenomenon. States tend to comply with it based on the belief that they should do so. To understand the phenomenon, I revisited remarkable analyses by Hume and later on Lewis, both of whom tried to explain how individuals coordinate their actions without consenting to it. I argued that something similar applies to states globally. This has a significant implication for how we think about the international order. The theories of international order are still dominated by the Hobbesian paradigm: taking the global order as anarchical and behavior of states as self-interested. Many philosophers, including Rawls and Nagel, tend to take these assumptions for granted. However, I tried to show that Hume's analysis is a fruitful framework to analyze the behavior of states. It can have far-reaching implications, most of which are questioning the importance of state consent. The major implication for global justice projects is that the picture is not as hopeless as the Hobbesian framework suggests. To be sure, by offering a competing account of the world order, we do not solve practical problems. After all, even on the argument I have defended here the fact remains that states violate their duty to create a just world order. The job of a philosopher, however, is not to make politicians and states they represent more moral. Instead, the job of the philosopher is to go below the surface of actual

and contingent behavior and identify moral principles that should guide it. Even if agents decide not to comply, at least we will know what we can hold them accountable for[318].

c) Revisiting the institutionalist approach

Perhaps the most general implication concerns the role of formal institutions in our practical reasoning. Following the present discussion, it appears that the Rawlsian institutionalist approach is unable to fully address the problem of global institutional reforms. By focusing on identifying distinctive features of public institutions, the view loses from its sight the role of noninstitutional norms in creating and changing institutions. The global institutional reforms reveal the full force of these considerations. For in the absence of global authority, it is unclear how such changes can take place. If conventions indeed can play a coordinating role, then we have to rethink the constitutive role of formal institutions and what grounds our obligation to them.

*

I began this discussion by citing John Lennon's lyrics and Theresa May's speech. The point I wanted to make was that they think about the same idea: the idea of the cosmopolitan world. In my view, this shows that the dominant attitude toward cosmopolitan ideas is not one of ignorance, but of either acceptance or rejection. I hope that this dissertation, by showing the full force of the

[318] In Kant's words, "although politics by itself is a difficult art, its union with morals is no art at all; for soon as the two conflict with each other morality cuts the knot that politics cannot untie. […] all politics must bend its knee before right, but in return it can hope to reach, though slowly, the level where it will shine unfailingly." Immanuel Kant, "Toward Perpetual Peace: A Philosophical Project,". Appendix, p. 347

state's duty to create a just world order, can contribute to tipping the balance in favor of the former. For very often the reason to reject the cosmopolitan world order is the belief that it is not feasible. Still, the world has always been, and for the foreseeable future, it will constantly be changing. There have been different arrangements before the emergence of a modern state, and it is very likely that there will be other arrangements in the future too. So, changes are not only possible but also feasible. What we should never lose from our site is that none of these arrangements is valuable in itself; instead, they are valuable only to the extent they enable us, individually and collectively, to fulfill duties we owe one another.

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