

RESEARCH ARTICLE

Getting away with it? Kleptocracy, atrocities, and the morality of autocratic exile

Shmuel Nili 

Political Science, Northwestern University, Evanston, IL, USA
Email: Shmuel.nili@northwestern.edu

(Received 30 July 2022; revised 24 February 2023; accepted 17 April 2023;
first published online 17 May 2023)

Abstract

Foreign exile has often served as an important solution to high-stakes standoffs between opposition forces and beleaguered autocrats. I assess the moral status of autocratic exile, by focusing on the tension between exile's contribution to domestic peace and its threat to global deterrence against autocracy. I begin by contending that transitioning societies normally have the moral prerogative of accepting an exile arrangement for their autocrat, even though such an arrangement harms global deterrence against autocracy. I then suggest that, in the absence of clear evidence of majority opposition to an exile arrangement within the transitioning society, foreign countries who have been entangled in an autocrat's rule will normally have a decisive duty to facilitate his exile, despite exile's repercussions for global deterrence. I explain why such foreign entanglement, particularly on the part of affluent Western democracies, is inevitable in the case of kleptocrats. But I also show that the entanglement argument for exile extends even to murderous autocrats, whose crimes fall under the purview of the International Criminal Court. Countries entangled in a murderous autocrat's rule ought to prioritize their particular duties toward his victims over their general moral reasons to advance international criminal justice.

Keywords: Asylum for dictators; complicity; corruption; global justice; hostage crises; International Criminal Court; transitional justice

Exile (banishment) is when a man is for a crime condemned to depart out of the dominion of the Commonwealth...not to return into it; and seemeth not in its own nature, without other circumstances, to be a punishment, but rather an escape, or a public commandment to avoid punishment by flight...For if a man banished be nevertheless permitted to enjoy his goods...the mere change of air is no punishment; nor does it tend to that benefit of the commonwealth for which all punishments are ordained, that is to say, to the forming of men's wills to the observation of the law. (Thomas Hobbes, *Leviathan*¹)

At least 50 people have died in the riots and unrest so far. If Ben Ali had stayed to fight and maintain his rule for as long as he could, there would undoubtedly

¹Hobbes 1996 (1651), Ch. 28, 21.

have been a far more bitter and bloody end. The price of saving who knows how many lives may be letting an old tyrant off scot-free. (*New Statesman*, 2011²)

Ukraine is a deep red on Transparency International's map, the 131st least honest place in the world and – alongside Russia – the dirtiest place in Europe. Yet Yanukovitch's property could not have been hidden without the services of his British shell companies. So why is Britain listed as an honest 10th? (Oliver Bullough, *Moneyland*³)

In 2010, a popular revolution in Kyrgyzstan ended the rule of President Kurmanbek Bakiyev. In 2011, Tunisia's Jasmine Revolution similarly ended the 23-year rule of President Zine El Abidine Ben Ali. In January 2014, Ukraine's Euromaiden protests brought down President Viktor Yanukovich. Nine months later, Blaise Compaore, the president of Burkina Faso, was overthrown following protests at his attempt to amend the constitution to allow himself another term, after 27 years in power. All four presidents were condemned for making a mockery of democratic norms and procedures to which they feigned allegiance. But these toppled leaders also shared a more specific trait: grand corruption. All four presidents not only abused public office for private gain,⁴ but did so on a massive scale.⁵

There were lurid examples highlighted by the victorious protesters. Thus for instance, there was the enormous public estate that Yanukovich had secretly converted into his personal property, complete with a publicly funded personal zoo, alongside numerous other extravagances.⁶ And there was the Compaore family's royal kennel for their dogs, 'sturdier than many people's homes in Burkina Faso, with a floor plan that appeared to include two bedrooms as well as a sizeable salon'.⁷ But even more damning were the macro-level facts in each case, from the missing billions in public funds to the portion of the economy controlled by the ruling family.⁸

At the same time, notwithstanding their grand corruption, there was one thing that Bakiyev, Ben Ali, Yanukovich, and Compaore were *not* guilty of. Despite their authoritarian methods, none of these leaders was accused of the kinds of wrongs that the international community treats as 'super-crimes'⁹ – war crimes, genocide, and crimes against humanity. Although some deaths did occur at the hands of state

²'Exile, sweet exile', *New Statesman*, 16 January 2011.

³Bullough 2019, 18.

⁴This has been the dominant definition of corruption in the literature, at least since Rose-Ackerman 1978.

⁵The UN Office on Drugs and Crime (2003, 28), following Rose-Ackerman, defines 'grand corruption' as 'corruption that pervades the highest levels of a national government, leading to a broad erosion of confidence in good governance, the rule of law, and economic stability'.

⁶For a tiny sample, see BBC 2014.

⁷Corey-Boulet 2015.

⁸See, e.g. Harsch 2017, Ch. 10; see also Reuters 2013; Dreisbach and Joyce 2014; Faulconbridge *et al.* 2014.

⁹I borrow the phrase from Altman and Wellman 2004.

security forces during each of the protests that toppled them, none of the kleptocrats oversaw large-scale killings.¹⁰

Because they refrained from mass killings, all four kleptocrats enjoyed the valuable option – which all of them took up – of heading into a safe exile abroad. The creation of the International Criminal Court (ICC), and Augusto Pinochet's precedent-setting London arrest for crimes against humanity, have all but eliminated foreign exile as a viable retirement option for leaders accused of mass atrocities.¹¹ Even if such leaders manage to find any foreign host, their prospects of avoiding trial are slim, because powerful countries are virtually certain to demand that their hosts extradite them to a jurisdiction where they will face trial.¹² Our four kleptocrats, by way of contrast, did not encounter any such predicaments. Not only were the kleptocrats able to enjoy the hospitality of foreign governments; none of these governments has been pressured by third countries to facilitate a trial for its guest. Ben Ali enjoyed a serene retirement in Saudi Arabia until he passed away in 2019. Similarly, at the time of writing, Bakiyev, Compaore, and Yanukovich remain unperturbed in their original exile destinations.¹³

One need not be especially invested in the politics of these particular leaders' home countries to think that autocratic exile is of normative interest.¹⁴ Far beyond Tunisia, Kyrgyzstan, Burkina Faso, or Ukraine, such exile is of global significance. The primary reason is that autocratic exile can often serve as a distinctive solution to high-stakes standoffs between opposition forces and autocrats who dread lengthy imprisonment or death at the opposition's hands. Such standoffs are complicated by the fact that, once they cede power, former autocrats have no way to force the opposition to comply with any promises of lenience it might have made to coax them into retirement. However, foreign exile is unique in putting the former ruler outside the opposition's reach – and thus in circumventing the credible commitment problem that so often hinders a peaceful end to authoritarian rule.¹⁵ Assessing the moral status of the exile solution is therefore necessary if we are to have a complete normative picture of many fraught regime transitions around the world. Yet, to the best of my knowledge, normative political theorists (unlike lawyers¹⁶ and empirical political scientists¹⁷) have offered no sustained treatment

¹⁰Under the Ben Ali dictatorship, physical repression, torture and disappearances were fairly uncommon. The regime [instead] perpetrated its oppression by means of a diabolically intrusive system of state corruption' (Chayes 2012). For Bakiyev and Compaore, see Krcmaric 2018, 490; for Yanukovich, see Ambrosio 2017.

¹¹Krcmaric 2020, *passim*.

¹²It is therefore unsurprising that the only two leaders who have gone into exile since the turn of the millennium despite presiding over large-scale killings (Peru's Alberto Fujimori and Liberia's Charles Taylor) were eventually tried and imprisoned for crimes against humanity. For background, see the essays by Abdul Tejan-Cole (on Taylor) and Ronald Gamarra (on Fujimori) in Lutz and Reiger, 2009.

¹³Belarus, the Ivory Coast, and Russia, respectively.

¹⁴Throughout, I will use 'autocrats' to refer both to leaders of straightforwardly dictatorial regimes, and to leaders of what have become known as 'competitive authoritarian' regimes, wherein elections and rule of law are not entirely a charade, but are nonetheless subjected to profound and recurrent transgressions from the ruling elite (see, e.g. Levitsky and Way 2010).

¹⁵Krcmaric 2018, 488. For other aspects of the problem see Menninga and Prorok 2021.

¹⁶See, e.g. Sadat 2006; Govern 2011.

¹⁷See references throughout, as well as Prorok 2017.

of the morality of autocratic exile.¹⁸ This article begins to address this gap, by focusing on the tension between exile's contribution to domestic peace and its threat to global deterrence against autocracy.

My inquiry into this tension proceeds as follows. The first section offers key definitions and assumptions and situates my treatment of autocratic exile in relation to the transitional justice literature. The second section argues that a transitioning society normally has the moral option of accepting an exile arrangement for its autocrat, as a way of ending his rule with minimal bloodshed. Here I contend (in subsection 'Accepting autocratic exile: the transitioning society's prerogative') that a transitioning society normally enjoys this option despite its repercussions for global deterrence. I also argue (in subsection 'Ascertaining popular preferences') that in the absence of decisive evidence that a majority within the transitioning society rejects an exile arrangement, it is morally appropriate for foreign governments to assume that the transitioning society accepts such an arrangement.

The third section offers further defenses of the exile solution against deterrence-based opposition. More specifically, this section lays out several variants of foreign entanglement in a given autocrat's rule. I discuss foreign entanglement stemming from direct governmental action – as when a foreign government arms an autocrat, in full knowledge of the repressive ends to which the relevant arms will be deployed. But I also stress how a foreign government might become entangled in an autocrat's rule through salient omissions – mainly, by failing to regulate private wrongdoers based in its own jurisdiction, who clearly enable the autocrat through their own actions (e.g. major banks serially laundering the autocrat's ill-gotten gains). I argue that a foreign government that has been thus entangled in an autocrat's rule, either through its actions or through its omissions, will normally have a morally decisive duty toward his victims to facilitate his exile, even at the expense of global deterrence.¹⁹

Finally, the concluding section takes up the concern that even if the argument in favor of exile is compelling when it comes to non-murderous autocrats, it is unconvincing regarding their murderous counterparts. Here – the objection goes – the normative force of entanglement duties is outweighed by the normative significance of the international regime of criminal accountability for mass atrocities, centered on the ICC. I explain at length why I am unpersuaded by this objection.

Setting the stage

The peace vs. deterrence dilemma

A credible exile offer can contribute to domestic peace by reducing an autocrat's incentive to fight to stay in power. Yet such an offer also undermines global

¹⁸As far as I am aware, my brief reflections on autocratic exile in earlier work (Nili 2019c, 179–85) represent the only discussion of the issue in contemporary political philosophy. The dearth of normative attention to autocratic exile is especially striking given the vast normative literature devoted to international dealings with autocrats. See, e.g. Pogge 2001; Cohen 2010; Barry 2011; Wenar 2008, 2011, 2016; Wenar *et al.* 2018; Wiens 2015; Wisor 2016; Armstrong 2020. See also Nili 2011a, 2011b, 2011c, 2016b, 2017, 2018a, 2018b, 2019a.

¹⁹Throughout, my reference to an entangled foreign government 'facilitating' autocratic exile will encompass both admitting the autocrat into its own jurisdiction (the most morally fitting choice in most circumstances), and (in special circumstances) inducing a third country to serve as a host.

deterrence against autocracy. The reason is that autocrats regularly adjust their plans based on information regarding the fortunes of their foreign counterparts, particularly insofar as these fortunes are affected by international actors. ‘Ample evidence’ confirms that autocrats ‘closely follow the fates of their peers’,²⁰ especially when assessing their own international retirement prospects. This evidence suggests while facilitating peace, a ‘golden parachute’ offered to any given autocrat is also likely to set back global deterrence against other (potential and actual) autocrats, domestically and globally.

