

# ETHICS AND GLOBAL GOVERNANCE

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At present there is no global state and thus no global government. Instead, in the contemporary world there are 194 sovereign states that coexist in a globalising world order. They coexist in a world in which there is a myriad of transnational interactions that have led over time to the creation of a huge number of international organisations of one kind or another. These include churches, multinational corporations, international scientific organisations, trade union movements, international sporting bodies, and so on. There is a huge literature on this process of globalisation (Waters 1995; Clark 1997; Scholte 2000; Lipschutz 1992). Within this complex world there has emerged a need for transnational rules of conduct to guide those engaged in this world of global interaction. Transnational rules are needed for the purposes of coordination, conflict prevention, dispute resolution, standard-setting, and so on. Nowhere is this currently more apparent than in the world of international banking as it confronts the international financial crisis. Without these rules regulating our new social enterprises in the existing globalised international practices, an orderly day-to-day existence would not be possible. A functioning set of such rules is a prerequisite for the ongoing operation of our globalised international order. In order to be effective the rules need to be binding on the participants in this globalizing society. Adherence to framework rules cannot be on a voluntary *ad hoc* basis. The creation of a rule-guided global order requires institutions of global governance that can create regulatory frameworks which are binding on the actors in specified functional areas. This raises the question: what are the institutions of global governance that provide framework rules, in the absence of a global state with an associated government?

The answer to the question posed at the end of the last paragraph is not simple. Rule-making for a globalized world (the setting-up of the appropriate regulatory practices) has been undertaken by many different kinds of organisations ranging from treaty-based ones such as the UN, NATO, the IMF and so on, to any number of different kinds of non-governmental organisations (NGOs). A detailed classification of these would require a book-length treatment.

## **The creation of a rule-guided global order requires institutions of global governance**

In spite of the variety of mechanisms for global governance, it is nevertheless important to point out a few general features about governance arrangements that have been put in place in this world without global government. First, all such bodies are *limited* in that they are confined to specific areas of competence—they make rules covering very specific functions and activities (banking, environmental preservation, energy production and distribution, and so on). The jurisdictions of governance bodies are limited to particular functions and often to specific geographical areas. Second, many governance bodies overlap in their fields of operation. Third, none of them possess the sovereignty that is the primary feature of states. Fourth, these organisations come into being at different times for different purposes. Finally, fifth, the world of governance bodies is in a state of perpetual flux: new ones come into being as old ones fall into disuse. An implication of this is that there are often disputes about who is entitled to make rules, about what, in which areas.

The institutions of global governance do not come into being in a vacuum, but are created in existing global practices by actors constituted within those practices. The two key practices within which the institutions of international governance come into being are anarchical ones. They are the society of sovereign states, on the one hand, and global civil society, on the other. Both of these are anarchical in the strict sense of the word. That is, in both of them the individual actors that comprise the practice have equal sets of freedoms and are not subject to any over-arching sovereign government. In the first practice, sovereign states are the central actors. In the second, individual men and women, conceived of as rights holders, are the actors who comprise the practice (for more detail about these practices, see Frost 2002).

In contemplating the vast range of bodies involved in global governance a fundamental question to ask is: "Are they ethical?" Although it is commonplace to ask this question of our formal state structures, as we often do in making ethical judgements about the merits of absolute monarchies (Swaziland), totalitarian states (North Korea), authoritarian states (Burma), failed states and weak states (Somalia), it is less common to make them about the bodies that carry out global governance. In making ethical judgements about sovereign states, we draw on democratic theory, theories of human rights, and theories of justice, amongst others. There are easy and well-rehearsed debates about the merits of social democracies versus the ethical merits of totalitarian states. More complicated are discussions, often entered into, about the ethical merits of different kinds of democracies, for example, unitary states versus federal ones. Similarly, there are complex arguments to be had about different kinds of electoral systems. At the international level, ethical arguments are often entered into about the merits of the society of sovereign states when compared to some other imagined international order (a communist one, for example). There are also ethical debates about our contemporary systems for the international distribution of scarce resources and about the freedom, or lack of freedom, that people have to move about the world as they wish. Such debates are informed by theories of international justice.

Why has there been rather limited discussion about the ethical merits of the many different forms of global-governance bodies that have emerged in recent times? Presumably this is so because governance bodies are so many, so diverse and because they are less well understood than sovereign states. In order to remedy this lack, let us now turn to a consideration of the ethics of global governance.

