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A Kantian conception of global justice

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Abstract. I start this article by addressing Kant's question why rightful interactions require both domestic public authorities (or states) *and* a global public authority? Of central importance are two issues: first, the identification of problems insoluble without public authorities, and second, why a domestic public monopoly on coercion can be rightfully established and maintained by coercive means while a global public monopoly on coercion cannot be established once and for all. In the second part of the article, I address the nature of the institutional structure of individual states and of the global authority. Crucial here, I argue, is Kant's distinction between private and public right. Private right concerns rightful relations between individual legal subjects, where public right concerns legal subjects' claims on their public institutions. I propose that the distinction between private and public right should be central to liberal critiques of current legal and political developments in the global sphere.

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Introduction

Why do we need an international authority like the United Nations (UN)? There is no doubt that the UN often fails, that it is inefficient, and that it suffers from corruption. So rather than seeking to reform and improve it, why not just follow the current trend of powerful nations, namely simply to set aside the UN and pursue unilateral solutions instead? Indeed, recently we have witnessed the US, a Western, liberal constitutional democracy, pursuing unilateralism in new ways. The US has employed private companies[1] to perform security functions as part of

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[1] Blackwater Worldwide, DynCorp International and Triple Canopy.

conducting a war as well as established prisons outside its own territory, in which presumed international criminals are held captive, subjected to military tribunals and punished – allegedly without being deprived of their human rights. Against these practices and others of their kind, many liberal voices have argued that we need an international body like the UN to be the sole authority regarding international interactions and interventions.

Although liberals typically are critical of such unilateral practices in international affairs, it is unclear exactly why they think we need the UN. This is especially unclear on the assumption that states are not adhering to the realist paradigm, according to which the goal of foreign policy, primarily, is to attain 'power, prestige, and wealth' – to use John Rawls's famous formulation.[2] The lack of a clear answer to the question why we need the UN if states act according to just principles seems characteristic of 'statist' liberal positions, such as Rawls's theory, 'cosmopolitan theories', such as those of Charles Beitz, Thomas Pogge, and Kok-Chor Tan, and 'institution-based' accounts such as the one defended by Allen Buchanan. Instead, these theories rest on the implied assumption that the UN is a prudential solution to problems of justice; it is simply easier to realise justice through it. If so, however, then these liberal thinkers should not be dissatisfied with the current debate's focus on whether the US and its allies or the UN is more likely to be successful policing the world. And yet these liberal thinkers are typically uneasy about the prospect of particular states unilaterally assuming the role of a world police. But to justify their dissatisfaction with the *status quo*, liberal thinkers must say something about the special standing a global authority ought to have in transnational affairs. Liberal thinkers must, but unfortunately do not, say something about what gives the UN special standing in global matters, such that that standing justifies an authoritative role.

A general problem characterising much contemporary liberal thought is therefore that it does not clarify whether respect for human rights and global justice *necessarily* requires a global, public authority, rather than one, or more, just and powerful agent, such as a state. To bring clarity to this issue, what we need is an explicit answer to the following question: if we assume a world in which resources were plentiful and individuals and/or states were acting in accordance with just principles, would we still need a global political authority like the UN? Contemporary liberal accounts of justice typically do not provide an explicit answer to this question. In this article, I address this lacuna in contemporary liberal thought. The aim is to provide a Kantian account of the foundations of a liberal theory of global justice, namely a conception of the global public authority that reconciles statist concerns for the sovereignty of nations and cosmopolitan concerns for individual rights. In doing so, I outline a positive account of why global justice requires states and private persons not only to adhere to some reasonable conception of rightful transnational interaction, but also to establish a global public institutional authority to regulate their interactions. If it can be shown that there are problems characterising global interaction that cannot in principle be solved without appeal to a public authority, then it is incorrect to think that establishing global institutions is in principle unnecessary to enable just global interaction. In addition, contrary to common liberal assumptions, I argue

[2] John Rawls, *The Law of Peoples* (Harvard University Press, 1999), p. 28.

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that the rights of public authorities go beyond those of private persons, meaning that the rights of public institutions are not coextensive with private persons' rights against one another. Rethinking these core assumptions concerning the need for public institutions as well as the distinction between private persons' rights and rights of public authorities are essential to showing how the Kantian approach can reconcile central concerns of both statist and cosmopolitan liberal theories of global justice without thereby arguing for a world state.

I do not, however, want merely to take seriously the important insights from prominent liberal accounts. I aim for an account that takes seriously the current legal and political reality, understood primarily in historical and current developments in international private and public law. My method is therefore informed by the idea that the most promising approach to global justice is able to critique actual, current developments in liberal law and political systems. The reason for this is neither merely that I want to avoid building a 'castle in the air' – beautiful to look at, but utterly useless for any practical purposes – nor simply that I believe that though often highly problematic in particular instances, there is wisdom in time worn liberal legal practices and the additions these practices push for as our world changes. This is also not to say that I find legal practices to be as wise and unproblematic as legal positivists often do. Rather, a liberal theory of justice should be able to illuminate whatever wisdom there is in liberal legal and political systems and use this knowledge to identify and engage the particular institutions comprising the actual systems. In particular, central to liberal legal and political systems is both the idea of individuals' rights as well as a fundamental distinction between private and public right, where private right concerns rightful relations between private individuals, whereas public right concerns legal subjects' claims on public institutions. This distinction, I believe, is one that neither is currently utilised by liberal theories of justice nor one that legal positivists make good sense of – whether we are focusing on issues of domestic justice or global justice. Yet it is a central distinction in the legal and political reality to which our theories should apply.[3] Following Kant I will suggest that the distinction between private and public right is at the heart of a liberal critique of current legal and political developments, and hence essential as we try to identify both our current mistakes and the way forward in our institution building attempts.