More precisely, my use of the phrase ‘global deterrence against autocracy’ is meant to cover two distinct dimensions of such deterrence. One dimension refers to conduct *while in office*. Here the thought is that the sight of a given autocrat facing severe legal repercussions for crimes committed while in power leads other countries’ autocrats to be much more cautious about engaging in similar crimes.²¹ The other dimension is deterrence against the use of criminal methods in the *quest* for highest office. Here the claim is that individuals who would otherwise be tempted by blatantly illegal tactics in pursuit of political power would be more reluctant to utilize such tactics to begin with – and therefore more committed to the rules of the democratic game – if they see these tactics’ legal repercussions for others. The former kind of deterrence has received more robust empirical support than the latter.²² But when examining the tension between peace and deterrence, I will assume (at least *arguendo*) that both dimensions actually obtain.

In turn, my inquiry into this tension draws important but limited inspiration from early classics of the transitional justice literature. Early seminal essays, centered on a ‘peace versus justice’ dilemma, emphasized that a transitioning society can rarely avoid a tragic choice between compromise and confrontation with authoritarian wrongdoers.²³ On the one hand, it is precisely a choice of this kind that lies at the heart of my analysis here (hence the inspiration). On the other hand, because the ‘peace versus justice’ debate has been almost purely domestic, it can only take us so far when thinking the international problem of autocratic exile (hence the limit to the inspiration).

For one thing, domestic debates about compromises with authoritarian wrongdoers make no room for salient duties borne by foreign actors. As a result, these debates overlook the fact that some foreign countries might be in a morally distinct position vis-à-vis any possible compromise that a transitioning society might reach

²⁰Krcmaric 2020, 42.

²¹As I note below, the focus of the relevant empirical research has been on the international deterrence of *atrocities* crimes. However, adopting a self-imposed handicap on my argument, I shall assume (at least *arguendo*) that a similar cross-border deterrence effect obtains for other kinds of crimes as well. Most importantly for what follows, I assume that the sight of one autocrat failing to get away with grand larceny might actually disincentivize future autocrats – not just at home but also abroad – from resorting to such larceny to begin with.

²²See references below.

²³See, e.g. O’Donnell and Schmitter 1986, 32; Huntington 1991, 228. See also Freeman 2009; Elster 2012. Some critics, it is worth noting, have disputed the ‘peace versus justice’ dilemma directly, arguing that ‘the history of impunity has hardly racked up a stunning record for peace’. See Jo and Simmons 2016, 445, as well as Dancy 2018. Other critics have pointed to alternative policy mechanisms of considerable significance, such as truth commissions and other forms of social accountability that do not necessarily involve criminal trials for authoritarian offenders. See for instance Posner and Vermeule 2003; Dukalskis 2011.

with its autocrat. I will argue that this fact is pivotal to a compelling normative analysis of autocratic exile.

Furthermore, purely domestic debates about ‘peace versus justice’ cannot capture the international deterrence costs associated with autocratic exile, nor can such debates capture the distinctive moral justification that these costs require. If autocrats do indeed learn from the fortunes of their foreign counterparts, and if they are therefore emboldened by any given ‘golden parachute’ enjoyed by one of their foreign peers, then it follows that every transitioning society owes justification to foreign countries with their own (aspiring or actual) autocrats, in case it produces headwinds for them by striking an exile compromise with its autocrat. This need for international justification, moreover, stands even if the exile compromise in question does actually lead (eventually) to durable democracy at home. Yet domestic debates about ‘peace versus justice’ do not provide us with any real guidance on how to think about tragic circumstances where the democratic gains to one society come at the expense of enhanced risks to democracy in other societies.²⁴

Dismissing the dilemma?

My mission is to end impunity for these crimes in order to contribute to the prevention of future crimes. (International Criminal Court Chief Prosecutor Luis Moreno-Ocampo, 2010)

[W]as it better to offer him sanctuary...or would it have been better to say to him when he was still in power, ‘We are going to prosecute you’? The reaction of any autocratic ruler under those circumstances would be to hold on to power as long as he possibly can...Threatening these actors with prosecution may make it more difficult to get rid of them. (Stephen Krasner, on Idi Amin’s exile, 2003)

If you have a system of international justice, you’ve got to follow through. If in some cases that’s going to make peace negotiations difficult, that may be the price that has to be paid’. (Yugoslav and Rwandan tribunals prosecutor Richard Goldstone, 2007²⁵)

The philosophical guidance that I wish to provide is partly meant to preempt a simple dismissal of the normative dilemma I just identified. More specifically, I wish to preempt three seemingly tempting ways to dismiss the dilemma – all of which have been present in the literature.

²⁴To be sure, even domestically, a given generation might very well owe a later generation justification for taking a lenient approach toward high political crime. But, at least absent a sustained argument, it is highly doubtful that such inter-temporal justification is identical in its normative structure to international justification. If nothing else, this is because in a purely domestic case, later generations will typically also reap not just costs but also certain benefits (at least indirectly) from previous generations’ lenience toward wrongdoers. In contrast, when thinking about damage to international deterrence as a result of a given society’s exile compromise with its autocrat, the benefits to foreign societies are hard to find. That is only one reason why lenience might be easier to justify across time than across space (for analogous observations in another context, see Nili 2015).

²⁵All three are quoted in Krmaric 2020, 8, 53, 189 (respectively).

First, there is the temptation to assume that policy decisions regarding compromises with autocrats involve few genuinely *normative* puzzles. On this view, as one political scientist puts it, the ‘critical questions are empirical’.²⁶ Accordingly, if we could only have enough confidence in the probabilities we assign to the possible outcomes of different policies over different time-spans, our normative questions would effectively disappear – presumably because the cost–benefit analysis of the relevant policy options would become straightforward. However, a singular focus on cost–benefit analysis simply ignores non-consequentialist approaches to political morality – and can arguably be dismissed on this ground.

The second temptation I wish to preempt is the temptation to associate rigorist treatment of authoritarian wrongdoers with retributivist zeal. Several influential political scientists who have criticized criminal trials for members of authoritarian elites have assumed that only a transitioning society which assigns intrinsic moral value to punishing authoritarian wrongdoers will refrain from pragmatic, forward-looking compromises with such wrongdoers.²⁷ This assumption ‘solves’ the policy dilemma by asserting that the dilemma only arises if we adopt (an implausibly rigid form of) retributivist fixation on the past.²⁸ But instead of stacking the deck this way, it is more fruitful (and more accurate) to construe both sides to the debate as *non*-retributivists, who share the claim that criminal punishment can only have instrumental rather than any intrinsic moral value.²⁹ The real point of contention between them is not about the past, but rather about whether decisions regarding possible compromises with autocrats should prioritize the global long-run or the local present.

The final temptation that I wish to preempt is the temptation to dismiss this dilemma by dismissing any empirical evidence regarding long-run deterrence as ‘speculative’.³⁰ In 2008, for instance, the same prominent political scientist who asserted that the ‘critical questions are empirical’ also asserted the following:

I do not believe that we have sufficient evidence to sacrifice lives in the ‘short term’ because more will be preserved in the ‘long term’...At one level this...is about another failure of social science. The task of social science is to establish generalizations buttressed so solidly with replicable evidence that they will be widely accepted, even by people who initially disbelieve them. We don’t do this very well for a variety of reasons...we have no unanimous, persuasive answers...we do not know, in such a manner as to persuade others, what is true, what will work, even in general, much less in particular situations that may not follow the general patterns we seek to trace.³¹

²⁶Licklider 2008, 385.

²⁷See especially Snyder and Vinjamuri 2003; Goldsmith and Krasner 2003.

²⁸Consider Mirjan Damaska (2008, 332): ‘The demand to enforce international criminal law...begins to clash with deeply troubling prudential calculations: how many lives should be sacrificed to provide justice for the dead?’

²⁹Goldsmith and Krasner (2003, 48) explicitly suggest that this claim is unique to consequentialism. Snyder and Vinjamuri (2003, *passim*) implicitly make the same suggestion. But this suggestion is mistaken. See, e.g. Tadros 2011.

³⁰See, e.g. Fish 2010, 1709; Ainley 2011.

³¹Licklider 2008, 385.

I strongly agree with the claim that we should beware excessive ambitious in social science, and obviously, the further into the future we look, the more ambitious the relevant social science becomes.³² Nonetheless, I also believe that we should take seriously the idea of long-term deterrence against autocracy, for several reasons.

For one thing, even where empirical testing is difficult, we immediately recognize the intuitive appeal of similar deterrence hopes in other contexts where unsavory compromises with wrongdoers must be countenanced. Consider, for instance, the familiar claim that that we should not accede to ransom demands – whether coming from cyber-criminals or from ‘classic’ hostage-takers – because doing so would only further incentivize more criminals to try to extract ransoms in the future. In most (if not all) contexts, this claim too may also be hard to assess empirically. Yet despite these empirical obstacles, this claim obviously informs actual policy discourse, and regularly shapes actual policy decisions.³³

Furthermore, at least when it comes to atrocity crimes, there *is* accumulating empirical evidence in support of an actual deterrence effect, resulting from rigorist treatment of wrongdoers. More specifically, in recent years, multiple scholars have offered empirical grounds for believing that trying one autocrat for overseeing atrocities deters other countries’ autocrats from resorting to atrocities themselves (if they have not already sunk to such lows).³⁴ We therefore have *genuine* empirical reasons for taking seriously tragic deterrence dilemmas, of the sort emphasized by Daniel Krmaric:

[C]onsider what would have happened if the international community had somehow convinced Assad to give up power when the Syrian rebels first marched on Damascus in 2012...If the Western powers...created a secure exile option for Assad, other leaders would realize that the international community is not serious about enforcing international criminal law. As a result, other leaders would not be deterred when contemplating their own campaigns of mass killing. Yet, giving Assad a golden parachute back in 2012 likely could have helped resolve the war in Syria before it become the devastating, intractable conflict that it is today. Of course, there is no easy solution here...Insisting that Assad be treated as a war criminal creates incentives for him to fight until the bitter end. Yet, successfully prosecuting Assad would bolster deterrence by sending a message...that the international community will not tolerate mass atrocities...When making decisions about whether to pursue or forgo global accountability for oppressive leaders, the international community can help resolve today’s civil wars *or* help prevent tomorrow’s atrocity crimes. It cannot, however, do both at the same time. That is the crux of the justice dilemma.³⁵

My final reason for taking the deterrence rationale seriously is perhaps the most important. In seeking to defeat such a rationale, there is value (philosophically

³²In fact, I have invoked this very claim in past essays. See, e.g. Nili 2016a, 2018c.

³³See, e.g. Howard 2018. I say more below on the analogy between dictators and hostage-takers. For an extended discussion of this analogy, see Nili 2023, Ch. 5.

³⁴See, e.g. Akhavan 2001; Olsen *et al.* 2010; Kim and Sikkink 2010; Jo and Simmons 2016.

³⁵Krmaric 2020, 195 (italics in the original).

and practically) in showing that it will often fail normative scrutiny, even if its empirical basis *is* solid, and even if international prosecutors' deterrence hopes are therefore cogent. That is what I wish to show here. I aim to establish that there is a crucial set of cases in which powerful democracies ought to facilitate autocratic exile, even if global deterrence against autocracy will indeed be damaged as a result.

The transitioning society's perspective

With this background in hand, we can complete the setup of our discussion with three final assumptions, which I will deploy to make the argument more tractable. One assumption is that the opposition facing the autocrat within a transitioning society has real prospects of establishing democratic institutions in case he heads into exile. In making this assumption, I am bracketing questions regarding a possible exile arrangement where the current autocrat is only likely to be replaced by another autocrat.³⁶ Another key assumption is that, if he heads into exile, the autocrat in question will not endanger the host country's democratic institutions. Finally, I assume that, given the relevant deterrence benefits, no normative puzzle arises if a transitioning society overwhelmingly opposes a 'golden parachute' for its autocrat. Under such circumstances, an exile arrangement clearly ought to be taken off the table.

A normative inquiry into autocratic exile should therefore start elsewhere – by asking whether it is morally permissible for a transitioning society to *accept* an exile arrangement, despite exile's repercussions for global deterrence.³⁷ This question, in turn, promptly brings another in its wake. Outsiders might very well encounter serious obstacles in ascertaining the transitioning society's preferences regarding autocratic exile, given both general informational limitations and the likelihood of internal disagreement on the autocrat's proper fate. Given these obstacles, what should foreigners – and most importantly, any foreign country that might serve as the autocrat's exile destination – assume about relevant popular sentiments? This section examines both questions.

