

Legitimacy, Justice and Public International Law

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The responsibilities and legitimacy of economic international institutions

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Recently much has been written about the ethical issues surrounding global politics. There has, for example, been a considerable literature on global ideals of distributive justice. However, amongst all this, very little has been written by political theorists on some of the most significant international institutions, such as the International Monetary Fund (IMF), the World Bank and the World Trade Organisation (WTO).¹ Many discussions of global distributive justice tend to regard states as the central duty-bearers and assume that the pursuit of global justice requires, for example, an increase in states' overseas development budgets. There has, of course, been a considerable literature on some international institutions. Writers such as Daniele Archibugi and David Held have defended what they term a 'cosmopolitan democracy' where this calls for the democratisation of global political institutions.²

Earlier versions of this paper were presented at the Department of Philosophy, St Andrews (February 2004); the Department of Politics, University of Southampton (April 2004); the Centre for International Studies, University of Cambridge (October 2004); the School of Politics, International Relations and the Environment, University of Keele (June 2005); and the Symposium on 'Justice, Legitimacy, and Public International Law', University of Bern (December 2006). For their illuminating comments I am grateful in particular to Duncan Bell, Allen Buchanan, Andy Mason, Tony McGrew, David Miller, David Owens, Mark Philp, Nick Rengger, Steve Ratner, John Skorupski and Graham Smith. I am especially grateful to Corinna Mieth, my commentator at Bern, and to Mathias Risse for their extremely helpful written comments. The final draft of this paper was completed during my tenure of a Leverhulme Research Fellowship and I am extremely grateful to the Leverhulme Trust for its invaluable support.

¹ For one notable exception see Peter Singer's analysis of the World Trade Organisation in *One World: The Ethics of Globalization* (New Haven and London: Yale University Press, 2002), 51–105.

² See D. Archibugi and D. Held (eds.), *Cosmopolitan Democracy: An Agenda for a New World Order* (Cambridge: Polity, 1995) and D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity, 1995).

However, the focus of this perspective tends to be on reforming the United Nations.³

My aim in this chapter is to provide a provisional and tentative analysis of the normative nature of international economic institutions, such as the IMF, World Bank and the WTO. I shall make particular reference to these three institutions, in part, because they play an important role and, in part, to simplify the analysis. However, it is not assumed that these are the only international economic institutions of import nor is it assumed that the analyses that follow cannot be applied to other institutions.⁴ To this we should also add that the chapter is exploratory in nature. It certainly cannot claim to provide and defend a normative theory of international institutions. I hope, however, to outline the key tasks of such a theory, analyse several different approaches, identifying their strengths and weaknesses, and introduce and defend what I take to be the most promising account.

Four tasks

Let us begin by outlining the tasks ahead. A normative analysis of international institutions must, I believe, perform at least four tasks. First, it should be able to provide a plausible account of the *responsibilities* or *functions* of the institutions. What duties do international institutions have? And, how does one identify these duties? To illustrate the relevance of this point we might consider current debates surrounding the role of the IMF. Some, such as Nobel Laureate Joseph Stiglitz, maintain that it should restrict itself to the purposes outlined in the original Articles of Agreement that were signed by the member states.⁵ Others, such as the late Milton Friedman, argue that the IMF should have no role to play and should be disbanded.⁶ This too is a position that should be covered under the heading of 'functions'. Some, by contrast with these preceding views, would argue that institutions such as the IMF, World Bank and

³ Some, though, have made some suggestions concerning the accountability of international economic institutions: see T. McGrew, 'The World Trade Organization: Technocracy or Banana Republic?', in A. Taylor and C. Thomas (eds.), *Global Trade and Global Social Issues* (London and New York: Routledge, 1999), 197–216.

⁴ Also, it should be noted that international institutions vary tremendously. For example, some include virtually all states whereas others have more limited membership. Furthermore, they clearly differ in their roles and in their powers.

⁵ J. Stiglitz, *Globalization and its Discontents* (London: Allen Lane, 2002), 232–3.

⁶ Cited in R. Gilpin, *The Challenge of Global Capitalism: the World Economy in the 21st Century* (Princeton and Oxford: Princeton University Press, 2000), 329–30.

WTO should help to eradicate poverty. They might hold, for example, that WTO agreements should be framed with a view to realising the aims of the Millennium Development Goals or, perhaps, more ambitiously, to maximise the condition of the world's least well-off.⁷ Some of these might also hold that it is the job of the WTO to design a framework of international trade that discourages excessive carbon dioxide emissions. Their view would be that the WTO has environmental responsibilities and should seek to minimise global climate change. In this vein, Stiglitz has argued that members of the WTO should use it to impose sanctions on high-emitting countries like the USA.⁸ Some, however, would strongly oppose these ambitious views. To give one prominent example, on 1 February 2001 Arthur Dunkel, Peter Sutherland and Renato Ruggiero wrote, in their 'Joint Statement on the Multilateral Trading System', that '[t]he WTO cannot be used as a Christmas tree on which to hang any and every good cause that might be secured by exercising trade power'.⁹ They thus reject the claim that the WTO should seek to address global poverty or should combat exploitative labour laws.

A second morally relevant question that needs to be answered is: 'What gives an international institution the *legitimacy* to perform the tasks it is performing?' Do they, for example, derive their legitimacy from the fact that they are the creation of states? Or does their legitimacy inhere in the fact that they perform important functions? Or do they in fact lack legitimacy?

A third key question is: 'What *powers* may international institutions have?' This can be broken down into two questions. The first considers the extent of their power. Should such powers be overridable by others? Or should they be the final arbiter on any issues? The first question, then, concerns the status of their decisions. A second question is the more specific one of which particular instruments should such institutions be entitled to use. Should international economic institutions have the power to issue binding regulations that govern all persons and enterprises? Can they make conditional offers? May they impose sanctions on regimes that do not comply with their rules? May they even levy taxes?

⁷ C. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1999), 150–3.

