

What to Say about the State

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1. In a little-known 1677 essay by Leibniz, two diplomats wonder about the status of princes of the Holy Roman Empire. These princes obtained a great deal of independence in the Treaty of Westphalia, but nonetheless remained subject to the Emperor. Were they, at least those with sizeable territories, “sovereign” or not? While the Treaty of Westphalia is considered the Magna Charta of the state system, its historical purpose was to keep the Empire functioning politically. Conceptual clarification was not a priority. In response, Leibniz offered an account of sovereignty meant to shed light on the Empire’s confusing political realities.¹

Leibniz distinguished between “Majesté” (majesty) and “Souveraineté” (sovereignty), the former being the “supreme right to command, or the supreme jurisdiction” (“le droit supreme de commander, ou la supreme jurisdiction”), and the latter a ruler’s “legitimate and regular power to force one’s subjects to obey, while [that ruler] could not himself be so constrained other than through war” (un pouvoir legitime et ordinaire de contraindre les subjects à obéir, sans qu’on puisse estre constraint soy même

¹ For the Leibniz essay, cf. Leibniz (1864); on the Treaty of Westphalia, cf. Krasner (1993). I came across this Leibniz essay in a reference in Herz (1957). Many thanks to Arthur Applbaum, Eric Cavallero, Nicole Hassoun, Aaron James, Frances Kamm, Malgorzata Kurjanska, Thomas Pogge, and Leif Wenar as well as audiences at a colloquium at the University of Copenhagen in January 2006, at the Werkmeister Conference on Cosmopolitanism at Florida State University in Tallahassee, at the Political Philosophy Workshop at Brown University, at the conference on Development, Globalization, and Global Ethics, and at the Ethics Reading Group at Boston University in March and April 2006 for helpful comments. This paper is a continuation of a theme developed in Risse (2005a): as part of an account of what we owe to the global poor, that paper offers an argument for the legitimacy of states. This paper offers a strategy for how to think about what is normatively special about states if indeed objections to a core part of the earlier defense succeed (one inspired by Blake (2001)), or at any rate cannot be rebutted without depending on controversial stipulations about, for example, what precisely counts as a reasonable alternative.

si ce n'est par une guerre;" Leibniz (1864), p 352). Crucially, princes are sovereign in virtue of having the immediate day-to-day power to enforce rules (a power Leibniz calls "ordinaire"). Although the emperor's authority is higher, he can enforce it only through war. (Of course, the emperor may be a sovereign in some territories.)

While that Empire has long since disappeared, the situation Leibniz confronted resembles the current state of affairs in one important regard: once again, states do not possess a "supreme right to command" in their territory; they are subject to a different authority, that of transnational organizations and networks. While Leibniz's account differs from contemporary accounts of sovereignty, he (unwittingly) also addressed a question that has become pressing, philosophically and politically, to our own political and economic reality. Despite increasing global interconnectedness, do states possess features that create special obligations among citizens but do not apply to outsiders? This question is one in two this essay seeks to address. The other one is whether there *should* be states at all. These two questions are too often not distinguished with sufficient care.

2. Before I clarify these questions in more detail (and in due course return to Leibniz), let me explain the contemporary urgency of exploring what to say about the state. Recent changes at the global level, especially the creation of globally operative political and economic institutions, have changed the ways in which we need to see ourselves related to persons who often live far away from us, and the ways in which we need to see these relationships as generating obligations. Let us glance briefly at some of these changes.

Even those who reject Hegel's view that political theory is merely an attempt to comprehend the state as an inherently rational entity may find it difficult to imagine a

world without states. Most people remain citizens of the same state throughout their lives. This is not to disregard emigrants, asylum seekers, dual citizens, refugees, and stateless persons, but their numbers are *comparatively* small.² This is also not to disregard states that cannot effectively control their territory, whose boundaries are disputed, which are not widely recognized, or whose autonomy is compromised.³ Still, the world's political system is a system of states. Most of the major political upheavals of the 20th century have created more states, and therefore their number has only recently reached its maximum to date. Historians disagree about why states arose. Spruyt (1994), for one, argues that territorial states, alongside city-leagues and city-states, emerged in response to economic changes in the Late Middle Ages. "States won because their institutional logic gave them an advantage in mobilizing their societies' resources" (p 185). Promoting an opposing view, Tilly (1990) claims that states succeeded because France and Spain adopted forms of warfare that temporarily crushed their neighbors and introduced a political model others were compelled to adopt (p 183).

But be all that as it may, states have arisen in response to particular conditions, and they may disappear in response to such conditions, no matter how familiar we have become with a political reality shaped by states. Among the circumstances favoring states, Zacher (1992) stresses the importance of the following: first, the cost/benefit ratio of the use of force made the costs of periodic resort to war tolerable and promoted autarky; second, low physical externalities among states caused little transboundary

² Martin (2004), p 443, states that "about 175 m people – 3% of the world's residents (...) – were migrants living outside their countries of birth or citizenship for a year or more in 2000, including 6% classified as refugee." (Martin's point is to emphasize that this is a lot of people, whereas mine is to stress that, comparatively speaking, it is not.)

³ Krasner (1999) discusses cases of each sort.

damage and did not require international collaboration to control them; third, low levels of interdependence did not require collaboration to manage its effects; fourth, low information rates limited growth in interdependence and promoted cultural distinctiveness; fifth, a predominance of non-democratic governments limited flows of information and people; sixth, cultural, political and economic heterogeneity made coordination difficult.

Yet these “pillars of the Westphalian system” have been undercut. Our world has become a global society still based on territorial sovereignty, but whose fate is increasingly shaped by transnational and transgovernmental networks, structures aptly called the *global political and economic order*. At the political level, the state system is governed by a set of rules, the most significant of which was codified by the UN Charter. At the economic level, the Bretton Woods institutions (IMF, World Bank, later the GATT/WTO) provide a cooperative network intended to prevent wars and foster economic progress.⁴ The emerging global economy, much of which consists of electronically networked markets that transcend national boundaries, compromises the effectiveness of governmental control, undermining jurisdiction over domestic markets.⁵ Global financial markets weaken governmental control of macroeconomic policies (as

⁴ Cf. Malanczuk (1997), chapter 15, for a description of the net of economic treaties governing the world economy. For an account of the global system of transgovernmental networks, cf. Slaughter (2004).

⁵ In principle, states can shut themselves off in the manner of North Korea. Yet, indeed, nowadays it takes such rather drastic measures to maintain a level of control that in the past was easier to come by. In spite of these changes, however, one should not lose sight of the fact that most economic interaction continues to happen within borders. For what economists sometimes refer to as the economic costs of borders (i.e., the extent to which trade is reduced through the presence of borders), cf. Anderson and van Wincoop (2004). Rodrik (2005) estimates that 25 times as much growth could come from liberalizing movement of people as from liberalizing goods and capital (p 208). Even between relatively similar countries such as Canada and the US, the border decreases trade by a factor of about twenty. To illustrate, in 1988 Ontario exported three times as much to British Columbia as to California, although the latter has ten times as many people (cf. Frankel (2000), pp 52ff).