Accepting autocratic exile: the transitioning society's prerogative

I wish to show that a transitioning society normally has the moral prerogative of accepting an exile compromise with its autocrat, even when such a compromise is suboptimal from a global perspective, due to its repercussions for global deterrence. The argument in favor of this prerogative can be summarized as follows:

- (1) If the course of conduct that is impartially best entails grave harm for the agent(s) who might adopt it, it is normally morally optional rather than required.
- (2) (From 1) *The default prerogative*: in circumstances where the victims of serious crimes must either suffer further grave harms at the perpetrators' hands

³⁶Or where an exile arrangement would clearly only allow the autocrat to re-group and (in all likelihood) return to power later on.

³⁷There are obviously different ways in which a transitioning society might 'accept' an exile arrangement for its autocrat. I note several possibilities below.

or compromise with the perpetrators, the default assumption should be that victims have the moral prerogative of accepting a compromise, even if rejecting a compromise would be impartially best.

- (3) *The manageable risk principle*: in certain cases, a compromise between the victims and the perpetrators is impartially suboptimal because it increases the risk of grave harm befalling other parties. But it matters whether these other parties are able, *without* incurring dramatic costs, to act so as to bring this risk (at least roughly) back to its pre-compromise level. If all relevant other parties have this ability, then this suffices for the victims to be morally permitted to compromise with the perpetrators.³⁸
- (4) Normally, both the default prerogative and the manageable risk principle apply when a transitioning society is considering a compromise with its autocrat.
- (5) (From 2, 3, and 4): a transitioning society normally has the prerogative of accepting a compromise with its autocrat.
- (6) Among the compromises that a transitioning society might reach with its autocrat, the exile compromise stands out, given credible-commitment considerations.
- (7) (From 5 and 6): a transitioning society normally has the moral prerogative of accepting an exile compromise with its autocrat.

We can unpack this argument by considering each of its steps in turn. Premise 1 reflects a bedrock conviction of commonsense morality: because each one of us has a separate life to lead, it is overly demanding to insist that agents must always try to maximize good in the world, regardless of the costs that they might have to shoulder in the process. To insist that ‘the hardships of some’ are always ‘offset by a greater good in the aggregate’ is to ignore what Rawls famously termed the ‘separateness of persons’.³⁹ In turn, from this core conviction follows the familiar idea that if doing what is optimal for the world entails heavy costs for them, agents normally have the moral prerogative of prioritizing their own interests instead.⁴⁰

Consider next the ‘default prerogative’ in step 2. Victims who have no good choices in the face of perpetrators’ threats normally have the same prerogative enjoyed by the rest of us in less tragic circumstances. They too are typically morally permitted to refuse to do what is in the world’s best interest, when this means undertaking dramatic sacrifices. Compromising with perpetrators may very well conflict with the interests of humanity writ large. Nonetheless, victims normally have the prerogative of accepting such a compromise, if that is their only way of avoiding extraordinary harms.

Step 3 refers to circumstances where it may initially seem as if this default prerogative disappears. Where victims’ compromise with perpetrators increases the risk of grave harm to other parties, it is tempting to think that once the number of such parties crosses a certain threshold, the default prerogative must give way. The manageable risk principle, however, shows that this is not so. According to

³⁸Note that my argument does not depend on whether this sufficient condition is also necessary.

³⁹Rawls 1999, 24.

⁴⁰See, e.g. Scheffler 1982.

the principle, a sufficient condition for the continued existence of the prerogative is that the other parties who face heightened risk of grave harm due to the compromise can respond by making adjustments which are not overly costly, and which would return the relevant risk (at least roughly) to its pre-compromise baseline.

As an example, consider a variant of a well-known actual case.⁴¹ The scion of an extraordinarily wealthy family is kidnapped by the mafia; the kidnappers tell their victim that they will murder him unless he arranges for a multi-million dollar ransom payment, even going so far as to cut off one of his ears to prove their seriousness. The victim knows that if he accedes to the kidnappers' demands, the public prominence of his case will increase the motivation of prospective kidnappers around the world to target the members of other wealthy families for similar treatment.

However, suppose that, informed that the kidnapped individual has arranged for a ransom to save his own life, every other affluent person affected by this ransom payment can bring the risk of his or her own kidnapping back to its earlier level, through means that each of them can afford (for instance, hiring adequate, reliable personal bodyguards). If this is the case, then the scenario is not one where the (virtually certain) harm suffered by one agent must be weighed against the elevated risk of comparable harm befalling multiple other agents. Rather, the scenario is one where the *grave* harm to one agent is *qualitatively worse* than the cost (of rational adjustments) for every other individual agent. Yet in *this* kind of situation, multiple philosophers have argued that the numbers are beside the point: no matter how much we may increase the number of those who face modest costs, we cannot aggregate these costs so as to outweigh a grave harm that would befall a smaller number of other agents.⁴² Accordingly, the kidnapping victim has the prerogative of negotiating with his captors in order to save his own life, no matter how many individuals would have to (each) incur modest costs as a result of him doing so.

With all this in view, consider step 4 of the argument, applying these ideas to a transitioning society's compromises with its autocrat. Just like the hostage, a transitioning society typically cannot avoid grave harms unless it makes at least some concessions to the perpetrators. Yet, again just as in the hostage case, these concessions are impartially suboptimal, insofar as they increase the risk that other parties will suffer grave harms at the hands of prospective perpetrators who will be tempted to imitate the current perpetrators' methods. The question, then, is whether the other parties can reduce this risk through measures that are not too costly. If compromising with a given autocrat incentivizes others to mimic this autocrat, are there non-burdensome policies that could counteract this incentive?

In normal circumstances, at least, the answer is quite clearly 'yes'. This is because our ability to discern certain patterns of authoritarianism which recur across different times and places should also translate into the ability to take pre-emptive action to reduce the risk of future authoritarian regimes. Thus for instance, suppose that we discern a growing international trend of political leaders who acquire authoritarian powers through the same institutional lacuna, such as the absence of (strictly

⁴¹For the case, see Weber 2011. For the latest account of the political significance of kidnapping for ransom, see Gilbert 2022.

⁴²See for instance Scanlon 1998; Kamm 2007; Voorhoeve 2014.

enforced) term limits, or through the same tactics for taking over the mass media. Such recurrent patterns would not necessarily preclude any given transitioning society from compromising with leaders of this sort. Rather, these patterns would reinforce the significance of preventative efforts to fix these recurrent democratic weaknesses in any country where they obtain – ensuring that term limits exist and are rigorously enforced, pursuing reforms and regulations that buttress media pluralism, and so on.

Similar thoughts apply to the central example of military rulers.⁴³ According to Sikkink, for example, the fate of military rulers is followed by young military officers, both at home and abroad, who use the trajectories of their seniors' careers to 'draw conclusions about their [own] future choices'.⁴⁴ This claim suggests that the main risk posed by lenient treatment of any given military ruler lies with the increased political ambitions of future military elites. The resulting task is therefore to implement policies that can restrain these ambitions without imposing severe social costs. Such policies can take several forms.⁴⁵ In some instances, civilian authorities might be able to check the military's political ambitions by routinely sending officers on international peace-keeping missions.⁴⁶ This tactic, pursued with considerable efficacy by post-authoritarian civilian governments from Latin America to sub-Saharan Africa, solidifies officers' professional identity as career soldiers rather than politicians, while also reducing the military's interest and ability to meddle in politics. In other instances, civilian governments might even be able to abolish their military completely (e.g. in the manner of Costa Rica) without incurring severe social costs. But even where such reform would go too far, there are still available policies which can often contain the risk of military interference in politics without dramatic costs. Abolishing conscription (in the manner of Argentina) is often a natural way to trim the military's wings. Slashing the military's budget might have the same effect in some countries, while in other countries with a history of military rule, regular modest increases in defense spending might actually be a more reliable way of preventing soldiers from forming too much of a taste for politics.

The deeper point here, however, obviously goes beyond particular tactics for dealing with politically risky militaries. Instead, it has to do with the *kind* of risk that future authoritarian regimes (be they military or civilian) represent, and that decisions regarding compromises with current autocrats must incorporate. The risk of future authoritarianism is not akin to certain processes in the natural world which, once set in motion, are largely impervious to human control. Rather, this is a risk that humans are normally quite capable of preempting. And this possibility of preempting the future danger explains why each transitioning

⁴³There is a large empirical literature on what is known as 'coup-proofing' techniques, meant to guard against military coups. The bulk of this literature is devoted to techniques deployed by autocrats. For overviews, see Böhmelt and Pilster 2015; Albrecht and Eibl 2018. But at least some of the same techniques clearly can be – and have been – utilized by democratic governments too, in morally innocent ways and to much more palatable ends.

⁴⁴Sikkink 2011, 259.

⁴⁵The following points drew on Rwengabo 2013; Rittinger and Cleary 2013.

⁴⁶See, e.g. Worboys 2007.

society is normally morally permitted to seek a compromise with its autocrat, if doing so is the only way to avoid grave harm befalling its current members.

In turn, if each transitioning society has the moral prerogative of compromising with its autocrat as a necessary means of avoiding grave harm, then each transitioning society also has, more specifically, the prerogative of accepting an exile compromise, given exile's distinct potential of neutralizing the credible commitment problem which so often inhibits peaceful transitions away from authoritarianism.

Ascertaining popular preferences

Establishing that a transitioning society can permissibly accept an exile compromise with its autocrat is the first step in our argument. The second step concerns the assumptions that foreign governments should make regarding the transitioning society's exile wishes.

I believe that, for practical purposes, foreign governments should approach a transitioning society's exile wishes as follows. In the absence of unequivocal evidence that a majority within the transitioning society *rejects* an exile arrangement, it is morally appropriate for foreign governments to assume that the transitioning society *accepts* an exile solution. In turn, for this assumption to obtain in a given case, it need not matter whether the exile solution is initiated by grassroots members of the opposition, by recognized opposition leaders, by the autocrat himself, by outsiders, or by any particular combination of these actors. On any of these variants, foreign countries can permissibly assume that a transitioning society accepts an exile arrangement, barring decisive evidence to the contrary.

Why is that? Why is it sensible for foreign countries to adopt as a default the assumption that transitioning societies 'opt in' for autocratic exile, rather than 'opt out'? The main answer has to do with a central empirical feature of popular protests against autocrats. In the overwhelming majority of cases, such protests explicitly revolve around the demand that the autocrat relinquish power. But this demand is crucially distinct from the (more ambitious) demand that the autocrat submit himself to legal authorities to face trial for any relevant crimes. Moreover, very much related, in those cases where the stand-off between the autocrat and the popular opposition is indeed resolved through exile, mass celebrations typically follow – clearly conveying a sense that the opposition has achieved its primary goal by ending the autocrat's rule, notwithstanding the fact that he is now beyond the effective reach of the country's laws.

I should stress that in highlighting this empirical pattern, I do not mean to ignore the fact that transitioning societies often feature minorities which would prefer accountability for the autocrat over safety. Nor do I mean to reject the thought that an autocrat's specific victims ought to enjoy a prominent role in societal deliberations about his fate – a role which a majority may very well fail to honor.⁴⁷ What I do mean to reject is any kind of *veto right* for specific victims regarding societal compromise with the autocrat.⁴⁸

⁴⁷For claims in this spirit, see Song 2015.

⁴⁸This point should be especially clear regarding autocrats whose main crimes have been those of kleptocracy, since such crimes, targeting public property, have the people as a collective, rather than individual citizens, as their victim. See Nili 2013, 2019b.