⁸ J. Stiglitz, *Making Globalization Work: the Next Steps to Global Justice* (London: Allen Lane, 2006), 176–8.

⁹ See www.wto.org/English/news_e/news01_e/jointstatdavos_jan01_e.htm.

A fourth, and final, question that an adequate account of the normative character of international institutions needs to address is: 'What are the *binding norms* that should govern international institutions?' To grasp the question being raised here it may be useful to give an example. For instance, it is commonly suggested that international economic institutions should adopt a norm of publicity and that their decision-making should be 'transparent' and 'open'.¹⁰ In the terminology I am employing, those who subscribe to this approach are claiming that international institutions should adopt a binding norm of transparency. Some might suggest some more demanding binding norms. To give one example, consider the claim advanced by many (but not all) liberal theorists that the state should be neutral between conceptions of the good.¹¹ Given this, one might ask, analogously, whether international institutions are similarly bound by these or similar strictures. May the World Bank, for example, act on controversial beliefs about the good life? One might consider population issues in this light. Population growth may, of course, have a pronounced impact on the extent of a country's economic development and it may also be tied to a religious worldview, such as Catholicism. The question, then, is whether the World Bank (or IMF) can act on the judgement that a state should curb population growth by encouraging contraception, and thereby act on the assumption that Catholic doctrine on contraception should be disregarded.

A further relevant question is whether international institutions should be neutral between conflicting accounts of justice when these are in conflict. So should they be neutral between egalitarian, libertarian and social democratic visions of global justice? We might also wonder whether international institutions should be neutral between different kinds of political system. Here we should record that the World Bank affirms that it should be neutral between different political systems. Article 4, section 10 of the Articles of Agreement of the International Bank for Reconstruction and Development (IBRD) states that:

¹⁰ See S. Caney, 'Cosmopolitanism, Democracy and Distributive Justice', *The Canadian Journal of Philosophy*, supplementary volume 31 (2006), 55; S. Caney, 'Cosmopolitan Justice and Institutional Design: An Egalitarian Liberal Conception of Global Governance', *Social Theory and Practice*, 32 (2006), 748–50; Stiglitz, *Globalization and its Discontents*, 227–9; United Nations Development Programme, *Human Development Report 2002: Deepening Democracy in a Fragmented World* (New York: Oxford University Press, 2002), 115; and N. Woods, 'Making the IMF and the World Bank More Accountable', *International Affairs*, 77 (2001), 90–1.

¹¹ R. Dworkin, *A Matter of Principle* (Oxford: Clarendon Press, 1985), 191; J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 191–4.

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.¹²

Finally, we need to consider whether international institutions must be non-partisan between two parties who are at war.

The above four questions are questions that any adequate normative account of international institutions must address. (They do not, no doubt, exhaust the set of relevant questions.) Prior to examining several specific potential theories we would do well to bear three methodological points in mind. First, as I have said, very few political theorists have written on these topics.¹³ Hence what follows will focus on existing normative theories and then see what light they shed, if any, on the question of the functions, legitimacy, powers and binding norms of international institutions.

Second, we may observe that the above four questions are interrelated. For example, the source of *legitimacy* (Q2) may also provide the answer to the *function* question (Q1). Thus someone may argue that the IMF has *legitimacy* because it resulted from an agreement between legitimate agents, namely states. But this answer to the *legitimacy* question may then provide an answer to the *function* question, namely institutions should serve the roles that have been agreed to by the member states. It may also provide answers to (Q3) (the powers such institutions possess will only be those that states have ceded to them and nothing more) and

¹² See the IBRD's Articles of Agreement at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049603~pagePK:43912~piPK:36602,00.html#I11>.

¹³ An exception is the recent important paper by A. Buchanan and R. O. Keohane, 'The Legitimacy of Global Governance Institutions', *Ethics and International Affairs*, 20 (2006), 405–37. There have also been extensive enquiries by others into the role of these institutions. For one example see the report on 'The Future of the WTO' chaired by Peter Sutherland and commissioned by the then Director General of the WTO, Supachai Panitchpakdi (www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf). See also R. Howse, 'The Legitimacy of the World Trade Organization', in J.-M. Coicaud and V. Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo: United Nations University Press, 2001), 355–407; R. Howse and K. Nicolaidis, 'Legitimacy and Global Governance: Why Constitutionalizing the WTO is a Step too Far', in R. B. Porter, P. Sauvé, A. Subramanian and A. Beviglia Zampetti (eds.), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium* (Washington, DC: Brookings Institution Press, 2001), 227–52; and R. Howse and K. Nicolaidis, 'Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?', *Governance*, 16 (2003), 73–94.

to (Q4) (the binding norms on such institutions can only be what states rightfully require of them). So an answer to one question may entail an answer to one or more of the other questions. This can be seen by considering another theory. Someone might argue that the appropriate answer to the *function* question can, on occasion, supply the answer to the *legitimacy* question. Suppose that someone argues that there should be an international legitimate authority in order to arbitrate when there are disputes between different states and/or economic corporations. On this view an international institution is required to perform a certain function. Now if this is the rationale for the introduction of an international legitimacy it might lead one to accept a particular answer to the *legitimacy* question (namely this institution acquires legitimacy in so far as it performs its role). The key point, then, is that the four issues are so closely related that an answer to one of them has implications for one's position towards the others. Moreover, what the two examples have borne out is that some theories prioritise one of the questions and then, drawing on the answer to that question, are led to specific answers to the other questions. For instance, some are preoccupied with the issue of legitimacy and from this work out the rest of their theory. Others, by contrast, are primarily concerned with certain functions and then from this work out the rest of their theory. What one needs is a theory whose answers to the four questions form a coherent whole.

