

Central European University  
Department of Political Science

## **Institutions in Global Distributive Justice**

András Miklós

A Dissertation submitted to the Central European University in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

Supervisor: Professor János Kis

Budapest, August 2006

## Acknowledgements

My work on this thesis was helped by several people and several organizations. In the first place, I would like to thank my supervisor, János Kis, who provided constant inspiration and patient support for my work during my doctoral studies. He set a standard of academic rigour which I have always tried, however imperfectly, to emulate. It would be impossible to note all the points where this thesis benefited from the ideas, comments and critical remarks with which he supplied me generously.

I am grateful to Thomas Pogge, who supervised my research at the University of Oxford. Not only did he give valuable comments on several chapters, but he also set me in a stimulating academic environment where I could participate in very rewarding discussions and seminars with students and professors working on issues related to global justice. His comments and critical remarks helped me enormously in clarifying my ideas at several points of the thesis.

I would also like to thank several others who provided me with valuable comments, criticisms, and questions about earlier drafts. I thank Attila Tanyi, Greg Bognár, Robert Huseby, Cornelius Cappelen, Dag Einar Thorsen, Miriam Ronzoni, Tiziana Torresi, and David Alvarez Garcia, as commentators and members of various stimulating political philosophy discussion groups in Budapest, Oslo, and Oxford, for helping me with valuable suggestions on several chapters. I am also grateful to Andrew Williams, Hugh LaFollette, and Gillian Brock for providing written comments on papers that evolved into chapters in this thesis.

I am grateful to several organizations for their financial support making this thesis possible. I would like to thank the Central European University for providing me with a stimulating academic environment and supporting me financially during my graduate studies. I also thank the Department of Political Science for Joint Student-Faculty Research Grants; the Foreign and Commonwealth Office (UK) for a Chevening Fellowship at Merton College, University of Oxford in 2002-03; the Research Council of Norway for a generous fellowship I held at the Ethics Programme and the Department of Philosophy, University of Oslo in 2004-5. Bibliographical research was also undertaken at the European University Institute, Florence, with support from the European Union Social Science Research Information Facility.

## Table of contents

Chapter 1. Introduction.....	3
1. Some facts of global poverty and inequality .....	3
2. Universal moral duties and particularistic distributive requirements.....	5
3. An outline of the thesis.....	7
Chapter 2. Nationalist criticisms of cosmopolitan justice .....	13
1. Individualist moral universalism .....	14
2. Relativism about justice .....	15
2.1. The argument from relativism.....	15
2.2. Questioning the extent and permanence of global distributive pluralism .....	19
2.3. Increasing reliance on international principles of distributive justice.....	20
2.4. The role of goods in distributive justice .....	21
3. Priority to compatriots: the nationalist position .....	26
3.1. Instrumental justification.....	27
3.2. Intrinsic justifications .....	30
3.3. The impersonal value of national self-determination.....	32
3.4. Objections to the impersonal interpretation .....	34
3.5. National self-determination as an individual good.....	38
4. Summary and conclusion .....	44
Chapter 3. Associative political obligation and egalitarian justice .....	45
1. Dworkin's argument from legitimacy .....	46
1.1. Legitimacy and integrity in Dworkin .....	46
1.2. Associative duties and equal concern.....	49
1.3. Individual and collective responsibilities .....	49
1.4. The role of distributive equality .....	55
1.5. Distributive equality and international distributive requirements .....	58
2. Shortcomings of the communal approach .....	59
2.1. The lack of self-determination.....	59
2.2. Failure to justify political obligation .....	60
2.3. The relationship between equality and legitimacy .....	62
2.4. Impartiality and partiality in private morality .....	63
2.5. The cosmopolitan objection introduced .....	65
3. Nagel's political conception of justice .....	68
3.1. Main ideas .....	68
3.2. Implications for international distributive inequalities.....	71
4. Objections to the political conception of justice .....	73
4.1. The case of undemocratic states .....	73
4.2. Insufficient justification of additional burdens.....	75
4.3. The cosmopolitan objection revisited.....	77
5. Summary and conclusion .....	83
Chapter 4. The subject of Rawlsian justice and the Law of Peoples.....	85
1. Rawls's domestic theory of justice.....	85
1.1. The subject of justice in Rawls.....	85
1.2. The special significance of the basic structure .....	87

2. Rawls's Law of Peoples .....	90
2.1. From the Law of Nations to the Law of Peoples.....	90
2.2. International distributive requirements.....	96
2.3. Domestic causes of the wealth of nations.....	100
2.4. National responsibility and the unfairness of international redistribution .....	103
2.5. States' responsibility for maintaining resources.....	108
2.6. Derivative reasons for equality.....	112
2.6.1. The reduction of deprivation .....	113
2.6.2. The avoidance of stigmatization.....	114
2.6.3. Securing procedural fairness .....	116
3. Summary and conclusion .....	122
Chapter 5. Rawlsian justice globalized .....	123
1. The global extension of Rawlsian theory .....	123
1.1. Basic structure as the subject of Rawlsian justice.....	123
1.2. Extension to the global domain .....	126
1.3. The rationale behind the global extension of Rawlsian justice .....	128
2. Arguments against the global extension.....	133
2.1. Insufficient international cooperation.....	134
2.2. Digression: the significance of the state system.....	136
2.3. Barry's argument .....	139
2.4. Lack of political institutions .....	143
3. Summary and conclusion .....	149
Chapter 6. Egalitarian cosmopolitanism and territorial institutions.....	150
1. Cosmopolitan justice .....	151
1.1. Cosmopolitanism in first approximation.....	151
1.2. Individualist moral universalism .....	153
1.3. The problem of justice.....	154
1.4. Egalitarian cosmopolitanism .....	157
2. The role of institutions .....	162
2.1. The role of market institutions in egalitarian cosmopolitanism .....	162
2.2. The territoriality of political rule.....	165
2.3. The place of territorial political institutions in cosmopolitan justice .....	172
3. Summary and conclusion .....	177
Chapter 7. The role of institutions in cosmopolitan justice.....	179
1. Two variants of cosmopolitan theory .....	180
2. Non-institutional egalitarianism .....	183
3. The more effective discharge of pre-existing individual duties .....	185
4. Institutions as channels of collective harm.....	187
5. Institutions making a difference .....	195
6. The case of egalitarian justice .....	198
7. Conclusion.....	202
Conclusion.....	205
Bibliography .....	208

# Chapter 1

## Introduction

Global distributive justice has attracted growing attention in the philosophical literature in the last three decades.<sup>1</sup> The heightened attention is fully justified, given the extreme level of global poverty, and the unprecedented inequalities between people living in the most affluent and in the poorest countries. The urgency of these issues makes the problem of global justice a topic with immediate practical relevance, one that needs to be addressed with a special emphasis by political theorists. Facts of global poverty and inequality compel us to ask what the responsibilities of wealthier societies are in light of these. Do they have any duty of justice to contribute to eradicating global poverty and inequality? If they do, what are its grounds? Questions like these prompted me to investigate problems of global justice in this thesis. I sought to examine and answer these questions by trying to see whether there are obligations of distributive justice that apply at the global level.

In preliminary, in order to get a sense of the practical importance of the topic, let us see some figures about global poverty and inequality.

### 1. Some facts of global poverty and inequality

The number of people living below the \$2 per day international poverty line specified by the World Bank has increased from 2.4 billion in 1987 to 2.7 billion in 2001.<sup>2</sup> Taken a somewhat less generous, \$1 a day poverty line, about 1.2 billion, that is one fifth of the total

---

<sup>1</sup> Among the numerous philosophers writing on the topic, those setting the scene included Peter Singer, Onora O'Neill, Thomas Nagel, Charles Beitz, Thomas Pogge, and Henry Shue, to name only a few. See Singer (1972), O'Neill (1974), Nagel (1977), Beitz (1979), Pogge (1989), and Shue (1996).

<sup>2</sup> Chen and Ravallion (2004: 153), quoted in Pogge (2005b: 57).

global population subsist with less than this amount, i.e. “that income or expenditure level below which a minimum, nutritionally adequate diet plus essential non-food requirements are not affordable.”<sup>3</sup> This poverty has severe consequences. Worldwide, the number of chronically undernourished people is around 800 million.<sup>4</sup> Poverty-related causes, such as hunger and preventable diseases, result in around 18 million deaths a year, accounting for roughly one third of all human deaths.<sup>5</sup> More than 10 million children die each year due to these causes. Such early childhood death is the fate of 19 per cent of all human beings born into our world.<sup>6</sup>

Not only these figures of absolute deprivation are striking, but also the extent of global inequalities among the least developed and wealthier countries. The poorest 44 per cent of the world’s population, those living below the \$2 a day international poverty line, consume only 1.3 per cent of the global product, whereas the high-income countries, with 15 per cent of the global population, consume about 81 per cent of it.<sup>7</sup> To make the comparison more vivid, the wealthiest 15 per cent of the world’s population consumes 62 times the share consumed by the poorest 44 per cent.<sup>8</sup> The most striking inequality concerns the prospects faced by children under the age of 5 in the poorest and the wealthiest countries. If born in one of the least developed countries, one has 25 times higher probability to die before reaching the age of 5 than someone born in one of the developed countries.<sup>9</sup> Moreover, according to some estimates, not only are the absolute numbers of the poor growing worldwide, global trends indicate a growth of inequality among wealthier and poorer parts of the world. These estimates show that the income gap between the poorest 20

---

<sup>3</sup> UNDP (1996: 222), quoted in Pogge (2001a: 7)

<sup>4</sup> UNDP (2004) quoted in Pogge (2005b: 57)

<sup>5</sup> WHO (2004), quoted in Pogge (2005a: 1)

<sup>6</sup> UNICEF (2005), quoted in Pogge (2005b: 57)

<sup>7</sup> World Bank (2003: 235), quoted in Pogge (2005a: 1)

<sup>8</sup> The figures are adjusted so as to reflect purchasing power in the domestic product. If compared at market rates, the differences would be even greater, amounting to a ratio of 180 between high-income and low-income countries.

<sup>9</sup> UNICEF (2006)

per cent and the richest 20 per cent of the population rose from 1 to 30 in 1960 to 1 to 74 in 1997.<sup>10</sup>

## 2. Universal moral duties and particularistic distributive requirements

When we are compelled to face these extreme levels of poverty and inequality, we have an intuition that better off people have some obligations to help people who are much worse-off, whether or not they are citizens of the same country. Commonsense moral thought recognizes certain sorts of responsibilities that we have toward each of our fellow human beings. It is rarely contested that we have to avoid harming others, or to provide limited forms of assistance in certain contexts. These responsibilities rest on the conviction, which seems natural for most people living in liberal democracies, that all humans have certain rights, and that all human lives are of equal worth. On the other hand, commonsense moral thought also holds that we have special responsibilities to people with whom we stand in significant forms of special relation. We may have special obligations to friends, or members of our family, which we think we do not owe to people in general. Similarly, many people, including political theorists, take it for granted that the boundaries of their national political community carry moral weight, and that it is worse to leave a compatriot of ours in need than to do the same with someone from some other country.

The immense level of global poverty and vast global inequalities in individual life-prospects are not trivial matters, and raise questions about the existence of obligations of global distributive justice, about their extent, and about their theoretical grounds. However, the enterprise of looking for answers to them is rendered difficult by the fact that trying to rely on a more or less systematic account of rights and justice, such as that provided by

---

<sup>10</sup> Pogge (2002: 100), quoting the 1999 UNDP development report. This claim has been debated, however. See Singer (2002: 81-2) and Risse (2005a: 10).

liberalism, may be of little help. When we want to arrive at an answer to the question about the existence of requirements of global distributive justice, we first encounter a *prima facie* conflict between two characteristic features of contemporary liberal political thought. This conflict is between the equal moral worth it attributes to individuals, and the particularistic political duties it acknowledges. One central assumption underlying liberalism – that the well-being of everybody matters equally – might ultimately seem to require that principles of justice have uninhibited global application. On the other hand, many liberals accept the claim that we have particular duties to our fellow-citizens, which we may not have to others. One unwelcome result of this tension is that not only does the nation-state remain the basic unit of world politics, but it is also all too often an unquestioned assumption in many liberal theories of justice. When this assumption is made explicit, on the other hand, many supporters, and not only critics, of liberalism make the claim that nation-states represent the actual domain of distributive justice.

Thus, liberal political theory is ambiguous about the scope of, and the ground for, principles of justice, that is, among whom they apply, and what gives rise to them. Hence, in order to be able to discuss global distributive justice, and to see behind the tension between the universalistic and particularistic characteristics of contemporary liberal thought, the thesis focuses on a point that seems to be of central importance for overcoming this ambiguity. It is concerned with the role of common institutions and practices in the emergence and implementation of obligations of egalitarian justice. More specifically, it seeks to answer three questions. It asks, first, whether or not social, economic, or political institutions play a foundational role in giving rise to demands of distributive justice egalitarian liberals advocate, and, second, what follows from the answer to this question with regard to the existence of global requirements of justice. Finally, it investigates what role political institutions play in the implementation of these demands.



In the course of the argument, I defend a cosmopolitan conception of egalitarian justice, according to which institutions do not play a role in giving rise to some demands of egalitarian justice that we owe other humans in virtue of our common humanity and of our competing claims over scarce resources. Since I work within the framework of liberal egalitarianism, the findings of the thesis are necessarily limited. Nevertheless, I hope to achieve two important aims. First, even though the thesis is not meant as a full-fledged defence of egalitarian cosmopolitanism, it does present an intuitive case for it and argues that, if there are reasons to accept distributive egalitarianism in the domestic case, there are equally compelling reasons to accept it for the global domain. Second, I aim to cast some light on the important role institutions can play in the implementation of the requirements of cosmopolitan justice. I examine how individual duties relate to the principles of justice cosmopolitan egalitarians defend, and what difference institutions make to the duties of individuals. Doing so is important, since the recent philosophical literature about distributive justice focuses on institutions. Philosophers discuss what principles a scheme of political and economic institutions must satisfy in order to qualify as just. However, institutions are sustained and reformed by individuals. If political philosophy is to have any normative significance for individual conduct, it must tell us about the duties of individuals sustaining these institutions. To do this is the other aim I want to achieve concerning global justice in this thesis.

### 3. An outline of the thesis

Chapters 2 and 3 employ a negative argumentative strategy against theories that deny the existence of global requirements of justice. The argument takes off in Chapter 2, where I examine a group of positions that either answer the question about the existence of distributive requirements cutting across borders in the negative, or claim that even if there

are international distributive requirements, these are weaker and different in kind than requirements of domestic justice. These theories advocate the thesis that compatriots take priority, that is, they draw a stark contrast between principles of justice regulating domestic institutions and principles for regulating international affairs. Their proponents hold that the latter need not be equivalent to, not even continuous with, the former. They provide various kinds of arguments for the priority thesis with radically different theoretical backgrounds. In this chapter I distinguish between two kinds of arguments that have been offered in the literature for the priority thesis. One type of argument rests on a relativistic view of morality, whereas the other type does not. The first part considers and rejects Michael Walzer's argument against international justice resting on relativism about justice. The refutation points out, first, that Walzer's thesis is not true as an empirical matter, since on one hand it downplays the pervasiveness of intra-cultural disagreements about principles of justice and, on the other hand, it neglects the increasing reliance on norms of justice in international affairs. Second, Walzer's thesis is rejected as a normative position as well: Walzer's view about the relativity of social meanings of goods is biased towards certain conceptions of the good, and hence does not pay equal respect to the interests of individuals. The second part of the chapter considers non-relativistic arguments for national partiality. It distinguishes between arguments emphasizing the instrumental and intrinsic value of national attachments respectively, and argues that neither form is capable of justifying the nationalist thesis. Instrumental arguments would have to rely on implausible empirical premises or standard of value if they wanted to establish the priority thesis. Intrinsic arguments, on the other hand, either would have to invoke a view of the impersonal value of national self-determination that is unacceptable to liberals, or need to come up with a justification showing how the intrinsic goods produced by political communities are capable of overriding claims of justice by outsiders.

Having rejected positions that defend the priority thesis either by relying on a relativistic view of justice, or by pointing to the instrumental or intrinsic value of the special relations represented by political communities, in Chapter 3 I proceed with presenting and rejecting a position that is individualistic about value but which regards political communities as playing a constitutive role in the justification of the requirement of distributive equality. The chapter begins by introducing a theory, advocated by Ronald Dworkin and Thomas Nagel, according to which we, citizens of the wealthier countries, do not as a matter of justice owe the global poor a duty to eliminate global inequality as such, even though we might owe them some duties of assistance to eradicate their poverty. This position attributes to political institutions of states a foundational role in egalitarian justice, since it attempts to derive the requirement of distributive equality from the need to justify the use of coercive force by states against their subjects regardless of their consent, and subjects' obligation to obey political decisions. This argument for the restricted scope of egalitarian requirements is premised on an associative conception of political obligation and on a collective view of moral agency grounding the collective responsibility of members of the political community for the state's distributive decisions. Having presented in detail this theory, I argue that although this theory can account for some of our egalitarian intuitions and practices, it neither can successfully ground the political authority of the state, nor is it acceptable from the point of view of outsiders, hence it has to be rejected.