Similarly, I do not mean to suggest that it is entirely unlikely that a transitioning society will oppose an exile solution in a way that ought to matter to foreign actors. Rather, my suggestion is that an exile solution ought to be taken off the table if – and *only* if – there is clear evidence that a majority within the transitioning society is willing to undertake the risks involved in a dogged pursuit of legal accountability for the beleaguered leader.⁴⁹

Extending the scope of our discussion will give us a better sense of how such evidence might look. So far, we have focused on beleaguered autocrats who have so thoroughly distorted democratic institutions that no legal challenge to their rule had any serious chance of success. Some beleaguered incumbents, however, may find that their attempts to hollow out liberal-democratic institutions have only been partially successful, and that conventional legal challenges – including challenges to their personal liberty – are therefore a clear and present danger. These leaders too (whom we might think of as aspiring rather than actual autocrats) might effectively threaten social and political chaos unless granted immunity from the law. Yet when faced with such aspiring autocrats, there might very well be a societal majority which demands not only that the incumbent relinquishes power, but *also* that he submit to the law. When that is the case, no exile solution protecting the incumbent from the law should be entertained.

To see why this is not a purely theoretical construct, consider the following case. In 2014, an anti-corruption government taskforce in Papua New Guinea, set up by Prime Minister Peter O'Neill 3 years earlier, issued a warrant for O'Neill's own arrest. The arrest warrant was based on O'Neill's alleged complicity in an attempt by an extremely powerful lawyer to siphon off to Australia millions of dollars that were illicitly extracted from Papua New Guinea's public coffers. Rather than submitting to the warrant, which was endorsed by Papua New Guinea's top judge and police officer, O'Neill 'took refuge under armed guard in parliament, replaced the police commissioner with a more pliable candidate, and cut off funding to the task force'.⁵⁰ It would not have been hard to imagine massive demonstrations by O'Neill's compatriots demanding that he submit to the arrest warrant, even if compelling him to do so would cost lives.⁵¹ And such demonstrations, in turn, would have clearly sufficed to make it impermissible for any foreign country (including Australia, keen to court O'Neill for its own reasons⁵²) to offer O'Neill exile as a way of defusing the crisis.

A similar point, in turn, applies to more subtle aspiring autocrats who find themselves in legal peril. Consider, for instance, Israel's longest-serving Prime

⁴⁹Some might worry that this condition, insofar as it focuses on informal popular preferences, ignores the possibility that a successor government might formally request the (ex)autocrat's extradition. Given space constraints, here I can only note (without fully defending) my view that such requests should not be taken at face value. This is mainly because a successor government will typically have political capital to gain but little to lose from demanding an ex-autocrat's extradition in public, while secretly assuring other countries that it has no real interest in having this request fulfilled. I hope to be able to defend this view in detail in future work. For pertinent empirical work, on the significance of secret assurances in international relations more generally, see Yarhi-Milo 2013.

⁵⁰Sharman 2017, 154.

⁵¹For further background, see Cochrane 2014.

⁵²Sharman 2017, 158–59.

Minister. Despite – and indeed partly *because* – of his systematic efforts to remove any constraints on his power, Benjamin Netanyahu was indicted in 2019 on charges of bribery, fraud, and breach of trust that could see him spend years behind bars.⁵³ Both before and after the long-expected indictment, Netanyahu and his acolytes violated almost every conceivable constitutional norm, short of explicitly calling for civil war, in an attempt to shield him from the law. Public proclamations that ‘millions will take to the streets’⁵⁴ in case of a criminal trial against the Prime Minister were augmented by Netanyahu loyalists physically targeting prosecutors, and by Netanyahu himself, in an incendiary speech outside the courtroom, not only insisting that prosecutors had lunched a ‘coup’ against him but issuing thinly veiled threats at the judges.⁵⁵ The attendant social and political upheaval has included an unprecedented series of five national elections in less than 4 years, all forced by Netanyahu in an attempt to secure a parliamentary majority that would provide him with Berlusconi-style retroactive immunity from criminal prosecution.⁵⁶ By the summer of 2021, Netanyahu’s desperate attempts to cling to power alienated enough of the political class to produce the most heterogeneous political coalition in Israeli history, united (temporarily) only by the conviction that Netanyahu must not be allowed to ‘hold the country hostage’⁵⁷ in pursuit of personal immunity from the law. Insofar as this has been the central message of numerous anti-Netanyahu protests, it would be wrong for any foreign country to try to defuse the – still ongoing – crisis by offering Netanyahu a golden parachute. This, notwithstanding widely circulated claims that Netanyahu would head abroad if allowed to retire without serving time in prison.⁵⁸

Facilitating an exile compromise: implicated countries’ responsibilities

The last section argued that a transitioning society normally has the moral prerogative of accepting an exile compromise with its autocrat. I also argued that foreign

⁵³See, e.g. Raoul Wootliff, ‘AG announces Netanyahu to stand trial for bribery, fraud and breach of trust’, *Times of Israel*, 21 November 2019, at www.timesofisrael.com/ag-announces-netanyahu-to-stand-trial-for-bribery-fraud-and-breach-of-trust/.

⁵⁴See, e.g. Carolina Landsmann, ‘With Indictment, Netanyahu’s Gaslighting Will Only Get Worse’, *Haaretz.com*, 28 February 2019, at www.haaretz.com/opinion/premium-with-indictment-netanyahu-s-gaslighting-will-only-get-worse-1.6980893.

⁵⁵See, e.g. Yossi Verter, ‘Anarchy Prevails in Israel, and It Starts With Netanyahu’, *Haaretz.com*, 9 October 2020, at <https://www.haaretz.com/israel-news/premium-anarchy-prevails-in-israel-and-it-starts-with-netanyahu-1.9222686>.

⁵⁶For background, see Nili 2020, Ch. 4.

⁵⁷In a widely cited speech on the eve of Netanyahu’s temporary ousting, one of Netanyahu’s former-allies-turned-rivals, a former defense minister and military chief of staff, told the anti-Netanyahu crowds, ‘If the government is replaced tomorrow, I can say that this is the longest hostage rescue operation I have participated in’. See, e.g. ‘Thousands gather at Balfour, Rabin Square to celebrate new government’, *Jerusalem Post*, 13 June 2021, at <https://www.jpost.com/israel-news/protesters-to-gather-in-support-of-new-government-670873>.

⁵⁸See, e.g. Hauser Tov 2021. At the time of writing (early 2023), the anti-Netanyahu camp appears determined not to budge in its demand that Netanyahu’s criminal trial will continue, even though the risk of macro-level violence keeps increasing. See, e.g. Keller-Lynn 2023; Misgav 2023. This camp’s most immediate problem is the mismatch between the popular majority supporting the continuation of Netanyahu’s trial (on the one hand), and (on the other hand) Netanyahu’s renewed parliamentary majority (a result of the peculiarities of Israeli electoral law), which he is predictably deploying to Berlusconi-style ends.

governments' default presumption should be that a transitioning society accepts an exile compromise, barring clear evidence that a majority insists on holding the autocrat legally accountable.

Building on these claims, we can now turn to examine the moral responsibilities of particular foreign countries, when faced with a transitioning society that is presumed to accept an exile arrangement for its autocrat. According to what we might term *the deterrence view*, these responsibilities are straightforward, partly because they do not vary across different foreign countries. No foreign country should facilitate autocratic exile – neither directly (by admitting the autocrat into its own jurisdiction), nor indirectly (by inducing another foreign government to provide a secure exile destination). The reason is that every foreign country ought to prioritize global deterrence – *including* countries that have themselves been implicated in the relevant autocrat's rule through policies that have foreseeably empowered him (call these 'implicated countries').

I wish to contest the deterrence view, and to defend the *fairness view* as an alternative. According to the fairness view, the fact that a foreign country's policies have foreseeably empowered the autocrat is normatively important, because it means that this country has *foreseeably played a significant role in forcing the transitioning society into its current predicament*. And because of this role, each implicated country normally ought to prioritize the transitioning society's interest in an exile solution over global deterrence.

The core problem with the deterrence view is that it ignores fairness considerations that ought to guide implicated countries' response to the transitioning society's predicament. The best way to evince this problem is to consider three categories of cases in which foreign countries' policies foreseeably empower an autocrat, in a way that forces the transitioning society into a manifestly non-ideal choice as to how to deal with him. So long as the transitioning society does not clearly opt against an exile arrangement, each of these categories is sufficient to generate a moral duty for the implicated foreign country to facilitate such an arrangement. I examine each category in turn.

Implicated countries: the case of wrongful actions

The first category is one where a foreign government has (a) foreseeably empowered the autocrat through its *actions*, and (b) these actions have been obviously morally wrong. Consider, for instance, a foreign government which has repeatedly sold crucial surveillance equipment to an autocrat, in full knowledge that the autocrat will rely on this equipment to track and repress peaceful dissidents. In cases of this sort, there is very strong reason to think that the manifestly non-ideal choice now faced by the transitioning society – whether to fight the autocrat or compromise – is forced upon it, at least in part, because of the foreign government's wrongful actions. Nonetheless, according to the deterrence view, these wrongful actions do not change the fact that the foreign government in question is justified in refusing to support any exile compromise, irrespective of whether the transitioning society accepts such a compromise.

In order to assess this view, we should temporarily step back from the specific details of foreign countries' dealings with autocrats, and consider the situation in

more general terms. Our interest here is in cases where: (a) victims must either pursue an extremely costly confrontation with a perpetrator or accept a manifestly non-ideal compromise with the perpetrator; and (b) this choice is forced upon the victims, at least in part, because of a third party's wrongful actions. According to the deterrence view, the third party's wrongful actions do not change the fact that it is justified in refusing to facilitate a compromise between the victims and the perpetrators. I want to show that this claim is false.

The path to this conclusion starts with what it means to refuse to support victims' efforts to compromise with perpetrators. At least in the circumstances in which we are interested, such refusal effectively means *forcing the victims to confront the perpetrators*. This is because no agent can coherently refuse to help victims compromise with perpetrators while expecting another (fourth) party to offer the relevant help instead. Any agent who refuses to help the victims in this way must be willing to defend such a refusal even if it turns out to be universal. But a universal refusal to help the victims negotiate a compromise with the perpetrators would clearly be a way of forcing the victims to confront the perpetrators.⁵⁹

The deterrence view, in other words, is committed to the claim that a third party can force the victims to pursue a very costly confrontation due to a predicament that was partly brought about by the third party's own wrongful actions. Moreover, these imposed costs are coming on top of the costs that the victims had already been forced to incur as a result of the third party's wrongful actions. So a third party that effectively compels victims to confront perpetrators violates essential fairness constraints that ought to have moral primacy. Ultimately, it is the deterrence view's inability to account for these fairness constraints which renders it implausible.

To further develop this argument, it would help to elaborate on the relevant fairness constraints. Note, first, that it is widely accepted that a community's pursuit of its collective interests – including its morally significant collective interests – ought to be constrained by considerations of fairness in the distribution of relevant costs among its members. Second, a community's pursuit of its collective interests must be attentive not just to fairness in the distribution of costs among members at any given point in time, but also to fairness over time. This point is familiar in the domestic realm. If, for example, you have performed jury duty multiple times, or if you have already performed a lengthy national service of some form, but are asked to repeat your service yet again, there is plainly a point at which it is reasonable for you to insist that, as a matter of fairness, it is now someone else's turn to bear the relevant burden.

Now, admittedly, the international cases that are our ultimate subject here have a different structure than such familiar domestic cases. In domestic examples, the state as a generally recognized central authority is tasked with allocating the burdens associated with the pursuit of the community's collective interests. This means that the process of allocation is hierarchical in character: the state orders you to serve in a jury, just as it orders you to report to national service. In contrast,

⁵⁹To be clear, I take no stance on whether such forcing is always necessarily wrong. The claim (elaborated in a moment) is much narrower: such forcing is wrong in those specific circumstances where the party doing the forcing bears significant responsibility for the victim's predicament vis-à-vis the perpetrators.

international cases feature no effective overarching institution that allocates relevant costs among (the countries that are) the community's members. This means that the allocation is (at least in practice, if not in theory) often left to individual members to negotiate with one another.