Third, one might wonder why it is appropriate to focus on international institutions. The answer to this is that international institutions are *sui generis*. By contrast with private individuals they have considerable power and often define the background within which individuals and corporations act. By contrast with states, on the other hand, international institutions tend to have a restricted remit. The WTO, for example, regulates some aspects of international trade but its jurisdiction does not extend beyond that and it does not even cover all areas of trade. In addition to their restricted remit, international institutions differ from states in that, almost by definition, they are likely to have a more culturally heterogeneous population than any state.

In connection with this last point, I wish to introduce, though not argue for, a hypothesis that I shall be working with. I shall term this hypothesis the Pluralist Hypothesis. This contends that: different agents (with different properties) may have different *responsibilities* (depending in part on their capacity, the kinds of instruments at their disposal and the nature of the institution) and are subject to different *binding norms* (depending, in part, on what instruments they employ). The thought is

that the responsibilities and binding norms (and possibly the sources of legitimacy) are different for different kinds of agents – be they individuals or states or NGOs or economic corporations or international institutions – and that one cannot simply treat them in a monistic way, ascribing the same roles, legitimacy, powers and binding norms to all. International institutions are different from states and individuals and firms in morally relevant ways and these morally relevant differences should inform our account of their duties, legitimacy, powers and binding norms. The analysis that follows should therefore be seen in this light and the conclusions reached apply only to international institutions and not to other actors.

Having made these preliminary methodological remarks we may proceed to the normative analysis.

State-centric contractarianism – version one

Let us begin with what might be termed *state-centric contractarianism*. On this view, states are regarded as moral agents. As such they have various duties, requiring, amongst other things, that they do not interfere with other states and that treat other states as free and equal. A corollary of the moral powers that states have is that they have the right to create institutions. From this theory we can deduce answers to the questions posed above. On the question of the functions of international institutions (Q1): the state-centric approach maintains that the functions that (state-created) international institutions should perform are those that states have mandated them to perform. For their legitimacy (Q2), the claim would be that these institutions have legitimacy because and to the extent that they have been authorised by states. On the question of power (Q3): international institutions can exercise only those powers allocated to them by states. Turning now to the fourth set of issues (Q4): international institutions can invoke whatever norms and principles that they are authorised to do. Thus the state-centric perspective can easily generate a coherent set of answers to the above questions. Let us call this first brand of *state-centric contractarianism* (SCI). Put succinctly SCI claims:

SCI: International institutions possess *legitimacy* to the extent that they are authorised by their member states; and the *responsibilities, powers* and *binding norms* of international institutions are those that their member states ascribe to them.

With this broad theoretical model in mind we can turn now to our contemporary world and apply it to the three international institutions

considered in this chapter. The legitimacy of these institutions is straightforward. Each is a creation of states. The IMF and World Bank were created at the Bretton Woods Conference and their legitimacy derives from the legitimacy of the contracting parties. To ascertain their responsibilities we should then turn to their Articles of Agreement. In particular we should turn to Article I of the IMF's Articles of Agreement which outlines the IMF's 'purposes' and Article I of the IBRD's Articles of Agreement which specifies its 'purposes'.¹⁴ For the WTO we should turn to Article III of the Marrakesh Agreement establishing the WTO and to the decisions reached at the Ministerial conferences.¹⁵

Is this an adequate account? One objection to this state-centric model is that it is a version of what Brian Barry terms 'justice as mutual advantage' and suffers from its faults.¹⁶ To explain: the contracting parties (in this case, states) have unequal bargaining power and this state-centric model allows the nature and functions of international institutions to mirror these inequalities. It allows the powerful and wealthy to determine the roles of these institutions to their advantage and to the disadvantage of the poor and disadvantaged. It simply operates according to the principle 'to each according to his threat advantage'.¹⁷ It would yield the highly counter-intuitive outcome that international institutions would be acting legitimately even if they are actively causing global poverty, exploitation, malnutrition and disease.

An obvious response to this line of argument is that we can easily modify state-centric contractarianism to avoid this objection. One might, for example, modify SCI and claim that:

SCII: International institutions possess *legitimacy* to the extent that they are authorised by their member states; and the *responsibilities, powers and binding norms* of international institutions are those that their member states ascribe to them; however, international institutions (like their member states) must not violate certain negative duties of justice (revision 1).

¹⁴ For Article I of the IMF's Articles of Agreement see www.imf.org/external/pubs/ft/aa/aa01.htm. For Article 1 of the IBRD's Articles of Agreement see <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049563~pagePK:43912~menuPK:58863~piPK:36602,00.html#11>.

¹⁵ For Article III see www.wto.org/English/docs_e/legal_e/04-wto_e.htm.

¹⁶ B. Barry, *Justice as Impartiality: A Treatise on Social Justice Volume II* (Oxford: Clarendon, 1995), 31–3.

¹⁷ J. Rawls, *A Theory of Justice*, revised edition (Oxford University Press, 1999), 122; cf. Barry, *Justice as Impartiality*, 41–6 and 48.

They are not entitled, for example, to steal or kill or harm people in other ways. This qualified version of state-centric contractarianism would, it might be argued, avoid the unattractive outcomes attributed to a pure form of state-centric contractarianism. The thought underlying the revised version is simply that states are entitled to further their own interests (and those of their members) so long as they do not harm other people, and hence they may create international institutions – like the IMF or the World Bank or the WTO or the European Union – so long as these too do not harm other people.

This response may allay some of the worries raised by the first objection but before proceeding further it is worth recording that it may have quite radical implications and could require a major transformation in the way that international economic institutions act at present. One powerful argument for why this might be the case is provided by Thomas Pogge in his important work *World Poverty and Human Rights*.¹⁸ In the latter Pogge advances the moral claim that agents (institutions and individuals) have a negative duty not to uphold unjust rules and practices. He further argues that much of the existing global poverty arises precisely because international actors violate this negative duty. If both of these claims are right, then, SCII would have considerable moral implications for the two claims entail that if international institutions abided by Pogge's injunctions then there would be no (or very little) global poverty. Whether honouring Pogge's negative duty does have such momentous implications depends on (at least) two issues. First, it is important to establish the content of the negative duty which binds institutions. Is it, as Pogge holds, a duty not to act in ways that result in others being in severe poverty, in which case ascribing this negative duty to international institutions would be of tremendous significance? Or is it something more modest and restricted such as the duty not to use extortion, manipulation or force? A second factor to bear in mind when considering the importance of Pogge's duty is the empirical matter of how much global poverty arises from the failure of international institutions to honour Pogge's negative duty and how much arises from other factors (such as corrupt or incompetent governments or natural phenomena).¹⁹ The point here, however, is not to settle

¹⁸ T. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity, 2002).

