# JF21 – NC – Contracts (2:33)

#### Permissibility negates:

#### [1] Semantics – Ought is defined as expressing obligation[[1]](#footnote-1) which means absent a proactive obligation you vote neg since there’s a trichotomy between prohibition, obligation, and permissibility and proving one disproves the other two. Semantics outweighs – A. it’s key to predictability since we prep based on the wording of the res B. It’s constitutive to the rules of debate since the judge is obligated to vote on the resolutional text.

#### [2] Safety – It’s ethically safer to presume the squo since we know what the squo is but we can’t know whether the aff will be good or not if ethics are incoherent.

#### [3] Logic – Propositions require positive justification before being accepted, otherwise one would be forced to accept the validity of logically contradictory propositions regarding subjects one knows nothing about, i.e if one knew nothing about P one would have to presume that both the “P” and “~P” are true.

#### Moral internalism is true:

#### [1] Disagreement – Externalist theories fail to explain why some agents have the differing motivation for actions – internalism solves by showing how agents’ motivations are dictated by internal desires. Markovitz

[Markovits 14, Markovits, Julia. Moral reason. https://philpapers.org/rec/ROCJMM Oxford University Press, 2014.//Scopa] SHS ZS

Relatedly, internalism about reasons seems less presumptive than externalism. **We should not assume** that **some of us have** special **epistemic access to what matters**, **especially in the absence of any criterion for making such a judgment**. **It’s better to start from the assumption**, as internalism does, **that everyone’s ends are equally worthy of pursuit** – **and correct this assumption** only **by appealing to standards that are** as **uncontroversial** as possible. **According to externalism** about reasons, **what matters normatively** – that is, what we have reason to do or pursue or protect or respect or promote – **does not depend in** any fundamental way on **what** in fact **matters to us** – that is, what we do do and pursue and protect and respect and promote. **Some of us happen to be motivated by what actually matters**, **and some** of us **are “wrongly” motivated**. **But externalists** can **offer no explanation for this supposed difference** in how well we respond to reasons – **no explanation of why some of us have the right motivations and some of us the wrong ones** – **that doesn’t** itself **appeal to the views about what matters** that they’re trying to justify. (They can explain why some people have the right motivations by saying, e.g., that they’re good people, but that assumes the truth of the normative views that are at issue.22) **A comparison to the epistemic case** helps **bring out what is unsatisfactory** in the externalist position. **We sometimes attribute greater epistemic powers to some people than** to **others** **despite not being able to explain why they’re more likely to be right** in their beliefs about a certain topic. **Chicken-sexing is a popular example** of this among philosophers. **We think some people are more likely to form true beliefs about the sex of chickens than others even though we can’t explain why they are better at judging the sex of chickens.** But in the case of chicken-sexing, **we have independent means of determining the truth, and so we have independent verification that chicken-sexers usually get things right**. **Externalism seems to tell[s] us that some of us are better reasons- sensors than others**, but **without providing the independent means of determining** which of us are in fact more reliably motivated by genuine normative reasons (or even that some of us are).

#### [2] Regress – a priori knowledge is merely an acceptance of an individual’s conception of rationality. Macintyre 81.

[Macintyre 81, Alasdair Macintyre, https://undpress.nd.edu/9780268035044/after-virtue/ After Virtue, 1981] SHS ZS

The most influential account of moral reasoning that emerged in response to this critique of emotivism was one according to which an agent can only justify a particular judgment by referring to some universal rule from which it may be logically derived, and can only justify that rule in turn by deriving it from some more general rule or principle; but on this view [**S]ince every chain of reasoning must be finite**, such **a process of justificatory reasoning must always terminate with the assertion of some rule or principle for which no further reason can be given.** ‘Thus a complete justification of a decision would consist of a complete account of its effects together with a complete account of the principles which it observed, and the effect of observing those principles. **If** [I] **the enquirer still goes on ask ing** ‘But why should I live like that?’ then **there is no further answer to give** him, because we have already, ex hypothesi, [we have already] said everything that could be included in the further answer.’ (Hare 1952, p. 69). **The terminus of justification is thus always**, on this view, a not further to be justified choice, **a choice unguided by criteria.** **Each individual implicitly or explicitly has to adopt his or her own first principles on the basis of such a choice.** The utterance of any universal principle is in the end an expression of the preferences of an individual will and for that will its principles have and can have only such authority as it chooses to confer upon them by adopting them.