However, essentially the same fairness constraint which obtains in the domestic examples also holds in such bilateral international contexts. Here too, the pursuit of what is best for the community as a whole is constrained by fairness in the allocation of the costs of this pursuit, and what fairness requires now will partly be a function of the burdens that each party has borne in the past. In a bilateral setting, more precisely, the fairness constraint is especially sensitive to what each party may have *done to the other* in the past. So the bilateral fairness constraint is especially pertinent where the current bilateral relationship is being negotiated against the background of wrongful past harms imposed by one party on the other.

To see the practical significance of all this, let us return from abstract reflections to concrete examples. More specifically, let us consider two examples that have important structural parallels to autocratic exile compromises. The first example is an actual, historical case. Throughout the 1980s and early 1990s, Pablo Escobar's infamous Medellín Cartel reaped staggering benefits from cocaine trafficking into the United States, against the background of the US 'War on Drugs'.⁶⁰ With an illicit personal fortune estimated at 30 billion dollars in 1993 (equal to 60 billion dollars in 2019 terms), Escobar was able to buy and/or terrorize a significant portion of Colombia's governing class, compelling successive Colombian administrations to negotiate with him. Thus for instance, in 1985, Escobar funded a notorious raid on the Colombian Supreme Court, which featured the taking of 12 justices as hostages and aimed at preventing drug lords' extradition to the United States. This aim was ultimately achieved in 1991, when a persistent campaign by Escobar and his associates led Colombian leaders to cave and pass a constitutional amendment prohibiting extradition of Colombian nationals. Similarly, rather than insist that Escobar face normal criminal proceedings, President Cesar Gaviria agreed to allow the kingpin to confine himself to a 'prison' that was actually an enormous mansion (designed by Escobar himself). In exchange for this safe 'internal exile', Escobar was supposed to commit to permanently retire from criminal activities.⁶¹

Now, one could very plausibly argue that, from a fully impartial perspective, these compromises were distinctly suboptimal, in light of their deleterious impact on the deterrence of kingpins around the globe. So it is easy to see why the world as a whole would have fared better had all Colombian politicians refused to concede anything to Escobar. According to the deterrence view, then, it would have been entirely appropriate for any country in the world to refuse to aid the Colombian government in compromising with Escobar and his ilk. So the United States, for example, was justified when it pressured the Colombian government not to compromise with Escobar.⁶²

⁶⁰This paragraph draws on Thompson 1996.

⁶¹For the deal and its aftermath, see the powerful epilogue to García Márquez 1997.

⁶²Thompson 1996, 61.

Suppose, however, that one accepts the following two claims. First, that the rise of drug lords such as Escobar would have been impossible without the War on Drugs: had the US government not been so hell-bent on its quixotic effort to eradicate all trade in certain substances, commercial exchanges of these substances would not have been nearly as lucrative, and gangsters like Escobar would accordingly lack both the motive and the means to spread violence and chaos. Second, that partly for this reason, the War on Drugs has been a policy disaster, wrongfully harming hundreds of millions of people around the world, among them a very large number of Colombians.

Both of these claims have been endorsed repeatedly by experts on drug policy.⁶³ But it is not necessary to defend them here. The point is simply that *if* they are granted – at least for the sake of discussion – then it follows that the deterrence view is wrong. There is at least one country that was *not* justified in refusing a Colombian request for help in negotiating with Escobar – and that is, of course, the United States. In line with the fairness view, the US government ought to have facilitated the Colombian government's effort to compromise with Escobar, since the need to pursue such a compromise would not have arisen to begin with had the United States itself not persisted in its harmful anti-drug crusade, with the empowerment of the drug cartels as its foreseeable result.

Now consider a second, hypothetical example. Building on the earlier discussion of hostage crises, and on the aforementioned reference to beleaguered leaders as large-scale hostage-takers, this example directly models the problem of autocratic exile on a small-scale hostage situation:

Robber's hostages: Thanks to expensive technology, Infamous Robber manages to break into the Victim family's home, but his heist goes astray. Hearing police sirens, Robber credibly threatens to shoot multiple Victims unless they allow him to escape. He then rushes to a back door that leads to a dense forest, and calls Forest Owner, asking her to click open the gate at the entrance to the forest. Forest Owner knows that opening the gate means ensuring Robber's successful escape from the police, and thus incentivizing copycats to attempt similar heists all over the area. On the other hand, Forest owner also knows that refusing to open the gate effectively means forcing a showdown between Infamous Robber and the police, in which at least one Victim is virtually certain to be shot.

If these are the only morally relevant facts, then it may be hard to say what Forest Owner ought to do. But suppose that there is another fact that must be accounted for. It is Forest Owner herself who, in full knowledge of Infamous Robber's criminal intentions, sold him the expensive equipment without which Robber could not have broken into the Victims' home. This fact clearly matters morally, for it means that Forest Owner's own wrongful actions have foreseeably empowered Robber at the Victims' expense. In turn, seeing as she herself is implicated in the Victims' predicament in this way, Forest Owner ought to prioritize the Victims' interest in emerging from this predicament alive (assuming there is no

⁶³See, e.g. Wood *et al.* 2009.

clear evidence that they choose to fight Robber), over the community's general interest in deterring future Robbers.

Much the same point, in turn, applies when a foreign government's wrongful actions foreseeably empower an autocrat at his victims' expense. Assuming that the victims prefer the autocrat's flight over a bloody fight, an implicated foreign government owes it to the victims to facilitate this flight. The implicated party – just as in the Escobar and Infamous Robber cases – ought to prioritize its particular moral duties to the victims whose predicament it helped create over the moral value of deterrence.

Implicated countries' wrongful omissions

The previous subsection explored one category of cases where implicated countries ought to facilitate autocratic exile. This subsection examines a second category. As in the first category, here too implicated countries' governments are guilty of serious wrongs. But, unlike the first category, here governments are guilty of wrongful *omissions*, rather than wrongful *actions*. More precisely, it is private actors based in the relevant countries whose actions foreseeably empower autocrats. The governments that regulate these private actors simply fail their moral duty to stop this private empowerment of autocratic rule.

In turn, arguably most significant case of private empowerment of autocratic rule is the financial empowerment of kleptocrats by foreign private banks, especially those banks based in the world's most affluent democracies. This particular form of autocratic empowerment is a *structural* problem, in terms of both supply and demand.

On the demand side, kleptocrats have recurrent incentives to ensure that the largest possible portion of their ill-gotten gains is stored abroad. For one thing, doing so is the most reliable way of complicating the work of any law-enforcement agencies that might seek to track their illicit assets.⁶⁴ Furthermore, no kleptocrat will rely solely on his country's financial system to protect his ill-gotten fortunes, since every kleptocrat knows that if he were to lose power, his illicit assets stored at home are bound to be confiscated (whether by a reformed government or by equally grasping rivals). Accordingly, kleptocrats, as corruption scholar J.C. Sharman puts it, 'have a strange relationship with the rule of law: contemptuous and corrosive of it at home, they are nevertheless keen on locating their wealth in states with strong property rights and effective laws'.⁶⁵

The supply side is no more encouraging. There is an abundance of evidence that numerous banks based in affluent democracies have long been – and continue to be – keen to serve as kleptocrats' money-launderers, paying little regard to anti-money-laundering regulations.⁶⁶ The other aspect of the supply problem is that in the overwhelming majority of cases, the governments tasked with regulating these banks refrain from meaningful criminal sanctions for the laundering of kleptocrats' ill-gotten gains. This is true even in those instances where governments officially recognize unequivocal evidence of bank violations of criminal prohibitions

⁶⁴Sharman 2017, 6.

⁶⁵Sharman 2017, 6.

⁶⁶See for instance Findley *et al.* 2014.

against such laundering.⁶⁷ In most other instances, governments opt for willful ignorance of such violations – ignorance that clearly does not exculpate the government for its blatant failure to act.⁶⁸

Now, my suggestion is that the relevant governmental omissions have a similar moral effect on the wrongful government actions discussed in the previous subsection. Here as there, the link between the foreign government's moral failures and autocratic rule generates a fairness-based duty to facilitate autocratic exile – even at the expense of global deterrence.

One way to see this duty is to recall an earlier observation, regarding the meaning of a foreign government's *refusal* to facilitate autocratic exile. Such refusal, we previously noted, is akin to forcing the transitioning society into a very costly confrontation with the autocrat. The deterrence view, in turn, holds that such forcing is warranted because it serves the global interest in deterring autocracy: the world's moral labor, as it were, happens to be divided in such a way so as to require that the transitioning society bear the dramatic costs of confrontation. But, in the circumstances in which we are interested, the transitioning society can reasonably complain that it would not be facing this extraordinary burden to begin with, had the foreign government in question been taking care of its own – far more modest – share of the world's moral labor, by preventing private actors under its jurisdiction from empowering the autocrat.⁶⁹ The availability of this complaint, in turn, explains why the culpable foreign government ought not impose the burden of confronting the autocrat on the transitioning society. Instead, so long as it is sensible to assume that the transitioning society accepts an exile compromise, the culpable foreign government is under a duty to facilitate such a compromise.

Unfair imposition

In the previous subsection, our focus was on a foreign country's wrongful omissions. But the fairness view suggests that an implicated country can have a duty to facilitate autocratic exile even in certain cases where its policies empowering the autocrat's rule are assumed to be justifiable rather than wrongful, all things considered.

The primary example here once again concerns foreign countries' lenience toward private banks, and the way in which such lenience supports foreign crime. More specifically, this example concerns lenience extended to 'systemically important' banks that routinely launder the proceeds of crime. Senior law-enforcement officials have publicly sought to justify such lenience, by pointing to the economic repercussions of a collapse of major banks in the aftermath of severe criminal sanctions targeting them.⁷⁰ However, our earlier conclusions remain intact even if we assume, *arguendo*, that these officials are in fact correct.

⁶⁷For some infamous examples from the UK, see Sharman 2017, Ch. 4, e.g. on 143.

⁶⁸Australia provides particularly galling examples of this point, as documented in Chapter 5 of Sharman 2017, aptly titled '*Australia: In Denial*'.

⁶⁹Sharman's description of an interview with British law-enforcement officials (Sharman 2017, 124) illustrates this point: 'British police giving advice on fighting corruption abroad recall being told, "It would be a damn sight easier if you [Britain] weren't laundering all the money".'

⁷⁰See, e.g. the 2013 US senate testimony on prosecution of financial crime by then-Attorney-General Eric Holder (US Senate 2013).

The main reason has to do with a simple observation. The fact that implicated countries' governments have repeatedly refused to prosecute major banks for mass-scale money laundering (even in the face of overwhelming evidence of such laundering) has caused profound damage to the deterrence of financial crime.⁷¹ But this damage, in turn, undermines any attempt by the same governments to invoke deterrence of financial crimes as a reason to block a transitioning society's exile compromise with its kleptocrat.

One way to see this point is to consider yet another angle on unfair distribution of costs in the pursuit of collective ends. Normally, a necessary condition for the justifiability of imposing serious costs on others in pursuit of collective ends is a willingness to incur comparable costs oneself in pursuit of the same ends. If one is *unwilling* to incur comparable costs for the sake of the relevant ends, then one cannot appeal to these ends to justify the imposition of such costs on others.

This point arguably obtains even in a hierarchical setting. Suppose, for example, that a senior manager at a large non-profit announces a junior-employee pay-cut, in the face of a deep financial crisis. By way of moral justification, the manager proclaims that all junior employees ought to be willing to prioritize the organization's socially valuable mission over their personal finances. It would clearly be morally untenable for the same manager to then dismiss calls to cut his own pay. Were he to be dismissive in this way, the natural reaction would be to accuse the manager of unfairly 'prioritizing' the organization's social mission only so long as someone else is paying the cost of this mission.

The same point, in turn, applies even more clearly in non-hierarchical settings, such as our international case, featuring sovereign countries that are supposed to relate to one another as equals. As was emphasized earlier, foreign countries that refuse to facilitate an exile compromise between a transitioning society and its autocrat must be willing to defend such a refusal even if it is universal, thus effectively imposing on the transitioning society the dramatic costs involved in a full-blown conflict with the autocrat. But foreign countries clearly cannot appeal to the deterrence of financial crime to justify imposing such costs on a transitioning society, if their own law-enforcement decisions regarding the largest banks show that they are patently unwilling to incur even lesser (economic) costs for the sake of the same end.

