

The Terrain of a Global Normative Order

1. Realism and Normative Order

Last time we discussed a stylized version of the realist view of global society. According to that view, the principal actors are states, who/which act rationally in pursuit of their interests, above all their interests in security. Because global society is anarchic—there is no central authority with the responsibility and capacity to make and enforce rules—states depend on their own devices. And because of their uncertainty about the intentions and conduct of other states, they must be constantly watchful about their own security. According to Mearsheimer, that watchfulness, at least in the case of great powers, will be expressed in a disposition to act in ways that increase relative power. Other forms of realism emphasize that rational states will act more defensively. But in either case, their watchfulness will often conflict with their compliance with global norms, and they will not treat those norms as constraints on their conduct.

1. We suggested three ways to think about these claims about states, and their rational pursuit of their interests. First, that they represent an empirical generalization about how states act. Second, they express a claim about how states have most reason to act: viz., that they have most reason to do what promotes their own security; and because that security is so open to challenge that they typically have reason not to constrain their conduct by reference to norms. And third, that because they are entitled to do what best promotes their security—such promotion is always permissible—they are permitted not to take

global norms as constraints on their conduct (alternatively, because they lack assurance about the compliance of others, it is permissible for them not to comply).

2. The readings for this time suggest an alternative view of global society: that such society either is or at least can be thought of as a normative order—a system of right—in which norms are acknowledged by agents as reasonable constraints on their conduct and the conduct of all other agents in the system. In each, the idea is that such an order is possible, given the way that human beings are. In Rawls's terms, a normative order is a "realistic utopia": utopian, because it is organized around and unified by a system of norms that express important political values; realistic, because a commitment to act on reasonable principles—as specified, for example, by his Law of Peoples—can be acquired by members of societies, who in turn can develop sufficient confidence in the compliance of political societies that they have reason to act on global norms and ought to act on them. In short, international society need not be such that security concerns are so pervasive as to make the normative principles practically irrelevant.

If you believe that a normative ordering of global society is possible—I you think that realism is sufficiently off the mark to make global political norms of practical relevance—then a large question you face is what the right norms are. For example: What rights must all political societies ensure for their members—a minimal set focused on bodily security, or a much more demanding set including a right to democracy? What is a fair distribution of global resources—is everyone

entitled to a decent minimum, or is a more demanding standard appropriate?

When are political societies permitted to use force? And what kinds of assistance does one society owe to others?

3. These (and similar) important questions will be occupying us as we proceed. But answers to these questions are in part reflections of thoughts about the nature of the moral terrain. And our topic today is the nature of the terrain, rather than the right way to characterize the content of the principles of global political morality. By “nature of the moral terrain” I have in mind, among others, the following issues: (1) who/what are the basic units of moral significance, and how are they best conceived? Should we suppose that the global normative order is founded on individuals, or peoples (ala Rawls), or states; (2) who, according to the principles of global political morality, are the bearers of claims (who is assigned rights and authority by those principles)? To see the distinction between this question and the first, notice that someone might think states have rights *because* assigning them rights is justified by reference to the rights of individuals; on the other hand, someone might think, with Rawls, that the morally basic units are peoples of various kinds (liberal and decent) but that the principles of global political morality, justified by reference to an agreement among people, assign rights to individuals; (3) how are we to think of the status of the norms themselves: in particular, are they best conceived of as principles that guide the conduct of political societies and other agents in their interactions with one another, but not as necessarily institutionalized, or do the norms apply in the first instance to a (possible) global legal order? And (4) how precisely are

we to understand the demands of “realism” in the idea of a realistic utopia, or in Kant’s conception of perpetual peace as something that is not chimerical.

2. Morality of States

Beitz’s discussion focuses critical attention on a classical conception of the global moral realm: a conception that focuses on the morality of states, as organized political societies (sometimes Beitz lapses into talking about governments rather than states, as when he says at 78 that governments are not free associations). This conception differs from realism in supposing that there is such a realm—that despite the “anarchic” qualities of international society, principles of political morality apply to it. But it bears a similarity to realism in supposing that the principal agents at the global level are states.

1. The central idea in this conception of a morality of states is that states have an equal right to autonomy. That right to autonomy, in turn, is expressed in two principles. The first requires non-intervention: it condemns uninvited external interference in the affairs of a political society. (Krasner says that any external role, even if invited, violates Westphalian sovereignty, but the principle of non-intervention condemns only the uninvited interferences.) The second calls for self-determination: it requires political independence—a state with rights to autonomy—for certain groups, though there is disagreement about the groups entitled to such self-determination.