This article then, has two parts. Part one addresses the first question emphasised above, namely why rightful interactions – or interactions consistent with, ultimately, individuals' right to freedom – require both domestic public authorities (states) *and* a global public authority. Of central importance here are two issues: first, the identification of which kinds of questions appear insoluble without public authorities, and second, explaining why a global public authority must be established, maintained, and developed through voluntary means even though a domestic authority can be rightfully established by coercive means. A global public authority is something that each party in the process can independently hope or wish for, but its establishment is something we can only intend collaboratively. This argument for the necessity of public authorities as well as the

[3] Ingeborg Maus, in 'From Nation-State to Global State, or the Decline of Democracy', trans. James Ingram, *Constellations: An International Journal of Critical & Democratic Theory*, 13:4 (2006), pp. 465–84, also draw the attention this legal distinction when interpreting Kant's conception of global justice.

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principled difference between the rightful establishment of domestic and global public authorities, I propose, can explain important features of the current structure of domestic and international private right.

The second part of the article turns to the nature of the institutional structure of both domestic and global public authorities. I briefly outline how domestic public right secures and enables private right for all of its citizens and how public right also contains other systemic measures involved in securing each citizen's right to freedom. I then outline core similarities and differences with regard to international public right. My proposal is that in the future international public right will aim to secure and establish international private right for all even though its current main focus lies in establishing the other aspect of public right, namely public institutions as required to secure global systemic justice. Moreover, I argue that the development of international public right both as required to secure international private right and to secure global systemic justice demands that we do not give up on, but keep reforming the UN institutions. Finally I argue that the global public authority will only seek to maintain a voluntary peacekeeping force as needed to protect stateless persons and that it will only authorise coercion on behalf of its members towards aggressive states. Yet since only the global public authority can have rightful standing in interstate conflicts, the rightful solution also to transnational injustice goes through it. States resorting to unilateral military action is always the last resort – and one that is not, in principle, reconcilable with rightful global relations.

Public authorities: why we need them

The lack of reflection upon the status of a global political authority probably results from the fact that contemporary liberal theoretical analyses typically see all issues of justice – domestic or global – through the perspective of hypothetical consent. Much contemporary liberal theory seems implicitly to adopt the Lockean assumption of a prudential need for authoritative public institutional solutions to problems of interactions. Yet in contrast to the Lockeans, much liberal theory then takes a shortcut by arguing that what matters for justice is simply that the right principles are enforced without also addressing the question of whether and why it matters who gets to enforce them. True, liberal statist theories do assume that just states should enforce international laws; cosmopolitan theories simply identify the bottom line as the principle that human rights should be universally enforced; whereas institution-based theories emphasise the importance of institution building. Yet all these theories say little about why we need a distinctly *public* authority to specify, apply and enforce principles of global justice.[4] Answering this question will

[4] For example, it is unclear whether the realisation of Rawls's 'Society of Peoples', which proposes a statist response to questions of global justice, *necessarily* involves the establishment of a *public* global authority of sorts or whether it is in principle sufficient that each one of the states ('liberal' and 'decent' peoples) individually abides, in its foreign policies, by the liberal principles (ideas and ideals) as put forward in the *Law of Peoples*. (See Rawls, *Law of Peoples*, p. 37.) It seems fair to say that Thomas Nagel's revisions of Rawls's theory in 'The Problem of Global Justice', *Philosophy & Public Affairs*, 33:2 (2005), pp. 113–48 also does not include a clear, ideal justification for the global authority. A similar puzzle arises in relation to the cosmopolitan theories of Charles Beitz, Thomas

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tell us what, exactly, is so wrong with the unilateral enforcement of global justice by an individual, a private security company, or a single state. Below I first argue that we can respect one another's right to freedom only through the establishment of domestic public authorities (liberal states). Subsequently, I provide the complementary account of why human rights and mutual respect for sovereignty among internally just states is possible only through the establishment of a global public authority.