The future of international law: the kleptocrats, the murderous, and the ICC

We theorists of international law like to pose venturesome, vitalizing questions, sweeping in scope: What would an ideal system of international criminal law look like, for instance, relieved of today's geostrategic constraints? How might we lend some conceptual coherence to such a program, flesh out its normative details? [Yet] The more essential questions we need to ask these days are less 'inspiring': What would have to change, in the very near future, for international criminal law to survive at all, in any moderately acceptable form, so that the other, 'grandier' questions would merit so much of our

⁷¹For the latest evidence on this point, see Bullough 2022.

attention? How might this more modest sort of change come about? (Mark Osiel, 'The demise of international criminal law', 2014⁷²)

Let us take stock of our findings so far. The preceding arguments yield an important prerogative for transitioning societies that are considering an exile compromise with their autocrat, as well as important duties incumbent upon certain foreign countries. Each transitioning society normally has the moral option of seeking an exile compromise with its autocrat, notwithstanding the fact that such a compromise sets back global deterrence. In turn, the fact that a given foreign country has been entangled in an autocrat's rule is normally sufficient to generate a duty for the relevant country to facilitate autocratic exile in the interest of domestic peace and democracy – once again, even at the expense of global deterrence.

In this final section, I take up at length an important objection regarding the scope of my argument. This objection has to do with the distinction, noted at the beginning, between autocrats who have been implicated in mass atrocities (call these 'murderous' autocrats) and 'non-murderous' kleptocrats, who have not been involved in such atrocities. As we have seen, since the turn of the millennium, the exile prospects of these two kinds of autocrats have differed markedly. But this difference has been conspicuously absent from my analysis. This absence (according to the objection) is problematic. The reason is that if exile should be entertained for the murderous just as it should be entertained for non-murderous kleptocrats, then my account seems to pull the rug from under the feet of the evolving regime of international criminal accountability for atrocity crimes. Am I really willing to countenance such damage to international bodies with obvious progressive potential, such as the ICC?

Ultimately, the answer is 'yes'. However, since I recognize that this is a radical conclusion, I want to approach it gradually. My opening step is to preempt an intuitive but erroneous thought: that even if my reasoning has been cogent regarding kleptocratic exile, this reasoning does not carry over to the case of murderous autocrats, because here the practical stakes are much higher.

This thought does not align with the facts. The practical stakes involved in exile for 'mere' kleptocrats are *at least* as high as the stakes involved in exile for the murderous. This is not only because even 'mere' kleptocrats, who have never before engaged in large-scale violent repression, will be tempted to fight the opposition to the bitter end, if they know that fleeing the country is simply not an option.⁷³ Less obviously, the practical stakes in terms of lives saved are at least as high when it comes to ending kleptocratic rule, because kleptocracy too is a mass killer. There are multiple possible examples, ranging from corruption-stricken healthcare systems that have collapsed in the face of the COVID-19 pandemic,⁷⁴ to corruption-induced construction shortcuts that routinely lead to tens of thousands

⁷²Mark Osiel, 'The demise of international criminal law', *Humanity Journal*, 10 June 2014, at <http://humanityjournal.org/blog/the-demise-of-international-criminal-law/>.

⁷³For detailed evidence to this effect in the case of the aforementioned Compaore, see Krcmaric 2020, 164–79 (esp. 168–70). Similarly, recall the opening quote regarding Ben Ali.

⁷⁴See, e.g. Kitroeff and Taj 2020.

of avoidable deaths from moderate earthquakes.⁷⁵ So if there is a fundamental normative difference between exile for the murderous and exile for 'mere' kleptocrats, this difference cannot be due to any 'lower stakes' in ending kleptocratic rule. *Independently* of any differences in how we judge their respective characters, or indeed in how we judge the severity of their respective crimes, we can confidently say that in the case of 'mere' kleptocrats just as with the murderous, numerous lives depend on decisions regarding autocratic exile. It follows that if my arguments have been compelling with regard to exile for 'mere' kleptocrats, they should also generate (at the very least) a strong presumption in favor of analogous conclusions regarding exile for the murderous.

With this presumption in mind, let us now focus more squarely on the normative significance of the international accountability regime for mass atrocities. At the heart of this regime is the idea of external actors serving as 'backup enforcers' of the rights of individual victims, when domestic law-enforcement is either unable or unwilling to hold perpetrators accountable.⁷⁶ Such backup enforcement often means that international judicial bodies effectively override the decision of domestic officials not to prosecute (or to pardon) offenders. Am I committed to the idea that it is *always* problematic for international actors to act with such determination, when a transitioning society accepts a compromise with serious wrongdoers?

No. There certainly *could* be circumstances in which international actors are justified in defending individual rights that the relevant domestic government effectively refuses to protect. In particular, if it becomes clear that a given government is unwilling to use the law to uphold the basic equality of the members of systematically threatened groups, then it is entirely appropriate for international actors to take a whole slew of actions, going (at the limit) all the way to armed intervention. But this is not an apt description of standard cases where a transitioning society agrees to let an autocrat (and his cronies) off the hook in the name of domestic peace. Officials who refrain from prosecuting the elites of the old regime in order to maintain a fragile 'pacted' transition are not akin to bigoted officials who systematically refuse to prosecute certain crimes because their victims have (say) the 'wrong' racial, religious, or gender identity.

Still, some critics might worry that the preceding paragraphs elide the most crucial concerns about my position. For one thing, when it comes to exile for murderous autocrats, I seem to be calling on the world's most powerful democracies to actively defy international criminal law and its institutions, which were, after all, established by the international community. But this conclusion smacks of dubious Western exceptionalism. Moreover, such 'international civil disobedience' on the part of powerful democracies would surely be fatal to the entire project of international law. 'International law', as Ronald Dworkin for example puts it, 'is fragile, still nascent, and in critical condition. The proposition that a sense of moral duty can justify violations of international law threatens to strangle the child'.⁷⁷

⁷⁵See, e.g. Ambraseys and Bilham 2011. See also Gonul Tol, 'How Corruption and Misrule Made Turkey's Earthquake Deadlier', *Foreign Policy*, 10 February 2023, at <http://foreignpolicy.com/2023/02/10/turkey-earthquake-erdogan-government-response-corruption-construction/>.

⁷⁶See again Song 2015.

⁷⁷Dworkin 2013, 23.

I do not want to pretend that these concerns are entirely immaterial: I cannot claim that my position is an uncomplicated friend to international law. Nor, however, is it an unabashed enemy. To see why, note first that my claims do not depend on any particular view of ‘international civil disobedience’. Perhaps such ‘disobedience’ can be justified in certain instances, such as the NATO intervention in Kosovo, famously carried out in the absence of Security Council authorization.⁷⁸ But my argument does not hinge on this possibility. Much more modestly, the argument points to mechanisms which are already built into existing international law, but which have been (massively) under-utilized.

More specifically, I have in mind Article 16 of the Rome Statute underlying the ICC. This Article authorizes the UN Security Council to postpone ICC prosecutions for 1-year renewable periods in ‘the interests of peace and security’.⁷⁹ Yet the Security Council has never utilized Article 16, despite (among other things) the formal efforts of the African Union to set this Article in motion on two separate occasions.⁸⁰ I am suggesting, with the African Union and against the Security Council, that Article 16 should receive much more serious consideration. This is true, at least, in those cases where foreign countries have been entangled in a murderous autocrat’s rule, and where they consequently have a duty to his victims to facilitate his exile.

Is this appeal to Article 16 merely a form of legalistic dishonesty, effectively dismantling the ICC while preserving its façade? No, because the very *existence* of this Article is deeply pertinent to the objection at hand. This objection trades on the intuitive appeal of policies that sustain and bolster international legal institutions such as the ICC. But this intuitive appeal, in turn, is inseparable from the hope for a global future in which these institutions are genuinely analogous to the domestic legal institutions of consolidated liberal democracies. The very existence of Article 16, however, reminds us that such a future is (at best) extraordinarily distant. No consolidated democracy, after all, would ever even entertain a version of Article 16 as part of its own domestic law. No consolidated democratic government, even one that accords its prosecutors extensive discretion as to which criminal cases to bring, would ever announce formal provisions allowing legal officials to spare violent criminals simply due to fears that these criminals would unleash more violence if prosecuted. Such fears are not credible in a consolidated democracy – in fact, that is precisely what *makes* a democracy consolidated. Any consolidated democracy, by definition, enjoys the coercive capacities that are necessary to ensure the effective subjection of perpetrators to the law – no matter how willing they are to resort to violence.

Article 16, however, foregrounds the fact that international legal institutions manifestly lack these crucial capacities. The Article thus orients our normative comparisons in the right direction. It is implausible to compare the domestic

⁷⁸See, e.g. Buchanan 2001.

⁷⁹‘No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions’.

Rome Statute of the International Criminal Court (July 2002), 2187 UNTS 90.

⁸⁰See, e.g. Jalloh 2017.

benefits that compromises with murderous autocrats might yield to a global ‘fantasy upon fantasy’,⁸¹ of the sort explicitly urged by Dworkin, featuring a *fully empowered* ICC, perfectly capable of enforcing its edicts through some form of reliable global police force. Rather, the morally appropriate comparison is between the domestic benefits of compromise with the murderous and the *actual* international criminal system – shot through with (at best) amoral power politics, routinely accused of anti-African and other biases, and fundamentally lacking independent coercive capacities. Yet once *this* is the comparison on the table, I see no obvious reason to think that the domestic benefits highlighted by the fairness view are bound to lose out to any relevant international gains.

A further, related point is also worth stressing. It is a sad but simple truth that a fully empowered ICC (in the sense just identified) could never materialize, if none of the world’s most powerful countries were ever willing to place their military might at the service of international criminal justice. This observation is not meant as a license for messianic military interventions, nor as a reversal of the position that I have been defending throughout this essay. Rather, this observation is relevant here because it points to a necessary condition for the moral permissibility of any powerful foreign country actively sabotaging an exile compromise with a murderous autocrat. If what I said earlier is correct, and any foreign country that opposes an exile compromise with an autocrat is effectively seeking to compel the autocrat’s victims to fight him, then fairness arguably requires that any such powerful country also be willing to – literally – *join* the fight. Certainly, a government’s willingness to sacrifice the lives of some of its own citizens for a global cause may not suffice to make such sacrifice legitimate, nor suffice to legitimate the government’s demand that other societies sacrifice some of their members too. But we are already in a position to see why such willingness is morally *necessary*. In the absence of such collective willingness to sacrifice, it is implausible to demand that other societies make sacrifices for a global goal – in general, and particularly when other societies will be forced to pay an extraordinarily heavy price in pursuit of this goal.⁸²

In turn, taken together, the last few paragraphs also allow us to contest the charge of worrisome Western exceptionalism. The best way to do so is to consider a specific scenario, combining elements from several actual African cases. Suppose that, because of amoral geopolitical calculations, specific Western powers spend years arming, financing, and otherwise supporting a remote dictator, in full knowledge of the mass-scale atrocities that the dictator has repeatedly committed against his own people (as the United States and France did with Chad’s Hissene Habre, for instance⁸³). Years later, facing a real risk of defeat in a civil war, the dictator must choose whether to fight on, or to try to flee abroad. His former Western backers, no longer willing to support him, now proclaim themselves firm adherents to international criminal law, and consequently insist that the dictator must face trial for the atrocities that he has overseen, effectively blocking an exile solution, and thus

⁸¹Dworkin 2013, 14.

⁸²I have no problem if someone echoes Patrick Henry and says “Give me justice or give me death”. I am much more dubious of outsiders who say “Give them justice or give them death”. Licklider 2008, 385.