Having employed a negative argumentative strategy in Chapters 2 and 3, I start to make a transition towards a positive case for global justice in Chapter 4. I begin by outlining some central elements of the liberal theory of justice as set forth by John Rawls. In doing so, I focus on the problem of social justice as Rawls understands it, and the subject of justice in the Rawlsian theory, examining the reasons for selecting this subject. I then proceed by presenting Rawls's views about the nature and justification of the right principles for the

conduct of international affairs as developed in *The Law of Peoples*, focusing on some of his major objections to global requirements of distributive justice. The theory allows for some international distributive obligations in the form of a duty of assistance, but it argues against international requirements of distributive justice. On this view there is a division of moral labour between domestic and international societies: the well-being of individuals is primarily the responsibility of their domestic societies, while the international community is required to create and uphold conditions among which well-ordered domestic societies can operate. Having presented the theory and Rawls's arguments against the international application of distributive justice, I argue against Rawls's reasons for rejecting the demand for international distributive justice by pointing out their inconsistency with some basic elements of egalitarian liberalism Rawls defends in his earlier work.

Building upon the argument in Chapter 4, in Chapter 5 I continue to elaborate the Rawlsian theory by presenting the extension of the Rawlsian domestic theory of justice to the global domain as proposed by some liberals defending global principles of distributive justice. I argue that there exists a global basic structure relevantly similar to the domestic ones, and that the same reasons Rawls argues call for the application of distributive justice in the domestic case require the global application of principles of justice. Next, I outline some arguments made against the applicability of Rawlsian principles of justice in the global domain. These objections to global distributive justice are presented in the chapter as internal to Rawls's liberal theory of justice, in contrast with the objections considered in the previous chapter. In turn, I defend claims of global justice by pointing out that these objections do not warrant limiting the scope of justice to the domestic level, since some central elements in the Rawlsian domestic theory that call for the application of the principles of justice also exist in the global domain. From this I draw the temporary

conclusion that, assuming we accept the key premises of the Rawlsian theory of justice, Rawlsian principles of egalitarian justice apply globally.

In Chapter 6, I present a cosmopolitan revision of the Rawlsian theory. I begin the chapter by presenting the outlines of cosmopolitanism about justice in general, and egalitarian cosmopolitanism in particular. Questioning Rawls's premise that requirements of justice emerge only in institutionally governed schemes of cooperation, I argue that cosmopolitanism is committed to seeing the problem of justice as the problem of finding fair principles for distributing scarce resources among all humans, who have an equal *prima facie* claim to the earth's resources. Egalitarian cosmopolitanism demands that people's fates should depend on the choices they make, and should be insensitive to the social circumstances they are born into, or to their natural endowments. This commitment calls for global redistribution on the basis of justice. Next, I argue that though egalitarian cosmopolitanism does not regard institutions as having a foundational role in giving rise to the case for justice, institutions in general, and political institutions in particular, might be indispensable for the performance of some functions necessary for securing global justice. I introduce several considerations, which I further elaborate in Chapter 7, that might support this view of the role of institutions. I argue that territorially demarcated political institutions are capable of making the demands of justice determinate, resolving disagreement, and preventing resources on a territory from deteriorating by bearing responsibility for their preservation. However, the roles played by institutions in the implementation of principles of justice, important as they are, do not override considerations of global justice, thus their performance is constrained by them. Reasons of global justice may prescribe the replacement of the current system of nation-states by a feasible alternative global scheme of institutions that is more sensitive to the demands of global justice.

Finally, having defended in Chapter 6 a cosmopolitan conception of distributive justice that does not regard institutions as having a foundational role in giving rise to certain demands of egalitarian justice, in Chapter 7 I investigate what role institutions do play in this theory. In doing so, I focus on a distinction between two kinds of theories about the role of institutions in cosmopolitan justice. On one position, principles of egalitarian justice apply to institutional schemes only, and do not apply to the actions of individuals. The opposing view holds that principles of egalitarian justice apply also to the actions of individuals. I aim to clarify this debate with a view on cosmopolitan justice by examining whether institutions can make a non-instrumental difference to what people ought to do with regard to distributive justice. The starting point is the outlining of two positions concerning the significance of institutions in cosmopolitan justice. The first position argues that institutions enable a more effective discharging of individual preinstitutional duties, however both institutions and individual conduct are to be evaluated with the same fundamental principles. The second position aims to establish the special significance of institutions in global justice by regarding them as possible channels of collective harm. In contrast to these two strategies, I provide an argument for regarding institutions as making a non-instrumental difference to what people ought to do with regard to cosmopolitan justice. The argument purports to establish that some fundamental cosmopolitan principles of justice do not apply to individual conduct directly. It emphasizes the constitutive role of global institutions in distributive justice on the basis of the conditional character of moral duties and of the systematicity of institutional schemes. The thesis is justified by reference to institutions' capacity to solve coordination problems and conflicts raised by the fact of disagreement, and their capacity to determine a unique set of just distributive rules, given the essentially underdetermined character of the demands of justice.

## Chapter 2

### Nationalist criticisms of cosmopolitan justice

Recent debates about international justice raise several related questions. Are there any distributive requirements applying internationally? If there are, are these requirements grounded in justice, or in some other moral notion? What considerations, if any, give rise to principles of international justice? Are these international principles the same as those that are thought to apply domestically, or different? What are the subjects principles of international justice apply to?

In this chapter I examine a group of positions that either answer the question about the existence of distributive requirements cutting across borders in the negative, or claim that even if there are international distributive requirements, these are weaker and different in kind than the requirements of domestic justice. To adopt Henry Shue's phrase, these theories advocate the thesis that "compatriots take priority".<sup>11</sup> That is, they draw a stark contrast between principles of justice regulating domestic affairs and principles for regulating international affairs. Their proponents hold that principles for regulating international affairs need not be equivalent to, not even continuous with, those regulating domestic institutions. The priority thesis does not claim that the interests of foreigners should not be taken into account at all: its distinguishing feature is that it takes account of their interests in a different way from that in which it takes account of the interests of compatriots.<sup>12</sup> Its advocates provide various kinds of arguments for the thesis with radically different theoretical backgrounds. In this chapter I propose to distinguish between two kinds

---

<sup>11</sup> Shue (1996: 132)

<sup>12</sup> Beitz (1983: 593)

of arguments that have been offered in the literature for the priority thesis. One type of argument given by nationalists for the priority thesis rests on a relativistic view of morality, whereas the other type does not. Before I present the arguments, however, I briefly sketch the cosmopolitan outlook nationalists argue against.

## 1. Individualist moral universalism

Cosmopolitan liberalism rests on the premise that all humans are of equal worth and their lives and well-being are equally important from the point of view of justice. As we shall see in Chapter 6, this general outlook is thought by cosmopolitans to justify certain requirements on the design of institutions, on the actions of individuals, and on the distribution of resources, so as to give an equal consideration to the interests of all humans. I postpone detailed discussion of these theories until Chapter 6. In this chapter I briefly mention some of the characteristics of the general moral stance underlying them only to contrast it with some nationalist theories that argue against cosmopolitanism.

The ground for the cosmopolitan outlook is a general individualist moral universalism, which has the following defining features.<sup>13</sup> First, it is *individualistic*, in the sense that it holds that all moral requirements must ultimately be justified by reference to their effects on individual well-being, and the value of other things, e.g. institutions, community, culture, relationships, etc. is always derivative. Second, cosmopolitanism is *universalistic* in the sense that it demands that all moral requirements be derivable from fundamental principles that consider the well-being of all humans equally. Since all human lives are equally valuable, morality must prescribe an equal consideration of human interests, and, because of its individualistic outlook, it must not allow a division of

---

<sup>13</sup> This characterization follows the description made by Thomas Pogge in Pogge (2002: 169). I provide a more detailed description of cosmopolitanism in Chapter 6.



humankind into states or peoples to have a fundamental role in determining how one individual should treat the interests of another. Finally, the scope of morality is *general*: all moral requirements must be based on fundamental principles that hold for everyone, not only for some subset of individuals, such as compatriots, fellow-religionists etc.<sup>14</sup>

On the basis of this general moral stance, cosmopolitans hold the thesis that there are international principles of distributive justice that follow from our common humanity and are justified in a way that is continuous with the justification of domestic distributive principles. Consequently, international distributive principles cosmopolitans advocate roughly resemble domestic principles of justice we are familiar with from liberal theories of justice.

Arguments that have been offered by nationalists often proceed by attacking one or several of the three main features of this moral stance, i.e. individualism, universality, and generality, but this strategy is not necessary for nationalists: as we shall see there are instrumental attempts at justifying the nationalist thesis which are compatible with individualistic moral universalism. Before presenting such arguments, however, I consider an argument for the thesis that rests on a relativistic view of morality.

## 2. Relativism about justice

### 2.1. The argument from relativism

The first type of argument voiced by nationalists I present in this chapter rejects the universal scope of moral individualism that underlies cosmopolitan theories of justice. The scope of moral principles has been seen as limited by some communitarian theorists on the

---

<sup>14</sup> Pogge (2002: 169)

basis of a relativistic view of morality.<sup>15</sup> In this section I am going to focus on Michael Walzer's version of the argument, as he is specifically concerned with distributive justice. Focusing on principles of justice that are supposed to guide the distribution of various goods in societies, he argues that such principles are not intelligible in abstraction from existing political communities. Principles of justice valid for a given political community are defined by the shared understandings of the members of the community. A given set of principles of justice applies to a political community where members' shared understandings imply this set. As Walzer states this claim: "All distributions are just or unjust relative to the social meanings of the goods at stake", and he thinks these social meanings, as well as distributive principles they imply, are relative to particular cultures.<sup>16</sup>

Let us spell out the argument in somewhat more detail. First, distributive justice in Walzer's view is concerned with the distribution of social goods: *all* goods whose distribution needs to be guided by justice are social goods.<sup>17</sup> Next, the meaning as well as the value of goods justice is in the business of distributing are defined by the understandings of the communities whose goods they are. This is a result of the conjunction of two ideas Walzer holds. On one hand, he views goods as having no 'brute' natural meanings, and he understands the process of interpretation through which goods get their meaning as being a necessarily social process, not an individual one.<sup>18</sup> On the other hand, the meanings of goods in Walzer's view differ across societies.<sup>19</sup> Importantly, Walzer equates societies whose members share an understanding of goods with political communities: he thinks members of political communities share a language, historical consciousness, and culture to a sufficiently large extent to ensure that they make up distinct distributive communities. In

---

<sup>15</sup> Alasdair MacIntyre, Charles Taylor, and Michael Walzer are perhaps the most prominent representatives of this relativistic stance. See MacIntyre (1985), Taylor (1989), Walzer (1983).

<sup>16</sup> Walzer (1983: 9)

<sup>17</sup> Walzer (1983: 7)

<sup>18</sup> Walzer (1983: 7-8). For this formulation see Mulhall and Swift (1992: 132).

<sup>19</sup> Walzer (1983: 8)

addition, Walzer believes that the meaning of a good and its distributive criterion go together: there are no criteria for distributing social goods that are independent of the very meanings of the goods as they are understood in a society. The conclusion of this line of thought is that distributive criteria are inherently social as well. Since the place where the meanings as well as the distributive criteria of goods are defined is a cultural community, there is no way to find principles for international justice since there is no equivalent for an interpretive community at the international level. Consequently, there are no requirements of justice that apply across political communities.

It might be countered that even if at present goods with which justice is concerned, and the principles of justice that should guide their distribution, vary across cultures, we may come up with a list of abstract goods, such as Rawlsian primary goods, that are general enough to be applicable internationally for purposes of defining a just distribution. If this were the case, there could be consensus on principles of global justice which would govern the distribution of primary goods globally, which in turn would be translated into distributive arrangements concerning more specific goods by individual societies in accordance with their shared understandings of these goods. Walzer denies this possibility, however: he believes it is impossible to come up with a list of goods that, on the one hand make the same sense in all cultures and, on the other hand, are concrete enough to be able to serve as a standards for distribution. To recall, he thinks distributive principles are always relative to concrete goods with specific meanings, and the farther abstract goods are removed from these concrete ones the less determinate the standards guiding their distribution will be.

Having defined goods and distributive principles attached to them in terms of cultures, Walzer's theory goes on by presupposing an almost complete identity between cultural and political communities. It rests on a view of political communities where each or

at least most members agree on the meaning and value of goods, as well as the way they should be distributed. In effect, Walzer presupposes that members of political communities agree in their conceptions of the good. Presupposing this, and holding that there is no way to come up with distributive principles for global justice resting on a list of more abstract goods, Walzer's theory takes nation-states as the exclusive domain for distributive justice. The global institutional structure in its current form consists of a number of nation-states, and on this theory, there cannot be more basic principles that would prescribe a different set of institutions for the global level, i.e. other than a set of nation-states each of which takes responsibility for the well-being of its members.

Walzer's theory of justice can be criticized from a number of directions. For instance, it can be criticized in its general form as a version of cultural relativism about moral principles, using arguments that have been levelled against several communitarian authors such as Alasdair MacIntyre, Charles Taylor, or Michael Sandel, who hold in one form or another relativist views about morality. I do not discuss these general criticisms of moral relativism and will rather focus on criticizing Walzer's specific version of it since it may have greater initial plausibility, given its focus on differences between distributive principles across societies.

I understand Walzer's theory as having a more limited scope than the theories presented by other communitarians that confine rational discourse about all moral principles to cultural communities with shared understandings. Walzer's theory focuses on distributive justice, a field that is much more controversial than some other areas of morality, such as basic human rights. It has proved a lot easier for states to agree on the acceptance and interpretation of rights against torture, genocide, rights to freedom of speech, religion, or association, than to reach even minimal agreement on issues of distributive justice. This might be thought to create a *prima facie* case for Walzer's distributive pluralism. A strategy

defending Walzer's relativism about justice might then proceed by drawing a distinction between basic human rights about which there is a prospect for international agreement, and requirements of distributive justice that are inescapably limited to domestic societies.

Let us see if this more limited Walzerian thesis is defensible. I am now going to present three arguments against it which, in my opinion, are sufficient to undermine the thesis.

## **2.2. Questioning the extent and permanence of global distributive pluralism**

The first argument proceeds by questioning the extent and permanence of distributive pluralism on which Walzer builds his skeptical thesis about the possibility of reaching consensus concerning principles of global justice.<sup>20</sup> The argument is of empirical nature: it aims to show that the supposed contrast between a largely homogenous public opinion about matters of domestic distributive justice and a globe characterized by irresolvable disagreement about matters of global justice is false.

It is obvious that political communities are not homogenous in the moral values of their members: in liberal democracies at least, members deeply disagree about moral issues, and disagreement is perhaps even more intractable with regard to issues of distributive justice. This makes the assumption about the existence of a contrast between domestic and international societies ungrounded. Also, there seems to be little reason to believe that domestic disagreement is more likely to be resolved than international one in the long run. A claim that this is so should at least be supported by empirical evidence, which neither Walzer nor other communitarians manage to supply.<sup>21</sup> We still seem to be in an early phase of international interdependence and cultural interaction, and it seems premature to

---

<sup>20</sup> The argument is presented by Allen Buchanan in Buchanan (2003: 204-5).

<sup>21</sup> Buchanan (2003: 204)

conclude on the basis of a somewhat greater level of international disagreement about distributive justice that – in contrast with domestic disagreement – international disputes are less likely to have rational resolution. We can see this the most clearly when we consider the evolution and growing acceptance of international human rights standards: at the beginning of the 20<sup>th</sup> Century it would have seemed entirely unrealistic to expect states to give up significant portions of their sovereignty by subscribing to international human rights norms, which they nevertheless did in the course of the second half of the century.

### **2.3. Increasing reliance on international principles of distributive justice**

The second argument against Walzer's position builds on the first one. Not only can we question the permanence and pervasiveness of international disagreement about distributive principles, we can actually make the positive point that considerations of distributive justice actually already figure in and increasingly pervade international law and discussions surrounding it. As Thomas Franck has shown, considerations of justice have been institutionalized by being included in a growing number of international norms. This fact indicates that there is some convergence about issues of justice on the international domain.<sup>22</sup> Franck in his treatise lists and discusses a number of areas where considerations of distributive justice play a prominent role. These include (1) multilateral lending institutions that provide subsidized loans and credits to support economic growth and reduce poverty in poorer countries; (2) multilateral environmental agreements imposing obligations on states to take into account the interests of citizens of other countries and future generations by the conservation of a fair share of natural resources; (3) multilateral compensatory and contingency financing (treaty-based commitments of wealthier states to

---

<sup>22</sup> Franck (1995)

compensate poorer trading partners for extreme levels of commodity price fluctuations); (4) multilateral treaties governing the exploitation of natural resources on seabed and continental shelves and the distribution of benefits flowing from their use; (5) treaties regulating the use of outer space and the Antarctic, regarding them as the “common heritage” of mankind.<sup>23</sup> To this list Buchanan adds the growing importance of discourse about international labour standards and the attempt to incorporate broader rights to immigration among basic human rights.<sup>24</sup> The developments discussed by Franck and Buchanan indicate that in a number of well-circumscribed areas in international law there is a growing consensus not only on the importance of distributive justice but also on the judgement that certain distributive arrangements are clearly unjust. This makes a compelling case against skepticism about the possibility of an international consensus on matters of distributive justice even if at present there is no consensus on everything that distributive justice is thought to require.