#### [3] Empirically proven – the competition between competing externalists modes of ethics has been going for centuries. Leiter

[Leiter, Brian. “Moral Psychology with Nietzsche.” Oxford University Press. Published 2019] SHS ZS

With respect to very particularized moral disagreements — e.g., about questions of economic or social policy — which often trade on obvious factual ignorance or disagreement about complicated empirical questions, this seems a plausible retort. But **for over two hundred years**, **Kantians and utilitarians have** [developed] **been developing** increasingly systematic **versions of their respective positions**. The Aristotelian tradition in moral philosophy has an even longer history. **Utilitarians** [They] **have become** particularly **adept at explaining how they can accommodate** [**others**] Kantian and Aristotelian intuitions about particular cases and issues, **though** in ways that are usually found to be systematically unpersuasive to the competing traditions and which, in any case, **do nothing to dissolve the disagreement** about the underlying moral criteria and categories. Philosophers in each tradition increasingly talk only to each other, without even trying to convince those in the other traditions. And **while there may well be ‘progress’ within traditions** — e.g., most utilitarians regard Mill as an improvement on Bentham—**there does not appear to be any progress** [towards] **in moral theory**, in the sense of a consensus that particular fundamental theories of right action and the good life are deemed better than their predecessors. What we find now are simply the competing traditions — Kantian, Humean, Millian, Aristotelian, Thomist, perhaps now even Nietzschean — who often view their competitors as unintelligible or morally obtuse, but don’t have any actual arguments against the foundational principles of their competitors. **There is**, in short, **no sign** — I can think of none — **that we are heading towards any epistemic rapprochement** between these competing moral traditions. Are we really to believe that hyper-rational and reflective moral philosophers, whose lives, in most cases, are devoted to systematic reflection on philosophical questions, many of whom (historically) were independently wealthy (or indifferent to material success) and so immune to crass considerations of livelihood and material self-interest, and most of whom, in the modern era, spend professional careers refining their positions, and have been doing so as a professional class in university settings for well over a century — are we really supposed to believe that they have reached no substantial agreement on any foundational moral principle because of ignorance, irrationality, or partiality

#### [4] Motivation – A. Externalist ethics collapse to internalism because agents will only follow external demands if they are consistent with their internal account of the good. For instance, citizens only follow the law insofar as its consistent with their internal beliefs, even when external value structures are being placed upon them. B. Empirics – there is no factual account of the good since each agent has unique motivation and there is no way to combine these beliefs into a unified ethic.

#### Next, agents justify their actions based on individual moral preferences and deal with ethical dilemmas by prioritizing their own beliefs. Gauthier.

[David Gauthier, Canadian-American philosopher best known for his neo-Hobbesian social contract theory of morality, Why Contractarianism?, 1998, ///AHS PB] SHS ZS