Scharpf (1998) shows for the EU). These changes are sometimes captured by the claim that the *territoriality* of states is undercut: effective control over many decisions affecting what happens on its territory no longer rests with the government.⁶

Another way of describing the changes is to distinguish between “governance” and “government.” States have “governments,” but it has become customary to refer to a system of international organizations and networks making decisions at the transnational level as “global governance.” Yet as Rosenau (1992) explains,

governance is not synonymous with government. Both refer to purposive behavior, to goal oriented activities, to systems of rule; but government suggests activities that are backed by formal authority, by police powers to ensure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or may not derive from legal and formally prescribe responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance. Governance, in other words, is a more encompassing phenomenon than government. (p 4)

Implicit in this assessment is that “governance” does not describe a *new* phenomenon. Instead, “government” is the shape that governance took for a while. As Rosenau says (and attributes to Rajhi Kothari), “governance has been usurped by governments.”

The concept of sovereignty itself has come up for a good deal of discussion. In a classical text Hinsley (1986) says that

applied to the community, in the context of the internal structure of the apolitical society, the concept of sovereignty has involved the belief that there is an *absolute political power* within the community. Applied to the problems which arise in the relations between political communities, its function has been to express the antithesis of this argument – the principle that internationally, over and above the collection of communities, no supreme authority exists. (p 158; emphasis added)

Morris (1998), for one, rejects this idea of tying sovereignty to “absolute” or “ultimate” authority, arguing that states always acknowledge competing sources of authority. States

⁶ Cf. Ruggie (1998), Kobrin (2002). Sassen (1996) argues that states no longer have full control over immigration. Norris (2000) surveys views on the questions of whether “the state has become obsolete.”

should not even want to be sovereign in this sense. Yet as Fowler and Bunck (1995) say, “sovereignty” distinguishes between “what states rightfully view as their own business from that of that of their neighbors and the international community” (p 152). This notion of sovereignty is more useful than the notion of an absolute authority. But as Fowler and Bunck (1995) also insist, the meaning of sovereignty can “differ markedly for a satellite, a defeated state, a newly independent nation, and a large and populous superpower” (p 124), which prompts them to capture sovereignty in terms of a “basket theory,” a set of rights and duties that may or may not apply to specific cases.⁷ So “sovereignty” has never selected an uncontested set of rights and duties. Still, the increasing interconnectedness of recent decades has done yet more to transform its character. For instance, Chayes and Chayes (1995) write that for all but a few self-isolated nations,

sovereignty (...) consists (...) in membership in reasonably good standing in the regimes that make up the substance of international life. To be a player, the state must submit to the pressures that international regulations impose. Its behavior in any single episode is likely to affect future relationships not only with the particular regime involved but in many others as well, and perhaps its position within the international system as a whole. (p 27)

Similarly, Keohane (2002) states:

Sovereignty no longer enables states to exert effective supremacy over what occurs within their territories: decisions are made by firms on a global basis, and other states’ policies have major impacts within one’s own boundaries. (...) What

⁷ The same point was made by Krasner (1993), p 236, who argues that, “[w]hile the term ‘the Westphalian system’ does accurately capture the fact that the efficacy of universal institutions has been virtually eliminated, it is misleading in suggesting that there has been agreement on the scope of authority that could be exercised by sovereign states. The positive content of sovereignty, the areas over which the state can legitimately command, has always been contested. The claim to exclusive control over a given territory has been challenged both in theory and in practice by trans-border flows and interference in the internal affairs of states.” Krasner (1999) suggests that the term sovereignty has been commonly used in four different ways: domestic sovereignty (organization of public authority); interdependence sovereignty (ability of public authorities to control border movements); international legal sovereignty (mutual recognition of states); and Westphalian sovereignty (exclusion of external actors from domestic authority configurations). Krasner argues that the characteristics most commonly associated with sovereignty (territory, autonomy, recognition, and control) fail to describe accurately the practices that have characterized “sovereign” states.

sovereignty does confer on states under conditions of complex interdependence is legal authority that can either be exercised to the detriment of other states' interests or be bargained away in return for influence over others' policies and therefore greater gains from exchange. Rather than connoting the exercise of supremacy within a given territory, sovereignty provides the state with a legal grip on an aspect of a transnational process. (p 74)

3. Political thought must respond to changes in the circumstances under which it is formulated. While there has long been reason for philosophers to subject the state to careful scrutiny, these changes have brought about a situation in which it is *inevitable* to do so. Even those of us not guided by "cosmopolitan" intuitions of sorts can no longer take states for granted.⁸ We must explore whether these changing circumstances require a reassessment of our relationship with our fellow-citizens, as far as that is a relationship that generates duties or particular levels of justification, vis-à-vis our relationship to others with whom we do not share a citizenship. More specifically, I will pursue two questions.

The first asks about the normative peculiarity of states. Let us say that, within a debate on justice, a property of persons is morally or normatively relevant if individuals can make justice-based claims on each other by appeal to the fact that they possess this property. Asking about the normative peculiarity of some group or collective entity then means inquiring whether members of that group or entity share a property X such that (a) it is in virtue of X that they can make claims on each other, but (b) X does not hold between them and individuals outside of that group or entity, or at any rate does not hold in a way that allows for claims on each other to be made. In other words, asking about the

⁸ I have put the term "cosmopolitan" in quotation marks because I have grown increasingly weary of using it. Often the term is used so generally (capturing ideas of equal respect that must be applied to everybody) that any approach to global justice that is not entirely hopeless will be cosmopolitan of sorts, no matter how much special significance it bestows on states.

normative peculiarity of the state means asking whether this particular association, in spite of the developments described above, still possesses features that create duties among citizens, or that requires a kind of justification of laws to citizens not owed to others. The duties we are especially interested in concern relative economic standing. That is, we are asking whether fellow-citizens are required to regulate property in such a way that economic differences among them remain within limits, whereas those who lack a shared citizenship are not so obligated. I will answer affirmatively.⁹

This stance is consistent with the view that there *ought to be no states*. While the normative importance of shared citizenship may not be on par with that of sex or race (in the sense that it is commonly agreed that sex and race do *not* sort out any normatively relevant feature), it simply may not be a feature we want to make into an organizing principle of the global political system. The second question that arises is whether there ought, or ought not, to be states. The latter query is not independent of the first: if one does not think there is any morally relevant property that fellow citizens share one would

⁹ Note two points about this question of the normative peculiarity of the state. First, one might ask, more simply, whether there are “redistributive” duties that hold among citizens that do not hold otherwise. But the term “redistribution” suggests that something is undone that has at least a prima facie legitimacy. However, the point is to ask how property should be arranged in the first place, and if we assume, as I will, that property regimes at the domestic level are (at least largely) conventional, then there is no prima facie legitimate distribution of property with regard to which property law merely acts in a *re*-distributive manner. So to the extent that I will speak of redistribution, one should think of it in the sense of legal mechanisms that correct markets to obtain a justifiable property distribution. There is, then, no connotation to this use of “redistribution” that entails that something is being taken away to which somebody had a prima facie legitimate claim. (Why not talk about “duties in distributive justice” in the first place, to avoid talk about *re*-distribution entirely? The reason why such talk is nonetheless appropriate is because, at a practical level, we are talking about measures that generally occur through taxation and thus inevitably redistribute holdings.) Second, my way of asking about the normative peculiarity of the state amounts to asking whether there are any *associative* duties that hold among fellow-citizens, but not among citizens and others. This formulation pays no heed to two kinds of duties: natural duties and transactional duties, i.e., duties that hold in virtue of certain natural properties of human beings (such as that they have certain basic needs) or in virtue of transactions such as contracts, promises, etc. This does not mean that these two duties are irrelevant for global justice. It is plausible to think that needs create some natural duties (though it is hard to assess just what their character is). Moreover, one way to think about associative duties that hold in a state is in terms of a hypothetical agreement, and hence in terms of hypothetical transactional duties. But working explicitly with these types of duties will not be relevant for the purposes of this study.