Of course, these considerations do not show that there is an international consensus on a full conception of distributive justice. But then nor is there such a consensus domestically. What Franck’s findings show is that it is a mistake to believe that considerations of distributive justice play no role at all in the international domain, and that current disagreements make it impossible to make progress towards a growing consensus.

#### **2.4. The role of goods in distributive justice**

The third argument against Walzer’s distributive pluralism targets his skepticism about the possibility of finding a set of abstract goods that, on one hand, are general enough to be applicable globally and, on the other hand, are specific enough to support a standard of

---

<sup>23</sup> Franck (1995). See also Buchanan (2003: 205-6).

<sup>24</sup> Buchanan (2003: 206-7)

distribution. In my counterargument I am going to show, first, that abstract goods such as resources are indeed capable of providing standards for an interpersonal valuation of goods that can be used for distribution. Second, I will argue that a liberal theory of justice cannot accept the Walzerian premise that all goods that are subject to distribution under principles of justice have in every culture their own inherent distributive criteria.

First, we can easily see that abstract goods can indeed be applied in measuring the value of resources across cultures if we consider the way markets actually work. Markets operate on the assumption that, within the limits of a permissible range of goods, “anything can be traded for anything.” This idea is institutionalized in the use of money as a medium of exchange, making it possible for any pair of traders to trade goods even without having a clear idea about what goods they want to end up holding.<sup>25</sup> So as a matter of general fact markets do not operate in the fashion Walzer sees distributive spheres operating: for most individual goods it is not the case that they get distributed on the basis of specific criteria built into their meanings. Goods get distributed on markets on the basis of their worth to individual participants. Thus, lack of agreement about the value of a good across cultures is not a problem. Goods can be traded among market actors even when they differ in their valuation of the good they want to exchange. The operation of markets shows that it is possible to rely on some very abstract measure, such as money, in the interpersonal valuation of concrete goods that need to be distributed.

Now, it is Walzer’s main objection to the use of market exchange for the distribution of various kinds of goods that in liberal democratic societies there are many different kinds of social goods whose distribution is a matter of justice, making up as many “distributive

---

<sup>25</sup> Waldron (1995: 144)



spheres”, in which distribution should be determined by their own criteria.<sup>26</sup> He considers market as one of these spheres, but he claims its role must be limited to the distribution of some kinds of goods. The danger of relying on market exchange for the distribution of a larger range of goods is, on Walzer’s view, that money has the tendency to become a dominant good, i.e. a good whose possession enables individuals having it to command a wide range of other goods whose distribution is inappropriately sensitive to variations in individual wealth.<sup>27</sup> Each of these goods, e.g. education, medical care, food, Walzer thinks, should have its own “distributive sphere”, sufficiently insulated from money, which should be confined to its own sphere and should not determine the distribution of other goods.

There is much conceptual unclarity in Walzer’s account. Jeremy Waldron argues that it is a mistake to regard money as a good, alongside with other goods: money is only the “representation of the commensurability of the meanings and values of other goods, not as a good with meaning or value in itself.”<sup>28</sup> On the other hand, even though not a good, money does have a social meaning, which Walzer’s account misrepresents, at least for liberal democratic societies. Money cannot be confined to its own sphere, since its social meaning is precisely that it can be exchanged to other goods.<sup>29</sup> Leaving aside these problems, I try to address Walzer’s main motivation in objecting to market exchanges in the distribution of certain goods. The intuition behind Walzer’s objection is the view that there are things money cannot, or rather, should not buy. We consider it as inappropriate to exchange public offices, court rulings, human body organs, or rights to basic liberties, for money. However, all this shows is that market exchanges are allowed to take place only within a permissible range of goods, against the background of regulations making sure that justice or other

---

<sup>26</sup> It should be noted, however, that the objection is valid only in liberal democratic cultures. It does not apply in caste societies, for instance, where the distribution of all goods is determined by one single distributive criterion, viz. one’s position in the caste hierarchy. See Walzer (1983: 27).

<sup>27</sup> Walzer (1983: 22)

<sup>28</sup> Waldron (1995: 147)

<sup>29</sup> Waldron (1995: 147)

moral requirements are not violated. In most cases exchange is prohibited because the goods or services featuring in them themselves are immoral. Murder is immoral, thus provision of murder for money is immoral.<sup>30</sup> There might be cases, however, when items cannot be exchanged for money not because there is something wrong about the things that would be exchanged, but because there would be something wrong with exchanging them. Cases like this might include prostitution, or surrogate motherhood, where it might be thought that offering and receiving cash payments for securing consensual sex or bearing someone else's child is inappropriate. However, most blocks on exchange belong to the former group, and I will now argue that there is good reason to allow for exchanges for a broad range of goods. This argument, which I take to be the main objection to Walzer's view of the social meanings of goods, focuses on the value of market exchange as seen by a liberal theory of justice.

In a liberal theory of justice goods are not regarded as having their own distributive criteria built into their very meaning. On the contrary, people differ in their opinions about the value of certain goods since they have differing conceptions of the good, different ideas of what gives value to life, hence different preferences. Some would have more beauty products while others would rather choose to go on a hiking trip; some drink champagne while others prefer beer; some would want to go more often to opera while others would rather watch more TV. In each of these pairs of preferences some people would be willing to spend more of their resources on some goods rather than on others. If society decided to allocate concrete goods equally on the basis of a specific understanding of their value, some individuals would find that they are unfairly disadvantaged as compared to others. The reason for this is that justice is not only about the distribution of a given stock of goods: what products are available for distribution is also a question of justice. The kinds and the

---

<sup>30</sup> See Waldron (1995: 155-64) for an interesting analysis of the various cases belonging to this group.

quality of resources to be distributed, and the kinds of activities prohibited or made possible, are also to be dealt with in accordance with justice. This implies that those goods distributive justice is concerned with should be valued in a way that takes account of the differing conceptions of the good people have, and takes account of them equally. In order to value a product someone consumes, in a manner that takes equal account of everyone's interests, we have to find a means to measure the costs to others of his consuming this product, i.e. the "cost in resources of material, labor, and capital that might have been applied to produce something different that somebody else wants."<sup>31</sup> Markets, at least in their ideal form, provide a way of measuring the value of one person's holdings of resources that reflect the true cost to others of her holding this amount of resources, hence they provide a standard for interpersonal comparison of resource levels that is not biased toward any conception of the good life. Considerations like this motivate Dworkin to take resources as the metric of distribution in his egalitarian theory of justice.<sup>32</sup> I do not here discuss the question whether we need the working of actual markets in order to define a just distribution, or we can find some other means, e.g. hypothetical markets, to achieve this.<sup>33</sup> Even if a theory of justice does not rely on actual markets, an equal concern for the well-being of everyone affected requires that we measure well-being for purposes of distributive justice in a way that is neutral across various conceptions of the good individuals hold.<sup>34</sup> This is why Rawls in his theory of justice proposes a list of "primary goods" as the metric of just distribution, rather than holding that goods ought to be distributed in a way that reflects their inherent distributive criteria as they are understood in a given society.<sup>35</sup> Walzer's theory about the social meaning of goods and their distributive criteria is biased towards

---

<sup>31</sup> Dworkin (1985: 194)

<sup>32</sup> See Dworkin (2000).

<sup>33</sup> I return to this question in Chapter 6.

<sup>34</sup> Unless otherwise specified, I use the term well-being in a broad sense, not denoting a welfarist view of distributive justice.

<sup>35</sup> Rawls (1999a)

some conceptions of the good, hence it does not pay equal respect to the interests of all individuals among whom the problem of distribution arises.

To conclude, Walzer's requirement that goods are to be distributed in accordance with their social meanings is neither necessary for a theory of justice, nor is it desirable for a theory that aims to avoid favouring the preferences of some people at the expense of others. Justice requires that we measure individual well-being in terms of abstract goods, such as primary goods or resources, which provide an unbiased standard of interpersonal comparison. These abstract goods do not have inherent distributive criteria built into their meaning: their distribution should be guided by distributive principles we arrive at independently of the meaning of goods.

### 3. Priority to compatriots: the nationalist position

Having rejected the argument from relativism about justice I now turn to a second kind of argument against the cosmopolitan position, which is not related to relativism about value. In the remaining part of the chapter I discuss a version of the view that being involved in special relationships such as families, friendships, or national communities implies giving priority to those with whom we stand in these relationships. The main thesis of theoretical nationalism, a prominent doctrine advanced in various forms by contemporary communitarian authors, is that people are permitted or required to be partial to their own nations and fellow-nationals because they stand in a special relationship with them. This doctrine is about the form of ethical reasoning: it says that whatever people's interests consist in, we should care more about our fellow-nationals' interests than about other people's.<sup>36</sup> What forms of partiality nationalists have in mind and what degree of it they regard as acceptable is rarely specified. For clarification we can list a few characteristics of

---

<sup>36</sup> Hurka (1997: 143)

partiality, though the list is controversial not only among theorists but also when it comes to commonsense moral intuitions. First, positive duties owed to fellow-nationals are thought to be less easily overridden by considerations of cost to oneself than positive duties to citizens of other countries. Further, positive duties to fellow-nationals are often thought to take precedence over one's positive duties to outsiders in case of conflict. Next, the threshold at which a positive duty can override a universal negative duty may be lower if the positive duty is owed to a fellow-national. On the other hand, the threshold at which a universal positive duty can override a negative duty can be higher if the negative duty in question holds with regard to fellow-nationals.<sup>37</sup>

Whatever the exact form and degree nationalists think national partiality should take, its implication for global distributive justice is that distributive requirements applying within nations are more stringent and possibly different in kind than distributive obligations applying on the global domain. Justifications of this thesis have been attempted along the lines of two main strategies: instrumental and intrinsic justifications of the value of national partiality.

### **3.1. Instrumental justification**

The instrumental justification starts from impartial moral principles, considering the interests of all humans equally. It proceeds by showing that partiality for conationals is justified since it has good effects impartially considered. One version of this strategy is represented by the route followed by Robert Goodin, who argues that fellow-nationals are better placed to look after the interests of one another, and are therefore required to give priority to one another's interests on universalistic grounds.<sup>38</sup> Goodin's strategy views

---

<sup>37</sup> This characterization is borrowed from Scheffler (2001: 52-3).

<sup>38</sup> Goodin (1988)

special relations among compatriots as representing a useful convention where particularistic duties are viewed “as an administrative device for discharging our general duties more efficiently.”<sup>39</sup> He regards such duties as cases of what he calls assigned responsibility, which he illustrates with the example of establishing a lifeguard on the beach: such a person is singled out to fulfil a general duty to rescue others in distress, since appointing one person as a lifeguard can overcome coordination problems that might be created by the presence of a larger number of people on the beach than the number required for fulfilling the duty of rescue. As a consequence, ordinary beachgoers are relieved of their duty to rescue others from the water.<sup>40</sup> By analogy, then, citizens of a state are thought to be relieved of their duties of justice towards citizens of other states, since these states are assigned responsibility for the interests of their own citizens. This justification of national partiality is instrumental because it proceeds by showing that national partiality is the best available setup for making sure that at the end of the day the interests of all humans are taken equally into account.

In their general form, instrumental justifications of national partiality are unlikely to succeed, for the following general reason. As we saw, they purport to justify the claim that, whatever people’s interests consist in, we should give priority to our fellow-nationals’ interests over those of others. However, as Charles Beitz argues against what he calls the consequentialist justification of the priority to compatriots view, it is implausible that such justifications can establish this general thesis since they would have to rest on “either implausible empirical premises or an eccentric standard of value”.<sup>41</sup> That is, they would have to presuppose a nearly equal background distribution of resources against which states’ taking care of the interests of their citizens might be justified. In the absence of such an

---

<sup>39</sup> Goodin (1988: 685)

<sup>40</sup> Goodin (1988: 680-1)

<sup>41</sup> Beitz (1983: 593)

equal background distribution, more of international redistribution could bring about a better state of affairs from an impartial point of view, given the unequal international distribution of resources and the tendency of free-market mechanisms to generate injustice without appropriate institutions maintaining background justice. Now, Goodin recognizes that special responsibilities can be assigned to agents only against the background of an equal initial distribution of resources.<sup>42</sup> It is very implausible to suppose that a setup where the Mozambiquean state is exclusively responsible for the well-being of its citizens and the Swiss state is exclusively responsible for the well-being of its own citizens produces the best overall state of affairs from an impartial point of view. However, an arrangement where each state would be allocated an equal initial per capita share of the earth's resources, and then left free to do whatever it can to perform its special responsibility for its citizens, would still be unjust if states are not self-sufficient. As we shall see in Chapter 4, the operation of free markets tends to generate injustice, unless it takes place against the background of just institutions correcting for unfavourable distributive effects. Later on I will argue that even in the domestic case partiality in special relationships is permissible only if there are background institutions that implement the impartial requirements of justice. Individuals have a duty to create and uphold such institutions that maintain the conditions of impartiality, against the background of which communal projects and personal commitments can take place. Analogously, if such just global background institutions are in place that maintain equality of resources and correct for unjust distributive effects of market transactions, there may indeed be legitimate forms of giving priority to fellow-nationals. However, this idea is different from what the priority thesis in its general form purports to establish, as it is silent about just background institutions.

---

<sup>42</sup> Goodin (1988: 685)

### 3.2. Intrinsic justifications

I now turn to intrinsic justifications of national partiality, which pose a more significant challenge to cosmopolitanism. Such justifications defend national partiality not by pointing to its instrumental role in bringing about an overall desirable state of affairs, considering the interests of all humans equally. Rather, they claim that the relationship between fellow-nationals is in itself sufficient to warrant special distributive requirements that do not apply among humans as such. They go against individualist moral universalism by holding that fundamental importance may attach to relations between persons, or persons and collectivities, without having to justify this importance by recourse to more fundamental, individualistic and universal principles prescribing an equal consideration of the well-being of all. Agents are viewed as already encumbered with definite duties and commitments to particular persons and groups, and it is claimed that these relational facts figure in moral reasoning as foundational elements.<sup>43</sup> That is, in justifying moral requirements the normative force of these relationships does not derive from their being compatible with a set of basic principles considering the interests of all humans equally: their binding force is not endowed upon them by their overall effects on the well-being of all humans.

Since this doctrine is a general thesis about the structure of ethical reasoning and not about its scope of validity, those nationalists who want to maintain the foundational importance of relational facts need not subscribe to relativism. In one form, the nationalist doctrine is both non-relativistic and agent-relative. It is non-relativistic if it takes at least one ethical principle as having universal validity, namely the principle that special relations are of intrinsic importance, and carry with them duties not depending on an equal consideration of the interests of all humans. According to this version, members of every national community ought to be partial to their fellow-members, and not only in those cultures

---

<sup>43</sup> Miller (1995: 50-1)



whose norms include a requirement of such partiality. On the other hand, the doctrine is agent-relative, since it prescribes partiality to one's own fellow-nationals: it does not demand that we should act in a way that results in maximizing the number of people being partial to their conationals. Therefore, this nationalist position has something in common with the relativistic argument about justice, namely that, when aiming to offer principles for regulating international affairs, it regards national distributive requirements as having an ethical status that is independent of their overall effects on the well-being of all humans.

We can further distinguish, however, between two forms of the intrinsic justification of national partiality. One strategy proceeds by arguing that national partiality is justified partly because some goods provided by nationhood, such as the survival or flourishing of national culture, or national self-determination, are good impersonally and special duties among fellow-nationals are necessary for securing them. This strategy regards these goods as good impersonally in the sense that they are "not reducible to the goods of individual persons, or to goods located in individual persons' lives."<sup>44</sup> One should show greater concern for the survival or flourishing of one's national culture, or national self-determination, not because this is a way of promoting the interests of one's conationals but because of the importance of these things in themselves. The other strategy of justifying the intrinsic importance of national ties and the special duties flowing from them does not regard these things or other goods they are necessary for bringing about as impersonally good. It proceeds by showing that special relations between compatriots are necessary for promoting their individual good. The value of these relations comes from their role in contributing to individual well-being. Here special concern is owed to fellow-nationals, as opposed to the nation, or its survival or flourishing.

---

<sup>44</sup> Hurka (1997: 144)

In what follows I will present these two distinct strategies of defending partiality on the basis of the value of communal attachments, and will argue against each in turn. Treating personal and impersonal defences separately serves analytical purposes, though they are often not distinguished clearly in writings about nationalism. First, I will discuss viewing communal goods as impersonally valuable.