Fortunately, I do not have to defend normative foundationalism. One problem with accepting moral justification as part of our ongoing practice is that, as I have suggested, **we no longer accept the world view on which it depends**. But perhaps a more immediately pressing problem is that we have, ready to hand, an alternative mode for justifying our choices and actions. In its more austere and, in my view, more defensible form, this is to show that **choices and actions maximize** **the agent ’s expected utility**, **where utility is a measure of considered preference.** In its less austere version, this is to show that **choices and actions satisfy, not a subjectively defined requirement such as utility, but meet the agent ’ s objective interests.** Since I do not believe that we have objective interests, I shall ignore this latter. But it will not matter. For the idea is clear; **we have a mode of justification that does not require the introduction of moral considerations.** 11 Let me call this alternative nonmoral mode of justification, neutrally, **deliberative justification**. Now moral and deliberative justification are directed at the same objects – **our choices and actions. What if they conflict?** And what do we say to the person who offers a deliberative justification of his choices and actions and refuses to offer any other? We can say, of course, that his behavior lacks moral justification, but this seems to lack any hold, unless he chooses to enter the moral framework. And such entry, he may insist, lacks any deliberative justification, at least for him. **If morality perishes, the justificatory enterprise**, in relation to choice and action, **does not perish with it**. Rather, one mode of justification perishes, a mode that, it may seem, now hangs unsupported. But not only unsupported, for it is difficult to deny that **deliberative justification** is more clearly basic, that it **cannot be avoided insofar as we are rational agents**, so that if moral justification conflicts with it, morality seems not only unsupported but opposed by what is rationally more fundamental. **Deliberative justification relates to our deep sense of self**. What distinguishes human beings from other animals, and **provides the basis for rationality**, is the capacity **for semantic representation**. You can, as your dog on the whole cannot, represent a state of affairs to yourself, and consider in particular whether or not it is the case, and whether or not you would want it to be the case. **You can represent to yourself the contents of your beliefs, and your desires or preferences**. But in representing them, you bring them into relation with one another. You represent to yourself that the Blue Jays will win the World Series, and that a National League team will win the World Series, and that the Blue Jays are not a National League team. And in recognizing a conflict among those beliefs, you find  rationality thrust upon you. Note that the first two beliefs could be replaced by preferences, with the same effect. Since in representing our preferences we become aware of conflict among them, the step from representation to choice becomes complicated. **We must, somehow, bring our conflicting desires and preferences into some sort of coherence. And there is only one plausible candidate for a principle of coherence – a maximizing principle**. We order our preferences, in relation to decision and action, so that we may choose in a way that maximizes our expectation of preference fulfillment. **And in so doing, we show ourselves to be rational agents, engaged in deliberation and deliberative justification**. There is simply nothing else for practical rationality to be. The foundational crisis of morality thus cannot be avoided by pointing to the existence of a practice of justification within the moral framework, and denying that any extramoral foundation is relevant. For an extramoral mode of justification is already present, existing not side by side with moral justification, but in a manner tied to the way in which we unify our beliefs and preferences and so acquire our deep sense of self. **We need not suppose that this deliberative justification is itself to be understood foundationally. All that we need suppose is that moral justification does not plausibly survive conflict with it.**

#### Thus, the standard is consistency with contractarianism. Agents must engage in the project of mutual self-restraint as to not impede upon the moral authority of others. Stanford.

[Stanford Encyclopedia of Philosophy. “Contractarianism.” <https://plato.stanford.edu/entries/contractarianism/> Published 18 June 2000] SHS ZS

