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Global civil society and international ethics: Mervyn Frost's restatement of constitutive theory

PETER SUTCH

Mervyn Frost's restatement of his constitutive theory of international relations raises a number of crucial points which need elaboration and discussion. Discussing the issues under the key headings used by Frost in his reply to my 'Human Rights as Settled Norms', I wish to focus on the following claim which I take to be central to the development of any norm-oriented approach to political and international theory. The claim is simply this; we are required, as a necessary component of post-positivist and constructivist theory, to take account of ethical and political inequalities in the development of any series of 'settled norms' that constitute the prevailing domain of discourse. This claim, I believe, accurately captures the core concerns of my earlier article and informs those tensions that remain to be discussed here.

Individual rights, civil society and democratic states

Frost's initial response to my article incorporates a significant extension to his theory as set out in *Ethics and International Relations*.¹ Frost's point, framed in response to my claim that there is a 'necessary' relation between the democratic character of 'fully developed' or 'initiate' states and his theory of human rights, suggests (A) that the word 'necessary' could be misleading and (B) goes on to posit the existence of a global civil society in which individuals constitute each other as rights holders in a process that is conceptually distinct from our existence as citizens of sovereign states. My response to these two points are related but require separate treatment.

(A) Frost writes that

It is true that the constitution of free individuals necessarily requires participation in both civil society and the democratic state. But there is an alternative reading of 'necessarily' which suggests that it is only in the context of the state that human rights make sense. This is false.²

Frost is certainly right to point out that there is no necessary, foundational or philosophical relation between human rights (what he also terms first generation rights or negative liberties) and the state. It is not a case of arguing that without the state there could be no such thing as ethics. The theoretical parameters of constructivist philosophy and constitutive theory prohibit this line of reasoning.

¹ M. Frost, *Ethics and International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996).

² Frost, 'Reply to Peter Sutch', p. 478.

However, the way in which constitutive theory gets off the ground is to claim that our conception of rights (whether articulated clearly or not) is the product of a political/ethical consciousness that is developed only in the context of a constitutive domain of discourse. The fact that our domain of discourse values (among other things) democratic institutions within states that support the first generation rights of citizens leads to the claim that we can (and do) abstract an understanding of ‘first generation rights’ from this context and that this is what gives our insistence on human rights its coherence. This seems to me to be a very promising line of reasoning. It does, however, require a supporting argument that confirms the moral authority of the settled status of the democratic ideal. There is certainly a lot to be said in favour of this understanding of contemporary claims to universal rights but my concern is to substitute a critical understanding of the domain of discourse for Frost’s ‘holistic’ understanding. What Frost’s theory cannot do is show that the rights we have abstracted from this domain of discourse are good in themselves. Such are the limitations of theoretical respectability. However we must not be reduced to simple descriptivism. Surely it is pertinent to note the relations between the political dominance of Western democratic ideals, the domain of discourse from which Frost draws his list of norms and these first generation rights that now do so much work. The relation between democratic states and human rights is (in Frost’s theory) necessary, not in the sense that these rights are only sustained within the democratic state but in the sense that these rights are descended from the ethical ideals of liberal democracy. There is, in constitutive theory, nowhere else they could come from. Ignoring this genealogy of the domain of discourse (as Frost wishes) requires that we ignore the fact that the conception of agency, or of ethics more generally, that dominates ‘coherent’ (and so permissible) human rights theory is drawn from the ethical tradition of the politically dominant Western, liberal powers. Political hegemony cannot be allowed to equate to ethical authority.

(B) The most important addition to Frost’s thesis is his claim that there is a global civil society ‘constituted by all those who claim first generation rights for themselves’.³ Like many, I have heard Mervyn Frost speak to this theme at conferences and welcome its appearance in a wider domain. Rather than pre-empt the full development of this line of reasoning I simply intend to make a number of introductory points.

(1) In what sense is global civil society the realm of first generation rights? I think there are two potential interpretations here.

(1a) At times in Frost’s ‘Reply’ it appears as though he is claiming that there is something about negative liberties that means that they are always created in the universal realm of the global civil society. The following quotation is typical.

The state may be the guarantor of first generation rights, it does not, however, create them. ... A crucial point in all this is that civil society must be understood as a social form ... which can be understood independently of the sovereign democratic state or states.⁴

Frost’s point is that universal, first generation rights, are realizable apart from the democratic state. The early impression I get is (to use Dworkin’s phraseology) that

³ *Ibid.*, p. 478.

⁴ *Ibid.*, p. 478.

first generation rights are trumps.⁵ This fact could be a property of the universal character of such rights but reaching this type of conclusion has always been fraught with philosophical difficulties. Also I am not sure that this understanding of Frost's extension of his ideas is compatible with his general method. Returning to the more general point of this article, it seems that a part of the constitutive approach to IR must include a critical understanding of how we come to rank certain understandings of rights in our ethical schema.