### **3.3. The impersonal value of national self-determination**

A number of impersonal goods have been associated with nationhood, and thought to justify partial attitudes. For one, it has been argued by some communitarian authors, most straightforwardly perhaps by Charles Taylor, that the cultural survival of national groups and national minorities, e.g. the survival of French culture in Quebec, is good. It is a good not only in the sense of being good for Quebecers as individual persons, but also good in itself. Francophone Quebecers who now deeply care about the existence of a French culture in Quebec three generations from now do not necessarily believe that their great-grandchildren will lead better lives if they are born and raised in a French culture than their lives would be as members of an English culture. Most probably these people would grant that after the lapse of a sufficiently long time the disappearance of French culture in Quebec would not make any specific person worse-off. If they continue to regard the survival of their culture as a good then, they must view it as an impersonal good in this sense: it would be a good thing if Francophone culture survived even if this would not be better for anybody.<sup>45</sup> The implications of the importance of cultural survival for international distributive justice are not clear, however. As long as we do not think that the impersonal value of national cultures justifies more stringent national distributive requirements than

---

<sup>45</sup> Taylor (1992: 58). See also, Hurka (1997: 145).

those on the international domain, we can grant that national cultures are good impersonally without having to give up requirements of global justice.

To turn to another of these goods endorsed by nationalists as impartially valuable that is more immediately relevant to issues of international distributive justice, let us discuss the case of national self-determination. Arguing against international distributive demands of justice, nationalists claim that the self-determination or autonomy of national political societies is valuable in itself, and that principles regulating international affairs should respect national self-determination. For nationalists this value implies a division of labour between domestic principles of distributive justice and principles regulating international affairs. International principles should serve to maintain background conditions in which self-governing political societies can flourish, and take responsibility for their collective choices. No international distributive requirements are justified above those necessary for securing conditions of the existence of self-governing political communities, since additional requirements would violate national self-determination as expressed in society's taking responsibility for its choices. The nationalist ideal is a world of self-governing societies, where nations manage their own affairs in their own political society in accordance with their culture and way of life. International redistribution would not respect the political autonomy of nations, thus applying principles of distributive justice on the global domain is not desirable.

David Miller supports this thesis with an example that seems on its face intuitively compelling. Suppose there is a decent but non-liberal society that respects most of the human rights of its residents, nonetheless it does not grant them some of the liberal civil and economic rights. Even liberals would not endorse intervention by other countries, for instance by military means or by way of economic sanctions, in the domestic affairs of such a society, Miller conjectures. This shows, he argues, that we respect the national self-

determination of political societies, and he concludes that international redistribution similar in scope to that in liberal societies is ruled out because it would violate this value.<sup>46</sup>

I leave aside the question how fine-tuned Miller's example is, however, it seems that it has much greater force in the case of military intervention than that of providing incentives for decent societies to become liberal. In the latter case it seems to me that liberals would have no qualms about influencing political processes in non-democratic countries by providing economic incentives,<sup>47</sup> such as offering the opportunity of participation in beneficial trade regimes, thus the force of the example may come from our reluctance to support coercion whenever other incentives are available, or from the possibility that military or economic sanctions would cause more harm than benefit. Disregarding this complication, I first consider why it is unacceptable to regard national self-determination as being impersonally good and having distributive implications in international justice. Next, I argue that even if we view national self-determination as good for individuals, its value is unlikely to be able to justify the nationalist's claim for national partiality.

### **3.4. Objections to the impersonal interpretation**

Liberals will object to viewing national self-determination as being impersonally valuable and as having significant implications for the justification of principles of distributive justice. They reject this view on the basis of individualist moral universalism that is at the core of liberalism. Liberalism rests on the premise that the moral justification of actions, policies and institutions should rest on an equal consideration of the interests of those

---

<sup>46</sup> Miller (1995: 77-8)

<sup>47</sup> Rawls disagrees. He claims that, for reasons of stability, international organizations should not offer their decent but non-liberal member peoples incentives to become liberal even in ideal theory. See Rawls (1999b: 84-5).

individuals, and only those individuals, who are affected by them. This is acknowledged by John Rawls in *A Theory of Justice* when he insists that a just regime cannot be a final end in itself; rather it is “something we ought to realise for the sake of individual human persons, who are the ultimate units of moral concern... Their well-being is the point of social institutions.”<sup>48</sup> It seems unlikely that a holistic view of the value of self-determination can figure in a theory of international justice that claims to be liberal. A distinctive point about liberalism is its insistence on referring ultimately to individual lives in justifying the content and scope of principles of justice and not supposing that “society is an organic whole with a life of its own distinct from and superior to that of all its members in relation to one another.”<sup>49</sup> States can make normative demands on individuals and on other states only if these demands can be justified with reference to the equal consideration of the well-being of each individual concerned. The significance of people associating in communities with special bonds of sentiment and obligation between them cannot simply be assumed as foundational, having *a priori* legitimacy, without the need for justification.<sup>50</sup>

This normative individualist view applies at the level of the justification of moral principles in general, and principles of justice in particular. It is compatible, however, with viewing some goods as communal in the sense that their content is specific to certain groups. For instance, some goods are culturally generated and might not exist outside the relevant culture. Access to internet may be regarded as a good in societies at a given level of technical development, possessing a culture that relies heavily on this form of communication.<sup>51</sup> Other cultures may not attach similar value to it. In this sense many goods are generated by groups, and have to be viewed in a holistic manner. However, we have to distinguish between this ontological sense of holism and its normative or justificatory sense.

---

<sup>48</sup> Rawls (1999a)

<sup>49</sup> Rawls (1999a: 234)

<sup>50</sup> See Kuper (2000: 652).

<sup>51</sup> I owe this example to János Kis.

Even though the goods that need to be distributed may not be interpreted at the individual level, principles for justifying their distribution must ultimately take into account only the interests of individuals.

Nevertheless, the value of self-determination may be seen as analogous to other values that are not individualistic, not only in the sense that they are generated at the communal level, but also in the sense that their value does not ultimately derive from their value to individuals. The insight behind regarding national self-determination as impersonally good is that we do recognize that individuals value certain kinds of relations in a manner that goes beyond their being instrumental to promoting the good of individuals. Proponents of the impersonal value of national self-determination see political bonds analogously. The conception of the good that lies behind their doctrine has at its core an insistence that social bonds in general and the relationship between citizens in political communities in particular are valuable in themselves, over and above their value as means to promoting the interests of individuals. This view of the good life is not identical with the conceptual charge often levelled by communitarians against liberalism, most notably by Michael Sandel, that liberalism rests on a mistaken view of the person, failing to see the importance of constitutive attachments in forming individual identity and interests.<sup>52</sup> The present claim is not so much about the conceptual incoherence of abstracting from particular attachments when justifying a conception of justice, as about the substantive content of this conception. Since national self-determination is viewed by this version of nationalism as an impersonal good, its advocates think it should be reflected in the way political communities relate to their members and to other political communities. Distributive justice should on this view be the business of self-governing political communities while principles regulating

---

<sup>52</sup> Sandel (1982)

international affairs should make sure to maintain the conditions necessary for the working of self-governing political communities.

Liberals reject the view that political bonds should be viewed as representing some communal good over and above the interests of individuals when justifying principles of justice. Viewing national community or culture as an impersonal good is inappropriate for a just political regime. As we have seen, the reason for this is normative individualism that is at the core of liberal political principles. It is true that people are members of several communities, such as families, religious faiths etc. As members of such communities they might have conceptions of the good that regard their relations with fellow-members as an impersonal good: for instance they might believe that what makes life valuable is that they build family ties viewing them as inherently good, apart from the value they contribute to the lives of family members. However, liberals argue, political community should not be viewed like this, and the principles that are supposed to guide the political organization of society and the distribution of resources should be based on an impartial consideration of the good of individuals only. Political institutions determine citizens' rights and duties, and regulate and enforce the distribution of resources among persons with competing claims to them. Hence it would be unfair for them to privilege any one conception of the good. While there might be views that regard it as inherently good for the life of a human being to be devoted to participation in political life, and see political activity as an impersonal good in the sense of not being reducible to the value it contributes to individual well-being, it is inappropriate to organize political institutions and structure distribution in accordance with this view of political life. Doing so would amount to privileging one specific conception of the good over others under circumstances when people differ in their conceptions of the good.

### 3.5. National self-determination as an individual good

Having rejected the nationalist argument from the impersonal value of national self-determination, I will now turn to a reformulation of the argument on the basis of the value of national self-determination for individuals.

A further reason given by nationalists for the importance of self-determination and the special distributive requirements flowing from it is that people value participation in the public and civic life of their political society, as well as being attached to their particular culture. As John Rawls argues, one function of political societies is to maintain their members' proper self-respect as participants in their society's history and culture.<sup>53</sup> Rawls finds this function justified since, as he eloquently puts it, "in this way belonging to a particular political society, and being at home in its civic and social world, gains expression and fulfilment."<sup>54</sup> Let us try to spell out the argument behind this claim. First, it assumes that national or cultural groups are important for the self-respect of their members. On one interpretation along the lines of an argument put forward by Avishai Margalit and Joseph Raz, national or cultural groups are important since they provide "an anchor for their [members'] self-identification and secure sense of belonging."<sup>55</sup> That is, members' well-being is bound up with the flourishing of the national or cultural group with which they identify or belong in a crucial way. The next step in the argument is to show that the importance of national belonging or flourishing to their members' well-being is sufficient to justify a claim to national self-government. The argument put forward by Margalit and Raz to this effect is that national groups are in the best position to judge their own interests, thus they should have the right to make decisions about their communal good and life.<sup>56</sup>

---

<sup>53</sup> Rawls (1999b: 34)

<sup>54</sup> Rawls (1999b: 111)

<sup>55</sup> Margalit and Raz (1994: 133)

<sup>56</sup> Margalit and Raz (1994)



This argument for the importance of national self-determination is thought by nationalists to imply the ideal of a world of self-governing societies, where peoples manage their own affairs in their own political society in accordance with their culture and way of life. An important aspect of national self-determination so understood is national sovereignty over distributive matters. Since international redistribution would not respect the political autonomy of peoples, nationalists argue, applying principles of distributive justice at the global domain is not desirable.

This argument combines considerations of society's taking responsibility for its collective choices with stressing the importance of its members' self-respect as self-governing participants in society's history and culture. For the sake of argument, I leave aside for the moment important problems with holding individuals accountable for the choices of the majority or governing elites of their societies.<sup>57</sup> Instead, I now focus on the question "Is the value of self-determination likely to justify the nationalist's restriction of the scope of principles of distributive justice to national political societies?"

To recall, in this section we are examining an individualist interpretation of the claim that political self-determination of national societies is of value. We have seen in the previous section that interpreting the value of self-determination in an impersonal way is not compatible with moral individualism, nor it is acceptable for political societies where members have differing conceptions of the good. However, if nationalists stick to the premise of individualism, according to which principles of justice should ultimately consider the interests of individuals affected by social institutions, they can try to salvage the point in two ways.

The first way to proceed in an argument for nationalism on an individualist ground is by incorporating communal self-determination among the goods individuals strive to attain.

---

<sup>57</sup> I will consider the soundness of this assumption in Chapter 4.

The argument would be that since self-respect is an important element of one's well-being and since communal self-determination is an essential means of nurturing individual self-respect, individuals have a right to participation in the political life of their political society. This construal of the value of self-determination would be in line with the Rawlsian aspiration that "we want to account for the social values, for the intrinsic good of institutional, community, and associative activities, by a conception of justice that in its theoretical basis is individualistic."<sup>58</sup> To the extent that collective entities have any moral importance, it is derivative, i.e. it must be justified by reference to the interests of individuals.

However, since this defence is predicated on individualist moral universalism, it takes us back to the instrumental case for national partiality. Again, instrumental defenses are problematic for the general reason noted earlier, and we can easily see how the argument from the value of self-determination is vulnerable to a specific version of that criticism. It runs as follows. If political self-determination is an important means of maintaining one's self-respect, every individual is presumed to have an equal claim to this good, as well as to other goods that are important for other reasons. Hence, in response to this construal of the value of self-determination liberals will object that the individual good of self-determination is unlikely to override claims of justice to all other goods by individuals, members of the same nation, or non-members. Resources are presumed to be important instruments for realizing individual life plans, and individualist moral universalism demands that the interests of all individuals be taken equally into account when justifying principles governing their distribution. Therefore nationalists should show that promoting one's self-respect by self-determination through one's political society is so much more valuable for individuals than claims to other goods by non-members that it is capable of overriding

---

<sup>58</sup> Rawls (1999a: 233-4)

serious inequalities in the distribution of resources among countries. If they fail to show this, the value of political self-determination to inhabitants of a rich country cannot override claims of inhabitants of poorer countries to an equal global distribution of resources. Given large global differences in resource endowments, however, it would be a highly implausible assumption to make, and even nationalists themselves do not make it. Since it is the case that the value of political self-determination is incapable of overriding outsiders' claims to an equal consideration of their interests, principles of international justice will continue to apply, and considerations of the good of self-determination figure as only one element in a theory of international justice.

There is another route nationalists can take in their defence of national partiality on the ground of moral individualism. This is not an instrumental argument that proceeds by showing that having a right to national self-determination promotes the interests of each individual, thus for each individual it needs to be secured in order to bring about a higher level of overall well-being in the world. It rather focuses on the intrinsic importance of special relationships within national communities. It claims that special relationships are valuable in themselves, and national self-determination is justified not because it will have good effects impartially considered by taking equally into account people's preference for governing their lives through communal decisions, but because special relationships bring about some good or goods for the individuals taking part in them. Thus, in this argument the focus is not on the overall effects of special relations but on their benefits to participants.

Thomas Hurka has put forward a version of this argument for national partiality. He argues that nations are intrinsically valuable because fellow-nationals as members of a scheme of political institutions are jointly creating some goods. To take one of his examples, Canadian identity is valuable because Canadians have created and maintained political institutions ensuring the rule of law, liberty and security of citizens, and also social

security such as universal health care.<sup>59</sup> A common history of fellow-nationals involving the joint creation and provision of such goods brings about a special relationship which is intrinsically valuable and sufficient to justify differential distributive requirements among them. This is not the case with racism, for example, which also takes some special relationships as giving rise to special requirements among members, but is in fact mistaken about them, since common membership in a race does not bring about an objective good which could justify differential treatment.<sup>60</sup>

This account of the intrinsic value of special relationships among fellow-nationals is problematic, however. To begin with, Hurka himself recognizes that it blurs the distinction between membership in nations conceived as cultural communities, and membership in nations as politically organized groups. These two types of relationship need to be distinguished, however: nations as political communities essentially embody a common set of laws and institutions regulating a system of cooperation, whereas nations conceived as cultural communities do not. Many nationalists make the unjustified inference, on the basis of their equivocating on two different meanings of the term ‘nation’, from the value of national self-determination among *fellow-nationals* to the requirement of partiality for *fellow-citizens*. However, this requirement obviously does not follow, given that the two groups do not coincide. If we consider goods produced by political communities, on the other hand, justifying the obligations owed by members to one another with reference to goods produced by them does not ground these obligations in the associative nature of the relationship, but in some other moral principle or principles. The force of Hurka’s examples of the Canadian welfare system and the rule of law more plausibly comes from a conception of members as recipients of benefits of political cooperation, with an obligation of fair play as the grounding moral principle, or from conception of members as participants in and

---

<sup>59</sup> Hurka (1997: 152-3)

<sup>60</sup> Hurka (1997: 152)

subjects of a just institutional scheme, where the grounding principle is a duty to support and comply with just institutions. In either of these cases, the force of the argument that we have obligations to the nation derives from the fact that we are subject to institutions characterizing politically embodied nations.<sup>61</sup> In other words, political obligation in such cases is not genuinely associative.

If this is the argument, however, and it is indeed the mutual benefits produced by cooperation or the justice of political institutions that make nations intrinsically valuable, then it remains to be seen how the benefits produced justify partiality for fellow-citizens. The argument, as we have seen, is expected to fit the general tenor of individualist moral universalism according to which the justice of institutions or the acceptability of actions depends on their effects on individual lives impartially considered. This stance makes a *prima facie* case for global distributive requirements which consider the interests of all humans equally. However, Hurka provides no argument from the joint production of benefits to a requirement of partiality to fellow-citizens. One such argument has been offered by John Rawls in *The Law of Peoples*, and by David Miller at various places. The argument attempts to justify special distributive demands among fellow-citizens on the basis of their collective responsibility for the goods they jointly produce. I will look at this argument in detail in Chapter 4. Before doing so, however, I consider in the next chapter two of the most promising recent attempts, by Ronald Dworkin and Thomas Nagel respectively, to justify special domestic distributive requirements on the basis of an associative account of political obligation and distributive justice.

---

<sup>61</sup> See the argument made by Margaret Moore in Moore (2001: 36-7).