⁸³See Bronner 2014.

forcing an actual war between the dictator and his domestic opposition. The African Union, protesting this newfound Western rigorism as a real threat to the dictator's victims, initiates a formal process to activate the ICC's Article 16, in order to salvage peace negotiations. The same Western powers, however, scuttle this process, and the dictator's victims consequently endure more violence – all while the relevant Western governments would not even *entertain* the idea of committing their own troops to any international military force that might join the fight against the dictator. After several years of civil war, the dictator, facing imminent violent defeat, actually flees abroad only to be sent to The Hague following intense pressure from the same Western powers. The dictator's eventual trial and conviction are officially celebrated by the same powers, who herald the resulting global deterrence while only offering passing rhetorical acknowledgement of their own past entanglement in his crimes, without any substantive policy implications.

Now compare this – eminently realistic – scenario to one where the relevant Western governments *genuinely* own up to their entanglement in the dictator's rule, accordingly support the use of Article 16, and facilitate exile for this dictator to spare his victims further harm. Is it really clear, even from a moral perspective heavily concerned with Western exceptionalism, that the former, deterrence scenario, is preferable to the latter, exile route? I confess that I fail to see why.

I am strongly aware that my reasoning here points to decidedly grim conclusions, and that these conclusions are likely to induce a lingering sense of unease. After all, I seem to be calling on the world's most powerful democracies – long perceived as the essential (if deeply flawed) 'stewards'⁸⁴ of liberal values in international politics – to turn their backs on the morally inspiring international project of ending impunity for politically mighty criminals. The resulting unease, in turn, is likely to be felt most acutely by those who cling on the hope that the 'nascent' international legal system can generate its own momentum, even in the enduring absence of anything like a world state with a global police force. Some philosophers of international law, for example, believe that the very existence of international prosecutions for crimes against humanity can contribute to the transition toward a more cosmopolitan future, in which 'humanity' itself becomes a more salient locus of identity at the expense of separate national identities.⁸⁵ Am I really willing to scuttle this cosmopolitan hope? To derive, from affluent democracies' sordid past, policy prescriptions that take us further away from an uplifting vision for the global future?

My main response to this question is to note commonsensical limitations on the practical reach of the entanglement duties that I have emphasized here. Entangled parties' duties toward those whom they have harmed *normally* take precedence over their general moral reasons to make the world a better place. But 'normally' is not the same as 'always'. There could arise drastic circumstances in which the (future) good of the world does have moral priority over past sins.

⁸⁴Hafner-Burton 2013.

⁸⁵Thus e.g. David Lefkowitz, envisioning a 'single global political community', argues that 'it is partly through the international practice of holding actors accountable' for crimes against humanity, that 'such a global community comes to exist'. Lefkowitz 2020, 200–01.

Suppose, for example, that during World War II, the Axis were on the verge of invading India.⁸⁶ Suppose further (at least *arguendo*) that India's inability to protect itself from this threat on its own, and consequent desire to compromise with the Axis, stemmed in large measure from the centuries of colonial pillaging to which India has been subjected by the British. Even against this sordid historical background, it would have still been morally appropriate, all things considered, for the British to compel India to avoid compromising with the Axis – even by using force if necessary. Although the British would have clearly been entangled in India's predicament, the impartial good of the world writ large would have weighed so heavily, that the duties borne by the British toward India would have had to take a backseat to the fight for a world not dominated by the Nazis and their allies.

The general lesson of this example is that in global 'supreme emergencies',⁸⁷ the past does not morally govern the shape of the present and the future. Therefore, if someone could muster the evidence necessary to show that the linear advancement of international criminal justice, entirely unencumbered by past wrongs perpetrated by powerful democracies, also qualifies as a global 'supreme emergency', then I would be willing to revise the normative guidance I have offered here. I am simply skeptical that the requisite evidence exists.

To be sure, even the last few paragraphs may not bring much solace to those who want to hope that a better world may come about simply through the progressive realization of a normative vision, rather than through 'extra-theoretical' calamities. It would surely be better, for example, to achieve more robust supranational institutions (such as a solidifying European Union) because of the peaceful development of genuine cosmopolitan sentiment, without relying on the exigencies of an appalling war. Similarly, it would be much better to progress toward the ideal of a world state simply because a majority of humans come to see themselves first and foremost as citizens of the world, rather than because global environmental calamity has made the idea of national governments obsolete. But the mere fact that we would prefer non-tragic pathways to a better global future does not mean that such pathways will be available. In the world that we actually inhabit, tragedy is all around us. Even if participants in the debate on how to deal with the world's worst rulers can agree on little else, this much has been – and should remain – common ground.

Acknowledgments. The roots of this essay go back almost 15 years, to some of my earliest exchanges on the moral complexity of dealing with autocrats. At multiple points, I benefited greatly from conversations with Chris Armstrong, Christian Barry, Seyla Benhabib, Jamie Dunn, Lior Erez, Jesse Hamby, Shelly Kagan, Andy Koppelman, Lizzie Krontiris, Hélène Landemore, Kaitlin Moore, Dan Philpott, Thomas Pogge, Ian Shapiro, Matt Vermaire, Ernesto Verdeja, and Leif Wenar. When it finally came into life, this specific essay also benefited from presentations at the University of Chicago, the University of Illinois Urbana Champaign, and Reichman University. I am grateful to the participants at all of these events, especially Asif Efrat, Aziz Haq, Paul Gowder, Assaf Moghadam, Ben Miller Colleen Murphy, Sue Stokes, Maoz Rosenthal, Matt Winters, and Cara Wong. David Enoch, Alon Harel, and Ori Herstein saved me from various legal rabbit holes. Jeff Howard, Ted Lechterman, Jiewuh Song, and Jim Wilson offered insightful written comments on multiple drafts. Tom Abers Lourenço and Alex Lawson provided

⁸⁶For an actual (little-known) piece of history in the vicinity, see Mike Thomson, 'Hitler's secret Indian army', *BBC*, 23 September 2004, at <http://news.bbc.co.uk/2/hi/europe/3684288.stm>.

⁸⁷This phrase is famously due to Michael Walzer. See Walzer 2000.

excellent research assistance. Last but not least, thanks to Dan Krcmaric for his patience in debating the empirics of autocratic exile, and to the editors and reviewers for *International Theory*, whose feedback significantly improved the final product.

References

- Ainley, Kirsten. 2011. "The International Criminal Court on Trial." *Cambridge Review of International Affairs* 24: 309–33.
- Akhavan, Payam. 2001. "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?" *American Journal of International Law* 95 (1): 7–31.
- Albrecht, Holger, and Ferdinand Eibl. 2018. "How to Keep Officers in the Barracks: Causes, Agents, and Types of Military Coups." *International Studies Quarterly* 62 (2): 315–38.
- Altman, Andrew, and Christopher Heath Wellman. 2004. "A Defense of International Criminal Law." *Ethics* 115 (1): 35–67.
- Ambraseys, Nicholas, and Roger Bilham. 2011. "Corruption Kills." *Nature* 469: 153–55.
- Ambrosio, Thomas. 2017. "The Fall of Yanukovich: Structural and Political Constraints to Implementing Authoritarian Learning." *East European Politics* 33 (2): 184–209.
- Armstrong, Chris. 2020. "Dealing with Dictators." *Journal of Political Philosophy* 28: 307–31.
- Barry, Christian. 2011. "Sovereign Debt, Human Rights, and Policy Conditionality." *Journal of Political Philosophy* 19: 282–305.
- BBC. 2014. "In Pictures: Luxury Ukraine Presidential Home Revealed." 23 February. Available at <https://www.bbc.com/news/world-europe-26307745>.
- Böhmelt, Tobias, and Ulrich Pilster. 2015. "The Impact of Institutional Coup-Proofing on Coup Attempts and Coup Outcomes." *International Interactions* 41 (1): 158–82.
- Bronner, Michael. 2014. "Our Man in Africa." *Foreign Policy*, 24 January.
- Buchanan, Allen. 2001. "From Nuremberg to Kosovo: The Morality of Illegal International Legal Reform." *Ethics* 111: 673–705.
- Bullough, Oliver. 2019. *Moneyland*. New York: St. Martin's Press.
- Bullough, Oliver. 2022. *Butler to the World: How Britain Helps the World's Worst People Launder Money, Commit Crimes, and Get Away with Anything*. New York: St. Martin's Press.
- Chayes, Sarah. 2012. "Corruption is Still Tunisia's Challenge." *LA Times*, 10 June.
- Cochrane, Liam. 2014. "Legal Battle over the Arrest of Papua New Guinea's Prime Minister Peter O'Neill." *ABC*, 30 June. Available at <https://www.abc.net.au/news/2014-06-30/legal-battle-over-png-prime-minister-peter-oneill-corruption/5560918>.
- Cohen, Joshua. 2010. "Philosophy, Social Science, Global Poverty." In *Thomas Pogge and His Critics*, edited by Alison Jaggar, 18–45. London: Polity.
- Corey-Boulet, Robbie. 2015. "In Burkina Faso, a Mansion Offers a Glimpse into the Revolution." *Al-Jazeera America*, 7 May. Available at <http://america.aljazeera.com/multimedia/2015/5/In-Burkina-Faso-a-mansion-offers-glimpse-into-therevolution.html>.
- Damaska, Mirjan. 2008. "What is the Point of International Criminal Justice?" *Chicago-Kent Law Review* 83: 329–65.
- Dancy, Geoff. 2018. "Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace." *International Organization* 72: 387–421.
- Dreisbach, Tristan, and Robert Joyce. 2014. "Revealing Tunisia's Corruption under Ben Ali." *Al-Jazeera*, 27 March.
- Dworkin, Ronald. 2013. "A New Philosophy for International Law." *Philosophy & Public Affairs* 41: 2–30.
- Dukalskis, Alexander. 2011. "Interactions in Transition: How Truth Commissions and Trials Complement or Constrain Each Other." *International Studies Review* 13 (3): 432–51.
- Elster, Jon. 2012. "Justice, Truth, Peace." In *Nomos: Transitional Justice*, edited by Jon Elster, Rosemary Nagy and Melissa Williams, 78–97. New York: New York University Press.
- Faulconbridge, Guy, Anna Dabrowska, and Stephen Grey. 2014. "Toppled 'Mafia' President Cost Ukraine up to \$100 Billion, Prosecutor Says." *Reuters*, 30 April.
- Findley, Michael, Daniel Nielson, and Jason Sharman. 2014. *Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism*. Cambridge: Cambridge University Press.