A brief sketch of the most complete and influential contemporary contractarian theory, David Gauthier’s, is in order. **Gauthier’s project** in Morals By Agreement **is to employ a contractarian approach to grounding morality in rationality** in order **to defeat the moral skeptic.** (However, Anita Superson (2009) points out that Gauthier attempts to answer only the skeptic who asks “why should I be moral?” but leaves both the motive skeptic, who argues that it is enough to act morally but need not be motivated by morality, and the amoralist, who denies that there is any such thing as morality, that is, that there are true moral statements.) **It is** generally **assumed that humans can have no perfect natural harmony of interests** (otherwise morality would be largely superfluous), and that there is much for each individual to gain through cooperation. However, **moral constraint on the pursuit of individual self-interest is required because cooperative activities almost inevitably lead to a prisoner’s dilemma**: a situation in which the best individual outcomes can be had by those who cheat on the agreement while the others keep their part of the bargain. This leads to the socially and individually sub-optimal outcome wherein each can expect to be cheated by the other. But by disposing themselves to act according to the requirements of morality whenever others are also so disposed, they can gain each others’ trust and cooperate successfully. **The contractarian element of the theory comes in the derivation of the moral norms. The compliance problem—the problem of justifying rational compliance with the norms that have been accepted—must drive the justification of the initial situation and the conduct of the contracting situation**. **It is helpful to think of the contract situation as a bargain, in which each party is trying to negotiate the moral rules that will allow them to realize optimal utility**, and this has led philosophers to apply a number of bargaining solutions to the initial contract situation. Gauthier’s solution is the “minimax relative concession” (1986, ch. V). **The idea of minimax relative concession is that each bargainer will be most concerned with the concessions that she makes from her ideal outcome relative to the concessions that others make**. If she sees her concessions as reasonable relative to the others, considering that she wants to ensure as much for herself as she can while securing agreement (and thereby avoiding the zero-point: no share of the cooperative surplus) and subsequent compliance from the others, then she will agree to it. What would then be the reasonable outcome**? The reasonable outcome, according to this view, is the outcome that minimizes the maximum relative concessions of each party to the bargain** (Gauthier 1986, ch. V). Equally important to the solution as the procedure is the starting point from which the parties begin. For some contractarians (like Gauthier) there is no veil of ignorance—each party to the contract is fully informed of their personal attributes and holdings. However, without the veil of ignorance, contractors will be aware of the differences in bargaining power that could potentially affect the outcome of the bargain. **It is important, then, that the initial position must have been arrived at non-coercively if compliance to the agreement is to be secured.** A form of the “Lockean proviso” (modeled after Locke’s description of the initial situation of his social contract): that one cannot have bettered himself by worsening others, may turn out to be beneficial in cases without a veil of ignorance. In sum, **the moral norms that rational contractors will adopt** (and comply with) **are those norms that would be reached by the contractors beginning from a position each has attained through her own actions which have not worsened anyone else,** and adopting as their principle for agreement the rule of minimax relative concession (Gauthier 1986, ch. VII). On one line of thought, contractarianism produces liberal individuals who seem well suited to join the kind of society that Rawls envisioned (Gauthier 1986, ch. XI). On another line, the Hobbesian contractarian argument leads towards the sparse government of libertarianism (Narveson 1988). The controversy here turns on the primary motivation for individuals to make agreements and cooperate. As we said before, there are two such motivations for the Hobbesian contractarian: fear of the depredations of others and benefits from cooperation with others. Libertarianism results when the first of these is primary, whereas when the second is primary, the kind of reciprocity and supportive government that will be discussed in the final section becomes possible.

#### Prefer additionally:

#### [1] Actor specificity – states are not moral entities but derive authority from the contracts that allows them to constrain action. This outweighs on empiricism; states aren’t bound by moral obligations, but they are by their contracts to other entities.

#### [2] Collapses – Contracts takes into account all other ethical theories and allows agents to engage under the index of their own good so long as they don’t violate the constraints of their other. The NC functions as a meta constraint – meaning indicts don’t take it out but they rather prove the truth of a theory under a particular index.

#### [3] Culpability – Only contracts ensure agents are held to their agreements since there is a verifiable basis for judging their actions as wrong as well as a pre-established punishment for breaking it.

#### Negate:

#### [1] LAWs are an intrinsic good as they cannot deviate from their agreed upon programming, which means they are always consistent with their contracts from the programming and international law. Khurana 18, Ryan. Founder and Executive Director of the Institute for Advancing Prosperity, In Defense Of Autonomous Weapons, October 14, 2018, <https://nationalinterest.org/feature/defense-autonomous-weapons-33201//BA> PB