#### 4. Summary and conclusion

This chapter looked at some of the central arguments that have been offered by nationalists against applying stringent principles of justice on the international domain. The first part considered and rejected Michael Walzer's argument against international justice resting on relativism about justice. The refutation pointed out, first, that Walzer's thesis is not true as an empirical matter, since on one hand it downplays the pervasiveness of intra-cultural disagreements about principles of justice and, on the other hand, it neglects the increasing reliance on norms of justice in international affairs. Second, Walzer's thesis is rejected as a normative position as well: Walzer's view about the relativity of social meanings of goods is biased towards certain conceptions of the good, and hence does not pay equal respect to the interests of individuals. The second part of the chapter considered non-relativistic arguments for national partiality. It distinguished between instrumental and intrinsic arguments and argued that neither form is capable of justifying the nationalist thesis. Instrumental arguments would have to rely on implausible empirical premises or standard of value if they wanted to establish the priority thesis. Intrinsic arguments, on the other hand, either would have to invoke a view of the impersonal value of national self-determination that is unacceptable to liberals, or need to come up with a justification showing how the intrinsic goods produced by political communities are capable of overriding claims of justice by outsiders.

## Chapter 3

### Associative political obligation and egalitarian justice

Equality is a basic ideal of politics. Most of its advocates agree that equality is a matter of justice: people demand as a matter of justice that they be treated equally by certain agents, bodies, or institutions, and that they receive their fair share of resources that is based on this requirement. Focusing on the question of the scope of egalitarian requirements rather than their content,<sup>62</sup> I examine a position concerning the role states are thought to play in the emergence of obligations of distributive equality. On this position the political institutions of states play a constitutive role in the justification of the requirement of distributive equality: an egalitarian distribution would not be a moral demand among individuals who are not tied together by common citizenship. In the chapter I present in detail a theory that I take to be the representative of the state-centred view. I call it the argument from political legitimacy, and I illustrate it with the political writings of Ronald Dworkin and an article by Thomas Nagel.<sup>63</sup> First, I outline Dworkin's argument. Then I argue that this theory can account for some of our egalitarian intuitions and practices, such as the requirement that we contribute to compensating our fellow-countrymen for harms suffered without our causal role in making them worse-off or taking advantage of harms caused by others. For reasons I point out, however, the theory is objectionable. Next, I present the development of

---

<sup>62</sup> I leave open several questions that must be answered by egalitarian theories of distributive justice. For instance, I do not discuss the question about what it is that should be distributed equally. Candidates for equalization in the literature have included welfare, resources, primary goods, capabilities, opportunity for welfare, and access to advantage. Nor do I aim to settle debates about the conditions on the basis of which inequality should be permitted.

<sup>63</sup> See Dworkin (1986: Chapters 5 and 6), Dworkin (1996: Introduction), (Dworkin 2000: Introduction, Chapters 4 and 5), and Nagel (2005).

Dworkin's argument into a systematic account of justice by Nagel, and finally raise some objections to it that will lead to the rejection of the state-centred view. The chapter concludes that attributing such foundational role to the political community in the justification of the requirement of distributive equality goes against the universal concern of justice.

## 1. Dworkin's argument from legitimacy

### 1.1. Legitimacy and integrity in Dworkin

In preliminary I must note that the Dworkinian argument is not directly concerned with differences between those distributive requirements that apply within states and those that apply across borders. Its primary aim is to defend a certain conception of political legitimacy and to justify the political obligation of citizens to obey the commands of legitimate government. Nevertheless, as I will argue later in the chapter, the argument Dworkin offers implies that the fullest form of distributive equality applies within the boundaries of states only, and does not apply among people who live in different countries.

The starting point of the Dworkinian argument is the requirement of political legitimacy posed against states. The argument operates at the level of what Rawls calls nonideal theory. It does not concern distributive requirements applying to basic structures under ideal conditions, when everyone recognizes and agrees on the same principles of justice, and strictly complies with them.<sup>64</sup> Dworkin's present focus is on the circumstances of politics as we know it. We start out by observing that we already belong to states that claim monopoly of the legitimate use of force on their territory. This claim is based on a moral demand: people under a legitimate state's jurisdiction have a "general obligation to

---

<sup>64</sup> Dworkin (1986: 176). For a characterization of nonideal theory, see Rawls (1999a: 309).



obey the state's political decisions that purport to impose duties on them.”<sup>65</sup> Under the circumstances of politics people disagree about what the demands of justice and fairness are. Significant numbers of law-subjects think some particular laws are undesirable, useless, or even unjust. Differing moral views or conceptions of justice provoke heated debates on issues proposed for the agenda of legislation, but once a particular law has been enacted, everyone in the country is required to comply. The problem is how to justify the state's claim to its subjects' obedience, even vis-à-vis those who regard particular laws wrong or unjust, or have voted against the ruling regime which has enacted them.

Dworkin's solution to the problem of legitimacy is provided by a complex picture involving a collective conception of moral agency that entails the requirement of political integrity, and an account of associative political obligations. Given the fact of disagreement, he argues, the need for political legitimacy entails that the state must act with integrity if it is to claim obedience. Political integrity “requires government to speak with one voice, to act in a principled and coherent manner toward all its citizens, to extend to everyone the substantive standards of justice and fairness it uses for some.”<sup>66</sup> The state must act on a unified and coherent set of principles of justice and fairness even if its citizens disagree about what the right principles of justice and fairness are. The principles underlying legal systems should be made to cohere in the sense that principles necessary for justifying one part of law must be respected by legislators and adjudicators in justifying other parts of it. Simply put, integrity rules out unprincipled distinctions between persons.

Integrity in politics is an aspect of the personification of the political community: Dworkin claims it enables citizens to view acts of government as acts of a moral agent, those of the political community.<sup>67</sup> This collective agent is regarded as capable of having

---

<sup>65</sup> Dworkin (1986: 190-1)

<sup>66</sup> Dworkin (1986: 165)

<sup>67</sup> Dworkin (1986: 187)

ideals, ambitions, and projects, integrity being a requirement that secures its adherence to them. Through this collective conception of agency individual citizens, as members of their political community, can feel allegiance to their political institutions and responsibility for collective decisions. The proposed holistic conception of the community as a distinct moral agent with principles of its own enables an individual citizen to conceive herself as a member of a collective agent – the political community – whose acts are in some sense her acts, representing the collective self-determination of the citizenry.<sup>68</sup>

We should not, however, take Dworkin's appeal to the collective self-determination as an instance of the voluntaristic account of political obligation even in the hypothetical sense. Citizens must obey the commands of their state and contribute their fair share to collective undertakings even if they disagree with them. For instance, even though I might regard a particular tax law unjust, nevertheless if the law in question is the tax law in force in my country, it seems wrong for me to decide not to pay my taxes and donate the money instead to what I think would bring about a more just state of affairs. Political obligation is seen by Dworkin as not being voluntaristic, but 'associative'. It binds individuals regardless of their choices, actual or hypothetical, simply by virtue of being born as members of a political community. This fits well with the basic experience of most of us, who are required to obey the laws of a state on the territory of which we were born, and the authority of which we did not have the choice to consent to. Associative political obligation is based on a natural duty of every individual to comply with associative practices that meet the following conditions enabling a group to be seen as a collective agent, and make it fair to treat individual members as responsible for what the group as a whole does.

---

<sup>68</sup> Dworkin (1996: 22)

## **1.2. Associative duties and equal concern**

Two kinds of conditions are necessary in order for an associative group to exist, and corresponding associative obligations to hold. On one hand, the group must meet the historical, sociological, or biological condition of being a ‘bare community’. Its members must be related to one another in one of these non-voluntary ways. Bare communities involve only a limited set of individuals, such as family-members, colleagues, or citizens of current states, and Dworkin seems to rule out viewing all humans as belonging to a common ‘bare community’. In addition to this condition, some important moral conditions must be met in order for a community to generate associative obligations. In order to count as an associative community, the institutions and practices of a bare community must reflect that the responsibilities of its members are reciprocal, personal, and special to that group. Most relevant to the present argument, the communal decisions and practices must reflect not only concern, but an equal concern for all members.<sup>69</sup> In Dworkin’s opinion a holistic conception of political community and the members’ related associative duty to obey communal practices that meet the above criteria are sufficient to ground political obligation. The fact that a community meets the specified conditions makes it a ‘true community’, and this, together with members’ natural duty to comply with practices that meet those conditions, is sufficient to justify their obligation to obey the law.

## **1.3. Individual and collective responsibilities**

Dworkin’s solution to the problem of legitimacy has two important and related consequences. First, it provides a justification for citizens’ collective responsibility without primary individual responsibility in place. The personification of the community, necessary

---

<sup>69</sup> Dworkin (1986: 199-200)

for viewing it as a moral agent, is capable of explaining the fact why members of a political community are held collectively responsible for unjust rules or practices, or wrongdoings committed by state officials, even if they personally played no causal role in bringing about the wrongs whatsoever.

The political community, Dworkin argues, should be regarded as a moral agent with principles and projects of its own, whose officials are supposed to act in the name of the community. Hence, even those members are justified in feeling shame when officials commit wrongdoings who did not have any control over the acts of the officials that could warrant attributing to them individual moral responsibility. More importantly, from an objective point of view, this position can account for attributing consequential responsibility to individuals for wrongdoings they did not have a significant causal role in bringing about. For instance, most people do not think it unfair to require individuals to contribute by way of taxation to the compensation of the victims of wrongdoings by state officials or bodies, even when they had no role in bringing them about, neither do they benefit from them. Suppose the police, searching for evidence in a criminal procedure, use physical violence to force a person to tell about the crime.<sup>70</sup> Suppose that not only is using physical force in criminal procedures wrong, it is also prohibited by the laws of the country. Finally, the wrong is committed in a way that is fully internal to the police, by certain police officers acting in their official capacity, with no private individual being responsible for it. If the victim of the abuse successfully demands redress from the court, the police is required by law to compensate the victim for violating her right. Given that the police is not a profit-making organization, the compensation must ultimately be covered by the tax contributions of the citizens of the country. By standards of individual responsibility only those citizens would be required to contribute who either had a significant causal role in the wrongdoing,

---

<sup>70</sup> I owe this example to János Kis.

or would have benefited from it. In this case, however, by assumption no private citizen is responsible for the act in this sense. Citizens are required to contribute to the damages nevertheless. Their duty cannot be justified starting from individual responsibilities, i.e. by applying judgments on the basis of personal standards of conduct. Such duties can, in Dworkin's account, only be explained by reference to the collective responsibility of all citizens for wrongs committed by state officials. Similarly, the personification of the political community can explain collective electoral responsibility for political decisions, even in the case of those who voted against the ruling government. For instance, if a unilateral action of government, such as expropriation, disadvantages foreign citizens holding investments in the country, the compensation must be covered by the tax contributions of all the citizens, including those who oppose the act, or have voted for the opposition. We do not feel it unjust to use tax contributions of such dissenting citizens for covering part of the compensation.

Consider an alternative view of politics, Dworkin suggests: suppose we tried to apply to political action standards of responsibility we are used to applying to individual action. This would mean seeing political decisions as the sum total of individual decisions reflecting diverging judgements of justice. In this case people who oppose particular laws because these do not correspond to their conception of justice, or who have voted against the government making them, would not feel bound by them. Furthermore, we know that the impact of individuals on political decisions is in most cases negligible. Apart from those whose views remain in minority, people often find themselves bound by the decisions of persons long dead, without having even the option to vote for or against them. Even for those who have voted for the current government, it would be problematic to regard its laws or policies as the outcome of their own decision, since under the conditions of modern democratic politics individual votes usually do not make any difference for the outcome in

either way.<sup>71</sup> If an individual's impact on political decisions is negligible, she cannot be held responsible for political decisions by the standard of individual responsibility we accept in everyday life, which holds that people are legitimately held responsible only for acts over which they had control.<sup>72</sup>

The attribution of collective responsibility to members of a political community is an important element of the Dworkinian argument, since in the absence of such collective responsibility, the Dworkinian picture of individual morality suggests, only some sort of minimal state could be justified. In individual morality people are held responsible only for acts over which they had control. If someone acted in a way that disadvantaged others, or gained from their disadvantage unfairly, he is liable to compensate that person. But on this ground we cannot build an egalitarian theory of distribution, Dworkin suggests. If the community never owed more to its members than the sum of the responsibilities of individuals composing it, that is if we tried to build up principles of social justice from standards of individual responsibility, then we would have to be content with the principle that people should be held responsible for redressing someone else's disadvantage only if it is attributable to their own action, or if they have voluntarily accepted benefits related to the disadvantage for which someone else is responsible. Defending an egalitarian distribution of resources is rendered easier by the deployment of the holistic conception of collective responsibility Dworkin recommends. The application of such conception of responsibility enables us to see the community as being responsible for the fate of its citizens, because the

---

<sup>71</sup> Dworkin (1996: 28)

<sup>72</sup> Dworkin (1986: 172). Derek Parfit argues that individual votes do make a difference: when considering the rationality of our voting, we have to calculate the expected benefit of our vote, i.e. we have to multiply the possible benefit that would be brought about by a superior alternative by the probability that my vote will tip the balance. If stakes are sufficiently high, it is rational for me to vote on consequentialist grounds, and I have to vote in a way that secures the greatest expected benefit. See Parfit (1984: 73-5). However, even if we accept Parfit's consequentialist thesis *ex ante*, it does not follow that an individual vote is subject to judgement of responsibility *ex post*. I would only be responsible if it were true that my vote was actually decisive, i.e. had I not voted, or had voted differently, the outcome of the vote would have been different. If my vote did not tip the balance, as it usually does not in democratic decisions involving a large number of people, I cannot be held responsible for the outcome on a plausible conception of individual responsibility.

community as a whole can be said to have control over various wrongs people suffer for which no individual can plausibly be regarded as bearing responsibility.<sup>73</sup>

The second consequence of Dworkin's theory, closely related to the first one, is that it seems capable of showing how political officials can have responsibilities – especially that of impartiality – that, according to Dworkin, are not derivable from the demands of individual morality. He suggests there is a sharp contrast between egalitarianism and the inherently partial nature of individual morality. Individual morality is inherently partial, since we all demand an “area of personal moral sovereignty” within which we are free to devote our resources to our own projects and commitments – such as family, friends, or self-regarding projects – without the need to consider the interests of all individuals in an impartial way.<sup>74</sup> Individuals need to be free to have discretion in spending resources on their own attachments and ambitions, on people and projects that are particularly important for them. Dworkin claims that partiality in personal behaviour cannot be eliminated by any sensible conception of justice.<sup>75</sup> By contrast, political officials have the responsibility to be completely impartial among members of their political community. When acting as officials, they are not allowed any area of personal moral sovereignty, and if they failed to be impartial, that would be condemned as an instance of corruption or nepotism. Dworkin thinks this requirement can be explained only with reference to the collective responsibility of the community. By viewing the community as a whole bearing a collective responsibility for rectifying disadvantages we can defend distributive equality in the face of our partiality in individual morality, in which we find no such demand of equal treatment.

---

<sup>73</sup> Note that the case of distributive egalitarianism is only one application of the idea of citizens' communal responsibility for social institutions and acts of officials. The police example above does not represent a case of distributive justice, but the role of citizens in that example is analogous with the way their role in securing distributive justice is conceived by Dworkin.

<sup>74</sup> Dworkin (1986: 174)

<sup>75</sup> Dworkin (1986: 174)

How are the responsibilities of individual members of the community related to the requirement of impartiality applying within the community? The requirement of distributive equality applying among members of the political community is grounded in the demand for state legitimacy. In the argument from legitimacy, egalitarianism is primarily a feature of the relationship between the state and its subjects, and not of relationships between individuals. It is the state's duty to treat its subjects with equal respect, since it claims the right to rule them, and their corresponding obligation to obey. Citizens as individuals, Dworkin claims, do not have the duty to treat everyone with equal respect,<sup>76</sup> although they have a duty to comply with the institutions of their country that are reasonably just. By contrast, state officials act as agents for the community, hence they have responsibilities that are derivative from and secondary to the collective responsibilities of the community. Thus, given the conditions of communal agency necessary for the justification of the state's coercive power, including the requirement of equal concern, officials must be impartial to all members of the community. No area of partiality is allowed to them when they act in their official capacity.

To sum up the argument so far, in Dworkin's justification of political obligation the state's claim to rule its citizens, and the associative character of political community, entail the state's duty to treat its citizens with equal concern. An aspect of the requirement of equal concern is the emphasis on political integrity: the laws of states should reflect a coherent set of principles of justice and fairness. On the other hand, the requirement of equal concern is likely to have particular distributional consequences in the Dworkinian theory. It has several possible interpretations, but Dworkin argues that the best interpretation prescribes that

---

<sup>76</sup> See Dworkin (1986: 173-4): Referring to "our most abstract and widely shared convictions about political justice and fairness", Dworkin writes, "we believe political officials have responsibilities we could not defend if we had to build these directly from the ordinary requirements of individual personal morality most of us accept for ourselves and others in nonpolitical life". Officials "have a special and complex responsibility of impartiality among the members of the community and of partiality toward them in dealing with strangers. That is quite different from the responsibility each of us accepts as an individual."



government must distribute resources among citizens in accordance with the demands of equality of resources.<sup>77</sup> Insofar as the state fails to be just, i.e. it fails to establish equality of resources, its citizens as members of the political community are collectively responsible for the injustice.