Beitz’s claim is that we cannot account for the principles of non-intervention and self-determination by reference to an equal right of states to

their autonomy—an equal right to sovereignty. States, as organized political societies, do not have the moral significance that the morality of states assigns to them. Their moral significance, such as it is, is entirely derivative. And it derives from their contribution to justice. Now Beitz does not offer a particular account of justice: or, more precisely, he does suggest such an account, and as we will see in just a minute it turns on ideas of individual autonomy. But the main thrust of the argument is independent of this particular account of justice. The central idea is that the moral significance of states lies not in themselves, but in their role as means to justice. So the principle of non-intervention, for example, derives not from a fundamental right to states to be treated as equals, or from an entitlement of groups of certain kinds (peoples, nations) to govern themselves.

Instead its justification—as well as its precise content—reflects the fact that it is typically the case, as an empirical matter, that external intervention makes things worse from the point of view of justice. That's because outside agents typically are both less interested in and less knowledgeable about the affairs of the countries in which they intervene than are the people there, and thus less likely to advance their justice. Moreover, it might be argued that one of the requirements of domestic justice is democracy, or some form of representative government, and that the only way that people master the skills of self-government is through the experience of self-government. This explanation of the principles, of course, limits their scope. When we have good evidence that improvements in justice are most likely to come through the efforts of an external

agent, then we should support such intervention. The fact that the changes come through the efforts of an outside agent is not itself a cost.

Now I said that Beitz does not offer a particular theory of justice, and he does allow that the right principles of domestic justice may well vary across circumstances. But he also supposes that those principles, whatever their precise content, are founded on and express the value of individual autonomy. Sometimes he connects this value with a hypothetical agreement theory of justice (or as he sometimes misleadingly says, theory of legitimacy). But the emphasis on individual autonomy is fundamental: the idea is that the moral significance of states, such as it is, is entirely derivative from the moral significance of individual autonomy. "Assuming that it is part of the justice of institutions that they treat their members in some sense as autonomous persons, then the claim that unjust states should not be accorded the respect demanded by the principle of state autonomy follows from the claim that it is only considerations of personal autonomy, appropriately interpreted, that constitute the moral personality of the state" (81). Here we have a very strong assertion of the insignificance of the value of collective self-determination, except as a means to justice, where justice itself is founded on the value of protecting individual autonomy.

2. Now I have two objections to this view. The first I will call the justice/obligation problem. Begin from two premises: that members of a society can have an obligation to obey even when the society is not just: the threshold for obligation is lower than the threshold for justice. And second, there is a case

against external intervention—and certainly against forcible intervention—when members have an obligation to obey. Put these points together, and you must conclude that external intervention cannot be warranted simply by the fact of injustice and chances of improving justice. There might be a case for intervention when the threshold of obligation is not met, but there is not good case for external intervention when members themselves are required to obey.

3. The second objection is more complex and substantial and will require that I say something about Rawls's conception of a people and his distinction between liberal and decent peoples.

In the *Law of Peoples*, Rawls distinguishes three ways of understanding the basic units of moral significance in the global normative order: thus we might think of global society as a society of individuals, a society of peoples, and a society of states, and endorses the view that we should think of it as a society of peoples. An essential features of taking the global normative order to be a society of peoples is that they are the agents whose agreement establishes the principles for the normative order—what Rawls calls the “law of peoples,” with its eight principles.

Now the idea of a people is not very precisely defined, but it has three main elements: a people has a government that represents its interests (an institutional feature); there are “common sympathies” among the people (a cultural condition); and the people has a moral nature, meaning that the political society is organized around a conception of justice, and that the people is prepared to cooperate with other peoples on reasonable terms. Two features of

this account are particularly important, and serve to distinguish the emphasis on peoples from the realist's emphasis on states. The first is the idea that peoples are assumed to be reasonable, and not simply rational: this contrasts with the standard realist assumption which, as we saw in Mearsheimer, is that states are rational agents that pursue interests, in particular an interest in security. A willingness to be reasonable is either simply assumed away, or is supposed to be so typically overridden by the demands of pursuing security as to be practically irrelevant. The second is that, among the interests of peoples is an interest in being treated with respect by other peoples: not being subject to disregard, or humiliation: "altogether distinct from their concern for their security and safety of their territory, this interest shows itself in a people's insisting on receiving from other peoples a proper respect and recognition of their equality" (35). Now this point fits together with the first about the willingness to be reasonable: thus a people, as distinct from a state, is reasonable in part because of its willingness to give due weight to the interest of other peoples in being treated with respect as equals.