LAWS are artificially intelligent military technologies that are able to execute a decision to kill a combatant without human input. These weapons systems do not exist as of yet, though artificial intelligence and advanced robotics technologies have already proliferated on the battlefield. The most aggressive push in the use of unmanned technologies in warfare has been by the Russian military, which has been using minesweeping drones—such as the [Uran-6](https://sputniknews.com/russia/201601171033284874-russia-robots-systems-demining/) in Syria—to limit casualties since 2016. Earlier this year it was confirmed that the Russians had deployed a fully unmanned ground vehicle, the [Uran-9](https://taskandpurpose.com/russia-uran-9-robot-tank-syria/), into the conflict zone, equipped with anti-tank missiles, an automatic cannon, and a machine gun turret. While the unmanned vehicle is remote controlled and therefore does not have lethal autonomous capabilities, Russian arms manufacturer Kalashnikov announced their intent to release **“**[**autonomous combat drones**](https://www.defenseone.com/ideas/2018/04/russia-races-forward-ai-development/147178/)**” that can make lethal decisions without human input**. As these technologies continue to develop, a commitment by nations more willing to enforce ethical standards in war to not develop LAWS is an abdication of responsibility because it allows more aggressive nations to set the standards of their development and deployment. Artificial intelligence researchers in western liberal democracies have an obligation to aid in the development of lethal autonomous weapons as a means to ensure that they are tools that are designed well. **AI, in its current form, is fundamentally an** [**optimization technology**](https://towardsdatascience.com/artificial-intelligence-is-for-optimization-human-intelligence-is-for-innovation-f0bddce2ed79)**, meaning that the protocols it internalizes and the goals set for it reflect the values of its operation**. If those who are committed to higher ethical standards decide not to contribute to the development of LAWS in a way that reflects their values, the technology will be developed anyway but by less scrupulous members of the research community. Therefore, **it is vital to emphasize the means by which LAWS can be used to make warfare more humane**, and focus on regulating its use rather than calling for a blanket ban. In designing autonomous weapons to reflect humane considerations, nobody has contributed more than roboticist Ronald Arkin. Arkin has been working with the U.S. Department of Defense since 2006 to develop ethically-guided military robotics and has [written widely](https://www.cc.gatech.edu/ai/robot-lab/online-publications/aisbq-137.pdf) on the means by which **they could** [**improve battlefield conduct**](https://www.cc.gatech.edu/ai/robot-lab/online-publications/308_V5812_VP_PCPREVArkinREV.pdf). Much of his argument relies on the simple fact that **humans are not good rule followers, while robots are. In combat, humans tend to make many mistakes, be motivated by anxiety or anger, and as a result of the strong bonds between military personnel, tend to cover for each other in the case of illegal activity. LAWS suffer from none of these issues**. Those who critique the possibility of ethical robots in war tend to focus on technology’s lack of empathy that allows for immoral conduct, but neglect the ways **human emotion amplifies, rather than minimizes, error in conflict**. Advances in artificial intelligence have improved [object detection](https://aiindex.org/) and [navigation](https://www.fastcompany.com/40572522/googles-ai-is-learning-to-navigate-like-humans), allowing for lethal autonomous weapons to limit collateral damage. For example, **they can be programmed to** ensure that there are no women or children in an area before carrying out an operation, and will **cancel their course of action if civilian casualties are likely. LAWS can better internalize the rules of war, and they can be placed alongside human combatants to limit ethical abuses or more accurately report them.** Restricting the autonomy of advanced weapons systems would allow them to be subject more to the unethical conduct of individuals, rather than the ideal behavior a robotic agent can be developed to reflect.

[2] States would not consent to a ban on autonomous weapons since they are consistent with their rational self-interest. **Gayle 19**