The need for domestic public authorities

As indicated above, I believe that justice is possible only within civil society, or within a liberal, legal framework. Civil society is an enforceable precondition for right, and not merely a prudent response to the so-called 'inconveniences' characterising the state of nature. In my view, these conclusions follow if one accepts Kant's relational understanding of right, according to which individuals' interactions must be respectful of one another's right to freedom. A right to freedom, on this view, is a right to set and pursue ends of one's own choosing subject to universal laws of freedom rather than as subject to the arbitrary choices of another. Moreover, our interactions are rightful only if they are subject to restrictions of freedom, namely restrictions that are neither contingent, meaning that they are traceable to some particular person's arbitrary judgement or preferences nor asymmetrical, meaning that they restrict people unequally. Such a right to freedom must be understood as innate, and since we are embodied beings, it must also be seen as involving a right to exist somewhere and to bodily integrity. That is to say, we must have a right to exist wherever we are born and we must have a right to defend our bodily integrity against attacks from others. Although the innate right to freedom gives one a right to protect oneself against attacks from others, it does not give us an individual right to punish. After all, rightful punishment requires determining non-contingent and symmetrical restrictions to be enforced against the perpetrator. Because it seems clear that there is reasonable disagreement with regard to issues of procedural justice and determinations of the amount of punishment, it is impossible for a private individual rightfully to enforce

Pogge and Kok-Chor Tan. These cosmopolitan theories distinguish themselves from Rawls's statism by using the wellbeing of individuals rather than societies (states or peoples) as the ultimate unit of analysis in considerations of global justice. Nevertheless, they do not make much headway with regard to settling the question of the status of the global authority. See, for example, Thomas Pogge, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23 (1994), pp. 195–224, and *World Poverty and Human Rights* (London: Polity Press, 2002), pp. 91–118 and 168–95. See also Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004); and *Toleration, Diversity, and Global Justice* (Pennsylvania: The Pennsylvania State University Press, 2000). For example, see Part III: 'International Distributive Justice', in Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), pp. 125–76; and 'Human Rights and the Law of Peoples', in Deen Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 2004), pp. 193–216. Finally, despite his focus on international law and global institutions, Allen Buchanan also fails to address the ideal question of why we need *public* institutions in the first place. See his *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004).

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her particular choice of procedures and punishment. Hence, rightful punishment requires the state: rightful punishment is impossible in the state of nature.

Setting and pursuing ends of one's own, however, requires more than a right to exist and to bodily integrity – and these further considerations yield other reasons why rightful interaction is impossible in the state of nature. More specifically, justice cannot be realised by each private individual acting virtuously, since private individuals can neither provide *rightful* assurance nor overcome certain problems of specification characterising private property, contract, and status ('private care') relations. The problem, in short, is that these relations among private individuals cannot be both rightful, and reconcilable with each person's innate right to freedom, *and* determined and assured by a *private* authority. But private authority is the extent to which there is authority in the state of nature. Thus, though we may identify the general principles that should be governing the various areas of private interaction (private property, contract, and fiduciary relations), this identification is insufficient for rightful relations. True, we can formulate the principles in a way that is reconcilable with each person's innate right to freedom. But identifying these fundamental principles of rightful private interaction – or the principles of private right – is not enough to enable rightful relations. There is still a problem of providing assurance that we will so interact and of determining rightfully how these abstract principles should be specified in relation to various empirical circumstances and cases so that the resulting set of restrictions constrains each person's actions symmetrically and non-contingently. Indeed, even a mutual agreement to trust one another and agreement on the specification of the principles cannot make relations among individuals rightful, since everyone's freedom is still subject to one another's arbitrary choice.

Because it is in principle impossible for private individuals to solve the problems of assurance and specification of the principles of private right, refusing to enter civil society is to do wrong. In order to interact rightfully with others we must establish a condition in which our interactions are subject to universal laws of freedom rather than to one another's arbitrary choices. The only way to do this is by establishing a will that represents the will of each and yet the will of no one particular private individual, that is, what Rousseau called a 'general will'. I will call it a '*public* will' or a 'public authority'. To refuse to enter civil society is therefore to refuse the condition under which interaction consistent with each person's right to freedom is possible – it is to 'do wrong in the highest degree', Kant argues. Thus, individuals have an enforceable duty to set up a *public* authority to provide assurance and to specify the rules for their interaction. They do not have a right to enforce their own specification even if it is a reasonable specification. Because consent cannot be a necessary condition for the establishment of a rightful state, we have good reason to think that the liberal ideal of political obligations at the state level is non-voluntarist in nature.[5]

[5] Kant's account of justice is found in the 'Doctrine of Right' in the *Metaphysics of Morals*. This text is found in Mary J. Gregor (trans. and ed.), *Immanuel Kant: Practical Philosophy* (New York: Cambridge University Press, 2006). I provide a fuller interpretation of Kant's account of domestic private right in 'Kant's Non-Voluntarist Conception of Political Obligations: Why Justice is Impossible in the State of Nature', *Kantian Review*, 13:2 (2008), pp. 1–45.