¹⁹ Pogge's claims are controversial. For a discussion and evaluation see Simon Caney, 'Global Poverty and Human Rights: the Case for Positive Duties', in T. Pogge (ed.),

these empirical questions (as if that could be done in such a cursory way) but simply to note in passing that to insist that international economic institutions honour a negative duty not to impose unjust rules on others might (if Pogge is correct) have quite dramatic implications for existing global poverty and inequalities.

State-centric contractarianism – version two

SCII is, undoubtedly, an improvement on SCI but it remains to be seen why international institutions are bound only by negative duties not to violate the rights of others. Why, it might be asked, do they not have positive duties too to eradicate poverty and destitution? After all, they undoubtedly may greatly shape the opportunities available to people. The WTO, for example, by determining the rules governing global trade is a major determinant of the success or failure of different firms and in doing so exercises power over people's ability to support themselves. Likewise, the IMF, by imposing conditionalities, determines the courses of action open to members of recipient states and through them it exercises power over people's lives and their ability to further their fundamental interests. Given this, one might ask what reason we have for accepting the assumption, made by SCII, to the effect that international economic institutions have only negative duties not to violate the rights of individuals and do not have positive duties to protect the rights of individuals. Put another way: SCII assumes that international institutions should promote the interests of their members so long as they treat persons fairly and that all that treating persons fairly requires is not violating their rights. And this last element requires some defence.

One argument might simply contend that there are no positive duties to uphold rights (such as, for example, the right not to suffer poverty). But this will be hard to sustain because the most natural defence of negative duties also requires a commitment to positive duties. When pressed as to why persons have a negative duty not to harm or kill another person it is very hard to avoid claiming that one reason that these are wrong is because they damage some absolutely fundamental interests. But if we make this claim it then becomes very difficult to see why persons do not also have some positive duties to help secure these

interests.²⁰ So to claim that international institutions are bound only by negative duties of justice because there are no positive duties of justice is implausible.

A second more complex reply to the question of why international economic institutions have only negative duties not to violate the rights of others would argue that as *private* actors they are free to act as they wish just so long as they do not infringe people's rights. It justifies SCII by referring to examples which involve non-political actors who are hired by individuals. Consider, for example, cases where individuals hire a lawyer (or accountant or financial advisor) to represent their interests. Such instances have two important features. Here we think, first, that the lawyer has a positive duty to further the interests of their clients. But we also think, second, that they may not do so by violating the rights of other individuals. Lawyers cannot promote the interests of their clients by intimidating or assaulting people who are not their clients. And this mirrors what SCII claims of international institutions. So one might defend SCII by arguing that it fits with our intuitions about other examples where a body is hired by certain parties in order to perform certain roles.

I believe that this kind of reasoning is a key assumption underlying state-contractarianism. Its guiding thought is that international institutions are in a contractual relationship with states in just the same way that lawyers or accountants are hired by individuals and are thus in a contract with them. To assess SCII we need, then, to examine more closely the assumption that international economic institutions are (like lawyers etc.) non-political institutions contracted by agents to represent their interests. In what follows I want to argue that state-centric contractarianism commits a category mistake for the responsibilities it affirms can only make sense if we conceive of international institutions as 'private' ones but not if we recognise that they are 'political' ones. Now in order to explain and develop this argument we need to: (a) provide a plausible account of what constitutes a 'political' institution; (b), elaborate further on the moral relevance of whether an institution is, or is not, a political institution; and (c), determine whether the three institutions in question are 'political' institutions if we employ this definition of the 'political'.

²⁰ See A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford University Press, 2004), 89–92: see also 197.

To begin with (a): there are, of course, numerous ways of defining the ‘political’. In what follows I wish to work with as uncontentious a conception as possible for I wish to show that even using such an uncontroversial conception we can show that state-centric contractarianism is untenable. For the purposes of this chapter I shall assume that X is a political body when X has a *major* impact on persons’ *fundamental interests* through the use of *power*. Three aspects of this definition merit comment. First, it, of course, raises the question of how we define ‘power’. Here I shall follow Robert Dahl’s well-known suggestion that ‘A has power over B to the extent that he can get B to do something that B would not otherwise do’.²¹ In a power-relationship, A (the power holder) is able to make B perform actions (or omissions) or impose sanctions or costs on them. B (the ‘victim’ of the power-relationship) has his choice constrained and his options are involuntarily limited. He may be compelled to pursue a particular course of action or to suffer an involuntary penalty. Second, observe that political institutions, on this account, exercise power over people’s most *fundamental interests*, structuring what kind of life they are able to lead and determining the opportunities they face. Finally, observe that political institutions have a *major* (as opposed to a trivial) impact on these fundamental interests. Our focus, then, is on actors that through the use of *power* exert a *major* impact over the *fundamental* choices open to others.