be hard-pressed to argue that, nevertheless, there ought to be states. Conversely, if one thinks there is such a property, one is by no means committed to the view that there ought to be states. Assessing the necessity of states, as we will see, requires a different sort of argument. It is important to keep these two questions distinct and the debate on global justice would benefit from doing so more carefully.¹⁰

Must fellow citizens keep in check economic differences while lacking any such obligations to individuals from different states? By posing this question I assume the state is responsible for the regulation of property. On the one hand, individuals have no extensive pre-political rights that constrain how states can regulate citizens' holdings.¹¹ On the other hand, humanity per se has no rights to the earth that render states illegitimate.¹² The most promising strategy for answering our question is in terms of the *coerciveness of state institutions*. According to this strategy, it is the shared subjection to a coercive state apparatus that makes for a morally relevant property that fellow-citizens share. The presence of coercion within states is justifiable to each participant only if the domain over which the state has jurisdiction, as well as the ways in which this jurisdiction is exercised, is suitably arranged, ensuring that certain claims of individuals

¹⁰ As I focus on these questions, I sidestep others, in particular those concerned with what kind of entitlement states have to their specific territory, and what border regimes are acceptable. To illustrate the way in which the debate on global justice could benefit from keeping these questions distinct: Often those who see states as in principle justified support their view with a reference to certain properties states happen to satisfy. Those who doubt that even the normative peculiarity of states can be substantiated object that this move already grants that states should be accepted, and thus find it question-begging. In situations like this, the opposition goes both against the normative peculiarity of states *and* against the view that there ought to be states to begin with. And while these subjects are often intertwined in such ways, they do require different arguments to be addressed.

¹¹ This assumption does not per se exclude a libertarian property-regime, but it does exclude such a regime based on pre-political claims to property.

¹² Risse (2005a) offers arguments to support this assumption.

(including claims involving economic differences) are acknowledged. I discuss two versions of this strategy, one offered by Michael Blake and one by Thomas Nagel.

States exercise coercion. According to Blake (2001) this is problematic because coercion interferes with agents' autonomy and thus requires justification. The Autonomy Principle states that "all human beings have the moral entitlement to live as autonomous agents, and therefore have entitlements to those circumstances and conditions under which this is possible" (p 267).¹³ The details of an account of autonomy do not concern us, nor does a defense of this principle. What is distinctive about shared citizenship, on this view, is that fellow-citizens are jointly subject to coercive structures, the body of law in effect in a country and enforced by its bureaucracy, courts, and police with fines, incarceration, and other penalties. Such coercive structures require justification in light of the Autonomy Principle. Different forms of coercion can be justified by hypothetical consent. In particular property law must be so justified. An argument can then be made that property law is justifiable to all who are subject to it only if economic differences remain within limits; that is, an argument can be made that individuals who share a property regime have claims on each other as far as their relative economic standing is concerned. Given the conventional nature of property, it is hard to see how such a justification could succeed unless the property regime is arranged in some sense to all participants' advantage. Since most property law is domestic, no such conclusion follows vis-à-vis people not subject to the same body of law.

¹³ The notion of autonomy captures a vision of people controlling their own destiny to some extent. An autonomous life is possible only if a person has the appropriate mental capacities to formulate and pursue personal projects; enjoys an adequate range of valuable options; and is free from coercion and manipulation. These are what Raz (1986) calls the "conditions of autonomy" (pp 369-378).

4. This argument must be tested against the objection that the global order *also* exercises coercion. If so, to the extent that coercion creates duties among citizens in the manner explained above, some (weaker) version of this view will apply to the global order as well. The coercion account of what is special about states would then fail for the same reason for which, as Beitz (1999) shows, the corresponding strategy in terms of cooperative structures fails: the global order also contains such structures and thus generates some of the duties they generate domestically. But *does* the objection succeed? There are four responses, of which the second and third are also given by Blake. I will assess the strength of the objection by evaluating the replies.

First, while international organizations give countries incentives to adopt certain policies, they do not coerce; therefore international organizations do not require the sort of justification that state power demands. Second, only the state is *both* coercive *and* required for autonomous lives. Third, only states coerce *directly*, whereas international organizations coerce through states. Fourth, while international structures may coerce, there are domains of interaction where only states coerce. One such domain is property law (with exceptions, notably the Agreement on Trade Related Aspects of Intellectual Property Rights, TRIPs), and since the enforcement of property law primarily accounts for redistributive demands, such demands are peculiar to those jointly subject to a property system— the citizens of a state. Unlike the first, the other responses grant the objection yet argue that nonetheless state coercion has special (normatively relevant) features, or that granting the objection is inconsequential because forms of coercion accounting for some of the most relevant special obligations among citizens still squarely pertain to the state.

All responses are problematic. As far as the ability to coerce is concerned, consider the following statement by Cover (1986) about state coercion: “A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life” (p 1601). Contrast this with Ruggie (2005)’s claim that “[i]nternational officials or entities may be endowed with normative authority that comes from legitimacy, persuasion, expertise, or simple utility; but they lack the basis and means to compel” (p 330). No analysis of power at the domestic and international level can disregard the difference that a comparison of these two statements reveals. Yet on Blake’s account, this difference in coercive power may not matter morally.

To see this, note that coercion is characterized by two features. First, it creates conditions under which X has no reasonable alternative but to do A. Second, it involves a threat: X has no reasonable alternative but to do A because otherwise the coercive agent will seriously worsen X’s circumstances. Recall that the point of the first response was that the global order merely sets incentives and thus need not be justified to those affected by these incentives in the same way in which state power must be justified. However, *if it is because of the Autonomy Principle* that coercion requires justification, anything will require justification that constrains whether, or to what extent, people have a reasonable range of options to choose from. The Autonomy Principle, after all, states that human beings “have entitlements to those circumstances and conditions under which [an autonomous life] is possible.” One way of affecting whether or not people live under such circumstances and conditions is by coercing them in the sense explained, but another way would be to take actions, or set incentives, that, regardless of whether they involve a threat, determine whether people can or cannot rise above the poverty line.

To make this concrete, think of measures international organizations may take to help the least-developed countries. For instance, the IMF might need to decide whether to give a loan to a country, and assume, for the sake of the argument, that the IMF is not to blame for the economic problems of that country. There will then generally be no coercion involved because no threat is present, but the IMF does have actions at its disposal that affect whether circumstances prevail under which people in that country can lead an autonomous life. In light of the Autonomy Principle, the IMF will have to justify its course of action just as well as if it had resorted to a threat. There are other morally important differences between coercion and incentive-setting, but one cannot argue for the normative peculiarity of the state by saying *both* (a) that states coerce while the global order merely sets incentives, *and* (b) that the reason why state measures require special justification in a way in which measures of international organizations do not is because of the Autonomy Principle.

Replies to the other three responses can be stated more briefly. As far as the second response is concerned, in principle international organizations may be needed to lead an autonomous life, namely if states are unable to do so (think of UN peacekeeping missions), or unable to do so on their own (think of states in need of much foreign aid). As far as the third response is concerned, coercion infringes on individual autonomy regardless of whether it is mediated. What needs explaining is why differences between “mediated” and “unmediated” violations of the Autonomy Principle matter. Finally, the problem about the fourth response is that the case for focusing on the state because it sets rules of property is a case for focusing on any rule-making body that makes rules bearing on the distribution of income. After all, property is a bundle of rights, and the relevant

aspect of property, when it comes to redistribution, is not control of use, but the flow of benefits. While TRIPs may be exceptional as far as the explicit regulation of property is concerned, the global order does constitute a system of rules regulating the flow of income. To the extent that all these responses are problematic, we cannot safely dismiss the objection that versions of duties that arise in the presence of coercion also arise at the international level.