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The need for global public authorities

Having seen how the Kantian conception of justice treats the domestic case, we can turn to the global case.[6] First, it is important to note that the above argument establishes that a group of persons do nothing wrong by establishing a state. To the contrary, establishing a state is a precondition for rightful relations among interacting persons. Consequently, once there exists states, the coercive establishment of a world state with a global monopoly on coercion would be wrong because it would involve wrongfully depriving peoples of their rightfully established states. However we approach issues of global justice, our account can therefore not require a people to abolish their state, which means that the ideal of global justice cannot be the establishment of a world state with a global monopoly on coercion.[7]

Second, the just state is a public authority without private interests. Consequently, it does not have what we often refer to as 'realist' global interests, such as imperialist interests. If an actual liberal state has such interests, then it misunderstands or contradicts its own fundamental liberal principles. According to its own ideals, the just state's domestic function is merely to enable rightful relations amongst its subjects. The corresponding global function is to pursue a condition in which it can interact rightfully with its neighbours and in which its citizens can interact rightfully with foreigners. Finally, note that on this relational conception of right, a state cannot rightfully use its citizens as means to solve other states' or people's problems. If you are not party to a particular conflict, then you do no wrong if you abstain from taking part in it. In other words, not only can

[6] Kant's main three writings on issues of global justice are 'On the common saying: That may be correct in theory, but it is of no use in practice' (PP), 'Toward Perpetual Peace' (TP), and the 'Doctrine of Right' in *The Metaphysics of Morals* (DR). The core challenge facing Kant interpreters concern dealing with the fact that he appears to be contradicting himself in his main texts on the issue. For example, there are some passages in each text, where Kant seems to argue that global justice is in principle impossible without a world state with a permanent monopoly on coercion (DR 6: 344, cf. 351, 354f; PP 8: 358, 379; TP 8: 310). Yet, in both PP and DR Kant appears to argue the contrary, namely that global justice cannot require a world state, but only requires a voluntary world republic (or 'league of nations'). Kant appears to give several reasons – some principled and some pragmatic – why global justice cannot require a world state (DR 6: 344, 345f, 351); (PP 8: 354; 8: 355f). Further interpretive complexity is added by some passages where Kant seems to say that a world state is in theory necessary, but in practice it is impossible and, consequently, all we can establish is a voluntary world federation (DR 6: 350; PP 8: 367; TP 8: 310f) Finally, in PP, Kant famously argues that states, due to their mistaken understanding of the right of nations, will in practice ('in hypothesi') wrongly reject what is true in theory ('in thesi') (PP 8: 357, cf. 312). I engage Kant's own text more carefully in 'Diversity and Unity. An Attempt at Drawing a Justifiable Line', *Archiv für Rechts- und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy* (ARSP), 94:1 (2008), pp. 1–25.

[7] Until recently it commonly presupposed that according to Kant and the Kantian position, the public authority was needed simply because it constitutes the more efficient means of ensuring peace. Consequently, whether a world state with a monopoly on coercion or a system of independent states was seen as an empirical question regarding which system is more likely to bring peace about. Michael W. Doyle, 'Kant, Liberal Legacies, and Foreign Affairs 1/1', *Philosophy and Public Affairs*, 11/12:3/4 (1983), pp. 205–35 and 323–53 and John Rawls (1999) famously pursue the statist line of argument. According to Doyle, liberal states have proven themselves less likely to go war against one another, and for both Doyle and Rawls, the aim is to identify which foreign policies liberal states should adopt in order to secure world peace. In contrast, Thomas Carson in 'Perpetual Peace: what Kant Should Have Said', *Social Theory and Practice*, 14:2 (1988), pp. 173–214; and Sidney Axinn in 'World Community and Its Government', in Jane Kneller and Sidney Axinn (eds), *Autonomy and Community* (Albany: State University of New York Press, 1998), pp. 119–29, argue that in our nuclear times, a world state with a monopoly on military power is more likely to secure world peace.

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citizens never be rightfully forced to participate in expansionist wars, since states do not own their own citizens, but in addition citizens cannot be forced to participate in any conflicts to which they are not a party.[8] Citizens can only be legally obliged to defend their own state against attacks. The implications of these preliminary remarks is that the pursuit of global justice for just states cannot involve the establishment of a world state with a global monopoly on coercion. Moreover, the level of required participation in the establishment of global institutions depends on the level and kind of interaction.

So what are the kinds of global interaction? It seems that there are two kinds of interaction: interstate interaction and global private interaction. Clearly it is advantageous for an account of global justice if it can draw the proper distinctions between relations between states and relations that involve private individuals and yet are transnational in nature. The assumption that relations are only either statist or individual in nature fails to accurately capture the complexity of global interaction. This is a significant problem with statist and cosmopolitan theories. For example, Rawls's statist account confines itself to an analysis of ideal relations simply in statist terms, and Tan's account does the same only simply in individual terms. A virtue of the Kantian account is that it can distinguish between, and yet incorporate, both the right of nations (interstate interaction) and cosmopolitan right (transnational interaction involving private individuals).[9] This in itself gives us some reason to pursue this third alternative, according to which accounts both of interactions involving states and of private persons are constituent parts of the full theory of global justice.

So far I have argued that global justice cannot involve imperialism or the establishment of a world state with a permanent global monopoly on coercion and that the analysis should involve both analyses of interstate interaction and of private individual interaction. At this point it is fair to ask why we need any global public authority at all and also what it would look like if it is not a world state with a global monopoly on coercion? In answer to the first question, why, ideally, we need a global public authority at all, there are two reasons corresponding to the two relevant types of global interaction – between states and between states and foreign, private persons. Each type of interaction requires a public authority in order to be made rightful.[10]

[8] See Kant in DR 6: 345f on this point.