The second essential point is that there is a distinction between liberal and decent peoples. Abstracting from details, the essential point is that a liberal people embraces a liberal conception of justice that assigns equal rights, personal and political—equal rights of personal and political autonomy—to individuals, and that regards individuals as free and equal persons. There are a variety of such liberal conceptions of justice, and different liberal peoples will endorse different such conceptions. In contrast, a decent people does not

endorse a liberal conception of justice. Instead, it is founded on, for example, a common good conception of justice and regards individuals as fundamentally members of groups or as occupying positions in social relations (it also is reasonable in its external relations). Though common good conceptions of justice assure basic rights to all members, they do not ensure the same rights for all individuals that we find in liberal democracies—they may for example make office-holding dependent on religious conviction—and they do not think of their own societies as made up of free and equal persons.

The third essential point is that we can think of the society of peoples as guided by a kind of shared reason—the public reason of the society of peoples, whose content is given by the principles of the law of peoples. The role of this public reason is to guide cooperation, and give content to the willingness of peoples to be reasonable. Thus, while reasonableness, abstractly conceived, is a matter of treating other peoples—both liberal and decent—as equals, more concretely understood, it is a matter of cooperating according to the principles of the law of peoples (or some reasonable specification of those principles). International institutions and agencies are to use these principles as practical guides, though the precise degree of institutionalization is not specified, and the principles of public reason for the society of peoples need not be embodied specifically in a legal code.

Now—together with the conception of peoples and the distinction between the kinds of peoples—the idea that the public reason of the society of peoples represent a form of shared reason has some important implications. First, public

reason expresses the value of *toleration*. In particular, liberal peoples do not insist that the content of the global public reason—the requirements of the law of peoples—match the principles of a liberal conception of justice: that is, do not insist that all political societies be held to those standards. Decent societies are understood to be beyond reproach. Second, the terms of argument among peoples are shared: thus public reason does not use or depend on a conception of individuals as free and equal, so that both liberal and decent peoples can accept its terms as a basis for discussion and conduct.

4. Returning now to Beitz: this sketch of the idea of a people has three large implications for Beitz's account of the terrain of the global normative order. First, Beitz supposes that the alternative to realism and to the morality of states is a view on which the agents of moral significance in the global normative order are *autonomous individuals*. But once we see that there is an alternative possibility—namely, peoples—then the focus on individuals as the basic moral units needs argument. And making that argument requires some response to the idea that a public reason founded on a conception of individuals does not give due weight to the value of toleration, because it conflicts with the way that individuals are conceived in the common good political moralities of the decent societies.

Second, the effort to found principles of self-determination and non-intervention on the value of justice also needs further argument now, in light of the distinction between justice and decency. Beitz supposed that the only way to defend those principles—to see the moral significance of an organized political

society and its autonomy—was by reference to the value of justice. But decent societies, while they are owed respect, are not just. If they are to be treated with respect, as equals in the society of peoples, then while there is a case for this founded on their meeting certain standards of political morality, those standards do not rise to the level of justice.

Finally, with the idea of a people we have a way to articulate the value of collective self-determination without resting that value on the contribution of self-determination to the autonomy of individuals. Because people are attached to the way of life of their political society, there is importance in respecting that way of life and in giving scope to internal efforts to improve it.

3. Habermas.

1. According to Habermas, Kant's conception of perpetual peace and cosmopolitan right is incoherent. Kant, he says, thinks of the agents in the global society as sovereign states. But he also supposes that those states can achieve perpetual peace if and only if they acknowledge an obligation to maintain the peace by committing to do their part in a federation of states. They need to form a federation because forming a single world state would be unacceptably oppressive, given the linguistic and cultural diversity of members. But in the absence of even a federation—with no coordination on security matters—states are left without any assurance of their rights at all, other than the assurance they can provide for themselves. And that is a recipe for conflict.

Habermas thinks that Kant's solution is contradictory because he thinks there is incoherence in the idea of a state that is both sovereign and has an obligation to uphold a federation and keep the peace (168-69). The precise nature of the contradiction is unclear, and perhaps the main concern is not the sheer inconsistency between the claim that a state has the rights that go with sovereignty and the claim that it has an obligation: after all, if the state has those rights and then enters an agreement to form a federation, it would seem to have an obligation to keep its part in the agreement. Maybe the point is that the state has an obligation to do its part only if it can reliably count on other states to keep their part of the agreement, but that in the absence of an enforcement mechanism there can be no such reliable expectation.

