

# Introduction – International law and global justice: a happy marriage

LAURA VALENTINI AND TIZIANA TORRESTI\*

## Introduction

The problem of global justice is, without doubt, one of the most pressing political and moral challenges the world has to confront. How to put an end to human-rights violations, eliminate tyrannical regimes, reduce global inequalities, and prevent wars and other atrocities are all issues central to both academic debates and political practice. Given the complexity of these problems, effective progress in solving them can only be made through the concerted effort of specialists from different disciplines. Philosophers, political scientists, International Relations (IR) scholars, lawyers, economists, and sociologists all need to join forces in an interdisciplinary quest for greater justice. This symposium takes a step in this direction, and brings together scholars from different intellectual backgrounds (including political theory, IR, international criminal law, and fiscal policy) to investigate the relation between *international law and global justice*.

Perhaps surprisingly, debates on international law and on global justice have for the most part proceeded separately. Only very few political theorists, John Rawls and Allen Buchanan among them, have suggested that the project of designing principles of international or global justice is closely related to that of designing principles of international law.<sup>1</sup> Like Rawls and Buchanan, we believe that there is considerable merit in an approach to global justice which takes international law seriously. In this introduction, we wish to highlight *three* promising areas of cross-fertilisation between these two disciplines, each of which is exemplified in one or more of the articles contained in the symposium. Our aim is thus twofold. First, we want to motivate and lend support to the claim that the ‘marriage’ between international law and global justice is a happy one. Second, we wish to offer a background framework within which to contextualise the contributions to the symposium.

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<sup>1</sup> John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), and Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2004).

In doing so, we proceed as follows. In the next section, we consider the relation between international law and global justice from a *normative-theoretical perspective*. That is, we consider the reasons in support of the claim that theorising about justice in the international realm cannot prescind from thinking about international law. In the subsequent section, we turn to a less abstract aspect of the relation between international law and global justice, bringing together *both normative-theoretical and empirical perspectives*. In particular, we observe that the process of globalisation puts pressure on state sovereignty – arguably the main pillar of the international legal system – and consider how the notion of state sovereignty might be reconceptualised in response to this challenge. Finally, in the penultimate section, we move to a predominantly *empirical perspective*, and look at the extent to which we can be hopeful that current international law will increasingly move towards global justice. The last section concludes.

Before getting started, a couple of words of clarification are in order. Central to our project are the notions of international law and of global justice. But what exactly do we mean by them? Since these are deeply contested terms, to be as ecumenical as possible, we will content ourselves with very general definitions. By *international law* we mean, broadly, a system of widely recognised norms which regulate how states, their citizens, and international/supranational organisations ought to relate to one another.<sup>2</sup> With the expression *global justice*, we indicate a set of normative standards whose aim is to protect fundamental human interests and values in the world at large. Different theories of global justice, of course, propose different such standards, but we can safely assume that all of them require putting an end to unacceptable global harms such as extreme poverty, oppression, war, and human-rights violations.<sup>3</sup> This is all we need to assume for the purposes of this introduction.

## Normative theory

### *International law as the subject of global justice*

There are two main theoretical outlooks from within which a plausible account of global justice must take international law seriously. The first outlook corresponds to the *Kantian tradition* broadly construed. Any political theorist who claims to be inspired by Kant's thinking cannot consistently ignore the crucial importance that law plays in Kant's account of justice. Yet, as Helga Varden notes in her contribution, although many contemporary (cosmopolitan) views about global justice claim to be Kant-inspired, the legal dimension of Kant's thinking has been somewhat neglected. Sketching the main outlines of the special relation between law and justice within a broadly Kant-inspired framework will therefore point in the direction of a fruitful and under-explored theoretical terrain.

Kant famously distinguished between two moral realms: the realm of justice (or Right) and the realm of virtue. Unlike duties of virtue, duties of justice are subject to legitimate enforceability. They are, first and foremost, *legally enforceable duties*

<sup>2</sup> Here we follow standard definitions of international law and their sources. See, for example, Antonio Cassese, *International Law* (Oxford: Oxford University Press, 2001).