Let us turn now to (b). It is critical to note that the issue here is not a terminological or semantic one about the meaning of the word ‘politics’. Rather it is important to clarify that the institutions in question are political ones in the sense that they need to satisfy the constraints imposed by political morality on such institutions. There are three

²¹ R. A. Dahl, ‘The Concept of Power’, *Behavioral Science*, 2 (1957), 202–3. Dahl’s definition has, of course, been much discussed. Note, however, two points. First, those who criticise his treatment of power employ a basic concept that is similar (though not identical) in structure. To take one prominent example: Steven Lukes holds that ‘A exercises power over B when A affects B in a manner contrary to B’s interests’, S. Lukes, *Power: A Radical View*, second edition (Basingstoke: Palgrave Macmillan, 2005), 30. Dahl’s account is preferable to Lukes’s because it articulates the core idea as being that of *making people do things they would not otherwise do*, whilst avoiding reference to the claim that power necessarily harms another’s interests. One may exercise power over another by compelling him to do something which is in his interests. Second, note that those who criticise Dahl’s view (such as Lukes) object that it is under-inclusive. They do not deny that power can fit his definition: it is just that they add that it does not capture all the relevant kinds of power-relations (such as what Lukes call the second and third dimensional views of power – e.g. Lukes, *Power*).

aspects to this point. First, whether an institution is political or not is relevant to the nature and applicability of *binding norms*. We do not, for example, insist that secondary associations should abjure controversial doctrines whereas we might make this claim of political actors (Q4). No one claims that the Catholic Church should eschew controversial conceptions of the good but one might (following liberals, such as Rawls) claim that since states exercise political power they are subject to the standards of public justifiability.²² Second, the question of whether an institution is political or not is critical to the question of whether it enjoys *legitimacy* (Q2) for if it is a political body we need to be able to provide an account of the source of its political legitimacy. Again this is not a task we need to perform for non-political bodies like clubs or churches. Third, the issue of whether an institution is a 'political' one or not, is also relevant to the question of its *responsibilities* (Q1), for I take it to be a feature of a political institution that it has duties to uphold a fair distribution of resources and opportunities in its jurisdiction. This is intentionally worded in a rather vague way to allow that there are many different accounts of justice (from libertarian to Rawlsian to egalitarian to desert-based and so on). All of the latter agree that the state is under an obligation to ensure people receive their just entitlements, however much they might disagree on what those entitlements are.

Having characterised the 'political' and noted why it might matter, let us turn now to (c). To make good the second objection we must note the ways in which the IMF, World Bank and WTO are political actors in the sense defined above. This is not hard to establish. To take the example of the WTO, this structures the terms of trade that govern international commerce. It exercises power because it lays down the rules under which people can and cannot trade – applying, in particular, its principle of non-discrimination (and its concomitant Most-Favoured-Nation (MFN) rule and National Treatment rule) and its principle of reciprocity.²³ The WTO has, moreover, frequently struck down laws which, it maintains, violate free trade. Furthermore through the dispute settlement system it allows states that have been wronged by another state's violation of the rules of the WTO to punish it through retaliatory measures. In virtue of this procedure the WTO regulates people's lives through the exercise of

²² Rawls, *Political Liberalism*.

²³ On these see A. Narlikar's helpful discussion, in A. Narlikar, *The World Trade Organization: A Very Short Introduction* (Oxford University Press, 2005), 28–9.

power.²⁴ If we consider now the IMF: this too defines the conditions under which some people live and as such exercises considerable political power over them. For example, by making conditional loans which specify that recipient governments must adopt certain kinds of economic policies it exerts control over people's lives. Much the same point applies to the World Bank which, in virtue of its technical expertise and its use of conditionality, can also compel states to implement certain reforms and thereby it determines the choices open to people in client states. In the most comprehensive analysis of the IMF and World Bank to date, Ngaire Woods writes that:

The powers of the IMF and World Bank to require governments to reform are significant. They do not lend large proportions of global development financing but the timing of their loans gives them considerable leverage because they lend at times when governments have few alternative sources of finance.²⁵

She continues,

The IMF and World Bank deploy a mixture of technical advice and coercive power in bargaining with borrowing governments. Each institution can variously lend or withhold resources, disburse or suspend payments, and impose various forms of conditions.²⁶

²⁴ For instructive general accounts see B. M. Hoekman and P. C. Mavroidis, *The World Trade Organization: Law, Economics, and Politics* (London and New York: Routledge, 2007) and Narlikar, *The World Trade Organization*. It is true that the WTO does not possess the kinds of powers possessed by states (which is why I have suggested the Pluralist Hypothesis), but by making laws which constrain the actions of members and by allowing the imposition of sanctions it limits the options of members who might then have no choice but to accede to its rules. As such it exercises power over them. An interesting account of one kind of power possessed by the WTO can be found in D. G. Singh, *Network Power: The Social Dynamics of Globalization* (New Haven and London: Yale University Press, 2008), ch. 8. See also M. Risse's helpful discussion of the coercive character of international institutions such as the WTO in M. Risse, 'What to Say About the State', *Social Theory and Practice*, 32 (2006), 671–98. Risse recognises that the WTO and other international institutions are coercive ('What to Say About the State?', especially 679–83 and 690–2) but goes on to argue that the state exercises a kind of coercion which is different in a morally relevant way (in particular, state coercion possesses '[l]egal and political immediacy' ('What to Say About the State?', 688)). I argue against the moral relevance of this difference in 'Global Distributive Justice and the State', *Political Studies*, 57 (2008), 502.

²⁵ N. Woods, *The Globalizers: The IMF, the World Bank, and their Borrowers* (Ithaca and London: Cornell University Press, 2006), 71. Woods does, though, caution against exaggerating the power of the Bretton Woods institutions, writing that 'it is easy to overstate their power and influence' (*The Globalizers*, 71). See, more generally, Woods's instructive analysis of the IMF and World Bank in *The Globalizers*.

²⁶ Woods, *The Globalizers*, 82.

Two further points should be recorded. First, as Woods's analysis makes clear, it is important to note that international institutions (in her case the IMF and World Bank) enjoy power over member states, and derivatively their members, in part because of the vulnerability of some member states and would-be member states. It is in part because countries like Angola or Mozambique are very poor that the Bank and the IMF are able to exercise power over them. Second, it is misleading to regard these three institutions in isolation for it is more accurate to say that they act in concert with each other (and with other institutions) and thereby they jointly form part of an international system that exercises power over people's lives. This last point is of fundamental importance for it might be the case that several institutions considered on their own do not make a group of persons do something that they would not otherwise do but that when they act in concert they do. In such a situation people in developing countries might be said to be powerless although there is no single political actor controlling them.

