

# LAW BEYOND THE ESTABLISHED LEGAL ORDERS

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# Some puzzles and the big picture

- A number of puzzles
  - ▣ How are states obligated in IL? (consent won't do)
  - ▣ Subjects of international law (individuals, companies)
  - ▣ Hierarchy of norms in IL (unity and fragmentation in IL) (Kadi, Solange)
- A Suggestion: A global order of legal obligations
  - ▣ These obligations are enforceable obligations even in the absence of institutional enforcement
  - ▣ Individual *institutional* orders undertake the enforcement of the same set of global obligations (monism)
  - ▣ Enforceable obligations are grounded on a particular normative relation (political association) that obtains between agents (or groups of agents)
- Two main challenges
  - ▣ Political association *extends* beyond the state
  - ▣ Enforceability is *independent* of enforcement

# Dworkin's lingering statism

- Institutional facts do not ground legal obligation –  
Same applies to consent in IL
- Associative obligations
- Conditions for political association
  - ▣ Domestic level: justification of state action to citizens
  - ▣ International level: 'reflex' obligations
- Lingering statism
  - ▣ Coercive imposition by the state (Nagel, Dworkin)
  - ▣ (The angelical society)

# Site vs. scope

- Two parallel debates
    - ▣ In law
    - ▣ In political philosophy (debate on global justice)
    - ▣ Site/scope identity thesis
    - ▣ The advantage of scope-based inquiry
  - Coercive imposition: what is the charitable interpretation?
    - ▣ Facts about enforcement (sanctions)
- Vs
- ▣ A structure that places agents in a normative relation

# A normative conception of coercion

- Reciprocal practices of action-direction action (trigger off) → principle of justification (principle C) (grounds) → enforceable obligations
  - C: A should not (do  $y$ , believe that her  $y$ 'ing will lead B to  $x$  and that this fact is a reason to  $y$  and fail to believe with justification that A's  $y$ 'ing will facilitate B's coming to  $x$  on the basis of her recognition of reasons to  $x$  that she has independently of A's  $y$ 'ing). [Julius (2009), 7-9]
- The structure of political association which generates legal obligations

# An objection from circularity

- The claim to justification selects reciprocal practices which trigger off the claim to justification
- Circularity between different levels of abstraction
  - ▣ Freedom from domination → reciprocal practices → claim to justification
- Cf with Scanlon's account of promise
  - ▣ (Duty of care) → practices of assurance → principle of fidelity

# Enforceability

- Joint obligations
  - ▣ By realizing R one helps realizing it for everyone
- Enforceability
  - ▣ ‘You ought (and can be made to) do x’ (second-personal or relational ‘ought’)
  - ▣ An authorization over the conduct of the agent who is subject to the obligation
  - ▣ Cf with non-enforceable moral obligations (e.g. prohibition of lying *simpliciter*)
- A plausible explanation of Kant’s duty to enter institutional arrangements
  - ▣ Legality: one question about ‘standing’ in others’ agency; another distinct question about the ‘means’ of realization

# Institutional enforcement

- Situated and pluralistic
- A seemingly fragmented but in reality interconnected global legal order
  - ▣ Explains better the initial puzzles (consent; subjects; fragmentation)
- An obligation to set up such institutions