<sup>3</sup> These are requirements of justice on which both so-called statist and cosmopolitan theorists agree.

compliance with which can be exacted by the state. Kant reaches this conclusion by considering the human situation in the state of nature. In conditions of moderate scarcity – such as those in which human beings find themselves – conflicts over resources are bound to develop between agents routinely interacting with one another. Absent an authoritative interpretation of how such conflicts ought to be solved, that is, of what justice requires, we are left with an insoluble disagreement between different ‘private’ understandings of justice. In these conditions ‘the strongest wins’. This is why Kant defends a duty to leave the state of nature, and create an authoritative collective agent, the state, with the right to interpret and enforce the requirements of justice. From a conflict of unilateral, private accounts of justice, we move to a situation in which the demands of justice are determined by a sovereign authority through a legal system. On a Kantian view, then, the subject of principles of justice is precisely a state’s legal apparatus, namely the rules on the basis of which a state establishes how conflicting claims ought to be solved between its citizens.<sup>4</sup>

Predictably, however, the conflicting claims which generate the need to establish an authority at the domestic level will reoccur at the international (transnational or global) one, between different states and between individuals and states other than their own, hence the need for two other forms of Right/justice: international and cosmopolitan.<sup>5</sup> Without these two other forms of Right, justice cannot be fully secured. Since, as we saw in the domestic case, justice requires the establishment of an authority speaking through law, so too in the international one, we should expect such an authority to be constituted. The nature of the appropriate international authority, however, has always been the object of controversy between those who subscribe to a broadly Kantian normative framework. On the one hand, the logic of Kant’s argument would suggest the need for establishing a global ‘state of states’, with the right to enforce the requirements of justice on each political community. On the other, Kant himself rejected this solution, opting instead for a voluntary league of nations.<sup>6</sup>

Leaving the solution to this controversy to one side, we can easily see how, *within a Kantian normative outlook, debates on international or global justice turn into debates about the appropriate nature of the international legal system*. Situated within this broadly Kantian theoretical framework, Helga Varden’s and Terry Nardin’s contributions precisely grapple with the question of what form international law and international authorities ought to take in order to secure global justice. Varden focuses directly on Kant’s thought, and discusses: (i) why, unlike in the domestic case, a global public monopoly on coercion (a state-like authority) cannot be established; and (ii) what structure international public authorities like the UN ought to develop in order to be just. In a similar vein, Nardin explores four different models of international legal authority, and defends ‘public-law

<sup>4</sup> Immanuel Kant, *The Metaphysical Elements of Justice. Part I of the Metaphysics of Morals* (1797), trans. John Ladd, 2nd ed. (Indianapolis/Cambridge: Hackett, 1999). For contemporary discussions of Kant’s political theory see Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton: Princeton University Press, 2009), chap. 2, and Jeremy Waldron, ‘Special Ties and Natural Duties’, *Philosophy and Public Affairs*, 22:1 (1993), pp. 3–30, esp. pp. 14–15.

<sup>5</sup> Immanuel Kant, *Toward Perpetual Peace: A Philosophical Sketch* (1795), in *Kant’s Political Writings*, trans. H. B. Nisbet and ed. H. Reiss (Cambridge: Cambridge University Press, 1970), pp. 93–130.

<sup>6</sup> See Katrin Flikschuh, ‘Kant’s Sovereignty Dilemma: A Contemporary Analysis’, *Journal of Political Philosophy*, 18:4 (2010), pp. 469–93, for discussion.

models' of such authority against emerging 'global-governance models', which place emphasis on informal and decentralised governance networks rather than on a system of public legal rules.

In addition to the Kantian tradition, there is a second moral outlook according to which thinking about global justice cannot prescind from thinking about international law. This, which some have called the *practice-dependent*, or 'constructivist', view<sup>7</sup> holds that the particular normative principles that apply to a certain domain of human action should express the values belonging to that domain. On this view, principles of friendship, for instance, should reflect the values of trust and loyalty, whereas principles of domestic justice should reflect the values of fair cooperation between citizens. But what about the practice of international law and the principles which should govern it? Saladin Meckled-Garcia's contribution is meant to answer precisely this question.<sup>8</sup> In particular, Meckled-Garcia argues that the point of international law, the values it is meant to express, differ from those we find in the domestic arena. Consequently, the cosmopolitan project of extending principles of domestic distributive justice to the global realm is problematic. Such an extension could only be viable if there existed an international governance authority of the kind we find at the domestic level. However, Meckled-Garcia claims, 'international law [with its *statist character*] does not and cannot represent that kind of governance authority'.