Having established that the IMF, World Bank and World Trade Organisation are political institutions, we can now return to the argument under consideration. SCII maintains that international institutions are akin to non-political bodies (e.g. lawyers) that are hired by individual parties (e.g. the lawyers' clients) to further their interests in a fair legal system. The point of the preceding analysis is to show that this analogy is incorrect. International institutions are not private actors. Unlike the latter they can and do exercise considerable power over large groups of people who have not consented to them. They are public bodies. Or, put another way, it is wrong to say that they should serve the interests of some within a fair framework (which is how we might think of lawyers) because they are part of the political framework. They define it. They are political actors and, as such, have the responsibilities noted above. With their power comes responsibility.

One can come at this issue from another angle. Rather than start with international institutions and ask what responsibilities they have we might begin with an account of moral responsibility and work out from that what duties fall to international institutions. One leading principle (and one which I have sought to defend elsewhere) holds that those who are able to uphold people's rights have, in virtue of that capacity, a *prima facie* duty to exercise their power in ways which uphold people's rights.²⁷ With their ability to make a difference comes a

²⁷ See S. Caney, 'Cosmopolitan Justice, Responsibility, and Global Climate Change', *Leiden Journal of International Law*, 18 (2005), 747–75; 'Global Poverty and Human Rights: the

responsibility to protect rights.²⁸ This principle thus entails that international institutions have a duty to exercise their ways which enable persons to enjoy their fundamental rights.

State-centric contractarianism – version three

I have argued above that the fact that certain institutions are political ones entails that they are under certain responsibilities. The political character of these institutions also has a second implication, namely that if an institution is a political one we then require an account of what (if anything) grants it the legitimacy to exercise power over people. It is worth dwelling on this point because one considerable problem in the state-centric perspective is that state-centric contractarianism is unable to provide an adequate account of political legitimacy. It assumes that international institutions possess legitimacy to the extent that they have been authorised to perform certain actions (and are complying with the terms of the contract and not violating persons' rights) by parties that themselves possess legitimacy to do these actions. Legitimacy is thus, as it were, passed down the line. This runs into two obvious problems. The first concern is simply that many states lack legitimacy because of their repugnant treatment of their own citizens (and foreigners) and because of their undemocratic character. Let us call this the 'problem of illegitimate states'. In the second place, even when governments enjoy a democratic mandate this is not because of their views on the policies of the WTO, IMF and World Bank. This can hardly be said to be uppermost in people's minds when they vote for a British MP, American Congressman or woman, member of the German Bundestag and so on. The electoral connection is thus not strong enough to have a legitimising effect. We

Case for Positive Duties'; 'Climate Change and the Duties of the Advantaged', *Critical Review of International Social and Political Philosophy*, 12 (2009).

²⁸ In making this argument I am not denying that private actors are subject to duties of distributive justice. Indeed, such a position seems plausible to me. (For a seminal contemporary discussion see G. A. Cohen, *If you're an Egalitarian, How Come You're so Rich?* (Cambridge MA: Harvard University Press, 2000).) My argument above is, however, directed towards someone who denies that international institutions have positive duties of justice on the grounds that they, as private institutions, are bound only by negative duties (whereas they would be bound by positive duties of justice too if they were public institutions). There are two kinds of response to this position. One is that private actors also bear positive duties of justice. I have much sympathy with this line of reasoning. The second response is to accept this argument's assumptions about the public/private distinction and to show that, even if we grant that, SCII still fails because international institutions are unequivocally public institutions in the relevant sense.

might think of legitimacy in terms of a water pail passed down a line of workmen. It is fullest at the start; when it is handed down the line to one person it inevitably leaks some water; and it does this again when this first recipient passes in on to his neighbour and so on. In the same way, there is a leakage of legitimacy the more that one body passes it on to another. Let us call this second point the ‘problem of diluted authorisation’.²⁹

One might think that state-centric contractarianism can partly meet these objections by making further modifications to it. To meet the problem of illegitimate states, for example, one might argue that international institutions have the legitimacy to perform certain tasks only where they have been authorised to do so by legitimate states and legitimate states are defined, for example, as liberal democracies (revision 2). To meet the problem of diluted authorisation, one might try to improve the democratic scrutiny of international institutions. This might be done in a variety of ways. For example, states may demand greater transparency in the workings of international institutions to better enable them to hold them to account; and they might empower themselves to compel IMF or WTO or World Bank officials to defend their policies before the committees in their respective legislatures.³⁰ By adopting such measures they can strengthen their ability to hold international institutions to account (revision 3). Adding in these two revisions, then, we arrive at the following revised conception of state-centric contractarianism:

SCIII: International institutions possess legitimacy to the extent that they are authorised by their member states; the responsibilities, powers and binding norms of international institutions are those that their member states ascribe to them; however, international institutions (like their member states) have a duty to all not to violate certain negative duties of justice (revision 1);

the created international institutions may include only liberal democratic states as members if they are to enjoy legitimacy (revision 2); and

²⁹ Both of these points are made by Buchanan and Keohane, ‘The Legitimacy of Global Governance Institutions’, 413–15.

³⁰ See, in this context, the Fourth Report of the Treasury Committee – *The International Monetary Fund: A Blueprint for Parliamentary Accountability* (13 March 2001). HC 162. Online, available at: www.publications.parliament.uk/pa/cm200001/cmselect/cmtreasy/162/16202.htm. In the latter the Treasury Committee recommends that Parliamentary Committees should be empowered to question senior IMF officials, the Treasury Committee should write and disseminate its assessments of the IMF’s performance, the minutes of the IMF’s Executive Board be published, and that the voting record of the UK’s IMF representative also be published. See www.publications.parliament.uk/pa/cm200001/cmselect/cmtreasy/162/16205.htm#a1.

initiatives must be taken to boost the accountability of existing international institutions to member states if they are to enjoy legitimacy (revision 3).