#### **1.4. The role of distributive equality**

Before I proceed with examining the theory's implications for international distributive justice, I have to clarify how distributive equality figures in Dworkin's argument from legitimacy.<sup>78</sup> The ideal of equality can play two different roles with regard to institutions in a theory of distributive justice: it can be a foundational element, or it can play a derivative role. In the former case, it is an independent demand of morality that is supposed to guide the design and reform of institutions, and perhaps individual conduct. Equality ought to be promoted and people should strive for attaining it even in the absence of specific kinds of existing institutions. In the latter case, the demand of equality is an emergent property of existing institutions. In the absence of institutions relevant for full-blown distributive equality, it would not be a requirement on anyone. According to the interpretation I have given to it, the argument from legitimacy conceives equality in the latter, derivative role, since some features of the political institutions of the state necessarily figure in the justification of distributive equality.

There can be an alternative interpretation of Dworkin's argument from legitimacy, however. In principle, there may be other elements of individual morality that contain the

---

<sup>77</sup> Dworkin (2000: 1-3)

<sup>78</sup> In the chapter I am not intending to provide a summary of Dworkin's theory of distributive justice as found, for instance, in *What is Equality?* Parts 1-2 in Dworkin (2000). I interpret only those of his writings in which he presents his argument from legitimacy. I do so in part because I believe the two theories, i.e. Dworkin's theory of distributive justice and his argument from legitimacy, cannot be made consistent with each other. This is because, as I will argue momentarily, some of their premises conflict with each other.

requirement of distributive equality on independent grounds. It can be the case that, besides the state's duty to treat all its citizens equally, the promotion of equality is an independent demand of morality binding all individuals. For instance, Dworkin's claim that state officials must be partial for the citizens of their country may in principle be compatible with accepting a more basic demand that equal concern should be given for the interests of all humans. If this were the case, what Dworkin would have to show is that there are good moral reasons for favouring a system of states each of which is concerned with the promotion of the interests of their citizens, because this system serves best the underlying aim of promoting the interests of all humans equally.<sup>79</sup>

However, the argument from legitimacy does not seem to be open for this interpretation.<sup>80</sup> Although we can conceive of egalitarian requirements in the abstract as a piece of ideal theory, Dworkin claims, equality so considered does not represent any actual demand of morality: it does not prescribe specific duties for individuals. The requirement of equal treatment yields determinate requirements on individual conduct only under the circumstances of politics, i.e. in actual political communities encompassing people with differing views on what equal treatment actually requires. Principles of equality we arrive at in ideal theory gain their binding force on private individuals and officials only through the requirement of legitimacy the state must meet vis-à-vis its subjects.

There are two main reasons for taking equality to play a derivative role in the Dworkinian theory. First, my reading is supported by Dworkin's communal conception of political obligation. Political obligation, according to Dworkin, is an instance of associative

---

<sup>79</sup> As we saw, this is what some proponents of the priority thesis try, and fail, to prove.

<sup>80</sup> In some passages Dworkin is quite explicit about this. In Dworkin (2003) he claims that government may legitimately favour its subjects over outsiders because one condition for their exercise of legitimate authority is that they show "special and equal concern for those subject to its dominion". (p. 19) Also, in Dworkin (1986) he makes the claim that "we treat community as prior to justice and fairness in the sense that questions of justice and fairness are regarded as questions of what would be fair or just within a particular group" (p. 208). Political officials of a country must primarily be impartial with their citizens not because abstract justice so requires. (pp.209-11). On the other hand, officials must be partial toward members of their own community in their dealings with people who are not members of the community (p.174).

duties, and such duties are considered to be morally more central, more demanding than, and different in kind from, universalistic duties.<sup>81</sup> When justifying citizens' political obligation there would be no point in emphasizing its associative nature if the justice of state institutions itself could justify an obligation to obey them. On the contrary, Dworkin argues the justice of institutions is not sufficient to justify the moral duty of their subjects to obey them.<sup>82</sup> Associative duties are not normally thought to override duties not to harm others, nevertheless for the advocates of the associative conception it seems that the associative nature of such duties justifies a greater concern for the well-being of our associates than what we are required to do for humans as such. Since we are required by associative obligations to give priority to the interests of our compatriots, it seems unlikely that the interests of all human beings are treated equally at the end of the day. In order that this could be the case, rather stringent background conditions must be maintained at the international level, and Dworkin is silent about any such demand of morality. On the contrary: officials, representing the obligations of the community vis-à-vis its members, are not allowed to subordinate the interests of their constituents even when universal justice so demanded, i.e. when they could promote justice overall. Dworkin contrasts his favoured model of political community with a community of people concerned only about securing justice and fairness universally, without having special concern for the well-being of fellow-members in their own political community. By contrast, officials following Dworkin's conception of community will view their responsibilities to their own community as greater in principle than universalistic duties.<sup>83</sup>

Second, the postulated contrast between the partiality of individual morality applying to private citizens, and the requirement of strict impartiality applying to state

---

<sup>81</sup> Simmons (1996: 260-1, footnote 35)

<sup>82</sup> Dworkin (1986: 193)

<sup>83</sup> Dworkin (1986: 209-11)

institutions and officials seems decisively to support the point that full-blown distributive equality is not a foundational element in Dworkin's theory of political legitimacy. From what we have seen it seems that in the absence of a political framework in which we live our lives full-blown distributive equality would not be a demand of morality, since it would be incompatible with our notion of individual responsibility. It is a basic virtue of politics, but only given the fact that we already live in states which claim our obedience even if we disagree with some of their laws. The scheme of political institutions is constitutive of the demand of equal concern. Without the existence of a state claiming to rule us, the promotion of equality would not be a demand on anyone.

### **1.5. Distributive equality and international distributive requirements**

The implications of this theory for international egalitarian distributive principles are quite straightforward. Since in the argument from legitimacy the full-fledged requirements of distributive equality apply only to states in relation to their subjects, the most stringent egalitarian requirements cannot stretch beyond the boundaries of states. In this account the requirement of equal concern, and the corresponding demand of equal distribution of resources, are bounded. Without reference to governments who enforce laws against their subjects, individuals are not required to give equal concern to the interests of all other humans, and it is no one's duty to promote equality of resources. Consequently, people acquire egalitarian distributive obligations deriving from the state's duty of equal concern only by being citizens of a relevant state, and they have these obligations only with regard to the fellow members of their political community. Dworkin does not deny that a number of distributive obligations among individuals may exist even in the absence of membership in the relevant state: few would deny that we owe moral duties to starving people outside our

country. Nevertheless, these must be different in kind and probably weaker than egalitarian obligations of distributive justice, which obtain only within political communities. Our special responsibility as members of our political community to uphold state institutions that treat every citizen's interests equally is in this case constrained by our moral duty to enable foreign people to reach a certain distributive threshold. However, this latter duty is distinct and justified separately from the requirements of distributive equality which demand constant transfers among individuals through redistributive institutions.

There are two different ways to interpret the claim that the requirement of distributive equality does not apply outside politically organized societies. First, we can think of justice as applying regardless of common political bonds, but involving only relatively undemanding requirements, whereas distributive equality with its more stringent requirements would apply only within political communities, but would not be a requirement of justice. The other way of conceiving the claim would be to hold that, even though distributive equality is a demand of justice, there is no standard of justice that would be applicable among individuals not related to one another through being subject to the same political authority. I postpone discussion of this issue until Section 2.5, when I introduce what seems to be the most powerful objection against grounding the requirement of distributive equality in the demand for state legitimacy. Before doing so, however, I consider three other objections that might be levelled against the argument from legitimacy.

## 2. Shortcomings of the communal approach

### **2.1. The lack of self-determination**

Dworkin's state-based view of distributive equality may seem problematic for several reasons. One criticism that has been targeted at this theory attacks the idea of self-

determination Dworkin uses to justify state coercion against citizens. Liam Murphy argues that this idea has come under pressure by the increase of international interaction and the existence of powerful international political institutions.<sup>84</sup> The idea of genuine self-government needed for justifying requirements of distributive justice has become problematic, Murphy argues, at least in the case of smaller and less powerful states. If states lose control over an increasing area of their sovereignty as a result of these globalizing processes, i.e. the growing importance of international economic relations and international organizations, they can command less and less responsibility over the lives of their citizens. Hence the idea of the self-determination of the political community becomes vacuous. The most important decisions with pervasive effect on people's lives are no longer made by the officials of their state. Individuals cannot regard themselves as makers of their own fates, not even collectively as members of a political community. If the idea of the community's collective responsibility for its citizens' lives becomes implausible, the Dworkinian justification seems to lose its point.<sup>85</sup> In the absence of a world-state capable of exercising authority in the face of global forces, egalitarian distributive justice would not apply within many states that cannot be regarded as genuinely self-governing.<sup>86</sup>

## **2.2. Failure to justify political obligation**

There are other, more important problems with the Dworkinian theory. First, even if states were genuinely self-governing, Dworkin's justification of political obligation would remain implausible on its own terms. The reason for this is the tension between two features of the proposed justification: the associative nature of political obligation (i.e. the fact of being born into a particular group can bind us to a state regardless of our consent) and the

---

<sup>84</sup> Murphy (1999: 277)

<sup>85</sup> Murphy (1999: 277)

<sup>86</sup> Murphy (1999: 277)

requirement that communal practices be just, where justice is understood as the requirement that the interests of each citizen must be treated equally. As we have seen, both of these conditions are necessary for justifying political obligation. But even Dworkin acknowledges that these conditions can conflict with each other.<sup>87</sup> A country's institutions may prove unjust to its citizens in varying degrees. There are cases of unsystematic injustice when some particular laws fail to treat the interest of members equally, whereas the legal system on the whole is still reasonably just. In this case, the obligation of those citizens to obey the unjust law to whom it is unjust – although it is *pro tanto* a genuine obligation – is overridden by considerations of justice.<sup>88</sup> On the other hand, there are more serious cases of injustice, when the legal system systematically fails to treat the interests of some of its members equally, therefore it is unjust on the whole. In this case, the argument suggests, none of the citizens are even *pro tanto* obliged to obey the law: an obligation to obey the legal system of the country never existed.<sup>89</sup> In this latter case the political community is not genuine and, as a result, it cannot justify the political obligation of its members. In both cases at least some citizens are justified in disobeying laws that are unjust, either because their political obligation is overridden, or because it never existed. But this is exactly the problem Dworkin wanted to solve by the associative account of political obligation. He wanted to show that citizens have an obligation to obey the law even when they find it unjust, in which case it is a great problem for the theory if we find that such a duty is overridden or cancelled whenever a particular law or the legal system as a whole is unjust. This suggests that the real justificatory force in the case of political obligation – perhaps in contrast with real associative obligations like family duties or duties of friendship – is carried by the justice of the state's laws, in the sense of treating the interests of its citizens

---

<sup>87</sup> Here I apply Dworkin's account of associative obligations to the case of political obligation. For his general description of the conflict with justice see Dworkin (1986: 202-6).

<sup>88</sup> This follows from the analogy with the case of family obligations. See Dworkin (1986: 204-5).

<sup>89</sup> Dworkin (1986: 204-5)

with equal concern, and the associative character of the obligation vanishes. It is to the extent that the institutions of our country act in accordance with the requirement of equal concern that we feel allegiance to them.

### **2.3. The relationship between equality and legitimacy**

I now briefly formulate an objection to the state-centred view of distributive equality that has been suggested in an egalitarian spirit by Liam Murphy and Gerald Cohen. Cohen and Murphy find the claim that the requirement of equal concern is only derivative of the justification of political legitimacy very problematic. It seems implausible for them that the main reason for seeking distributive equality and avoiding inequality is that distributive inequality undermines the legitimacy of the use of coercive power by the state.<sup>90</sup> They claim that egalitarians endorse distributive equality quite independently of considerations of legitimate governance, even if distributive equality is a necessary condition for political legitimacy. They think equality among humans is valuable for its own sake. For them, the relationship between distributive equality and democratic legitimacy goes the other way around: egalitarians think states are valuable because of their role in securing equality among people. The proper role the requirement of distributive equality should play in a theory of justice is foundational, not merely derivative.

Is this claim about the foundational role of distributive equality plausible? In order to be more than an assertion of Murphy's and Cohen's intuitions, the claim is in need of argument. As I will show now, making reference to intuitions about the role of equality in private morality is of no help here, since such intuitions seem to be inconclusive.

---

<sup>90</sup> Murphy (1999), Cohen (2000)



## **2.4. Impartiality and partiality in private morality**

On one hand, Dworkin thinks private morality is inherently partial. He suggests that the demand of equal concern cannot be arrived at by starting from principles of individual or private morality, that is from moral principles regulating individual conduct or the working of private associations, because of the partiality inherent in it. Therefore that we regard equal concern an important political ideal derives from the fact that we live in states that claim our obedience regardless of our consent: in other words, equal concern is a derivative feature of the theory.<sup>91</sup>

On the other hand, however, those attributing a foundational role to equal concern may argue that Dworkin's argument rests on a defective view of morality. Even though for most people it seems permissible to give priority to the interests of their families in certain ways, significant areas of individual morality are as impartial as the state should be in implementing its principles and policies. For instance, duties not to harm other people are generally thought to bind anyone with regard to any other human being, and bind everyone to the same degree. We are not permitted to inflict some harm on a person unrelated to us in order to benefit a member of our family. Duties of fairness also embody impartiality: for instance, it is morally wrong for me to evade paying my fair share of taxes just because I first want to fulfil my duties of fairness to some of my friends. The obligation I owe to the taxpayers of my country to undertake a fair share of the burdens of some joint enterprise is not overridden by obligations of fairness to my friends. The requirement of non-discrimination is also a strictly impartial requirement in the domain of individual morality. For instance, it is morally wrong to discriminate among applicants in selection procedures for corporate jobs or university appointments on the basis of race or religion, even if the employer feels strong associative obligations to fellow-members of his race, or to co-

---

<sup>91</sup> Dworkin (1986: 173-5)

religionists. The impartiality involved in these obligations shows that the requirement of impartiality is a considerable element of private morality, in the case of both individual conduct and the practices of associations.<sup>92</sup>

Nevertheless, I said that intuitions about the role of equality in private morality are inconclusive because the advocate of the associative obligation account of distributive equality may not be convinced by the examples of impartial demands in private morality. There are two things to be said here: first, the above examples are not sufficient to ground the strong conclusion that everyone has to treat every other person equally in every respect. What they show is only that, in certain circumstances and with regard to specific criteria, we have to treat others equally. Second, the force of some of the examples may depend on a hidden reference to associative ties between fellow-citizens. We may, for instance, be required by morality to refrain from discriminating among job applicants who are our fellow-citizens, without however having the same strict requirement with regard to discriminating between compatriots and foreigners. Thus the force of the impartial aspect of morality may be limited: we may, for instance, have to be impartial with regard to certain negative duties such as the duty not to harm others, whereas in the case of other duties it may be morally permissible to give priority to the interests of our associates. So, both the state-centred view of justice and the strong egalitarian claim Murphy and Cohen make to the effect that interpersonal distributive equality is valuable for its own sake, regardless of the particular type of relations individuals stand in, is still in need of a powerful argument. We will have to develop a systematic account of the relation between equality and legitimacy, one that draws on a defensible conception of distributive justice.

---

<sup>92</sup> As I try to show at the end of the chapter, Dworkin's favoured ethical theory that he thinks is most compatible with egalitarian distributive justice also supports the claim that impartiality permeates morality. This argument is in striking contrast with his remarks in Dworkin (1986) about the inherent impartiality of private morality, and the impossibility of grounding egalitarian considerations on it.

## 2.5. The cosmopolitan objection introduced

To begin with, we might want to clarify the relation between justice, equality, and legitimacy by developing the implications of some of Dworkin's remarks in a way capable of supporting the global scope of justice. As a first step, we will recall that Dworkin's theory seemed to allow for conflicts between justice and associative political obligation, which made it problematic as a justification of political obligation. Cosmopolitan defenders of universal egalitarianism may connect this observation to another objection to the limitation of the scope of equal concern to political communities.<sup>93</sup> The objection starts from the opposite direction: not from the need to justify our obligation to obey the state, but from the requirement to justify the state's differential treatment of its citizens as opposed to foreigners. An associative community, cosmopolitans argue, can be unjust in two ways: it can be unjust in the way it treats its members, and unjust in the way it affects the interests of people who are not members. Dworkin himself acknowledges this second possibility with regard to associative practices in general when he discusses social practices that are discriminatory against members of racial or religious groups<sup>94</sup>. He claims that, if associative groups defined by social practice discriminate against non-members, their practice is unjust, which in turn undermines the legitimacy of the practice.

There are two ways of interpreting this remark. First, we can take Dworkin to be applying a unitary and independent standard of justice to associative practices. The same standards of justice would apply to associative practices both in regard to the manner they affect the interests of members of the group, and as they affect the interests of nonmembers. If we further assume that justice requires an equal treatment of all persons affected by the group's practices, regardless of their membership, then what is problematic about practices

---

<sup>93</sup> One formulation of the objection is developed by Samuel Scheffler in 'Families, Nations, and Strangers', and in 'Liberalism, Nationalism, and Egalitarianism', both in Scheffler (2001: 56-64 and 73-6).