To sum up, both the Kantian and the practice-dependent/constructivist view urge us to take international law seriously when thinking about global justice. As both views recognise, central to international law is the notion of states' sovereign authority. The traditional account of this notion, however, is being increasingly put under pressure by so-called globalisation. This points in the direction of a second fruitful area of research, bringing together normative-theoretical and empirical considerations.

## Normative theory and political practice

### *Sovereignty and globalisation*

We live in an era of 'globalisation'. The world is becoming increasingly integrated. People, capital, goods, and services easily move from one part of the globe to the

<sup>7</sup> For this approach see Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), chap. 2. See also Aaron James, 'Constructing Justice for Existing Practice: Rawls and the Status Quo', *Philosophy and Public Affairs*, 33:3 (2005), pp. 281–316; and Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality', *Journal of Political Philosophy*, 16:2 (2008), pp. 137–64. For a critique of this approach see Laura Valentini, 'Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism', *Journal of Political Philosophy*, forthcoming. We borrow the term 'practice-dependent' from Sangiovanni in particular. The term 'constructivist' is instead used by Meckled-Garcia. See the next note for details.

<sup>8</sup> Meckled-Garcia has rejected the label 'practice-dependent' as an appropriate description of his own approach, opting instead for the label 'constructivist'. See Saladin Meckled-Garcia, 'On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency', *Journal of Political Philosophy*, 16:3 (2008), p. 251. In this introduction we intend to remain neutral between the two labels. All we want to indicate is a general family of views which hold that the appropriate principles for a given sphere of human action or practice depend on the point and purpose of that practice.

other.<sup>9</sup> The goods that we buy are less and less produced in our own countries. Our shoes come from Taiwan, our coffee from Brazil, and our shirts from China. More and more, our cities become ‘cosmopolitan’, and we find ourselves working side-by-side with people whose cultures and customs are quite different from our own. This is what globalisation has brought us.

Although such greater integration may appear a welcome development in world history, on closer scrutiny, it also has a ‘dark side’. The more the world becomes integrated and interdependent, the more individual political communities lose the capacity to solve those problems which justify their creation in the first place (recall the Kantian story sketched in the second section). Globalisation, in other words, puts *state sovereignty* under immense pressure. Of course, the idea of sovereignty can be variously interpreted, but for present purposes, we can understand it as indicating the set of powers and rights enjoyed by states. These include the authority to govern their citizens, the power to use the resources within their territories, the right not to be interfered with by other states and so forth.<sup>10</sup> A state is genuinely sovereign only if it is in a position to exercise such powers effectively. Only then can a state be the bearer of a genuine duty to realise just relations among its citizens. If ought implies can, states have to be *substantively* (and not simply *formally*) sovereign, in order to perform their moral functions.<sup>11</sup>

The process of globalisation puts into question states’ substantive sovereignty in a number of different areas. Most importantly, it challenges their ability to secure criminal justice (punishing crimes that are becoming increasingly ‘international’) and socioeconomic justice. The contributions of Elisa Orrù and Miriam Ronzoni, and of Peter Dietsch, are precisely meant to address these practical-political challenges to state sovereignty. Orrù and Ronzoni engage in a comparative analysis of the erosion of state sovereignty in the areas of criminal and of socioeconomic justice. They argue that, in both domains, justice could only be restored by creating *supranational* authorities. However, they further argue, the kinds of supranational authorities we would need in order to counteract the erosion of state sovereignty differ across these two domains. International economic justice requires *global* authoritative structures, while international criminal justice requires smaller-scale, *regional* arrangements.

Dietsch, on the other hand, focuses on one aspect of socioeconomic justice in particular, namely international fiscal policy. Unlike Orrù and Ronzoni, in response to the erosion of sovereignty generated by international tax competition, Dietsch proposes an explicitly *international*, as opposed to supranational, solution. This conclusion is based on a reconceptualisation of the notion of sovereignty: from sovereignty as immunity from external interference, to sovereignty as responsibility for individual well-being. If sovereignty is understood as entailing duties as well as rights, Dietsch concludes, it follows that states ought to respect a set of principles facilitating international fiscal cooperation.