5. Let us consider a different proposal for the normative peculiarity of the state, one that also endorses the strategy of explicating the normative peculiarity in terms of the coerciveness of state institutions. Nagel (2005) argues that

it is this complex fact – that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences – that creates the special presumption against arbitrary inequalities in our treatment by the system. (...) This request for justification has moral weight even if we have in practice no choice but to live under the existing regime. The reason is that its requirements claim our active cooperation, and this cannot be legitimately done without justification – otherwise it is pure coercion. (p 128-9).

While Nagel and Blake agree that what requires justification is the coercive apparatus of the state, Blake finds the source of this need for justification in the Autonomy Principle, whereas Nagel finds it in the fact that we are both authors and subjects of coercion. Nonetheless, Nagel's approach is also open to the concern that international structures share these features to some extent. As Cohen and Sabel (2006) say:

Suppose the IMF will lend structural adjustment funds to a country on the brink of economic chaos only if the borrower agrees, as a condition of the loan, to reduce regulatory barriers to trade, and improve its courts and other rule-of-law institutions, whose current deficiencies make it impossible to enforce any regulatory reform. (...) Or imagine that the WTO approves trade sanctions on a country that has adopted some non-tariff trade barriers, or, more to the point, that a country changes its trade policies to remain in compliance with WTO

agreements, which are binding on all member states. Why not say that citizens in member states are expected to take account of WTO decisions, which have binding legal force: that they ought not to oppose a new trade regulation that is made pursuant to a WTO finding? (p 167f)

Cohen and Sabel draw attention to the fact that with increasing interconnectedness it becomes ever less plausible to insist that the global order does not coerce.¹⁴ Plausibly, global interconnectedness will yet more increase, to such an extent that, eventually, one may be able to describe the current epoch, as Reinicke (1998) suggests, as a transition from “occasional interventionism” to “global public policy.”

Yet Nagel has a response. “Justice,” he says, “applies

only to a form of organizations that claims political legitimacy and the right to impose decisions by force, and not to a voluntary association or contract among independent parties concerned to advance their common interests. (...) There is a difference between *voluntary association*, however strongly motivated, and *coercively imposed collective authority*. (p 140; emphasis added)

Joining international organizations, on this view, occurs in response to incentives, whereas coercion involves threats as the source of these incentives. Unlike Blake, Nagel does not appeal to the Autonomy Principle. So one cannot say that the effects of strong incentives on the Autonomy Principle (or some other principle that explains *why* coercion is bad) may be the same as the effects of coercion itself. For Nagel it is the presence of threats per se (rather than the violation of any principle through them) that makes for a crucial difference between states and international organizations.

This reply, however, cannot rebut Cohen and Sabel. Nagel rightly points out that a difference between citizenship in states and membership in international organizations is

¹⁴ Consider another example. The EU has a parliament whose members are elected by direct vote. While the impact of the European Parliament on the politics of the EU is much smaller than the impact of national parliaments on domestic politics, the joint presence of this parliament and the European Commission makes it plausible that the EU exerts coercion that has EU citizens as both authors and subjects.

that one does not generally assume the former voluntarily but does so assume the latter. In addition, there are similarities between citizenship and such membership. First, generally both involve coercion (including threats) in cases of non-compliance. (Think of the WTO dispute settlement process.) Although in the case of membership in an international organization the limit to the threats will be drawn by exclusion from the organization (and thus be rather different in nature from the sort of coercion that would apply to individuals in states in case of non-compliance), this might still amount to coercion. And second, once citizenship or membership has been assumed, resigning may not be a reasonable option; and in the case of, say, the WTO one could also argue that not being a member is no longer a reasonable option either, and presumably will be ever less so in the future.¹⁵

Thus in both cases, withdrawing from a situation in which one is exposed to coercion is not a reasonable option. Since, again, what matters for Nagel it is the presence of threats per se, rather than the violation of any principle through them, the difference between citizenship in states and membership in international organizations is insufficient to draw a morally salient contrast between such citizenship and such membership in terms of coercion.

6. I have been critical of the coercion strategy and put the burden of proof on its defenders. I am sympathetic to that strategy, and do not want to rule out the possibility

¹⁵ It is true, though, that some countries have been economically successful without being members of the WTO. Vietnam still is not a member of the WTO, and China was economically successful long before it became a member. Still, China did become a member for good reasons, and Vietnam is a WTO observer, which requires it to start ascendancy negotiations in due course. Given that the WTO was only founded in 1995 and given that ascendancy negotiations often take a long time, the claim above should be read as emphasizing that staying away from the WTO will ever less be a reasonable option.

that there might be successful responses to these objections. Yet my worry is that the available rebuttals search for support by turning to controversial issues, such as determining what should be accepted as a reasonable alternative or what counts as a threat rather than an incentive, issues with regard to which it is hard to make progress. As it is unsatisfactory for the coercion strategy to depend on such matters, we need to explore how it fares if the objections succeed. So let us assume they do. To wit, it will turn out that making this concession will not affect the capacity of the coercion strategy to defend the normative peculiarity of the state. However, making this concession renders implausible the view that strong (perhaps egalitarian) redistributive duties apply within the state, whereas only humanitarian duties apply to those outside of it.

To make progress in our quest for what is normatively peculiar about the state under that condition, then, note that both Blake and Nagel emphasize the unmediated nature of interaction among people in a state with their government, what I will call the *immediacy* of the interaction between citizens and state. Blake thinks only states coerce immediately. Similarly, Nagel admits that

the traditional model of international organizations based on treaties between sovereign states has been transcended. Nevertheless, I believe that the newer forms of international governance share with the old a markedly indirect relation to individual citizens and that this is morally significant. (p 139).

So the immediacy of the relationship between citizens and the state *somehow* seems morally significant, that is, generates reasons why there ought be duties that apply among fellow-citizens but not to others. Yet while Blake and Nagel acknowledge this, the immediacy of this relationship does not appear explicitly in their accounts of the normative peculiarity of states. One advantage of omitting an explicit mention of immediacy from these accounts is that coercion and autonomy are *obviously* morally

relevant, but it requires elaboration to show why the immediacy of the relationship between a state and its citizens is. So let us see if we can amend the coercion strategy in a way that puts this immediacy to work and makes its relevance clear. Recall Leibniz's distinction between the power of the Emperor and that of princes. By way of contrast with the Emperor's "Majesté," the sovereignty of princes consists of a "pouvoir legitime et ordinaire." What is "ordinaire" about this power is the princes' immediate day-to-day ability to enforce rules. It is this aspect of the relationship between a state and its citizens, and thereby a characterization of the specific nature of the power the state has over the citizens, that must be added to an account of the normative peculiarity of the state.¹⁶

The relevant notion of immediacy has nothing to do with spatial proximity, and any such connotations should be set aside. State power can be immediate in a sense I am about to explain although some citizens may be remote from the actual seats of power. Instead, the immediacy of interaction among citizens and the state can be characterized along two dimensions, a legal one and a political one. (For brevity's sake, I will sometimes just talk about legal or political immediacy.) To formulate the crucial points up front: the legal aspect of the immediacy of the relationship between a state and its citizens consists in the directness and pervasiveness of its law enforcement. The state's enforcement agencies have direct, unmediated access to their citizens' bodies and assets. Moreover, since many facets of the dealings of citizens among themselves (including all property dealings, ranging from the purchase of a cup of coffee to the ownership of firms

¹⁶ In what follows the notion of a political system will occur frequently. To fix ideas, I use a generalized version of Easton's (1965) account, who defines the hallmark of a political system as providing the arena where the authoritative allocation of values in society takes place. Since I am interested in political systems that may not be restricted to one society, I use this account replacing "social systems" for "society," where social systems are supposed to include in particular international organizations of states.

and the conditions on inheritance and bequest) are legally regulated, the potential involvement of such enforcement is pervasive for individuals subject to it.