A good point of departure is to note that the many different governance structures in world politics were created by actors in the two practices briefly mentioned above. Those setting up governance institutions are either sovereign states in the society of sovereign states, or individual men and women rights holders in global civil society. These actors do not exist in a vacuum, but are constituted as what they are (and who they value themselves to be) within the two practices already named. An important implication of this is that these actors are constrained by the ethical values embedded in the practices within which they are constituted as states or as individual rights holders. The fact of their social constitution puts ethical constraints on what institutions of global governance it

would be appropriate for them to create. The rest of this chapter will set this claim out in more detail and will explore the implications that follow from it.

There is a whole range of areas in global affairs within which actors are at present seeking to construct adequate governance structures. Here is a short list of areas in which governance issues are currently pressing: global finance, global banking, global warming, the distribution of genetically modified food, global terrorism, international migration, and the regulation of private military companies. There are many others. The actors seeking to tackle these issues are both states and private individuals (who often work through specific associations). As already noted, these actors are not free-floating entities who are waiting in some limbo to create structures of global governance appropriate to the issues listed. They are also not properly understood as actors who are free to choose what ethical code to apply in their deliberations about the appropriate forms of governance to be introduced. Quite the contrary, these actors are already participants in highly sophisticated global practices in which elaborate ethical codes are embedded.

Consider, in the first instance, sovereign states. To be a sovereign state is to be constituted as such in the practice of sovereign states. By this it is meant that what counts as a participant state is determined by other states within the practice of states. For any state, *recognition* from the other states as a legitimate participant is fundamental to being a participant. The whole practice is based on the mutual recognition that states give one another. There are many entities around the world who wish to become participants in the society of states, but who have not yet been given the appropriate recognition. The Republic of Somaliland is one of these and so, too, is the Palestinian Authority. The recognition requirement referred to here is common to all social practices. Football clubs, churches, schools, universities, private clubs, and so on, all have internal rules and regulations about the criteria to be applied before an actor is recognized as a *bona fide* participant in the practice. One of the key features involved in becoming a participant in a social practice is that the actor in question has to understand, accept and promote the ethical values embedded in the practice to which entry is sought. Thus, for example, students joining King's College, London have to accept the ethical commitments embodied in the college. These include, amongst other things, a commitment to the search for truth, to be bound by the rules of evidence, and the rejection of plagiarizing practices. In like fashion, entities that are accepted into the practice of states have to accept the values associated with that practice. These are a commitment to the

sovereign autonomy of individual states and an acceptance of the value of diversity between states within the practice, accepting, that is, that some states will be socialist, some liberal, some communist, some Islamic, and so on. In this society the participants have a right to be different.

Upon entering into any practice as a fully-fledged participant, actors learn about a menu of possible legitimate actions that are open to them as participants. In the practice of university life, students have made available to them opportunities for, amongst other things, academic research and scholarly analysis. In the practice of sovereign states, states have made available to them the possibility of making certain kinds of alliances with other states, the freedom to pursue internal policies as chosen by their own citizens, and the freedom to pursue their own international diplomatic and economic goals. There are many other authorized actions available to them as participants in this practice.

In like manner, newcomers to practices have to learn about a whole slate of possible actions which are considered illegitimate within the practice. Students at King's learn about the illegitimacy of plagiarism and cheating. Sovereign states have to learn about the illegitimacy of waging aggressive war against other sovereign states, the illegitimacy of seeking to impose their preferred internal policies on other states, and that failing to keep their contracts in the international arena is wrong. At base, participants have to know what actions would be so contrary to the ethic embedded in their specific practice that doing them would result in their expulsion from the practice. In sum then, learning the ethics is a requirement for participating in the practice.

Let us now look at the second global practice that is fundamentally important when considering the construction of units for global governance. This is global civil society (GCS). This is a worldwide practice that includes as participants everyone, everywhere. In GCS people constitute one another, through a process of reciprocal recognition, as holders of first-generation human rights. They recognize one another as being the holders of a more or less standard set of freedoms, that includes within it, the right to safety of the person (not to be killed, tortured, assaulted and so on), the right to freedom of movement, freedom of association, freedom to make contracts, freedom of conscience, academic freedom and the right to own property. There are often arguments amongst participants in GCS about what rights ought to be included in the list, but there is agreement on most of the core elements. Again, GCS, like all social practices, has built into it an ethical value slope. In this case the

two core values which cohere with the rights that define the practice as a whole are the values of individual autonomy (broadly conceived) and the value of diversity. It is not possible to make sense of a rights-based practice without assuming that the participants value freedom and the diversity that their freedom makes possible.