<sup>94</sup> Dworkin (1986: 202)

discriminating against outsiders is that such associative practices violate the requirement of equal treatment. This argument might be thought by extension also to apply to the effects of a state's institutions on the lives of people residing in foreign countries. In these cases duties of abstract justice the members of a political community owe everyone else are seen as conflicting with their associative obligations they owe to their fellow-citizens. A political community might achieve legitimacy by treating each of its members with equal concern, still if it fails to treat the interests of insiders and outsiders equally, its practices are objectionable, so the objection runs.<sup>95</sup> Now let us suppose a group's practices are seriously unjust in this way to outsiders, even though they treat the interests of each member equally. Cosmopolitan critics of the argument from legitimacy would see Dworkin's argument as entailing that the obligations a group's practices purport to impose on its members are either overridden by considerations of justice to outsiders, or have never been genuine obligations because of the legal system's grave injustice in treating outsiders. Again, according to this objection, at the end of the day what matters is the justice or injustice of state institutions, this time in relation to outsiders.

In reply to this objection, defenders of the state-centred account of equality would want to hold on to the possibility of applying a more stringent distributive standard to the interests of citizens than to those of foreigners. Can they find plausible grounds for this? One way of circumventing the cosmopolitan objection would be to argue that it is not a matter of justice to give priority to the interests of compatriots, however it is justified on some other ground. It is conceivable that the requirements of justice are quite weak both in relation to fellow-citizens and foreigners: they would prescribe an equal treatment of persons only in a weak sense, such as not harming others and providing basic humanitarian

---

<sup>95</sup> As Dworkin puts it, "If the consequences [of discrimination] for strangers to the group are grave, as they will be if the discriminating group is large or powerful within a larger community, this will be unjust." Dworkin (1986: 202). Now, the consequences of certain institutions for foreigners often *are* grave, therefore proponents of universal egalitarianism hold they should be subject to assessment on grounds of justice.

assistance. In this case we would still apply a unitary standard of justice to the case of members and nonmembers in an associative political community. However, the requirement of distributive equality would be justified independently of considerations of justice so conceived. Equality of resources would not be a demand by justice, but a distinct distributive responsibility within a particular type of association, the state. However, this reply to the cosmopolitan objection would conflict with the egalitarian intuition, shared both by cosmopolitan and state-centered egalitarians, that distributive equality *is* a matter of justice. State institutions that fail to meet the distributive criterion of equality of resources are thought to be defective in a special way: they are unjust. Since this is a claim that state-centred egalitarians accept, this strategy does not seem a plausible way out of the trouble for them.

The other way to get around the difficulty of defending more stringent domestic distributive requirements would aim at finding a principled basis for responding to the cosmopolitan objection on behalf of outsiders, by giving justice-based reasons for distinguishing between the interests of insiders and outsiders. For instance, while maintaining that the requirement of distributive equality *is* a demand of justice, we might interpret Dworkin's statement that associative groups might violate justice with regard to outsiders in the restricted sense that it applies only *within* political communities, which are required on associative grounds to uphold distributive equality among their members. This second interpretation would hold that there are actually no standards of justice universally applicable both within and outside political communities. The claim would be that associative groups do not stand under a general requirement to give equal concern, in the sense capable of grounding a demand of distributive equality, to the interests of the insiders and the outsiders: such requirement applies only within political communities, since considerations of full-blown distributive justice are limited to such groups.

In Dworkin's writings we cannot find resources for such a reply. On the basis of abstract justice alone Dworkin's theory offers no principled way to make such a distinction between the interests of insiders and outsiders. Thus, in order to see the outlines of a systematic account, I will now turn to another, more recent, formulation of the associative justification of distributive equality. I will present Thomas Nagel's account of what he calls the political conception of justice, then I will state some objections by which I hope to show why this position is untenable. In the course of refuting Nagel's position, I aim to give a better grounding to the universalist egalitarian view.

### 3. Nagel's political conception of justice

#### 3.1. Main ideas

Thomas Nagel in a recent article elaborates on the ideas we have seen emerging from Dworkin's writings, and develops them into a systematic account of justice, calling it the *political conception of justice*.<sup>96</sup> The political conception of justice holds that justice is a specifically political virtue: the requirement of justice emerges only in politically organized societies. The problem of justice is a political problem: it concerns how fellow-citizens in a sovereign state ought to treat one another as citizens, or how they ought to be treated by their state. Political institutions play a foundational role in the emergence of the demands of justice by creating a special relation between fellow-citizens which they do not have with others. This contingent and special moral relation gives rise to the problem of justice that does not exist without the bounds of political societies. It calls for the application of special standards of fairness and equality within states that fill out the content of justice.

---

<sup>96</sup> Nagel (2005). Similar accounts with different emphases have been defended by Blake (2001) and Risse (2005b)

In developing the considerations underlying the political conception of justice, Nagel draws on certain aspects of Rawls's theory of justice. The political conception interprets Rawlsian theory as applying only to a special subject: the basic institutions of politically organized societies. According to Nagel, it is the "comprehensive control" exercised by sovereign states over the framework of their citizens' lives that "creates the special demands for justification and the special constraints on ends and means that constitute the requirements of justice."<sup>97</sup> As we shall see in Chapters 4 through 6, John Rawls, in making an intuitive case for his theory of justice, repeatedly insists on reducing or eliminating morally arbitrary sources of inequality in individual life-prospects as a matter of justice. Rawls claims that distributive inequalities brought about by social institutions with profound effects on individual life prospects should not be sensitive to factors such as one's sex, race, the social class of one's parents, or one's inborn natural endowments, which are beyond the scope of one's voluntary choices.<sup>98</sup> Nagel interprets in a novel way this claim of Rawls. He argues that the fact that large inequalities due to factors which individuals have done nothing to deserve have a profound effect on their life-prospects is not sufficient to explain the presumption against them. An additional condition is necessary to explain this presumption and the requirement to justify any departure from the benchmark of equality. He takes this condition to be that individuals are members of the same society organized along political institutions.

There are two crucial aspects of membership, both of them involving the individual agency or will of members, that Nagel thinks explain the requirement of equal treatment as a demand of justice. First, being member in a politically organized society makes individuals "joint authors of the coercively imposed system" of political institutions. Second, members are "subject to [the system's] norms, i.e. expected to accept their authority

---

<sup>97</sup> Nagel (2005: 123)

<sup>98</sup> Rawls (1999a: 63)

even when the collective decision diverges from [their] personal preferences.”<sup>99</sup> Obviously, this dual role of citizens – i.e. being both the authors and subjects of law – does not involve a voluntary choice on their part in the sense that they have chosen to become or remain a member of their society: political obligation is associative according to Nagel, just as according to Dworkin. However, Nagel argues, membership in a political community involves “an engagement of the will that is necessary to live inside a society”, which represents an active cooperation by citizens without which the exercise of political authority over them is pure coercion.<sup>100</sup> By “obeying [the state’s] laws and conforming to its norms”, citizens are “supporting the institutions through which advantages and disadvantages are created and distributed.”<sup>101</sup> Since we are implicated in upholding a coercive institutional scheme imposed on others, which has large material effects on their lives, we owe them a justification for the terms on which the scheme operates.

On the other side of the coin, the state acts in our name when making political decisions, and it requires us to take consequential responsibility for them and also to obey its laws even when we disagree with their substance. This claim calls for a special justification we can demand from the state, which is not required in the absence of this special relationship between the state and its subjects. Since, without having the choice to consent to authority, we are held responsible for the collective acts of the society, the state owes us a justification for why we should accept inequalities among fellow-citizens that come about through the operation of the social, political, and legal institutions of the society.

Hence, Nagel argues, on top of our prepolitical duties not to harm others and to provide humanitarian assistance to the needy, additional demands of political equality, equal

---

<sup>99</sup> Nagel (2005: 128-9)

<sup>100</sup> Nagel (2005: 128-9)

<sup>101</sup> Nagel (2005: 129)



opportunity, and the requirement to reduce socioeconomic inequalities arise among fellow-citizens of a state as a matter of justice. The reason for this is that “the state makes unique demands on the will of its members – or the members make unique demands on one another through the institutions of the state – and those exceptional demands bring with them exceptional obligations, the positive obligations of justice.”<sup>102</sup>

### **3.2. Implications for international distributive inequalities**

What implications does the political conception have for the scope of justice? On this conception the scope of application of the principles of justice is contingent, because the scope of the special moral relation triggering the demand for justice is also contingent. States have their boundaries and populations for various historical reasons unrelated to justice, but given that they exercise sovereign power over their citizens, they have a duty of equal concern toward all their citizens, and given that citizens are implicated in upholding the scheme of social, legal, and economic institutions of the state, they have special obligations toward one another. Egalitarian requirements are owed by citizens of a state only to their fellow-citizens. They are of associative nature, grounded in a special associative relation.<sup>103</sup>

The attitude of the political conception towards global justice, or the lack of it, is this: since at present there are no global political institutions capable of grounding full-blown requirements of justice at the global level, the issue of distributive justice does not arise here. The requirements of distributive justice do not apply to the world as a whole. Furthermore, not only do we not stand in the requisite special relation capable of triggering duties of justice with many of our fellow-humans, we are also not required to enter into that

---

<sup>102</sup> Nagel (2005: 130)

<sup>103</sup> Nagel (2005: 121, 125)

special relation with whom we do not yet have it. There is no duty to work toward global justice as long as, for nonmoral reasons, there has not been formed a global sovereign authority. This does not mean that we do not have any duties in the face of human rights violations or severe deprivation vis-à-vis the global poor. Apart from justice, we have basic duties to avoid harming others and to provide humanitarian assistance regardless of the existence of a political relation with them. These duties are prepolitical: they do not depend on the special institutional relation that gives rise to duties of justice.

The general idea behind this theory is the Rawlsian view that different principles are appropriate for regulating different subjects. Morality is not unitary: principles that can guide the design of institutions are not appropriate for guiding individual conduct or the working of private associations or, for that matter, international relations of societies to one another. According to Nagel's interpretation of this picture, private morality is relatively undemanding: moral rules for individual conduct require us not to violate the human rights of others, and perhaps to provide basic humanitarian assistance such as rescue from immediate danger.<sup>104</sup> These duties are preinstitutional, in the sense that they bind us with regard to everyone in the world, regardless of the presence or absence of institutional relations with them. These duties in the Nagelian picture are gradually supplemented by additional obligations we may acquire in various ways, through various forms of voluntary and non-voluntary relations in which we stand with others.

This view of morality helps to explain why Nagel believes that some actions' or practices' having large material effects on people's lives is not sufficient to trigger the requirement of equal treatment or fairness that characterizes a full conception of justice. He brings up the example of immigration policies to illustrate his thesis. Immigration policies of affluent and powerful countries typically impose huge effects on the lives of people

---

<sup>104</sup> Nagel (2005: 131)

living in other countries, but the political conception of justice does not see that as a reason for demanding that “such policies should be determined in a way that gives the interests and opportunities of those others equal consideration.”<sup>105</sup> The putative reason is that immigration laws do not request the cooperation of foreigners in accepting and upholding them, nor are they imposed in their name. They are simply enforced against them.

Nagel’s account of the political conception of justice provides a coherent and original statement of a position that explains egalitarian duties in a non-cosmopolitan, still universalistic way. Egalitarian demands rest on a universalistic associative duty that is formulated conditionally: we have a duty to cooperate in according equal treatment to anyone with whom we are joined in a system of coercively imposed political institutions.<sup>106</sup> This requirement is conditional: it is triggered only *once* we are fellow-participants in a coercively imposed institutional scheme; we have no obligation to work toward equality-promoting institutions in the absence of a common political scheme. Distributive equality is an emergent property of politically organized societies. However, this conditional character of the obligation and its dependence on a nonvoluntary relationship is what makes this account vulnerable to some objections.

## 4. Objections to the political conception of justice

### 4.1. The case of undemocratic states

The first objection states that Nagel’s political conception of justice is too restrictive in a way that makes it practically inapplicable to nondemocratic regimes. An important function of any conception of justice is that it should be able to serve as standard for criticizing existing schemes. Now, one condition Nagel places on the applicability of the concept of

---

<sup>105</sup> Nagel (2005: 129)

<sup>106</sup> Nagel (2005: 133)

justice to a scheme of political institutions is that it claims to be a “collectively imposed social framework, enacted in the name of all those governed by it.”<sup>107</sup> However, many nondemocratic regimes do not claim to impose their social framework on their subjects in their name but, for instance, in the name of some divine will (divine right), or the good of a certain caste or group. In these cases subjects are not even formally regarded as authors of the legal framework. Without a significant measure of rights to democratic participation the claim that subjects are authors of the legal framework seems hard to justify, and in the above cases not even formal reference is made to their authorship of the law. Certainly, the cooperation required from subjects and thus the involvement of their will in such regimes fall short of what the political conception postulates. In such cases when the regime cannot be said to be enacted in the name of all the subjects, principles of justice would not serve as standards for criticism, which makes Nagel’s account lack an important critical edge.<sup>108</sup>

In response to this objection one might argue that it rests on a misunderstanding: the condition that political institutions are enacted in the name of all subjects does not refer to the actual state of affairs but reflects a normative aim. In order for authority over subjects to be legitimate, it should be imposed on them in their name. In the absence of an egalitarian distribution subjects are not treated equally, hence they cannot be expected to bear consequential responsibility for the effects of laws even when they disagree with them. Political authority is not justified. If political institutions do not represent the will of subjects, political rule is mere unjustified coercion. However, this way out is not open for Nagel. His example of the immigration law rests on the assumption that policies or institutions with large material effects on people’s lives ought to meet an egalitarian standard *only if* they are imposed in the name of subjects. The interests of these people need not be given equal consideration if – as Nagel thinks it is the case with immigration policies

---

<sup>107</sup> Nagel (2005: 140)

<sup>108</sup> Similar arguments have been made by Cohen and Sabel (2006: 160-1) and Julius (2006: 180-1).

– laws are merely enforced on them, without asking for their acceptance.<sup>109</sup> So Nagel's account of political legitimacy and the political conception of justice face a dilemma: either it is the case that institutions' having large material effects on people's lives is a sufficient condition of an egalitarian presumption about them, and a requirement of subjects' actual acceptance is not a necessary condition for criticizing an existing undemocratic regime, or the political conception is inapplicable for criticizing undemocratic regimes.

#### **4.2. Insufficient justification of additional burdens**

The second objection to the political conception targets the conditions that may seem sufficient in Nagel's account for grounding egalitarian duties of justice. According to the political conception, the moral baseline of a requirement to respect basic rights and to provide humanitarian assistance can be exceeded by additional obligations people incur in various ways. A salient example of additional obligations is the case of voluntarily incurred obligations.<sup>110</sup> As compared to the minimal moral baseline, one is required to undertake more significant burdens if, for example, she has associated with others for a specific aim, or promised to perform some act. Even if these obligations may be more demanding than the minimal moral duties one owes to everyone else, we have nevertheless to perform them. Similarly, Nagel claims, the fact that we find ourselves under the authority of political institutions claiming to act in our name in an involuntary association with others is sufficient to ground additional egalitarian obligations toward fellow-citizens we do not have to humanity in general.<sup>111</sup> By contrast, no matter how large material effects our actions have on the well-being of foreigners, we do not owe them more than the basic moral duties because they are not our associates in an involuntary political community.

---

<sup>109</sup> Nagel (2005: 129)

<sup>110</sup> Nagel (2005: 132)

<sup>111</sup> Nagel (2005: 132)

However, one may object to this view that there is a contrast between voluntarily incurred special obligations and involuntary relations such as being fellow-citizens of a state. Whereas in the first case we can justify incurring additional obligations as compared to a lower universal moral baseline by pointing to our voluntary undertaking of them, we cannot have recourse to a similar justification in the case of political duties.<sup>112</sup> In the debate about political obligation many liberal theorists insisted that such additional obligations that are usually associated with being citizens of a state cannot be justified on voluntaristic grounds. Nagel agrees with them in claiming that the nature of our special obligation to our fellow-citizens is involuntary. If, however, we regard political obligation as involuntary, the mere fact of being fellow-citizens does not suffice to ground additional (egalitarian) obligations toward them unless we can give a justification for them that is based on a prior moral requirement of some kind, one that is sufficient to ground such heavy demands. Political obligation and the corresponding additional distributive requirements are not normatively independent, i.e. self-justifying.<sup>113</sup> The existence of a state cannot in itself create additional moral obligations for its subjects. There must be some prior moral principle which grounds these obligations. Possible candidates include subjects' consent to political authority, or their accepting certain benefits provided by political authority, or their prior duty to create and uphold just regimes.