The political aspect of the immediacy of the relationship between a state and its citizens consists in the crucial importance of the environment provided by the state for the realization of basic moral rights. So whereas the legal aspect of the immediacy of that relationship captures its *directness* and *pervasiveness*, the political aspect captures its *profundity*. What accounts for the normative peculiarity of the state, then, is not merely its coerciveness, but the particular nature of this coerciveness. Let me elaborate – but notice throughout that my concern at this stage is neither to argue that there ought to be states, nor to offer a complete account of a just or legitimate state. My concern is merely to offer an account of what is normatively peculiar about states, and to do so by characterizing the specific character of the state’s coerciveness.

Consider first the *legal* dimension: Like Leibnizian princes, states, ideally (which is what matters here), possess the ability of immediate, unmediated law enforcement.¹⁷ Bureaucracies, courts, police, and other agencies may seize, retain, incarcerate, fine or otherwise penalize individuals. Such enforcement agencies often come with nested or overlapping jurisdiction (think of local, state, and federal authorities in federal political systems), and sometimes states may even decide to do without many or even without any enforcement agencies to which all citizens are subject (think of the early 19th century US). Still, what characterizes all such agencies is that they have direct access to individuals’ assets and bodies (sometimes the one more than the other, depending on their

¹⁷ I say “this is what matters here” because what we are interested in is an account of the normative peculiarity of the state, which is consistent with granting that many states fall short of the ideal of a state in particular in a manner that renders an account of the normative peculiarity of states inapplicable.

specific jurisdiction). Even if a state, such as the 19th century US, decides to enforce its laws in a decentralized manner, this by itself is grounded in a prior decision to execute law enforcement accordingly, a decision that is within the power of the state to change (which is what happened in the US). While law enforcement may take on a variety of shapes, living in a state means living in an environment where enforcement agencies pervasively have such access, and where it is up to internal political processes to regulate what specific shape such access takes and what constraints it is subject to.

States, as Max Weber put it, possess a monopoly of the legitimate use of force in a certain territory.¹⁸ We can reformulate Weber's claim by saying that a state is, in particular, a system of rules that guides the interaction among individuals in a territory in a manner accompanied by enforcement mechanisms that can reach the individual directly. The relationship between citizens and the state is such that there is no organization "in between," in the sense that its prerogative (a prerogative acceptable within a just state) is to offer protection against enforcement agents of the state, in a way in which state agencies are charged with protecting individuals from both other individuals (or associations) and other states.¹⁹

Not all citizens will be within reach of the state in this sense at all times, nor will this necessarily be the case for all their assets. At the same time, not all individuals subject to a state's authority are its citizens: some may be tourists, temporary workers, or illegal immigrants. Still, the particular nature of the state's power, *by way of contrast*

¹⁸ Weber, (1921) defines the essence of the state as "the monopoly of the legitimate use of physical force within a given territory."

¹⁹ Obviously, the legal framework itself might include some agencies whose function it is to protect individuals from other state agencies (think of public defenders, appellate courts, or administrative review boards), or might allow individuals to delegate this task to other individuals (think of lawyers). But none of this undermines the contrast we are after here.

with other agencies that may exert power, can be characterized in terms of its directness and pervasiveness.²⁰ The relationship between individuals and Leibnizian sovereigns is of that sort, whereas interaction between individuals and the Leibnizian majesty or other sovereigns is not. Some of the laws that the state's enforcement agencies implement may have been adopted in a manner not effectively under the state's control; and some of the individuals to whom the state's enforcement agencies have immediate access may live in that state only because other states and global rules deprive them of access to other jurisdictions. Yet even such laws depend for their implementation on enforcement mechanisms of the state, and even those individuals who would rather live somewhere else are subject to the state's law enforcement.

As far as the *political* dimension is concerned, it is the state that provides the environment in which individuals' basic rights are, or fail to be, realized. The kind of rights I have in mind are those captured by Rawls's first principle of justice (cf. Rawls (2001), p 44): "freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law."²¹

Basic liberties depend on what happens in one's immediate environment. For me to have freedom of speech means to be able to speak my mind to those around me; it does

²⁰ One may object that, while international organizations may not be able to exert power in this way, the Mafia might. But note two points in response. First, I am not concerned with offering a complete account of a just or legitimate state here. And second, while perhaps this account of the legal aspect of immediacy might apply to the Mafia, the account of the political aspect of immediacy will not.

²¹ It should be clear that, in what follows, rights are to be understood as moral rights, rather than legal rights. Otherwise, states will feature the property of legal immediacy by definition. For instance, when quoting Rawls on rights, I take him to be talking about moral rights that he proposes should also become legal rights.

not depend on governments elsewhere refusing to publish my views, even if this means that I cannot reach the audience I am most eager to reach. For me to have freedom of conscience means for me to be able to practice my religion where I live, not for my religion to be accepted elsewhere, nor does it even mean for me to be able to travel anywhere my religion might require me to travel. (Think of the Muslim Hadj: if by some peculiar development a future government of Saudi Arabia were to prevent Muslims from making the pilgrimage to Mecca, we would not say that this undermines the freedom of conscience of Muslims living in Detroit.) And for me to enjoy freedom of association means to be able to get together with like-minded persons in an area where I am subject to the same jurisdiction as others who live there; it does not depend on my ability to associate with people with whom I do not share a jurisdiction, even if those are the only like-minded people I have. International organizations can monitor rights violations, or set incentives for states to respect or to disregard basic rights. Yet whether individuals can exercise these rights is a function of their immediate environment.²²

In the case of a failed or abusive state individuals may have rights (such as the right to asylum), and other states may have duties or prerogatives (such as the right to intervene on behalf of the abusive state's citizens) that they otherwise do not have, and in the case of war special conditions obtain in which individuals have rights against other

²² It is possible to construct scenarios in which the exercise of certain basic rights of the sort envisaged here depend only to a very small extent on what is happening in one's immediate environment. Think of a religion that does not just require a once-a-lifetime pilgrimage to a holy place (such as the Hadj), but that requires ongoing frequent travel to many places far from one's immediate environment, and requires nothing that would in any way depend on one's immediate environment. However, I think a world in which such cases are common is quite different from the world we live in. Overall, the kinds of arguments I have been making up to this point are informed by the way we in fact live on this planet, and it is inevitable for political thought to be informed in this manner. I submit that the kind and quantity of counter-examples to the claim I am making here about basic rights will not suffice to undermine the special importance of the immediate environment for their realization.

states, for instance, as prisoner's of war, nevertheless, in an ideal case the state will indeed guarantee these rights. That this environment is the state, rather than smaller or larger units, is a corollary of the points made on the legal aspect of immediacy. The basic liberties shape the relationship of individuals with the state, and their realization depends on the manner in which legal enforcement works. Whereas the legal dimension of the immediacy characteristic of the relationship of the state with its citizens captured the directness and pervasiveness of that relationship, the political dimension captures its profundity.²³