In both the global practices that have been described here, rights holders will use their rights in different ways. In the one case it is states that will do this and in the other, it is individual men and women. A rights-respecting practice creates and nurtures diverse outcomes. In GCS as in the society of states, there are clear-cut requirements that have to be met before a person may be recognized as a participant. The major one is that he/she respect the rights of others in return for which he/she will be recognized as a rights holder. The second is that the rights holder nurture the diversity that comes about through his/her recognition of the rights of others. Becoming a participant grants a person a whole slate of possible actions, most of which allow different kinds of association with other rights holders. As before, membership also requires of participants that they know what is not allowed within the practice; primarily they are required not to abuse the rights of others. In the worst case, abuse of the rights of others could result in the withdrawal of recognition from the participant by the other rights holders.

It is crucial for the purposes of this chapter to understand that all those who are charged with creating the governance structures to deal with the issues listed above are concurrently participants in both of the practices outlined above and are thus constrained by the ethical values on which the practice is built. They are at the same time both actors within the society of sovereign states (in their capacity as citizens) and actors in GCS as rights holders. All people, everywhere, are simultaneously participants in these practices and also in any number of other local (not global) practices such as the family, the church, schools, colleges, private clubs and so on. What follows from this is that as circumstances change, practices have to adapt to these changes. It often comes about that what is required from the ethical point of view of one practice might come to clash with what is required ethically within another. Finding ways to deal with such tensions is central to planning and policy-making with regard to governance. So, for example, it might seem at first as if there is an inherent tension between what is ethically required of an actor in GCS (claiming and respecting individual human rights) and what is ethically required of an actor in the society of sovereign states (protecting the autonomy of his/her state). In some cases doing the latter might seem to require overriding the former.

This might happen, for example, with regard to governance issues relating to migrants. When faced with such a puzzle, actors are required, if their lives are not to descend into ethical incoherence, to seek ways of resolving such tensions. One way in which this might be done is to insist that states and their governments, in all that they do, also promote the GCS rights of individuals.

**All those who are charged with creating the governance structures are at the same time both actors within the society of sovereign states and actors in global civil society as rights holders**

What has been outlined in the previous paragraphs is a constitutive theory of individuality. It is a “constitutive” theory in that it shows that to be an actor on the international stage, a person has to be constituted as such in the global practices just described and that in order to maintain that standing, actors have to uphold the values embedded in the practices. According to this theory, ethical conduct must always be directed towards maintaining the inter-subjective reciprocal recognition achieved in these global practices. At base, the ethical constraints require of participants in these practices, in all that they do, that they strive to not undermine the ethical values in terms of which they are constituted. Their dependency on the recognition of others provides a constant pressure to ensure that they do just this. This process governs them in all that they do, including their efforts to put in place structures of global governance.

At this point it might be objected that constitutive theory is fundamentally conservative and that it cannot promote or account for social change and development in our global order. If the charge here is that constitutive theory is a static theory oriented only towards maintaining the *status quo*, then it misses the mark. This criticism fails to take seriously the ways in which participants in multiple constitutive practices have actively to engage in ethical construction as they encounter new and changed circumstances. Thus, for example, as new technologies of communication (a sub-field of developments in the wider cyber domain) make it possible for people to form new communities across physical boundaries such as Facebook, Twitter, and YouTube, participants have to consider the ethical challenges these pose to traditional notions of politics, community and society. Do new, mobile

phone-based political movements pose ethical threats to traditional ways of understanding political commitments? In order to maintain their inter-subjective standing as ethical beings, participants in both the society of sovereign states and GCS will have to think in profound ways about the implications of these new cyber-based social forms on their traditional ways of thinking about ethical standing. Confronting the challenges brought about by change in any number of ways requires participants in these practices to maintain an active engagement with difficult ethical arguments, not a simple-minded commitment to the ways things were done in the past.

### **Confronting the challenges brought about by change in any number of ways requires participants in these practices to maintain an active engagement with difficult ethical arguments**

How does the above relate to questions of global governance? In the short space available, a single example about how to apply constitutive theory will have to suffice. The example chosen is from the military domain. Over the past few years many Western governments (especially the United States and the United Kingdom) have been privatizing many functions that were once carried out by the formal military apparatus of the state. The companies that have been contracted to do this work are now referred to as private military and security companies (PMSCs). The functions picked up by PMSCs include the guarding of installations in war zones, the provision of military prisons, the provision of security to high-net-value individuals in war zones such as Iraq and Afghanistan, the provision of security to reconstruction and development teams, the maintenance of military vehicles in conflict zones, and so on. The privatization of these functions obviously poses governance issues within the global practices that have been discussed. Where the men and women performing them had previously been under the direct authority of the governments of the sovereign states which they served, they are now in the employ of private companies that are autonomous from governments in many ways. These companies are focused on profit-making. Are these companies to be left free from any direct control by governments? What forms of accountability are they to be held to? Many people have been highly critical of PMSCs, arguing that they (and