This reply is partially successful. There are no doubt ways of improving the accountability of international institutions to member states and so the concerns informing the problem of diluted authorisation might perhaps be allayed. However, the response to the problem of illegitimate states, whilst it is an improvement on the previous formulation, is inadequate. It can, perhaps, explain why international institutions would have legitimacy over the citizens of liberal democratic member states of these international institutions. However, international institutions will inevitably exercise power over individuals who belong to states that would be excluded from the contract because they are illiberal and/or undemocratic. The actions of international institutions cannot be restricted so that they only exercise power over their members for they will almost always produce actions which constrain persons not party to the contract, thereby restricting some people's fundamental opportunities. The latter's interests are, however, unrepresented in this revised version of state-centric contractarianism. An international institution's legitimacy over such people (persons in non-liberal democratic regimes) needs to be justified and it cannot be grounded by reference to the agreement of liberal democratic states.³¹

To bring out the ways in which international institutions will inescapably have a coercive impact on people living in illiberal states that are not party to the contract consider the following examples:

- Tariffs:* Suppose that an international institution passes laws imposing tariffs on goods imported from non-member countries. This could be authorised by the liberal-democratic member states and yet it exercises considerable power over the lives of people who are not represented in the institution (constraining what they may do and the opportunities open to them).
- Subsidies:* International institutions may also subsidise certain industries (as is the case of the European Community's Common Agricultural Policy (CAP)). In doing so they, in effect, force firms in other countries out of business because they leave these other firms with no genuine chance of competing. In

³¹ This point is also brought out by Buchanan and Keohane, 'The Legitimacy of Global Governance Institutions', 415–16.

such cases international institutions (authorised by liberal democratic member states) may be said to be coercively limiting the opportunities of others and thereby exercising power over them.

Given these two kind of phenomena it follows that under SCIII international institutions would exercise power over members of states who are not represented in the international institutions. As such a state-centric contractarianism is unable to provide an adequate account of how the power of international institutions over such people could be legitimate.

This concludes the analysis of state-centric contractarianism and it may be useful to sum up the two kinds of charge being pressed against it. The first kind centres on state-centric contractarianism's account of the *duties* of international institutions. Here we have seen that

- * first: SCI's account results in morally unacceptable results.
- * second: SCII's position is more tenable. However, we have no reason to accept its contention that international institutions have only negative duties not to harm others on the grounds either that (a), there are no positive duties of justice or (b), that international institutions *qua* non-political actors are bound solely by negative duties of justice. Neither (a) nor (b) was plausible. SCII's insistence that international institutions should simply refrain from violating others' rights thus remains undefended.
- * third: *qua* political bodies, international institutions, have positive duties to ensure that the global economic, political rules within which individuals and corporations act are fair.

The second set of problems surrounds state-centric contractarianism's analysis of *legitimacy* (Q2). For here we have seen that

- * even when modified (à la SCIII) state-centric contractarianism is unable to provide a compelling account of why international institutions (even ones comprising only liberal democratic states) possess legitimacy over the citizens of those states and, more importantly, why they possess legitimacy over the unfortunate members of illiberal states whose lives are structured by these institutions but who have no input into the process.

Cosmopolitan justice and cosmopolitan democracy

Having considered and rejected one account of the normative character of international institutions, let us now consider two others. We may start by drawing on the claim advanced earlier that international

institutions are, in a morally relevant sense, political institutions. For with this in mind, we should ask what roles and powers are appropriate for political institutions. Prior to examining the second and third accounts we should note that to call international institutions political actors is, of course, not to equate them with states. There are a number of obvious and important differences. Unlike states, international institutions, (a), do not, at present, possess a monopoly of coercive powers. Furthermore, (b), they have a restricted remit, being concerned only with quite specific areas of policy. In addition to this, (c), they, more than states, have jurisdiction over a culturally diverse population. While it is, of course, true that many states are profoundly divided along ethnic and cultural lines, the diversity at the global level is (as a matter of logic) at least as great and (as a matter of fact) much greater than in any state. The existence of pluralism at the global level is thus more dramatic and profound than that found in any state. Finally, (d), we should record that, unlike very many states, international institutions do not comprise a citizenry united by a civic culture. It is not just that the world includes cultural, religious, ethnic and national diversity. It is also the case that there is no identification with global institutions in the way in which individuals (even individuals in pluralistic societies) often identify with their state's political institutions.

The contrasts with individuals are equally obvious. International institutions can, (a), generally exercise more influence than individuals and, (b), they may use political power. A third difference is the fact that, (c), international institutions are also not subject to the kinds of obligations that individuals are (such as special obligations to friends and family and, some would argue, special obligations to fellow nationals). International institutions, of course, lack these kinds of responsibilities. Any adequate normative account of international economic institutions must, then, be sensitive to the ways in which they differ from both individuals and states. It must reflect their *sui generis* nature.

With these points in mind, let us now present two different normative models of international institutions – what we might term the ‘cosmopolitan justice’ approach and the ‘cosmopolitan democracy’ approach. Consider the cosmopolitan justice approach first. This starts with a commitment to realising a cosmopolitan programme of distributive justice and then seeks to work back from this to deduce the responsibilities, legitimacy, powers and binding norms of international institutions. To give a skeletal account of this model, its provisional answers to the four questions run as follows: in terms of the functions of

international institutions (Q1), the claim is that they should act in such a way as to bring about a distributively fairer world (as judged by cosmopolitan criteria). So if, for example, one thinks that there should be a global difference principle then, on the cosmopolitan justice approach, the role of international institutions is to further this ideal of cosmopolitan distributive justice.³² If we turn to the legitimacy question (Q2), this approach would argue that international institutions have legitimacy insofar as they successfully further principles of distributive justice. They affirm then something like Joseph Raz's 'normal justification thesis' and his 'service' conception of legitimacy.³³ In terms of the means to be used (Q3), the answer to this question draws on the functions to be performed for the claim must be that international institutions may use those tools necessary to achieve their desired goals. So it should employ conditionalities only if, and to the extent that, these further the goals of distributive fairness. If we turn now from (Q3) to (Q4), a cosmopolitan justice approach will endorse a binding norm of transparency. It might also defend a norm of neutrality towards conceptions of the good on the grounds that to adopt a partisan position on a deeply controversial issue will make it more difficult for the institution to garner widespread support and without this it is, in general, less likely to be able to secure its objectives. The cosmopolitan justice approach is however unable to adopt a complete neutrality on either ideals of justice or on which political systems are preferable.