(1b) An alternative understanding of Frost's point is that his thesis rests more on a claim of political science than on a principle of political theory. The principal claim here could be that, as a matter of fact, we have moved beyond the modern state domain of discourse to a time when that settled norms of human rights do have recognized priority over the norms of sovereign independence. As a potential development of a constitutive theory of international relations this is certainly a possibility but I would be reluctant, to say the least, to let a claim that this is the case now pass without interrogation. It would also require a full working out of precisely what the first generation rights were.

(2) The second introductory question I wish to pose relates to the first question. What critical or political force does Frost's idea of a global civil society carry? Does it have the properties of a cosmopolitan theory in that it sets the outer boundaries of permissible behaviour in global politics? Or does it function in a manner similar to that of Walzer's 'thin' and 'transient' moral minimum?⁶ Of course this question will be decided in part by the outcome of the preceding enquiry but I am tempted to say that the latter option is more in line with the type of argument that one can generate from constructivist predicates. For Walzer frequent engagement with international crises induces a thin understanding of universal ethics (rights to life and liberty). We *are* all aware that states that deny what Frost calls first generation rights are doing something wrong. However this thin moral sense is neither thick enough to live by (we create locally shared understandings of ethics to fulfil this requirement) or shown to have ethical priority over these shared, 'thick', conceptions. For Frost's theory to do more than this (and I suspect that this is what he wants) requires that he show how 'first generation' rights have priority.

Justification of constitutive theory/ consent

The issues raised by Frost here lead me to focus more strongly on what I believe to be the central question of constructivist political theory and Frost's particular version of this tradition. The general question is this; what property of norm-oriented constructivist theory gives it ethical force? Given, as Frost notes, that we can no longer assume fixed ethical standards this question has become one of considerable importance to normative theory. It has received lengthy treatment in the literature relating to contemporary political theory and continues to be a subject

⁵ For example Frost argues that a state cannot be fully ethical in the absence of this civil society.

⁶ See M. Walzer, *Thick and Thin: Moral Arguments at Home and Abroad* (University of Notre Dame Press, 1994).

of hot debate.⁷ Its core point is, however, best (and most briefly) illustrated by focusing on this question in relation to three points made on page three of Frost's 'Reply'. Firstly Frost responds to my claim that his theory needs to justify both the settled norms of international politics and the constitutive approach, writing

I did not, and do not, seek to provide some *external* justification or vindication for the existing practices of international relations. We have no vantage point from which to make such a justification.

This leads to his second point. Given that we cannot rely upon fixed ethical standards the task for political ethics is to construct a theory that shows how our values cohere or fail to cohere. The groundwork done here then leads him to express concerns relating to my worry that the novice states may not have consented to the practices of international relations.

Of these points the first is key. For norm-oriented theory to move beyond a conservative descriptivism it is paramount that we show that constructivist theory can provide a critical key through which to generate the moral force required by any useful system of political ethics. It *is* possible to achieve this even after we take into account recent developments in philosophy. The projects of Onora O'Neill, the later Rawls and a multitude of others in political theory all focus on this point in a variety of different ways.⁸ Frost's chosen route is to search for coherence but I am not sure how this property (the coherence of a theory or a value system) attains its moral standing. Surely we need to be able to take account of claims that challenge the existing order, particularly when it is noted that the existing order favours the dominant groups from whose political and ethical culture the domain of discourse is principally drawn. This brings me to my final point. My concerns about consent and the transposition of Dworkin's method were never intended to advocate a liberal methodological individualism. My points are not about consent or democracy but about ethical authority and the just nature of the domain of discourse. Consent is a classically liberal way of conferring authority but my point was that we cannot use these models in IR. Furthermore, the way Hegel confers authority upon a set of practices is unavailable to Frost. My general point was therefore to raise the question 'what does give the domain of discourse its ethical force?'

Concluding remarks

I am convinced that a norm-oriented and constitutive approach to international ethics has a lot to offer. But a constructivist account of political ethics must do more

⁷ One particularly useful recent treatment of this issue is O. O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reason* (Cambridge: Cambridge University Press, 1996).

⁸ O'Neill argues (successfully in my view) that it is possible to generate a functional account of practical reason from constructivist predicates and from here she generates (a less successful) cosmopolitanism. Rawls (more successfully) constructs a thin conception of practical reason and applies it to a norm-oriented or 'appropriate' account of society and the person to generate his law of peoples. See O'Neill, *Towards Justice and Virtue, passim* and J. Rawls, 'The Law of Peoples', in Shute and Hurley (eds.), *On Human Rights* (1993). See P. Sutch, 'Constructing International Community', in M. Evans (ed.), *The Edinburgh Companion to Contemporary Liberalism* (Edinburgh University Press, 2000).

than cohere with the settled norms of the international system. It is still theoretically possible to distinguish between political dominance and ethical authority. In attempting to work out the form of such a distinction I hope to conform to Frost's final demand, that of presenting an alternative (yet allied) interpretation of our global institution. My task is to substitute a critical constructivism for Frost's holistic constitutive theory.