Legal and political immediacy, then, characterize what is peculiar about the state's coerciveness. Citizenship is membership in an association for which these two features are distinctive, and those two aspects of the immediacy of the relationship between the states and its citizens provide reasons for associative duties restricted to people who share a citizenship. If individuals live by a set of rules, including rules regulating property, that come with enforcement mechanisms that allow direct and pervasive access to their bodies and bodies, these rules should be justifiable to all who live under them; similarly, if individuals live by a set of rules that define the environment on which their most basic liberties depend, and thus affect them in a particularly profound manner, these rules should be justifiable to each person subject to them. Because the legal and political aspect of the immediacy of the relationship between the state and its citizens enter political debates in this manner, they are normatively relevant:

²³ One might object that, say, an individual living in Manhattan can realize his basic rights to a larger extent than an individual living in bad parts of the Bronx, which shows that it is really municipalities (or even boroughs), rather than a country as a whole, that provide the environment on which the realization of rights depends. However, the fact that law enforcement in the US is organized in a manner that makes the realization of rights vary across municipalities or even boroughs is itself an arrangement made with a political system guided by the constitution of the United States, and one that could be changed through a political process.

they provide reasons on the basis of which individuals can make claims on each other, and these particular reasons do not hold among people not subject to the same coercive structures characterized by legal and political immediacy. The existence of this relationship between the state and its citizens also creates a special relationship among the citizens, namely that of joint subjugation to the authority of the state and thus to a form of power with the characteristics we just provided.

The increasing economic and political interconnectedness of this world with which this essay started is consistent with this normative peculiarity of the state. It does not follow from my account that other coercive structures to which people are subject do not need to be justifiable to them; this account does by itself not even imply that such structures may not give rise to claims that must have priority over claims arising within political systems characterized in this way. What is pertinent is that the condition of two individuals being jointly involved in a relationship with a political entity whose exercise of power is immediate in the sense sketched creates a special association between them, which is sufficient to provide considerations that bear on rules enforced in an environment shaped by these forms of immediacy. In particular, this association creates considerations that have a bearing on property rules enforced under such conditions. It is this immediacy of interaction along the legal and political dimension that must be added to a coercion-based account of associative duties that hold within the state. Those redistributive duties that hold among fellow citizens are not a product of the presence of coercion per se, but rather of a coercive enforcement of property within an association shaped by these legal and political aspects of immediacy.²⁴

²⁴ One might object that more attention needs to be paid to people who temporarily live in some state (say, on a visa, or as legally permitted visitor. Nothing in this account is inconsistent with a state's having the

7. We have now formulated the normative peculiarity of the state in a manner that does not just talk about coercion per se, but also characterizes the state's particular form of coerciveness in terms of legal and political immediacy. While this account can be seen as an amended version of the coercion account, it is in a better position than the previous accounts to address the objection that nothing about the state could explicate its normative peculiarity. But we must now also explore the respective relevance of coercion per se and of legal and political immediacy. To what extent is it the presence of coercion as such that governs redistributive duties, and to what extent is it the specific nature of the state's coerciveness? Asking this question also means asking what kinds of duties apply within states versus outside of states. The more immediacy provides the basis for redistributive duties, the more redistributive duties will be guided by something particular to the state, and the less will such duties apply to those who do not live within the same state. Consider a first answer:

Strong Answer: Redistributive duties are associative duties that arise within political systems only if each of the following three conditions holds: (a) coercion is present; (b) the regulation of property is under this system's jurisdiction; and (c) the system is characterized by legal and political immediacy. Only humanitarian duties apply among individuals who are not tied by structures characterized by all three of these conditions.

right, or perhaps a duty, to regulate immigration in certain ways. Immigrants, once permitted to enter the country, would from then on also stand in this sort of relationship to other citizens; if they come in on a visa, they would stand in this relationship either on a temporary basis or with certain restrictions. (See Blake and Risse (forthcoming) on an account of immigration that should be complementary to the account given here.) More generally, the distinction between the question of the normative peculiarity of states and the question of whether there ought to be states renders the question of how exactly political communities ought to regulate membership orthogonal to this account of the normative peculiarity of the state. If indeed the existence of states can be justified, and if indeed an account of immigration is available that supplements such a justification, then we understand the difference between citizens and non-citizens. Legal and political immediacy as explicated above then apply both to citizens and to those who obtain a temporary status as residents of a state. Perhaps complex legal realities will render it impossible to ascertain in any given case whether these properties apply. But that does not mean that such ascriptions are not generally intelligible.

This view is unsatisfactory. First, the presence of coercion by itself creates no redistributive pressure at all on this account. Since it is only (c) that is entirely particular to states, redistributive duties are governed by immediacy and thus by a particular form of coerciveness. This overstates the normative importance of immediacy. The second reason is that increasing interconnectedness renders the Strong Answer implausible. To see this, notice the following three points about the WTO. First, the WTO is an organization in which most nations are members. Staying away is arguably no longer a reasonable option. Second, the WTO treaty is a “single undertaking:” members cannot choose which bits of the treaty they wish to accept. Finally, through the adoption of TRIPs the WTO has taken on the regulation of at least one domain of property. These remarks put us in a position to see that the WTO satisfies weakened versions of conditions (a) and (b) in the Strong Answer, as well as a variant of condition (c).

As for condition (a), recall that we have characterized coercion by two features: X has no reasonable alternative but to do A; and X is threatened. Member states have not joined the WTO because of a threat, but categorically staying away from the WTO is not a reasonable option. Parallel to reasoning employed above, we can see that the WTO thereby requires special justification in light of the Autonomy Principle, regardless of whether autonomy has been affected by strong incentives, or by a threat. As for (b), while the WTO does not generally regulate property, it has taken on the regulation of intellectual property. As for (c), while the particular form of coerciveness that is characterized by legal and political immediacy is restricted to states, coerciveness in other forms is present outside of states. The WTO’s dispute settlement system, in particular, is coercive because it can impose sanctions. Asserting that these weakened

versions of (a) and (b), and this variant of (c) do not give rise to *any* associative duties, whereas the original conditions give rise to strong associative duties, is implausible.²⁵ Such weakened conditions should give rise to different duties (presumably weaker in some sense), but they should not simply be incapable of giving rise to any duties stronger than humanitarian duties.²⁶

Consider this alternative answer to our query for the basis of redistributive duties:

Weak Answer: States are political systems characterized by the following three conditions: (a) coercion is present; (b) the regulation of property is under this system's jurisdiction; and (c) the system is characterized by legal and political immediacy. These three conditions jointly characterize the state's normative peculiarity and give rise to redistributive duties. In the absence of any associative structures that hold among them, individuals are tied merely by humanitarian duties. However, outside of state structures international organizations exist that satisfy weaker versions of conditions (a) and (b), as well as variants of (c), as explained for the case of the WTO. The kind of associative duties that would arise under such conditions depends on the nature of the respective association.

Recall that I pointed out earlier that conceding the success of objections to Blake and Nagel would not affect the availability of an account of the normative peculiarity of states. I also pointed out that such a concession would make it impossible to maintain the view that strong (perhaps egalitarian) redistributive duties apply within the state, but only humanitarian duties apply to those outside of it. The rejection of the Strong Answer in favor of the Weak Answer is bearing this out.