[9] In Kant's DR the former account is found in 'Public Right. Chapter II. The Right of Nations' (6: 343–51), whereas the latter account is found in 'Public Right. Chapter III. Cosmopolitan Right' (6: 352–3).

[10] Other non-prudential interpretations that deal with issues of global justice include Kevin E. Dodson, 'Kant's Perpetual Peace: Universal Civil Society or League of States', *Southwest Philosophical Studies*, 15 (1993), pp. 1–9; Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', in James Bohman and Matthias Lutz-Bachmann (eds), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, Massachusetts: the MIT Press, 1997), pp. 113–53; Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, trans. Alexandra Newton (New York: Cambridge University Press), 2006; Pauline Kleingeld, 'Approaching Perpetual Peace: Kant's Defence of a League of States an his Ideal of a World Federation', *European Journal of Philosophy*, 12:3 (2004), pp. 304–25; Nancy Kokaz, 'Institutions for Global Justice', in Daniel Weinstock (ed.), *Global Justice, Global Institutions* (Calgary: University of Calgary University Press, 2007); Thomas Pogge, 'Kant's Theory of Justice', *Kant-Studien*, 79 (1988), pp. 407–33; Howard L. Williams, 'Back from the USSR: Kant, Kalingrad and World Peace', *International Relations*, 20:1 (2006), pp. 27–48.

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First, let me consider states' interactions. There are two main types of ideal interaction among states: interaction in international spaces (in the air and on the sea) and interaction regarding borders. Even though individual states may specify the general principles to govern both interaction in international spaces and the determination of a proper border, there can be a reasonable disagreement about how to specify them. And though it is advantageous if various states can work things out, say through a willingness to engage in a Habermasian discourse or a Rawlsian political discourse, there can still be reasonable disagreement regarding exactly where the actual lines should be drawn. Although it is often unreasonableness that leads to conflict, disagreements can also be reasonable. The only way to find a solution to such a deadlock that is consistent with a commitment to a liberal ideal of rightful freedom involves establishing a public authority to decide the matter. Just as in the domestic case only a *public* authority can represent both parties to the conflict and yet no one in particular. Therefore, a rightful solution to problems involving interactions between states in international spaces requires the establishment of such an authority. Since states can reasonably disagree, it seems that a true commitment to rightful peace involves a willingness to establish an international authority with standing to *specify and apply* the laws governing these kinds of interactions. States committed to rightful peace will, insofar as possible, coercively defend only borders so determined. Only coercion authorised by the global authority in this way is reconcilable with rightful peace. It is for these kinds of reasons that liberal states want something like the International Court of Justice (ICJ).[11]

Second, there are interactions between states and foreign private individuals. Ideally, there are only voluntary visitors to a state.[12] Voluntary visitors are persons

[11] This is an argument that is particularly important for countries with contested borders, such as Norway. Norway is involved in many of the controversial international disputes concerning borders on Svalbard, the Arctic and offshore borders in the North Atlantic Ocean, and the Barents Sea. Norway typically follows the relevant rulings of the International Court of Justice in these matters, and yet a lot of the theoretical and public officials' analyses of these matters are undertaken in realist and increasingly neoliberal terms. A drawback of these analyses is that they only partially grasp why Norway find it so important to look to the international authority when formulating its own national policies, including its foreign policies, regarding these matters. The partial reason stems from prudence – as a small nation, Norway has no option but to work with other political forces when pursuing its interests. The argument presented here is not antithetical to or incompatible with prudential reasons, but it maintains that the commitment to the ICJ can also be seen as a consequence of Norway's general commitment to function as a liberal legal system. Which reason is actually operating depends on the extent to which Norway is able to function as a public authority, of course. But the main point here is that liberal institutional commitments to right are fundamentally incompatible with unilateralism and consequently insofar as liberal states progress, they will be increasingly resistant to use unilateralism in their global interactions.

[12] Involuntary visitors are refugees. States can justify their territorial monopoly on coercion only if it is consistent with everyone's innate right to freedom. Hence, though a state need not give permission to everyone wanting to enter its territory, it cannot turn away those who have nowhere safe to go. If it does, then the state's use of coercion is irreconcilable with its own foundation, since such exclusion is irreconcilable with the refugee's innate right to freedom – it would not be reconcilable with everyone's right to exist somewhere. Moreover, even as the state lets the refugee across its border, there arises the problem that until the refugee has obtained legal status as a citizen, the particular state in which she is living is not her public authority. The state in representing the general will of the people does not thereby represent her will. Therefore, until citizenship is conferred, the state does not fully representing the refugee. On this account, it is in recognition of these kinds of problems of reconciling a state's monopoly on coercion with a visitor's innate right to freedom that current states have instituted the UNHCR (The Office of the UN High Commissioner for Refugees: {http://www.unhcr.org/basics.html}. This global public institution represents both states and refugees,