But the UK is among a group of **states** – including Australia, Israel, Russia and the US – **speak**ing forcefully **against legal regulation**. As discussions operate on a consensus basis, their objections are preventing any progress on regulation.  The talks come as the UK military is ploughing tens **of** millions of pounds into **autonomous weapons**, most recently announcing on Thursday a £2.5m project for “drone swarms” controlled with the help of next-generation autonomy, machine learning, and AI.  The talks in Geneva are taking place under the convention on certain conventional weapons. First enacted in 1983, the convention is intended to restrict the use of weapons “that are considered to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately”. It already covers landmines, booby traps, incendiary weapons, blinding laser weapons and clearance of explosive remnants of war.  “We urgently need a ban on killer robots,” said Ben Donaldson, head of campaigns at the United Nations Association – UK. “The majority of states get it. A rapidly growing proportion of the tech community get it. Civil society gets it. But a handful of countries including the UK are blocking progress at the UN. The UK needs to listen to this growing coalition and join calls for a preemptive ban.”  Responding to the criticism, a Ministry of Defence spokesperson said: “The United Kingdom does not possess fully autonomous weapon systems and has no intention of developing them. We believe **a preemptive ban is premature** as there is still no international agreement on the characteristics of lethal autonomous weapons systems.”  The issue of human control is at the heart of discussions about killer robots, according to the British military, and its negotiators have sought to focus debates at the UN on building consensus on what that means. Britain’s negotiating team says that no UK offensive weapons systems will be capable of attacking targets without human control and input.  They are arguing against **a** preemptive **ban** on the basis that it **could jeopardise their ability to exploit** any potential **military advantages** they could gain by imbuing weapons **with AI.**

Gayle, Damien. “UK, US and Russia among Those Opposing Killer Robot Ban.” *The Guardian*, Guardian News and Media, 29 Mar. 2019, [www.theguardian.com/science/2019/mar/29/uk-us-russia-opposing-killer-robot-ban-un-ai](http://www.theguardian.com/science/2019/mar/29/uk-us-russia-opposing-killer-robot-ban-un-ai). //CF