the men and women serving in them) are no better than mercenaries. To put it crudely they are considered to be guns for hire to the highest bidder. The companies have denied this, committing themselves to the promotion of sovereign statehood in the areas within which they operate: the pursuit and protection of human rights, the rule of law and the promotion of democracy. In order to highlight their ethical commitments, many PMSCs agreed to participate in a process launched by the Swiss, United States and British governments to produce a Code of Conduct for Private Military and Security Providers. The Code of Conduct (COC) was launched in November 2010 in Geneva. Although more than 120 companies have signed the agreement, a problem of global governance remains. By what means will the code be monitored and by what means will the companies be held accountable to it? An interim steering committee has been charged with coming up with a solution to the governance problem. Consideration will now be given to how constitutive theory might guide their deliberations.

The committee that is seeking to craft an International Accountability Mechanism (IAM) will have to do so within the ethical constraints operative on its members as outlined in the earlier part of this chapter. Let us look at one proposal that is currently on the table and consider how it fares when evaluated against the requirements of constitutive theory. The plan suggests that a suitable IAM could be provided by a trade association that serves the PMSC industry. It calls for the PMSCs to self-regulate through their own trade association. It is plausible to suppose that many privatized industries might contemplate a similar form of self regulation. The banking industry might be one such case. Here the suggestion might be that a bankers' trade association could set up an IAM for banks. The question then is: is such a manoeuvre ethical when judged by constitutive theory?

In order to answer this, constitutive theory requires that it be shown that the proposal does not undermine the values embedded in the practices within which the proposers themselves are constituted—that is, the practice of sovereign states and the GSC. As we have seen, these two practices enshrine the values of liberty and diversity. In the former it is the liberty and diversity of states, in the latter it is the liberty and diversity of individual rights holders. Would the proposal for an industry-based IAM do this? There are some clear-cut reasons for supposing that it would not meet the requirements of the theory. A key function of the IAM will be to determine whether any given PMSC has breached one of the commitments made when it signed the COC. For example, it might have to investigate whether a given

company infringed the human rights of a group of people in the conflict zone. If the IAM is set up, recruited and paid for by the PMSC industry itself, there would seem to be good reason for supposing that it might well be biased towards finding in favour of the PMSC. It would confront the problem of being a judge in its own causes. An IAM established in this way would also suffer an ethical legitimacy problem in that many people from elsewhere in our global practices might well doubt the neutrality of a monitoring body that was set up by the industry itself. Such an IAM might also suffer a legitimacy problem amongst potential victims who could be harmed by the activities of the PMSC in the conflict zone in which it operates.

The point made in the previous paragraph can be stated in a very general way. The states, and the individuals who are constituted as who they value themselves to be in the practice of sovereign states and GCS respectively, are so constituted, as we have seen, through a process of reciprocal recognition whereby *all* the participants recognize one another as having equal sets of freedoms. Anything done towards setting up any governance body must consist of a set of actions which *any* member of these practices can clearly interpret as broadly contributing to the maintenance, upholding and development (in the face of new circumstances) of the fundamental ethical values embedded in these practices.

### **The states, and the individuals who are constituted as who they value themselves to be in the practice of sovereign states and GCS respectively, are so constituted through a process of reciprocal recognition**

The key is reciprocal recognition. So the test of whether or not a proposed form of governance for PMSCs is ethical or not must be: would any of the other participants in the two key practices recognize what is being proposed as contributing to the upholding of the reciprocal relationships of recognition that contribute to the core values embedded in these two global practices? That is, do they contribute to maintaining the rights-based values of freedom and diversity? Let us consider whether the proposed IAM would do that. Constitutive theory allows that the matter be considered from the point of view of *any* participant in these global practices. Let us consider the proposal from the point of view of a person in a

weak and failing state within which the PMSCs are operating. An accountability mechanism which is put in place and run by the trade association of PMSCs would be unlikely to convince such a person that it is able to (or likely to) uphold the rights of the people in that state. Such a person is likely to see the proposed governance structure as insufficiently detached from the PMSCs it is holding to account, as having every incentive to make decisions in favour of its own members, to seek to hide infringements of the code from public scrutiny, and to hold the interests of the PMSC industry paramount at all times. A more ethical governance arrangement would be one which was independent of the industry itself, which included within it representatives of a number of different communities from the areas within which the PMSCs were operating. It would also be important that the mechanism not be too close to the customers that employ the PMSCs in order to make sure that the interests of these did not override the ethical commitments of the two global practices.

In conclusion then, this chapter has set out an ethical framework from within which the ethical worth of existing and proposed governance structures can be evaluated in a straightforward way.

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