Whether or not there is a formal inconsistency, the essential point is that states lack a good reason for acting on the obligation given the absence of any assurance that others will so act: thus the reference (at 170) to a problem of "ensuring" the obligations of sovereign states. The problem, Habermas says, is that is that the obligation in question is presented as a purely moral obligation, with the implication that there is *no enforcement mechanism* associated with the obligation. But the absence of enforcement deprives a state of any assurance that others will act properly. And that lack of assurance defeats the obligation to uphold the terms of the federation.

2. So Habermas supposes that a global normative order cannot be a purely moral order, where a "purely moral order" is understood as an association—say, a society of societies—in which each is guided by principles of

right with no institutionalized enforcement of the terms of agreement. Instead, the global normative order needs to be a legal order. Now this claim that it must be thought of as a legal order has large implications for our understanding of the global normative order, because of some general properties that Habermas associates with legal orders.

Generally speaking, and without getting into the complexities of Habermas's theoretical system, law quite generally has what he calls a *Janus-faced* nature: it is in the nature of law to have a dimension of both facticity and validity. In saying that a regulation is legally valid, we are always making both a claim about social facts and a normative claim. Thus, law has a dimension of facticity in that it is both enacted and enforced through sanctions, thus providing strategic agents with reasons for compliance (incentives to comply), independent from their views about the validity or justifiability of the law. But law also has a dimension of validity. Roughly, then, we are to think: we accept these coercively enforced rules because we think they are valid; we think they are valid in that we think they would be agreed to under idealized conditions of communication, in which the views and interests of all are taken into account.

The details of this general theory theory are not crucial for current purposes. What is pertinent is the claim that it is in nature of the legal medium that it establishes rights: "The legal medium as such presupposes rights that define the status of legal persons as bearers of rights" (FN, 119). In a more elaborate formulation: "Legitimate law is compatible only with a legal mode of coercion that does not destroy the rational motives for obeying the law: it must

remain possible for everyone to obey legal norms on the basis of insight. In spite of its coercive character [part of its facticity], therefore, law must not compel its addressees, must offer them the option, in each case, of forgoing the exercise of their communicative freedom and not taking a position on the legitimacy claim of the law . . . [but instead adopting] the objectivating attitude of an actor who freely decides on the basis of utility calculations” (FN, 121). Or again, “the legal subject does not have to give others an account or give publicly acceptable reasons for her action plans. Legally granted liberties [meaning liberties that are ingredient in the legitimate law as such] entitle one to drop out of communicative action...; they ground a privacy freed from the burden of reciprocally acknowledged and mutually expected communicative freedoms” (FN 120).

Here then is the relevant line of thought: the global normative order needs to be a legal order because in the absence of an enforcement mechanism it cannot provide assurance to its members, and a purely moral order would lack such enforcement. But because it is a legal order, it also has a dimension of validity, which ties the content of law to idealized conditions of justification. And, moreover, it is characteristic of legal regulation, as a distinctive mode of social coordination, that such regulation assigns rights to individuals.

3. Before addressing this aspect of Habermas’s view, I want to draw attention to another part of his account, which speaks not to the normative structure of the global normative order, but to its realism (its practicality). By realism here, I mean its realizability, as in Rawls’s idea of a realistic utopia.

Thus Habermas criticizes three Kantian ideas about how “nature” cooperates in helping us achieve our moral purposes: the moral purpose in question is to establish an order of perpetual peace, which is both desirable in itself and which enables republican forms of political society—the only legitimate forms, on Kant’s view—to preserve their character. The three Kantian ideas describe how patterns of historical change operate in ways that make the moral purpose not “chimerical”—as in a ruse of reason, the unintended consequence of these patterns of historical change is to provide a relatively favorable environment for perpetual peace. And they provide that environment by making the interests of political societies more congruent with—less in tension with—the norms of perpetual peace.

Thus we see: (1) the emergence of republican political societies, which are less belligerent than autocracies because the members-citizens have political power and are less likely to approve of war than are autocratic rulers, because the members will suffer the consequences; (2) the development of commercial ties between peoples across the globe that have the effect of altering sensibilities, creating interdependence, and increasing levels of satisfaction, all in ways favorable for peace; and (3) the emergence of a public sphere of informal communication that serves both to monitor actions by government and to foster greater understanding of political principles.