#### [3] Moral obligations of states towards other states or citizens cannot exist because international politics is the state of war. Singh, [N. N. Singh (Faculty of Law, National University of Singapore). “THE ABSENCE OF A SOVEREIGN LEGISLATURE AND ITS CONSEQUENCES FOR INTERNATIONAL LAW.” December 1970.] MKThere being no international legislature for international society some writers have refused to concede the nature of true laws to the rules of international law.1 The 'Austinian' objection that law cannot emanate from a non-sovereign body clearly illustrates this view.2 John Austin had defined international law as a system consisting of rules of 'positive morality'.3 In his opinion : If the same system of international law were adopted and fairly enforced by every nation, the system would answer the end of law, but, for want of a common superior, could not be called so with propriety. If courts common to all nations administered a common system of international law, this system, though eminently effective would still, for the same reason, be a moral system.4 Similarly W.E. Heavn had declared that 'Law cannot be predicated of mere customs which are not even true commands much less the commands of any competent State'.5 Following John Austin's thesis, Holland had called international law a 'law by courtesy' or 'law by analogy'.6 These jurists and their followers clearly refused to accept anything except the acts of a sovereign legislature body or the commands of a sovereign as true laws.7 They had, thus, not only set up a very narrow definition of law, but thereby also expressed reluctance to recognise the historical evolution, or the changing character, of human institutions. Further, such an attitude had not only obscured the organic relationship of law to society8 but also the vital part which custom, as opposed to legislation, has always played in the legal systems of national states.9 However, the Austinian concept of law so far as it inde with commands of a sovereign seems to have been complet by modern writers; even from among the few modern writers who have denied the character of 'law' to international not one seems to have subscribed to it, Thus, the denial of the legal character of the rules of international law simply on the ground that they do not represent 'commands' of a sovereign or because there is no sovereign international legislature in existence is clearly a thing of the past. The few modern writers who have denied the legal character of the rules of international law10 have done so mainly by taking refuge in the smug opinion that the rules of international law, even though substantially observed, are not 'legal' because they cannot be effectively enforced against States if the States themselves do not submit to them. This, it must be submitted, brings us to a completely different problem, i.e., the problem concerning the 'enforcement' of the rules of interna tional law11 which is quite different from the question of its 'legal character '. The legal validity of a rule, based on the conviction that it is binding, is quite distinct from its enforceability: law is not law because it is enforced, on the contra 2. The question of the 'source' of obligation in international law Doubts about the character of international law as true law can, however, only be dispelled by showing that obligations upon States exist in international relations which are very similar to the normative obligations that exist in any system of law. To show this, however, involves an examination of the source of such obligations, for it is not possible, given the absence of an international parliament, to rely on the formal source of a sovereign legislative body. It is to an examination of the theories of the source of obligation in international law that we must, therefore, now turn. But as the term 'source' has been used by different writers implying different meanings it is perhaps necessary to indicate here the meaning attributed to this term; it has been used in the sense of 'originating Cause' and not in that of 'evidence'. Also no attempt has been made to distinguish sharply between the terms 'cause' and 'basis'. The question of the rise of obligations is certainly not the same as the question concerning the validity or the binding character of obligations after they hâve been established. It is only in connection with the latter question that we can use the term 'basis of obligation' and to that extent we can distinguish between 'basis' and the 'originating cause or causes'. But this must not lead us to believe that there is no correlation between the two. On the other hand, there is a vital connection between the originating causes, which explain the rise of obligations, and the basis of those obligations, in the sense that che 'originating causes' to a very large extent also provide the very basi for the continuing validity, application and the binding character of the obligations which they are instrumental in creating. Much depends also on how we formulate our question. The question that needs to be answered is in Ehrlich's words: 'Whence comes the rule of law, and who [in essence what] breathes life and efficacy into it (a) The 'will' of the State — the Continental approach A strong reaction against the Austinian concept of law was inevitable. On the Continent, Bergbohm had been one of the earliest writers io suggest that the absence of an international legislature should only lead us to the conclusion that a particular source of law does not exist within the society of States and, further, that it should not lead us to deny the 'legal character' of the rules of international law.13 To Bergbohm, the expression of State will, as evidenced in interna agreements, constituted a proper source of law.14 Similarly Jellinek traced the source of obligation in international law to the will of the State. First, he pointed out that States are not above law and can be bound by their own will — through a process of auto-limitation.15 Secondly, he emphasized that the international and the municipal systems of law are different systems having different objectives, that is, whereas the the municipal system of law envisages the 'subordination' of the members of a community, the international society is run on the principle of 'co-ordination'. Thus, international law was according to him a law between co-ordinate entities and different from the law of the States which emphasized the element of command. However, by asserting that the States are legally free to disengage themselves from any such obligation which runs counter to their interests,16 he called into question the very 'legal' character of international obligations.17 The difficulty with Jellinek was that he could not deny the States, especially within the framework of his theory of 'auto-limitation', the right to disengage themselves from those obligations which they had themselves created. The answer to this difficulty was provided by Triepel's Vereinbarung stheome.18 Triepel pointed out that although the will of the State is a necessary element, the will of any single State alone is not sufficient for the creation of international obligatio that purpose he envisaged that a fusion of several wills leading to the creation of a 'common will' is necessary. He called this 'common will', as expressed in treaties and agreements, by the name of Vereinbarung. By making the Vereinbarung the source of international obligations Triepel had also succeeded in creating 'a legal power over States' : only Vereinbarung could undo what it had created. But one of the serious charges levelled against Triepel's theory is that it does not explain the existence of customary or general international law and reduces the rules of international law to a conglomeration of particular law.19 Cavaglieri, Anzilotti and Strupp attempted to answer this question — raised by the criticism of Triepel's theory — by asserting that those States which do not participate in the formulation of a particular law later on become bound by it through certain processes.20 Claiming that rules of international law are expressions of the will of the State as evidenced in agreements, these writers also attempted to establish a basis for the binding force of international agreements in the rule of pacta sunt servanda, which in Cavaglieri's opinion is a rule of customary international law whereas Anzilotti describes it as an original hypothesis and a postulate incapable of proof.21 But, despite these variations in the approach of writers to explain the genesis of the rule or the fact that recourse to the principle of pacta sunt servanda leads them to a tautology (international agreements are binding because they are binding)22, such doctrinal assertions at least indicated a movement towards interpreting law on a much more practical basis than hitherto employed.23

1. <https://www.merriam-webster.com/dictionary/ought> [↑](#footnote-ref-1)