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who visit (tourists) or live over longer periods in a different country not out of need, but because they would like to pursue a professional or private interest in this way. They do not have a right to enter another state, but if they are permitted to enter, the challenge for the state concerns how to enable rightful interactions between itself, its citizens and the foreigners. The first response from just states is to guarantee the visitors legal protection by giving them various types of legal residence status, such as tourist visas, temporary work visas, permanent residence, and so on. As long as a person is not a citizen, she or he does not enjoy full citizen rights, but many of these rights in virtue of being granted these kinds of legal status. Moreover, as mentioned above, private individuals do not have a right to punish; only the state can. Yet since the state does not fully represent the visitors (the resident does not have full rights), the next challenge for the just states concerns how they can still rightfully punish the visitors? We see just states responding to this problem in a variety of ways. For example, just states provide legal aid to the foreigner, secure foreign embassies the rights to assist their citizens (the resident), or negotiate extradition treaties. The suggestion in this article is that it is because the state does not fully represent the foreigners that they try to secure their rights by involving the state, of which the foreigner is a citizen, in these ways.[13]

Finally, there are transnational issues concerning private property, trade, and fiduciary relations. Private persons inherit property in other states, engage in international trade, and marry and have children across state borders. There are therefore private right cases involving private property, contracts, and fiduciary relations where at least one party to the conflict is located in a different state then the other(s). Again, the challenge for the state is how to make these interactions rightful and the main problem concerns which laws the state should apply in any particular transnational case at hand. For example, it can be a US airline company filing a case in the US legal system suing a Belgian airline company for an accident involving several American airplanes at the Brussels airport, or it can be a Canadian couple adopting a child from Korea, and then the Korean biological parents challenge the rightfulness of the adoption in the Korean legal system. In these kinds of cases, there is a so-called 'conflict of laws', which means that it is unclear which domestic laws should be applied in the particular case: should it be

and it is the means through which states and refugee interaction are made rightful. In addition, of course, the UNHCR deals with other non-ideal situations, such as by trying to set up safe places for refugees, by regulating any other non-state interaction with refugees, and by facilitating their transition to permanent new homes in new states. Finally, it follows that the public authority will seek to maintain a global peacekeeping force as required to stabilise and assist currently stateless peoples as they (re)build their just states. No state's military can fulfil such a role (ideally), since it cannot (in principle) act on behalf of the stateless people; only a global public authority can. Moreover, because the public authority cannot command anyone to risk their lives in such peacekeeping missions, the UN must maintain its peacekeeping force purely by voluntary means.

[13] The International Criminal Court's (ICC) {http://www.icc-cpi.int/}, in contrast, is a means of securing just punishment on behalf of defenceless persons and peoples – or persons and peoples who, in effect, are stateless and hence deprived of protection by a just state. It is therefore a non-ideal measure in that it enables rightful punishment of aggressive, violent behaviour that otherwise cannot be punished (since one of the parties exists in the state of nature). It should therefore, if things go well, be incorporated into the UN structure proper. This seems consistent with how the founding document of the ICC makes it clear that even though the ICC is currently independent of the UN (Article 2, 'Rome Statue of the International Criminal Court', downloaded from ICC's homepage on 17 Feb. 2010), 'The Court shall be brought into relationship with the UN through an agreement to be approved by the Assembly of States Parties to this Statute . . .'.

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the laws of the legal system where the suit is filed or the laws of the legal system of the defendant? In order to deal with these problems, many states have developed so-called 'international private right', which are laws aimed at deciding how legal systems should deal with these kinds of conflicts. Moreover, in the last few decades, individual states have been trying to coordinate their international private right systems, especially through the Hague Conference on Private International Law (HCCH). In my view, this is the first step towards making such interactions rightful, namely by establishing which principles should determine which states' laws should be relevant in various types of cases. The further step seems to involve establishing an international court with standing to evaluate whether or not states properly applied the principles of international private right. Since a particular state is not the public authority of all the interacting parties, a global authority as an ultimate appeal is necessary for rightful relations involving international private right. Hence, though the HCCH is a step in the right direction, it is not the last step if things go well.

The institutional structure of public authorities

Having argued that we need both domestic and transnational public authorities, we need to obtain a clearer idea of what such public authorities look like.[14] In particular, we want to make sure that establishing these authorities does not merely reproduce the problems of the state of nature by subjecting freedom to someone's arbitrary choice rather than to non-contingent and symmetrical law. This requires us to identify the institutional structure of the public authorities. Again, let's take a look at the domestic case before turning to the global case.