Habermas criticizes the ways in which Kant formulates these three trends—both in their specifics, and in the more general idea that these trends are—in his words—“quasi-natural.” In saying that Kant thinks of them as “quasi-

natural,” I believe that Habermas means to say that Kant does not represent them as a “learning process” in which public discussion educates people about normative principles, which in turn reshapes their interests. So for example Kant offers an institutional version of the republican peace theory—a version according to which republican political societies (in the contemporary literature, *democracies*) are less likely to fight because citizens, who bear the costs, are less likely to approve of wars than are autocratic rulers, who do not bear the costs: this would be true, regardless of the normative commitments of the citizens. The trouble with this theory is that it predicts that republican political societies (democracies) are less likely to go to war period, and there is no evidence for that.

But there is some evidence that democracies are less likely to fight against other democracies. And Habermas suggests that this diminished likelihood of war between democracies (or at least between large democracies) reflects features of democratic political culture. The idea is that as a consequence of open political discussion, citizens grasp basic normative principles and values (say the principles and values that provide a case for democracy), and develop an allegiance to democratic norms. While they may be prepared to support a use of force by reference to those norms, they will oppose the use of force against other democracies (as a general rule): “The deployment of military force is no longer exclusively determined by an essentially particularistic *raison d’etat* but also by the desire to foster the international spread of nonauthoritarian states and governments” (173).

Habermas then retells the commercial side of the story as an account of how greater interdependence in the form of economic globalization—both of finance and of production chains—makes “softer” forms of power (information, persuasion), more productive than military power. And he retells the public sphere argument as a story not simply about the public sphere within democracies, but as about the emergence of a global public sphere, in which communication and argument (about issues of human rights, or global environmental issues) transforms our understanding of our interests, so that they are more congruent with the conditions of perpetual peace.

4. I have two lines of criticism of Habermas’s argument about the nature of the global normative order. Let me be clear about the nature of the criticism: these are not matters on which I mean to assert that Habermas is wrong, but on which his argument seems lacking.

First, Habermas draws from the fact that international normative order must be a legal order—apparently to meet the conditions of assurance—that it also must be an order that protects the autonomy of citizens (and thus restricts Westphalian sovereignty): it is a cosmopolitan legal order that “bypasses the collective subjects of international law and directly establishes the legal status of the individual subjects by granting them unmediated membership in the association of free and equal world citizens” (181). It is not clear that he is supposing that this conclusion follows from the assumption that the fundamental moral units in the global normative order are autonomous individuals, but rather seems to draw this conclusion from the very nature of the legal form of

regulation. But if the idea is that each individual is to be conceived of in the global normative order as an autonomous individual, with the full set of rights that accompany that conception, then the argument from the very nature of the rule of law seems too thin. It seems to require too rich and demanding an understanding of the very nature of law: the agents to whom the law applies may be organized political societies, or groups of other kinds. It may be that the right way to think of the global normative order is as an association of autonomous individuals under law, but that conclusion cannot be arrived at simply by claiming that the normative order is a legal order. We need some more directly normative argument.

Suppose instead that the argument is not that the legal form as such establishes an order of autonomous individuals, but that that conclusion follows once we consider what might make the law *valid* or *justified*. Recall that law comes janus-faced, with a claim to be valid. So it might be that when we consider what would be required for global legal norms to be valid, we see that they must protect individual autonomy. And this would be plausible (if not entirely compelling) if we suppose that validity depends on a hypothetical agreement or consensus among individuals, reached through idealized reasoning. But that would simply be to base the case for individual autonomy at the level of the content of the principles on the basis of an assumption that the agents in the global normative order are autonomous individuals. This may be the right view, but it needs to be defended against the alternatives: including the idea, in Rawls, that the agreement that justifies global norms is an agreement among peoples

that meet certain idealized conditions, not an agreement among autonomous individuals.

Second, even if we suppose that rights and autonomous individuals come with the territory of law, it is not so clear why the principles in the global normative order need to be embodied in a legal system. As I indicated earlier, a principal reason that Habermas offers is that the legal system is required to address the assurance problem that emerges in the Kantian account of a federal arrangement, founded on norms that are moral rather than political. There may be a good case for focusing on legal institutionalization of global political norms, both to make the norms more determinate (specifying the content of human rights and the ways that different political societies are to meet the needs of societies with insufficient resources), and to provide greater assurance that others will cooperate. But the argument about an evolving congruence between global norms and domestic interests suggests that at least some of the problems about assurance—some of the case for the realism of the global normative order—can be addressed without relying specifically on legal guarantees of compliance and a centralized enforcement power in a cosmopolitan legal system. To the extent that the congruence problem is addressed, looser forms of institutionalization may suffice—forms that serve to coordinate policy-making, make norms and commitments more determinate, and expose violations (with effects on reputation). Law may be necessary, but more of a case is needed than very general concerns about assurance.