<sup>9</sup> Notwithstanding the considerable difficulties encountered by many migrants due to border control.

<sup>10</sup> See A. John Simmons, ‘On the Territorial Rights of States’, *Philosophical Issues*, 11:1 (2001), pp. 300–26, esp. p. 305. In his account Simmons refers to David Copp, ‘The Idea of a Legitimate State’, *Philosophy and Public Affairs*, 28:1 (1999), 3–45.

<sup>11</sup> See Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, forthcoming), chap. 9, and Miriam Ronzoni, ‘The Global Order: A Case of Background Injustice? A Practice-dependent Account’, *Philosophy and Public Affairs*, 37:3 (2009), pp. 229–56.

Although our two contributions offer slightly different answers to the question of *how we should respond to the erosion of state sovereignty brought about by globalisation*, they both point to yet another promising area of cross-fertilisation between thinking about international law and thinking about global justice.

## Political practice

### *International law towards greater justice?*

Finally, the study of international law may be of great service to the quest for global justice by making theorising about global justice more firmly grounded in political reality. It is all well and good to claim that international law is the most effective and appropriate means at our disposal to securing global justice, but is international law actually moving in this direction? Is the notion of sovereignty being *actually* reconceptualised in terms of responsibility? Is individual well-being becoming the central value of the international community not only in political rhetoric but also in political practice?

The last two contributions to our symposium address precisely these important questions. Although David Armstrong and Margot E. Salomon both recognise a shift, in international legal discourse and practice, towards a more cosmopolitan approach to international relations in which state sovereignty is to be conditionalised upon its ability to secure individual well-being, they also warn against excessive optimism. Despite the many human-rights documents, international tribunals, and norms of *ius cogens* established in recent years, power politics still remains a major driving force behind the evolution of the international legal system. Perhaps, then, we are moving towards global justice, but we are doing so very slowly, and still within the limits of a statist international legal apparatus.

After outlining those developments of the international legal system which would suggest a move towards greater justice, Armstrong expresses notes of caution, reminding us of how power politics and national interests prevent humankind from finding mutually acceptable solutions even to problems of paramount importance such as climate change (consider, for instance, the disappointment of the Copenhagen summit in late 2009).

By the same token, Salomon takes a critical (yet constructive) attitude towards current international legal norms, and specifically towards contemporary international human-rights law. Even the most ‘global-justice-friendly’ piece of international law, she argues, is less effective than it could be. This is because, instead of focusing on global *inequalities*, contemporary international human-rights law tends to concentrate on *absolute deprivation* and the predicament of the poor. This obscures the role that affluent countries have had in generating the poor’s predicament, by sustaining a grossly unfair international institutional system. Inequality, Salomon claims, is not an accident, but ‘a deliberate product of the international political economy’. To be of genuine help to the poor, she concludes, international human-rights law should directly address those ‘international mechanisms and arrangements that preclude equal distribution.’ Otherwise, international

human-rights law might be thought to offer yet another example of how political ideology, while superficially promoting the interests of the powerless (through a focus on poverty), protects those of the powerful (by ignoring inequality).

Although these reflections may sound quite pessimistic, they have an important constructive dimension. Indeed, without a diagnosis of the problems and limits of contemporary international law, we cannot even begin to solve them. From this perspective, the three areas of research we have briefly looked at should be seen as working in synergy with one another. The first, normative-theoretical area, tells us why, conceptually, if we care about global justice we should also care about international law. The third, practical-empirical area, tells us what is wrong with international law as it is, and what we can realistically achieve through it. Finally, the second, practical-cum-theoretical area, tries to propose normatively satisfactory reforms of international law which may help it overcome its shortcomings and respond to the challenges posed by our ever-more globalising world.

## **Conclusion**

In this short introduction we have tried to point to three key areas of research in which the study of international law and that of global justice can be fruitfully brought together. In so doing, we have offered a general background and ‘guide’ to the contributions that make up this symposium. Of course, the symposium itself is only just a starting point for what we hope will be a continuing and growing debate. If indeed our hope for greater justice across the world lies in international law, more scholars have very good reason to engage in it.