The institutional structure of domestic public authorities

To avoid the problematic conditions of the state of nature, first, the state cannot have 'private' interests; second, it must guarantee all its citizens' freedom and

[14] I believe the charitable reading of Georg Cavallar, *Kant and the Theory and Practice of International Right* (Cardiff: University of Wales Press, 1999); Dobson (1993), Habermas (1997), Höffe (2006), Kleingeld (2004), Kokaz (2007), Maus (2006), and Pogge (1988, 2009) agree with me that according to Kant rightful solutions to conflicts in interstate relations and in relations between states and foreigners require the institution of a global public authority. The main differences are as follows: Dobson and Höffe argue that Kant's ideal reasons for not establishing a global authority with a monopoly on coercion should be rejected and instead our aim for the global authority should be what Höffe calls a 'minimal state'. Habermas and Pogge, in contrast, argue that the considered Kantian position defends an overlap between domestic, regional, and global spheres of sovereignty. Maus uses the point to support her view that global justice requires that just states always remain independent of one another, even though they ought to use global institutions like the Court of Justice to settle their disputes. Cavallar, Kokaz and Kleingeld, in turn, use these ideal arguments for the necessity of the global authority as providing further support for their developmental conceptions of the world federation with some limited coercive powers. In contrast I have argued that the global public authority is the only rightful authoriser of coercion regarding interstate relations (though the individual just states do the actual enforcing) and that the global peacekeeping force is limited to the protection of stateless individuals. Finally, I have argued that the choice to partake in other states' and stateless peoples' conflicts is a choice that ultimately lies with each state's individuals.

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equality by both securing for each one of them rights to bodily integrity and to private right, and by setting itself up as a tripartite coercive authority that specifies, applies, and enforces only the law. Thus, to overcome the problems of the state of nature and to establish a condition in which rightful relations are possible, the public authority requires a constitution or a similar fundamental legal document circumscribing its fundamental powers in these ways. These circumscriptions make it possible for the public authority to be authorised to act on behalf of its people in order to enable their rightful interaction – interaction that was impossible in the state of nature. The public authority cannot own private property or have any private interests because this would make it impossible to represent no one in particular, and yet all its citizens. The public authority treats them as free and equal by securing their rights to bodily integrity and private rights and by establishing the sovereign as the rule of public law so that the law rules the offices of the sovereign authority.

In addition to setting the sovereign power up in these ways designed to overcome the problems of the state of nature, the state must take certain additional steps to secure conditions of justice because it must establish a monopoly on coercion. That is to say, because the state must assume a monopoly on coercion, it must also ensure that monopoly on coercion is reconcilable with everyone's right to freedom, namely their right not to find their freedom subject to another private person's arbitrary choice, but only to the public authority's laws. This is why the state must provide unconditional poverty relief, why it must assume special control over land, the economy and financial systems, and why it must set up a public administration and a system of punishment. Each of these systemic measures is necessary to ensure that citizens do not find their freedom, although determined by institutions, effectively under the control of some private person. Establishing such public institutions with the appropriate structure is a matter of public right, namely it concerns the claims citizens subjects have on their public institutions in virtue of their citizenship. Therefore, public rights are not coextensive with the rights people have against one another as private persons. Rather the claims of domestic public right are different in nature and kind by being systemic claims citizens have only with regard to their own state.[15]

The institutional structure of the global public authority

Let's now return to the global case. How, exactly, do we set up a global public authority, which is to say how do we reform the UN? As in the domestic case, I believe that there are three main institutional processes that must take place. First, the establishment of a global public authority requires a founding legal document circumscribing its authority in ways similar to the domestic case. Second, this document must specify the public global authority and the way in which it is comprised of three independent yet complementary public institutions: a legislative authority, a judicial authority, and an executive authority. Third, consistent with

[15] I provide an interpretation of this public right argument to Kant's 'Doctrine of Right' in 'Kant's Non-Absolutist Conception of Political Legitimacy: How Public Right "Concludes" Private Right in 'The Doctrine of Right'', *Kant-Studien* (forthcoming).

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the legal foundation, other public institutions must be established to enable and secure systemic justice. The current UN, albeit in need of significant reform to secure global justice, is at least approaching minimally meeting all three conditions in a way that is reconcilable with just states' sovereignty. Because of some unjustifiable asymmetries that characterise the UN's core institutions, some improvements seem pertinent to their ability to issue political obligations on interacting states in all regards, but there seems to have been clear institutional improvement over its short history. Consequently, although there may still be some time before these institutions are capable of functioning as public authorities capable of issuing political obligations, I do not see that there are any principled reasons why we shouldn't be able to reform them so as to overcome these problems.

To start, the ideal function of the UN Charter is to serve as the founding legal document for international public right, and therefore it is the document within which all the other UN institutions must act. Moreover, it specifies the tripartite structure of the public authority required for international right. The legislative authority currently lies with the General Assembly, and the judicial authority is currently identified with the International Court of Justice. And consistent with what I have argued, if things progress rather than regress, a suitably constructed analogue to the Hague Conference on Private International Law will also become parts of the UN judicial authority. Central to further progress regarding all institutions, I believe, focuses on being able to reform them into institutional authorities that reason and act as public authorities – namely as authorities representing all and yet no one in particular. This naturally includes progress with regard to establishing the principles determining which judges are necessarily biased in which types of cases. The more we are able to do this, the more unreasonable and irrational it becomes to insist on settling transnational conflicts by unilateral means.