What I have termed the 'cosmopolitan justice' perspective is adopted by thinkers from a number of different political perspectives. For example, some of an egalitarian stripe might hold that it is the role of international institutions to further a global difference principle or a global principle of equality. Others, by contrast, would see the role of the international economic institutions as upholding laissez-faire principles of justice.³⁴

The 'cosmopolitan justice' approach can be contrasted with a second normative account of international institutions – what I earlier termed

³² Beitz, *Political Theory and International Relations*, 150–3.

³³ J. Raz, *The Morality of Freedom* (Oxford: Clarendon, 1986), part one.

³⁴ See F. A. Hayek, *The Road to Serfdom* (London and Henley: Routledge and Kegan Paul, 1976 [1944]), ch. XV and E.-U. Petersmann, 'Human Rights and the Law of the World Trade Organization', *Journal of World Trade*, 37 (2003), 241–81. For a useful discussion of the issues surrounding the appropriateness of 'constitutional' approaches to the WTO see D. Cass, *The Constitutionalization of the World Trade Organization: Legitimacy, Democracy, and Community in the International Trading System* (Oxford: Oxford University Press, 2005).

the ‘cosmopolitan democracy’ approach. The guiding principle at the heart of this model is that institutions that impact greatly on persons’ interests must be accountable to those persons via democratic procedures. It maintains that those whose lives are deeply affected by international institutions have a democratic right to hold those institutions to account.³⁵ Now drawing on this normative principle, one can construct an account of the roles, legitimacy, powers and binding norms of international institutions. On the cosmopolitan democratic view, international institutions have legitimacy, (Q2), only to the extent that they are democratically accountable. Without this they suffer from a ‘democratic deficit’ and therefore a ‘legitimacy deficit’. As to their roles (Q1): their roles are derived in a procedural fashion and are defined as furthering those policies which democratically accountable global institutions in fact choose. On (Q3): a cosmopolitan democratic position would conclude that global institutions should have those powers that the people decide to allocate to them. So representatives of international institutions would have those powers that they have been authorised to possess (so long as they do not use those powers to undermine democratic government.) Finally, cosmopolitan democrats will hold that democratic global institutions should be governed by the kinds of norms that they think should characterise democratic politics – for example, transparency, respect for the views of others and so on.

What both accounts have in common is that they start from a recognition that institutions like the WTO, IMF and World Bank are public institutions: they are not private bodies at liberty to seek their own interests. Where they differ is in their interpretation of the duties of public bodies. It is possible that the two positions will converge in practice. However, even if they do converge they are, of course, theoretically distinct and possess different strengths and weaknesses.

The limitations of both cosmopolitan models

Are either of these two normative models compelling? Let us start with a purist version of the cosmopolitan democracy approach. This is vulnerable to three objections.

First, to assess the relevance of the cosmopolitan democratic approach to global institutional design it is useful to reflect on the following.

³⁵ See Archibugi and Held, *Cosmopolitan Democracy*; Held, *Democracy and the Global Order*; and McGrew, ‘The World Trade Organization’.

Consider the current state of affairs in the world. According to a recent UNDP Human Development Report, ‘one in five people in the world – more than 1 billion people – still survive on less than \$1 a day, a level of poverty so abject that it threatens survival. Another 1.5 billion people live on \$1–\$2 a day. More than 40 per cent of the world’s population constitute, in effect, a global underclass, faced daily with the reality or the threat of extreme poverty’.³⁶ The report continues, ‘more than 850 million people, including one in three preschool children, are still trapped in a vicious cycle of malnutrition and its effects’.³⁷ And it adds that ‘more than 1 billion people lack access to safe water and 2.6 billion lack access to improved sanitation. Diseases transmitted through water or human waste are the second leading cause of death among children worldwide, after respiratory tract infection. The overall death toll: an estimated 3,900 children every day’.³⁸ Now in light of this, we might ask ‘when determining global institutional design, which is more problematic – the existence of these levels of global poverty and sickness, on the one hand, or the fact that the WTO, IMF and World Bank are not democratically accountable, on the other?’. In light of the current ills of the world it would seem extraordinary to claim that our primary objective when engaged in global institutional design should be to democratise global institutions. This shows that we attribute greater moral weight to eradicating certain material injustices. When constructing a global order these are more morally urgent than securing the electoral accountability of the Executive Boards of the Bretton Woods institutions. Elsewhere I have termed this the ‘wrong priorities objection’.³⁹

Second, we should note that a commitment to democracy does not entail that all decisions are taken democratically. In many countries, for example, there is a common law tradition and hence the source of law is not a legislature’s statutes but the reflections of judges on cases. Furthermore, in some political systems the central bank is not directly accountable but this is not felt to be a problem. To be committed to democracy as a form of government does not, of necessity, require that one apply democratic procedures to each and every

³⁶ United Nations Development Programme, *Human Development Report 2005 International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* (New York: Oxford University Press, 2005), 24.

³⁷ UNDP, *Human Development Report 2005*, 24.

³⁸ UNDP, *Human Development Report 2005*, 24.

³⁹ Caney, ‘Cosmopolitan Justice and Institutional Design’, 731–3.