- Fish, Eric. 2010. "Peace Through Complementarity: Solving the Ex Post Problem in International Criminal Court Prosecutions." *Yale Law Journal* 119: 1703–14.
- Freeman, Mark. 2009. *Necessary Evils: Amnesties and the Search for Justice*. Cambridge: Cambridge University Press.
- Gamarra, Ronald. 2009. "A Leader Takes Flight: The Indictment of Alberto Fujimori." In *Prosecuting Heads of State*, edited by Ellen Lutz and Caitlin Reiger, 95–110. Cambridge: Cambridge University Press.
- Gilbert, Danielle. 2022. "The Logic of Kidnapping in Civil War: Evidence from Colombia." *American Political Science Review* 116 (4): 1226–41.
- Goldsmith, Jack and Stephen Krasner. 2003. "The limits of idealism." *Daedalus* 132: 47–63.
- Govern, Kevin. 2011. "Avoiding Amnesty: Bringing the Gaddafis to Justice." *Jurist Forum*, 25 August. Available at <https://www.jurist.org/commentary/2011/08/kevin-govern-gaddafi-icc/>.
- Hafner-Burton, Emilie. 2013. *Making Human Rights a Reality*. Princeton, NJ: Princeton University Press.
- Harsch, Ernest. 2017. *Burkina Faso: A History of Power, Protest, and Revolution*. London: Zed Books.
- Hauser Tov, Michael. 2021. "Larry Ellison Offers Netanyahu Lucrative Oracle Post." *Haaretz.com*, 14 September. Available at <https://www.haaretz.com/israel-news/premium.HIGHLIGHT-larry-ellison-netanyahu-trial-witness-offers-ex-pm-seat-on-oracle-board-1.10209042>.
- Hobbes, Thomas. 1996 (1651). *Leviathan*. Oxford: Oxford University Press. Ed. G.C.A Gaskin.
- Howard, Jeffrey. 2018. "Kidnapped: The Ethics of Paying Ransoms." *Journal of Applied Philosophy* 35 (4): 675–88.
- Huntington, Samuel. 1991. *The Third Wave: Democratization in the Late Twentieth Century*. Norman, OK: University of Oklahoma Press.
- Jalloh, Charles Chernor. 2017. "The African Union, the Security Council, and the International Criminal Court." In *The International Criminal Court and Africa*, edited by Jalloh and Ilias Bantekas, 181–213. Oxford: Oxford University Press.
- Jerusalem Post. 2021. "Thousands Gather at Balfour, Rabin Square to Celebrate New Government." 13 June. Available at <https://www.jpost.com/israel-news/protesters-to-gather-in-support-of-new-government-670873>.
- Jo, Hyeran, and Beth Simmons. 2016. "Can the International Criminal Court Deter Atrocity?" *International Organization* 70 (3): 443–75.
- Kamm, Frances. 2007. *Intricate Ethics*. Oxford: Oxford University Press.
- Keller-Lynn, Carrie. 2023. "Gantz Says Judicial Reform Plan Will Lead to 'Civil War'; Urges Israeli Masses to Take to the Streets." *Times of Israel*, 9 January. Available at www.timesofisrael.com/liveblog_entry/gantz-says-judicial-reform-plan-will-lead-to-civil-war-in-israel/.
- Kim, Hunjoon, and Kathryn Sikkink. 2010. "Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries." *International Studies Quarterly* 54 (4): 939–63.
- Kitroeff, Natalie, and Mitra Taj. 2020. "Latin America's Virus Villains: Corrupt Officials Collude with Price Gougers for Body Bags and Flimsy Masks." *The New York Times*, 20 June.
- Krcmaric, Daniel. 2018. "Should I Stay or Should I Go? Leaders, Exile, and the Dilemmas of International Justice." *American Journal of Political Science* 62 (2): 486–90.
- Krcmaric, Daniel. 2020. *The Justice Dilemma: Leaders and Exile in an Era of Accountability*. Ithaca, NY: Cornell University Press.
- Landsmann, Carolina. 2019. "With Indictment, Netanyahu's Gaslighting Will Only Get Worse." *Haaretz.com*, 28 February. Available at www.haaretz.com/opinion/.premium-with-indictment-netanyahu-s-gaslighting-will-only-get-worse-1.6980893.
- Lefkowitz, David. 2020. *Philosophy and International Law: A Critical Introduction*. New York: Cambridge University Press.
- Levitsky, Steven, and Lucan Way. 2010. *Competitive Authoritarianism*. Cambridge: Cambridge University Press.
- Licklider, Roy. 2008. "Ethical Advice: Conflict Management vs. Human Rights in Ending Civil Wars." *Journal of Human Rights* 7: 376–87.
- Márquez, Gabriel García. 1997. *News of a Kidnapping*. Trans. Edith Grossman. New York: Vintage Books.
- Menninga, Elizabeth, and Alyssa Prorok. 2021. "Battles and Bargains: Escalation, Commitment, and Negotiations in Civil War." *International Studies Quarterly* 65: 409–22.
- Misgav, Uri. 2023. "No Compromise and no Dialogue: War." *Haaretz.com*, 26 January. Available at https://www.timesofisrael.com/liveblog_entry/gantz-says-judicial-reform-plan-will-lead-to-civil-war-in-israel/.

- Nili, Shmuel. 2011a. "Conceptualizing the Curse: Two Views on Our Responsibility for the Resource Curse." *Ethics and Global Politics* 4 (2): 103–24.
- Nili, Shmuel. 2011b. "Democratic Disengagement: Towards Rousseauian Global Reform." *International Theory* 3 (3): 355–89.
- Nili, Shmuel. 2011c. "Our Problem of Global Justice." *Social Theory and Practice* 37 (4): 629–53.
- Nili, Shmuel. 2013. "Rawlszickian Global Politics." *Journal of Political Philosophy* 21 (4): 473–95.
- Nili, Shmuel. 2015. "Environmental Reform, Negative Duties, and Petrocrats: A Strategic Green Energy Argument." *Journal of Politics* 77 (4): 914–27.
- Nili, Shmuel. 2016a. "Liberal Global Justice and Social Science." *Review of International Studies* 42 (3): 136–55.
- Nili, Shmuel. 2016b. "Liberal Integrity and Foreign Entanglement." *American Political Science Review* 110 (3): 148–59.
- Nili, Shmuel. 2017. "Customary Trade and the Complications of Consent." *Journal of Applied Philosophy* 34: 315–30.
- Nili, Shmuel. 2018a. "Injustice Abroad, Authority at Home? Democracy, Systemic Effects, and Global Wrongs." *American Journal of Political Science* 62 (1): 72–83.
- Nili, Shmuel. 2018b. "Integrity, Personal and Political." *The Journal of Politics* 80 (4): 428–41.
- Nili, Shmuel. 2018c. "The Moving Global Everest: A New Challenge to Global Ideal Theory as a Necessary Compass." *European Journal of Political Theory* 17 (2): 87–108.
- Nili, Shmuel. 2019a. "Global Poverty, Global Sacrifices, and Natural Resource Reforms." *International Theory* 11 (1): 48–80.
- Nili, Shmuel. 2019b. "The Idea of Public Property." *Ethics* 129 (1): 344–69.
- Nili, Shmuel. 2019c. *The People's Duty: Collective Agency and the Morality of Public Policy*. Cambridge: Cambridge University Press.
- Nili, Shmuel. 2020. *Integrity, Personal and Political*. Oxford: Oxford University Press.
- Nili, Shmuel. 2023 (forthcoming). *Philosophizing the Indefensible: Strategic Political Theory*. Oxford: Oxford University Press.
- O'Donnell, Guillermo, and Philippe C. Schmitter. 1986. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Baltimore, MD: Johns Hopkins University Press.
- Olsen, Tricia, Leigh Payne, and Andrew Reiter. 2010. "The Justice Balance: When Transitional Justice Improves Human Rights and Democracy." *Human Rights Quarterly* 32 (4): 980–1007.
- Osiel, Mark. 2014. "The Demise of International Criminal Law." *Humanity Journal*, 10 June. Available at humanityjournal.org/blog/the-demise-of-international-criminal-law/.
- Pogge, Thomas. 2001. "Achieving Democracy." *Ethics and International Affairs* 15 (1): 3–23.
- Posner, Eric, and Adrian Vermeule. 2003. "Transitional Justice as Ordinary Justice." *Harvard Law Review* 117: 762–825.
- Prorok, Alyssa. 2017. "The (In)compatibility of Peace and Justice? The International Criminal Court and Civil Conflict Termination." *International Organization* 71 (2): 213–43.
- Rawls, John. 1999. *A Theory of Justice*. Rev. ed. Cambridge, MA: Harvard University Press.
- Reuters. 2013. "Former Kyrgyz Leader's Son Sentenced in Absentia for Graft." 27 March.
- Rittinger, Eric, and Matthew Cleary. 2013. "Confronting Coup Risk in the Latin American Left." *Studies in Comparative International Development* 48 (4): 403–31.
- Rose-Ackerman, Susan. 1978. *Corruption: A Study in Political Economy*. New York: Academic Press.
- Rwengabo, Sabastiano. 2013. "Regime Stability in Post-1986 Uganda: Counting the Benefits of Coup-Proofing." *Armed Forces & Society* 39 (3): 531–59.
- Sadat, Leila N. 2006. "Exile, Amnesty and International Law." *Notre Dame Law Review* 81 (3): 955–1036.
- Scanlon, Thomas Michael. 1998. *What We Owe to Each Other*. Cambridge, MA: Harvard University Press.
- Scheffler, Samuel. 1982. *The Rejection of Consequentialism*. New York: Oxford University Press.
- Sharman, J.C. 2017. *The Despot's Guide to Wealth Management*. Ithaca, NY: Cornell University Press.
- Sikkink, Kathryn. 2011. *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. New York: Norton.
- Snyder, Jack, and Leslie Vinjamuri. 2003. "Trials and Errors: Principle and Pragmatism in Strategies of International Justice." *International Security* 28 (3): 5–44.
- Song, Jiewuh. 2015. "Pirates and Torturers: Universal Jurisdiction as Enforcement Gap-Filling." *The Journal of Political Philosophy* 23 (3): 471–90.

- Tadros, Victor. 2011. *The Ends of Harm*. Oxford: Oxford University Press.
- Tejan-Cole, Abdul. 2009. "A Big Man in a Small Cell: Charles Taylor and the Special Court for Sierra Leone." In *Prosecuting Heads of State*, edited by Ellen Lutz and Caitlin Reiger, 205–32. Cambridge: Cambridge University Press.
- Thompson, David. 1996. "Pablo Escobar, Drug Baron: His Surrender, Imprisonment, and Escape." *Studies in Conflict and Terrorism* 19 (1): 55–91.
- Thomson, Mike. 2004. "Hitler's Secret Indian Army." *BBC*, 23 September. Available at <http://news.bbc.co.uk/2/hi/europe/3684288.stm>.
- Tol, Gonul. 2023. "How Corruption and Misrule Made Turkey's Earthquake Deadlier." *Foreign Policy*, 10 February. Available at foreignpolicy.com/2023/02/10/turkey-earthquake-erdogan-government-response-corruption-construction/.
- UN Office on Drugs and Crime. 2003. *UN Guide for Anti-Corruption Policies*. Available at http://css.unodc.org/pdf/crime/corruption/UN_Guide.pdf.
- US Senate. 2013. *Hearing Before the S. Comm. on the Judiciary*, 113th Cong. (6 March 2013). Available at www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice-2013-03-06.
- Verter, Yossi. 2020. "Anarchy Prevails in Israel, and It Starts With Netanyahu." *Haaretz.com*, 9 October. Available at <https://www.haaretz.com/israel-news/premium-anarchy-prevails-in-israel-and-it-starts-with-netanyahu-1.9222686>.
- Voorhoeve, Alex. 2014. "How Should We Aggregate Competing Claims?" *Ethics* 125 (1): 64–87.
- Walzer, Michael. 2000. *Just and Unjust Wars*, 3rd edition. New York: Basic Books.
- Weber, Bruce. 2011. "J. Paul Getty III, 54, Dies; Had Ear Cut Off by Captors." *New York Times*, 8 February.
- Wenar, Leif. 2008. "Property Rights and the Resource Curse." *Philosophy & Public Affairs* 36: 2–32.
- Wenar, Leif. 2011. "Clean Trade in Natural Resources." *Ethics & International Affairs* 25: 27–39.
- Wenar, Leif. 2016. *Blood Oil*. Oxford: Oxford University Press.
- Wenar, Leif, Michael Blake, Aaron James, Christopher Kutz, Nazrin Mehiyeva, and Anna Stilz. 2018. *Beyond Blood Oil*. Lanham: Rowman and Littlefield.
- Wiens, David. 2015. "Natural Resources and Government Responsiveness." *Politics, Philosophy and Economics* 14 (1): 84–105.
- Wisor, Scott. 2016. "Conditional Coercion versus Rights Diagnostics: Two Approaches to Human Rights Protection." *Politics, Philosophy & Economics* 15 (4): 405–23.
- Wood, Evan, Daniel Werb, Brandon Marshall, Julio Montaner, and Thomas Kerr. 2009. "The War on Drugs: A Devastating Public-Policy Disaster." *Lancet (London, England)* 373 (9668): 989–90.
- Wootliff, Raoul. 2019. "AG Announces Netanyahu to Stand Trial for Bribery, Fraud and Breach of Trust." *Times of Israel*, 21 November. Available at www.timesofisrael.com/ag-announces-netanyahu-to-stand-trial-for-bribery-fraud-and-breach-of-trust/.
- Worboys, Katherine. 2007. "The Traumatic Journey from Dictatorship to Democracy: Peacekeeping Operations and Civil–Military Relations in Argentina, 1989–1999." *Armed Forces and Society* 33 (2): 149–68.
- Yarhi-Milo, Keren. 2013. "Tying Hands Behind Closed Doors: The Logic and Practice of Secret Reassurance." *Security Studies* 22 (3): 405–35.