The executive authority primarily lies with the Security Council, which is authorised to decide when member states can be called upon to intervene in situations where international rightful peace and security is threatened. Since the Security Council must be reconcilable with just states' sovereignty, not only must the just states' own citizens have the last word on intervention, it will only authorise coercion aimed at stopping international violence or domestic violence within unjust states. The enforcement of the authoritative decisions made by the UN is carried out by the just states themselves and/or by the UN Peacekeeping forces. Moreover, it seems fair to say that the main challenge with regard to this authority concerns reforming the Security Council into an authority that can be seen as representing all its legal subjects – all just states – as free and equal. Today's system of veto by permanent members and the possible election of the most unjust states as members of the Security Council may be prudent given the global climate, but I cannot see that it can fulfil its function as a public authority until it becomes based on a firm commitment to freedom and equality.

What about the third condition, namely of securing systemic justice? Interestingly, the General Assembly, the ICJ, and the Security Council comprise only three of the six original bodies established by the UN Charter. The other three are the Economic and Social Council, the Trusteeship Council, and the Secretariat. Without looking at the details surrounding these institutions, it is fair to say that

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they all concern systemic issues related to global interaction – that is, systemic issues related to the global economy, including poverty, peoples without independence as a result of historic imperialism, and public administration. All of these issues were identified by the founders of the UN as central to establishing a global system of public right. Moreover, as time has passed, other institutions have been added, far too many to mention here. Rather, what is important is that there seems to be a fairly clear structure to the growth of the UN as an institutional whole. It is similar to how the public institutions of just states have and still do increase in number or grow to enable conditions of rightful interaction for all its citizens. New institutions, whether on the domestic or global front, are necessary to fill out the public institutional structure required for rightful relations (rightful peace) for all. Since on the global front we need a fairly comprehensive system to deal with international spaces, international private right and systemic right, we are now seeing the growth of institutions in all these areas.

On the one hand, we see an increasing number of public or quasi-public institutions aimed at enabling borders and international private right. As already mentioned, in addition to the ICJ for border and international space issues, we have the Office of the UN High Commissioner for Refugees (UNHCR) specialising in refugee issues. In addition, there are increasing numbers of institutions aimed at enabling international private right, such as the World Trade Organization (WTO) and the quasi-public HCCH, which, I suggest, will be reformed into a public authority if things go well. On the other hand, we have an increasing number of institutions aimed at enabling systemic justice with respect to the global economy and the international financial system. This explains some of the complexity of the World Trade Organization's operations as well as institutions like the World Intellectual Property Organization (WIPO). We also have institutions aiming to make it possible for states to have interacting economies and financial systems without thereby risking the downfall of these states. To that end, the UN has set up the International Monetary Fund (IMF), the World Bank (WB), and the World Health Organization (WHO). Like the original Economic and Social Council called for under the UN Charter, their primary function is to help the stabilisation and growth of international global systems without also creating, even unintentionally, destructive dependency relations between states. This is not to say that there are some serious asymmetries involved in the current institutions, such as the way in which the Western countries control the WTO, the IMF and the World Bank. Rather the main point is that current UN already includes much of the necessary structural features to serve as a just global public authority. Therefore, although all these institutions still require significant reform, the current UN charter establishes a coherent institutional structure that can be reformed into the kind of public authority necessary to enable global justice.

Conclusion

Despite my conditionals in the arguments above, the main objection to my conclusions is still likely to be that many of these UN institutions are notoriously corrupt and unjust deserving only of the rubbish heap, so let's just scrap them and

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start from square one. Let me therefore just emphasise again that I completely agree that the current UN institutions are corrupt and unjust. But I also believe that the above account says something about what makes such institutions corrupt and explains why the solution to our current problems requires us to fix these institutions from within. On the one hand, these institutions are unjust because they do not treat all their legal subjects (states and persons) as free and equal. There are certain institutional asymmetries that simply must be overcome before they can properly issue political obligations. But because proper institution building takes time, this will take time.

On the other hand, the alternative to fixing global public institutions seems to be to settle for unilateralism of powerful states, which is worse. It is worse because it is the incarnation of the asymmetry problem currently characterising aspects of the UN institutions. Of course, unilateralism that involves enforcing illiberal principles is worse than unilateralism that involves enforcing liberal principles. But that is not the point here. Since I'm after identifying the liberal ideal to strive for, the main point is that all unilateralism *necessarily* involves interaction between states as unequals subject to contingent and asymmetrical restrictions. Unilateralism cannot in principle enable global justice. After all, even an internally just, powerful state cannot rightfully enable global justice because it cannot in principle be impartial, have rightful standing in particular transnational disputes or assume rightful authority over global systems of interaction. The reason is simply that any particular state can only represent the general united will of its own people. Therefore, it cannot in principle have the rightful authority to specify, apply or enforce private or public right beyond its own territory since it does not represent the world as such. Indeed, even the state's own, reasonably contested borders are beyond its own rightful authority. Because siding with unilateralism cannot in principle lead to rightful relations, the only way forward with regard to establishing global justice requires reforming the UN by working towards eliminating the institutional asymmetries that currently exist. And as they are eliminated, liberal states can and must increase their institutional commitment to them too. Finally, since the UN has much of the required institutional framework in place, also the prudent way seems to be to reform it rather than start all over again. After all, just as with states, there is no good reason to think that starting all over again is going to be much easier and get us much further, faster, than reform will.

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