The price that the Weak Answer pays for accommodating the objections to the Strong Answer is that it specifies the relative weight of coercion and immediacy less

²⁵ I am talking about a variant of condition (c) rather than a weakened version because the two crucial features of state coercion (legal and political immediacy) are not present at all in the case of the WTO. A variant of condition (c) is a condition that lists other forms of coerciveness than those characteristic of states.

²⁶ This view goes against Nagel's (2005) stance according to which it is either the case that merely humanitarian duties apply, or that a broad range of redistributive duties apply.

clearly. Still, we have encountered enough relevant considerations to see how the Weak Answer applies. Consider the contrast between a state and the WTO. Talk about coercion and immediacy provides a terminology in which associative duties can be supported. Assuming that the regulation of property is left to the regulation of states, as explained above, one may include references to legal and political immediacy to justify redistributive measures within states: one may say that we are straying too far from political equality and are making the value of basic rights too unequal if large income and wealth differentials are accepted; or one may say that no property law that is up for direct and pervasive enforcement is justifiable to each person under its jurisdiction if it allows overly large inequalities due to genetic luck. The directness, pervasiveness, and profundity of state coerciveness enter such arguments.

With regard to the WTO, one has to argue differently. The WTO has jurisdiction over a much smaller range of issues than a state, with a corresponding difference in its impact on individuals. No appeals to legal and political immediacy can be made. Claims to the existence of associative duties could be made by pointing out that the WTO is a single undertaking, that there is no reasonable alternative to membership in the WTO (or that this, at any rate, is increasingly so), and that the dispute settlement system of the WTO comes with its own version of coercion. Since in addition the members of the WTO generally are sovereign states, the WTO should grant all its members a certain status of equality, which should have a bearing at least on WTO procedures, the availability of legal council for states who cannot afford a well-staffed WTO-delegation, etc. Or claims to the existence of such duties could be made by reference to the fact that TRIPs forces developing countries to accept intellectual-property standards that developed countries

themselves were willing to accept only when they reached a certain stage in their development (cf. Finger (2000), p 430). But of course the property domain regulated by the WTO is much smaller than that regulated by states. It should be clear that, with regard to the WTO, it will in particular be much harder to argue for extensive financial transfers of the sort that are embodied by a domestic tax system. Therefore, the kind of associative duties that arise depends on the actual nature of the association.²⁷

8. The argument so far does not address the question of whether there actually *ought to be states*. The view captured by the Weak Answer is consistent with various thoughts on that subject, including the view that there ought to be states; that there ought not to be states; or that neither is the case. Given the world we live in, states may generate particular associative duties, but that does not mean we *should* live in such a world, any more than an argument entailing that there should be honor among thieves implies that there should be thieves. Territory could be organized in ways other than states. There could be a system of overlapping allegiances, as the Middle Ages knew it; city-leagues, as the early modern age knew them; a system of vertically dispersed sovereignty, as envisaged by Pogge (2002); states with full territoriality but with strong redistributive duties towards non-members; states whose borders are controlled by international forces supervising a global migration policy; a world state; a world confederacy; regional confederations; or virtual states whose members are dispersed across the globe. Among all these possibilities, ought there indeed be *states*?

²⁷ I have explored the case of the WTO in a bit more detail in Risse (forthcoming).

When addressing this question, we ask whether there is a justificatory standpoint from which states are preferable to other political arrangements. Contractarians like Locke, Kant, or Rousseau, seeing the state as responding to problems in a state of nature, thought there ought to be states to solve these problems. Hegel thought that only within states of a certain form could individuals truly be “at home.” For these philosophers the state was problematic; after all, they did see the need to justify it vis-à-vis a state of anarchy. Still, they did not see the need to justify it vis-à-vis alternative political arrangements. Yet these philosophers were writing when the conditions formulated by Zacher (1992) held (see section 2). For this reason, though they did not systematically think about alternative political arrangements, we must. States need to be justified (respectively) especially to those who neither belong to nor benefit from them. But what would be a suitable justificatory standpoint?

One might consider various such standpoints. One standpoint is of a suitable original position, a second is that of common ownership of global resources.²⁸ I have discussed the second standpoint in Risse (2005a). The idea is to assume that the world belongs to humankind in common, and to assess what is the philosophically preferred sense of that view. However, as the challenging part is to assess whether common ownership of the earth is even consistent with the existence of states, there is nothing about this standpoint that implies that there ought to be states. Nonetheless, as Risse (2005a) argues that this standpoint is indeed consistent with the existence of states, it is

²⁸ A third justificatory standpoint one could consider requires actual, institutionalized practices of justification. This standpoint is developed in Abizadeh (forthcoming). However, since an appropriate form of engagement with that standpoint requires attention to the detail of its formulation, it would be inappropriate to discuss it at this stage, without that paper being available in its final version. So my argument will have to leave a gap and postpone the engagement with that view to another occasion.

not the case that there ought to be no states. So as far as this standpoint is concerned, the existence of states is neither precluded nor required.

Consider next the justificatory standpoint captured by a quasi-Rawlsian global original position in which individuals deliberate about the political organization of the world.²⁹ Let us think of the parties in this original position in the same way in which Rawls thinks about the deliberators in his Original Position. Individuals might well encounter the following proposals. Though more details must be added to make the proposals sufficiently inclusive, the amount of specificity provided should suffice for now. There will be other proposals on the agenda, but since the deliberators will be unable to choose between these, it is irrelevant whether their choice problem is more complicated.

Proposal 1: Classical state system. The political organization of the world should be a state system. What these states can do internally and externally will have to be constrained: their actions towards their citizens must be guided by certain moral standards; they must allow for certain forms of immigration; and they must grant rights of refuge and asylum if other states fail (as inevitably some will).

Proposal 2: State system with shared border control. Just like Proposal 1, except the borders are under international control: immigration and emigration policies are subject to international control enforced through actual border control.

Proposal 3: Vertically Dispersed Sovereignty. Governmental authority is widely dispersed. Persons would be citizens of a number of political units of various sizes, without any of these units being like a state (cf. Pogge (2002), chapter 7).

My purpose here is to render plausible a skeptical stance towards the tractability of the choice problem posed by these proposals. What I can say within the confines of this study is sketchy and will require elaboration elsewhere, but I think it can stand up

²⁹ I say “quasi-Rawlsian” because it is Rawls himself has not theorized such a standpoint. His *Theory of Justice* presupposes states. Rawls (1999) does use a global original position, but its goal is to devise principles of foreign policy for well-ordered societies, see below.

under such elaboration. Consider first Proposal 1 in isolation. The two most promising lines of argument in support of a state system are these. The first conceives of states as public good providers and argues that, on practical grounds such as efficiency or stability, public goods are best provided in large packages in territories under unified control. The second argument focuses on the value of self-determination. The crucial components of that view are first, the idea that individuals desire to live in peoples, groups tied by what Rawls, following Mill, calls “common sympathies” (Rawls (1999), p 24) (i.e., not necessarily by blood-connections), groups that are, and for which individuals desire to be, the primary locus of social, economic, and political structures that persons belong to; and second, the idea that individuals desire their people to have the right to self-determination, and that, barring unacceptable effects, this right should be granted.³⁰

Pogge (2002) offers considerations that potentially undermine both of these arguments (and that Pogge takes to give support to Proposal 3). He insists that the existence of states undercuts peace, security, global justice, democracy, the reduction of oppression, and the maintenance of the ecology. If so, states come at too high costs. Yet how can we tell whether problems that Pogge asserts arise because of the sheer existence of a system of self-determining entities or because of its local failures, and its general need for reform (e.g., independence of states to be transformed into independence of

³⁰ It has been objected that the very reason why philosophers like Blake and Nagel are eager to account for the normative peculiarity of the state in terms of its coerciveness is precisely because they do *not* want to do so in terms of “common sympathies” or anything of that sort. Recall, however, the structure of my argument. I distinguish between the question of “is there anything normatively special about the relationship of being fellow-citizens” and the question of “ought there to be states.” Even though I agree that the considerations presented in the text above do not bear on the former question, they do bear on the latter question, insofar as that question is conceived as a choice-problem in a suitably defined original position.

peoples)? It is difficult to acquire the relevant knowledge to decide whether the state system needs “reform” or “revolution,” since we can only observe this one world.

But even if we are not drawn to Proposal 3, but favor a version of the state system as captured by Proposals 1 and 2, it is difficult to see what convincing argument would allow us to choose between Proposal 1 and 2. In *Civilization and Its Discontents*, Freud insists that human beings will display certain forms of destructive behavior regardless of what form of society they live in. A political system as envisaged by Proposal 2 portrays peoples with vastly different political attitudes (too vast for them to inhabit the same social space) jointly controlling borders. One does not need to be overly pessimistic to doubt the stability of such an arrangement, and whether the benefits of such a system make up for the loss of self-determination.

Each of these proposals will have inherent problems, none will have all advantages on its side, and although a lot more could be said, it is difficult to see in the end how we would possibly gather relevant knowledge about human behavior that would allow us to make a choice between political visions on such a scale. We can only draw on historical, sociological, and other insights about the one world we know and the one history it has gone through. Such insights can be put to good use in comparative studies that derive insights about one development, event, historical epoch or country by drawing on other developments, events, historical epochs or countries that closely resemble them and therefore license certain inferences. (And of course, whole branches of the social sciences are devoted to drawing such inferences from such comparative studies.) Nevertheless, such insights will be insufficient to assess confidently how the world’s political system as a whole should be redone if the opportunity to do so should arise.

(Again, how could there possibly be comparative studies of the relevant sort?) The question of which of these proposals would be chosen in this quasi-Rawlsian original position is intractable.³¹

9. At this stage, looking at Rawls's (1999) notion of a *realistic utopia* is useful. "Political philosophy," as Rawls explains, "is realistically utopian when it extends what are ordinarily thought to be the limits of practicable political possibility and, in so doing, reconciles us to our political and social condition" (p 11). A realistic utopia is relative to a point in time. What is realistically utopian at the beginning of the early 21st century may differ from what will be generations later. Rawls constrains his own global original position (charged with determining principles of foreign policy for well-ordered societies, rather than with redesigning the global order) with the demand that its results be realistically utopian. Adding this demand to the more extensive original position we envisaged will make its assignment more tractable. Setting up that more extensive original position in such a way that *self-determination of peoples* is valued is necessary for the global original position to pass as realistically utopian *here and now*. Pursuing self-determination of peoples is *utopian* in the sense that, although self-determination is widely desired, many peoples are not yet self-determining. The current state system does not correspond to a system of self-determining peoples. At the same time, pursuing this ideal is *realistically-utopian* in the sense that self-determination is, *as an ideal*, already

³¹ A response is that in the *Theory of Justice*, Rawls envisages a four-stage procedure in the course of which ever more information becomes available. The fact that people are ignorant in the Original Position does not mean they cannot make a certain sort of decision that would be developed through subsequent deliberations when more information is available. The response is that in the Rawlsian Original Position parties should not have certain information that was conscientiously withheld from them, but would then be made gradually available to them; but they do know general sociological and psychological facts. But the point here is that the relevant information is not available *at all*.

embodied in the global order, especially through occupying a central place in UN-documents.³²

In the pursuit of that ideal it may also become clear that, occasionally, or perhaps even on a large scale, political or economic reasons urge a transfer of sovereignty to supranational organizations. Within the realistic-utopia approach, this could be accommodated as a development of an ideal that is originally aimed at realizing self-determination of peoples, but that does not thereby have to consider such self-determination as final once realized. Self-determining peoples may decide to transfer authority to supranational organizations. So, for instance the development of the EU, including its eastward expansion in 2004 and possible further enlargements in the near future, should not be taken to conflict with the views defended here. This development is best understood as driven by the enlightened self-interest of self-determining peoples. However, as opposed to a global original position constrained by commitment to the value of self-determination, most models that champion alternative ideals (like Pogge's vertically dispersed sovereignty) are not within the range of what is realistically utopian and thus fail to provide proper guidance to action. This sort of defense of the state (and hence of Proposal 1 above) is the best we can do. Yet we can indeed do as much.

10. Let me end with a brief summary of what I have argued. I began with Leibniz's distinction between "Majesté" (majesty) and "Souveraineté," which was meant to distinguish between the power of the Emperor and the power of princes in the complex political reality of the Holy Roman Empire after the Treaty of Westphalia. The situation

³² Cf. UN Charter, Chap. 1, Art. 1, Par. 2; International Covenant on Economic, Social and Cultural Rights, Part 1, Art. 1; International Covenant on Civil and Political Rights, Part 1, Art.1.

that befuddled Leibniz in the 17th century is similar in some ways to the current political and economic reality created by the presence of international organizations, in the sense that it is not obvious that states possess a “supreme right to command” in their territory.

Our question then became whether states, despite increasing global interconnectedness, still possess features that create special obligations among citizens, but that do not apply to outsiders. Is there a normatively relevant sense in which the idea of the state’s having “un pouvoir ordinaire” could be spelled out in a manner that made it clear how there could be such duties although the entity possessing such power is also embedded into a larger political system that limits the exercise of its power. The answer to this question, I believe, can be formulated in terms of the coercion approach to the normative peculiarity of the state, as developed by Blake (2001) and Nagel (2005). However, I have also argued that both of their specific versions of this approach face severe objections, and have assumed for the sake of this paper that these objections succeed. In that case, so I suggested, what is required is a more detailed account of the nature of the “pouvoir ordinaire” of states to explain why, even in light of increasing global interconnectedness, there continues to be a tie among fellow-citizens that creates particular obligations among them. My suggestion was to spell out the nature of this “pouvoir ordinaire” in terms of legal and political immediacy.

One implication of this amended account of the normative peculiarity of the state is that it becomes implausible to think the associations that hold among fellow-citizens give rise to strong associative duties whereas those that hold among those who are not so related do not trigger any associative duties at all (beyond certain minimal humanitarian duties). Instead, we found that individuals are tied by different associative structures,

where the nature of the duties that hold among them depends on the nature of those structures. Nevertheless, the state continues to hold a distinguished status within such a picture.

None of this answers the question of whether there ought to be states at all. Those who question the sheer legitimacy of states often reject answers that explain the normative peculiarity of the state as question-begging. For such answers, for example, tend to take for granted that it indeed is the state that regulates most of our property relations. But accounts of the normative peculiarity cannot be expected also to answer the question of why there ought to be states to begin with. This is a separate question that requires a separate inquiry. My answer to that question was formulated in terms of a realistic utopia. That is, political visions of global justice that do not have some role to play for the state will have to be guided by factual assumptions that are not in our power to verify because we can only observe the history of this one planet. Devising a global original position in which deliberators have to decide among different proposals for a global order means creating an intractable problem. For now, an ideal that advises to improve the state system as we currently have it is the only sort of ideal that can offer any sensible guidance to action. More work on the issues surrounding the question of whether there ought to be states – and the extent to which there are epistemic constraints on our ability to answer it – is required, however. This is the subject of another research project.

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