Nagel is aware that the justification of political obligation requires more than pointing out that citizens are thrown together into a common scheme of coercively imposed institutions which can be shown to be just. In order for such an obligation to hold, there must be a prior duty requiring us to comply with authority. He conjectures that political obligation, and the move to a higher level of mutual obligations coming with it, may be

---

<sup>112</sup> This is the tenor of Samuel Scheffler's Voluntarist Objection to associative obligations. See Scheffler (2001: 54, 70)

<sup>113</sup> Simmons (1996: 266)

based on “a more basic obligation, emphasized by both Hobbes and Kant, that all humans have to create and support a state of some kind”, which is in turn based on “the imperative of securing basic rights”.<sup>114</sup> In Nagel’s account basic rights, as well as basic humanitarian duties such as the duty to rescue others from immediate danger, are part of a minimal morality that does not depend on any institutional relation between persons. Basic rights include human rights against violence, enslavement, coercion, rights to freedom of religion and expression.<sup>115</sup> In order to secure such rights, individuals have an obligation to work toward the establishment of common political institutions that are capable of providing assurance for individuals and coordinate their behaviour. Political obligation, so grounded, however, is not based on a universal requirement of equal treatment owed to all other persons. The scope of the underlying requirement to secure basic rights of others is fuzzy, and the requirement can be met more or less locally.<sup>116</sup> The requirement of equality features in the theory only derivatively: once we are subject to political institutions claiming our obedience, such institutions are required to treat all their subjects equally.

#### **4.3. The cosmopolitan objection revisited**

Contrary to the political conception, cosmopolitans view political obligation as resting on a universal duty we owe to everyone else. Cosmopolitans agree with the political conception in regarding the securing of human rights as one important ground of political obligation. They further regard, however, the requirement to secure distributive justice as another important prepolitical requirement, which plays a central role in grounding political obligation.

---

<sup>114</sup> Nagel (2005: 133)

<sup>115</sup> Nagel (2005: 127, 131)

<sup>116</sup> Nagel (2005: 133)

Perhaps the most important task states are expected to perform is securing distributive justice. The problem of justice as cosmopolitans understand it concerns the distribution of scarce resources among all humans who have competing claims over them. They follow Kant in holding that rights to resources are not established by a unilateral declaration of ownership by someone.<sup>117</sup> Property rights, for instance, imply a claim on an item against all other persons who can potentially claim the same item. Moreover, this claim must be enforceable in order to ground title to property, otherwise it cannot be regarded as a right. These claims to resources, publicly enforceable against everyone else, generate the requirement of a public justification of property rights, and hence of public principles of distributive justice, among all those individuals whose claims to resources can potentially conflict. Therefore, rights to resources presuppose two elements: publicly justified principles of distributive justice as standards for designing and reforming social institutions on one hand, and an authority capable of applying and enforcing just distributive principles in actual practice, on the other hand.

The first of these elements, the requirement to justify principles of distributive justice, has on the cosmopolitan view a global scope. Since, according to the cosmopolitan thesis, no-one has special antecedent claim to the earth's external resources,<sup>118</sup> and these resources are scarce, we owe this justification in principle to all other humans, or at least to those with whom we cannot avoid being side-by-side.<sup>119</sup> The scope of justification of principles of distributive justice is global and prepolitical: they must be justified regardless of whether there already exist global political institutions. Since in contemporary circumstances the potential scope of social interaction is global, distributive shares ought to be justified among all humans, taking the interests of all equally into account.

---

<sup>117</sup> For Kant's theory of property rights, see Kant (1991: 261-70).

<sup>118</sup> For the principle, in a different context, see Dworkin (2000: 66).

<sup>119</sup> Kant (1991: 123-4)



This reasoning applies not only to natural resources, but to social resources as well. Even those goods that are the products of social cooperation do not come into being with property rights attached to them. Property rights concerning all goods must be in harmony with universally acceptable principles of distributive justice, given the global scope of potential social interaction in contemporary circumstances. The substance of the principles of justice on the cosmopolitan conception is a further matter. Without going into much detail about them at this point, it suffices to note that egalitarian cosmopolitans derive from the equal moral status of all humans, and the need to arrive at universally acceptable principles of justice regulating the distribution of resources over which no-one has antecedent claims, a presumption in favour of an equal distribution of resources on the global scale.<sup>120</sup> On the cosmopolitan egalitarian conception, rules regulating acquisition and transfer of property operate in tandem with a system of rules maintaining background justice, i.e. an overall egalitarian distribution of resources.

The second element of a just system of property rights, the requirement to interpret, apply, and enforce just distributive principles, serves to ground political authority. The case for political authority rests in large part on the recognition of the potential of widespread conflicts about property. Such conflicts can arise for two basic reasons: either because people disagree about the correct principles of distributive justice guiding, among other things, the acquisition and transfer of property, or because they disagree about the application of a principle they accept. Cosmopolitans hold we have a duty to prevent potential conflicts about rights over resources from giving rise to violence, or from the strong carrying the day over the weak.<sup>121</sup> The potential for conflict among humans for

---

<sup>120</sup> I discuss the characteristics of this theory in more detail in Chapter 6.

<sup>121</sup> See Jeremy Waldron's analysis of Kant's political philosophy in Waldron (1999) and in Waldron (2000). Waldron interprets Kant in a manner very much resembling the structure of Hobbes's justification of political authority. Differences in the initial conditions lead Hobbes and Kant to diverge on interpreting the duty to leave the state of nature as, respectively, hypothetical or categorical.

scarce resources, in conjunction with the need for assurance and coordination among them, makes political authority necessary, and underlies our duty to support and comply with existing just institutions and to promote the establishment of not yet existing ones.<sup>122</sup> In the absence of authority capable of justifiably defining and enforcing property rights, violence and injustice in distribution would follow. Hence, among current conditions with a potentially global scope of social interaction, we owe the duty to create and uphold political institutions in principle to everyone else, since the potential for conflict about distribution holds among all human beings. Contrary to what the political conception of justice holds, we have to create and uphold just political institutions not only in order to secure basic rights of those whose situation we are in a position to affect. We have such duty partly in order to prevent conflicts about property from giving rise to injustice.

As we can see, the cosmopolitan conception of justice reverses the order of justification of political obligation and distributive principles as compared to the political conception. According to the political conception, more limited human rights underlie the need for political authority, and our obligation to obey. Once such authority exists, the need for principles of distributive justice arises, since we are subjects of a common scheme of political institutions enforced on us, claiming to act in our name, demanding our obedience even when we disagree with the substance of its commands. These additional demands bring with them a presumption for equal treatment and an egalitarian distribution of resources. On the cosmopolitan conception, by contrast, the need for arriving at a publicly acceptable scheme of distributive justice, capable of grounding mutually acceptable property rights to external resources, is a prepolitical need. It arises in virtue of the fact that humans make conflicting claims about the earth's resources, and are required to arrive at publicly acceptable distributive principles. This in turn makes political authority necessary,

---

<sup>122</sup> I return to a detailed discussion of the role of political institutions in distributive justice along these lines in Chapters 6 and 7.

and underlies our obligation to obey political institutions even when we disagree with their commands.

The cosmopolitan conception reflects the recognition of the fact that justifying political authority needs to cover more than justifying the obligation to obey of subjects: it needs to provide, for outsiders as well, a justification of the territorial nature of political authority characteristic of modern states. States claim rights to control over and access to resources on their territory, which rights are in need of justification to outsiders as well. In order to be justifiable, the territorial rights of states must be exercised against the background of global basic institutions securing background justice globally. It may be true that political authority makes special demands on its immediate subjects by aiming to engage their will in upholding political institutions, though as we saw in the first objection to Nagel's account, it may be debated to what extent these burdens are more demanding than the burdens imposed by political authority on outsiders without asking for their acceptance. The existence of additional burdens does not entail, however, that principles governing the distribution of resources across states, and the control of states over resources on their territory, are not subject to justification vis-à-vis all humans required to respect them. On the cosmopolitan view there ought to be a division of labour between the political institutions of the state and global background institutions. The former play a vital role in specifying and enforcing property right regimes regulating ownership and possession of resources on the state's territory. The latter, on the other hand, serve to maintain just background conditions as against which states may justly govern the use of resources on their territory, and access to their territories by outsiders.<sup>123</sup>

The contrast between the two conceptions of justice manifests itself in a difference between their attitude towards the political institutions of nation-states. Since on the

---

<sup>123</sup> I return to these issues in Chapter 6.

political conception our political obligation rests on the requirement to secure human rights, it can be fulfilled with political institutions that have limited focus, such as nation-states. On the cosmopolitan conception, by contrast, we have obligations grounded in distributive justice to strive towards the establishment of institutions capable of securing justice at the global level. Requirements of distributive justice exist even in the absence of common political institutions, even if in this case there may be no way to discharge them directly. Political authority cannot stop at the level of nation-states.

The contrast between the political and cosmopolitan conceptions of justice, contrary to what we saw earlier on in Dworkin's writings, does not turn on a difference between their views about partiality and impartiality in private morality and social justice. The cosmopolitan conception of justice is fully compatible with allowing some room for partiality in private morality. It is a view where political institutions play a crucial role in determining and implementing principles of justice, without demanding that individuals be impartial in all aspects of their private life. Even if demanding that individuals be fully impartial in their personal lives were motivationally unfeasible because of the strength of special ties to the near and dear, and morally undesirable because of the inherent value of living an autonomous life with special projects and commitments of our own, it would not imply that we are incapable of designing a system of institutions that can realize the impartial demands of cosmopolitan justice. Partiality in our treatment of the near and dear is thought to be permissible only if there are background institutions that implement the impartial requirements of justice. Individuals have a duty to create and uphold such institutions that maintain the conditions of impartiality, against the background of which they are free to pursue their own projects and undertake personal commitments. In such a case it is a demand of morality that such institutions be designed in the first place, and not only that once state institutions are in place, they ought to be impartial if they are to be

justified in ruling those under their jurisdiction. This is the crucial distinction between the state-centred and non-state-centred views of equality.

The view that impartiality is built into all areas of morality finds important support in Dworkin's ethical theory as developed, for instance in Chapter 6 of *Sovereign Virtue*. There he claims, contrary to what he says in *Law's Empire*, that partiality in personal life can be reconciled with the demand of impartiality in public life if one adopts equality of resources in the conception of justice that is to regulate social institutions. Dworkin uses his favoured ethical theory he dubs as the "challenge model" to support the principle of equal objective importance of human lives, and the demand of equality of resources he thinks results from it.<sup>124</sup> The principle of equal importance of human lives holds that "it is important, from an objective point of view, that human lives be successful rather than wasted, and this is equally important, from that objective point of view, for each human life."<sup>125</sup> This principle, however, does not depend on any further feature of individuals other than being humans.<sup>126</sup> If this is the principle underlying the demand for equality of resources among persons, then background institutions must secure resource equality among all humans by virtue of their humanity. That is, in order for global resource equality to be promoted, such global institutions must be created that are capable of maintaining background justice, enabling individuals to focus in their life-plans on the interests of their near and dear.

## 5. Summary and conclusion

The chapter continued the negative argumentative strategy, also employed in the previous chapter, against theories that deny the existence of global requirements of justice. Having

---

<sup>124</sup> Dworkin (2000: 277-80)

<sup>125</sup> Dworkin (2000: 5)

<sup>126</sup> Dworkin (2000: 279)

rejected in the previous chapter positions that deny the existence of global distributive justice either by relying on a relativistic view of justice, or by pointing to the instrumental or intrinsic value of the special relations represented by political communities, I proceeded with presenting and rejecting a position that is individualistic about value, but which regards political communities as playing a constitutive role in the justification of the requirement of distributive equality. The chapter focused on the writings of Ronald Dworkin and Thomas Nagel, which attempt to derive the requirement of distributive equality from the need to justify the use of coercive force by states against their subjects regardless of their consent, and subjects' obligation to obey political decisions. This defence of distributive equality was based on an associative conception of political obligation and on a collective view of moral agency grounding the collective responsibility of members of the political community for the state's distributive decisions. In order to clarify the relation between justice and distributive egalitarianism, I presented Nagel's theory of justice that seemed capable of grounding a principled distinction between egalitarian requirements applying within political societies and nonegalitarian requirements applying among humans as such. In response to this theory, I have argued that political obligation can be justified only against the background of robust enough prior moral requirements. Since on the cosmopolitan view no-one has special antecedent claim to the earth's resources, principles regulating distribution need to be justified among all humans. The need for arriving at mutually acceptable principles of justice is prior to the demand of political obligation, rather than the other way around. Thus, states do not play the constitutive role in the emergence of obligations of distributive equality Dworkin and Nagel argue for.

## Chapter 4

### The subject of Rawlsian justice and the Law of Peoples

Having employed a negative argumentative strategy against theories denying the existence of global requirements of justice in Chapters 2 and 3, I start to make a transition towards a more systematic account of global justice in the present chapter. I begin by outlining some main elements of the liberal theory of justice set forth by John Rawls in *A Theory of Justice* (henceforth *Theory*) and *Political Liberalism*. In doing so, I focus on the problem of social justice as Rawls understands it, and the subject of justice in the Rawlsian theory, examining the reasons for selecting this subject. I then proceed by presenting Rawls's views about the nature and justification of the right principles for the conduct of international affairs as developed in his *The Law of Peoples*, focusing on some of his major objections to global requirements of distributive justice. Having done so, I argue against Rawls's reasons for rejecting the demand for international distributive justice by pointing out their inconsistency with some basic elements of egalitarian liberalism Rawls defends in his earlier work.

#### 1. Rawls's domestic theory of justice

##### 1.1. The subject of justice in Rawls

From among 20<sup>th</sup> Century philosophers John Rawls was the one to provide the most systematic and most influential account of social justice. One of the special characteristics of his theory is its focus on the basic institutions of society. Rawls claims his theory of justice – justice as fairness – has a special subject: what Rawls calls the basic structure of society, i.e. “the way in which the major social institutions distribute fundamental rights and

duties and determine the division of advantages from social cooperation.”<sup>127</sup> The central problem for a theory of justice is to arrive at principles of justice by which the basic structure of society is to be evaluated.

The function and a crucial characteristic of the basic structure are apparent from the above definition. As for its function, Rawls conceives the basic structure of a society as a scheme governing cooperation between its members. Rawls views social cooperation within society as being mutually advantageous for those participating in it, and claims that the institutions of the basic structure regulate the distribution of benefits arising from cooperation. The problem of justice is seen by him to determine how to distribute properly the benefits of social cooperation among the individuals concerned. Social cooperation, however, need not be beneficial for everyone participating in it. Therefore, it has been proposed by others, it is sufficient to hold that whenever significant advantages or disadvantages are produced through cooperation, they should be subject to assessment by the principles of justice.<sup>128</sup>

The crucial characteristic of the basic structure that we see from the definition is that it consists of institutions. By an institution Rawls understands a “public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like.”<sup>129</sup> These systems of rules are meant to govern social cooperation among those subject to them, i.e. members of a society. Principles of justice evaluate alternative schemes of institutions comprising the basic structure in light of their likely effects on the distribution of rights, duties, and the division of advantages and disadvantages among those concerned.

---

<sup>127</sup> Rawls (1999a: 6)

<sup>128</sup> Beitz (1979)

<sup>129</sup> Rawls (1999a: 47)



Another important feature of the subject of Rawls's theory of justice is what it excludes from the scope of the principles of justice. These principles, as Rawls understands them, are not used to evaluate individual conduct, the working of associations, or even individual institutions taken separately. Their field of application is limited to evaluating a society's fundamental social, political, and economic institutions, as they hang together in a holistic scheme.<sup>130</sup> Not all kinds of institutions are part of the basic structure, and thus regulated by the principles of justice. Only those main public principles and policies belong to the basic structure, which regulate social and economic inequalities.<sup>131</sup> Among the main constituents of basic structure, Rawls at one place names "the political constitution and the principal economic and social arrangements"<sup>132</sup>, at another, he lists among its elements "the political constitution, the legally recognized forms of property, and the organization of the economy, and the nature of the family."<sup>133</sup>

In regard to scope, Rawls contrasts his theory with utilitarianism, which he interprets as a general theory with a first principle applying to all social forms as well as to individual actions. The Rawlsian theory, by contrast, is not a general theory of right with first principles applying to all subjects; its principles of justice apply to one subject only: the basic structure. Other subjects such as individual conduct, or the working of associations will most likely be regulated by different principles.

## **1.2. The special significance of the basic structure**

What is special about the basic structure that makes it the proper subject of social justice?

The reasons Rawls gives for focusing on the basic structure as the subject of his theory of

---

<sup>130</sup> Scheffler (2003a: 450), Waldron (1992: 24)

<sup>131</sup> Rawls (1993a: 282)

<sup>132</sup> Rawls (1999a: 6)

<sup>133</sup> Rawls (1993a: 258)

justice can be classified into two main groups. One reason Rawls cites for taking such institutions to be the proper subjects of justice is that their effects are “so profound and present from the start.”<sup>134</sup> They decisively shape the life prospects one faces from the moment of birth. They do this partly by shaping the aims and aspirations people have, partly by influencing the way individual abilities and talents are developed and realized, and partly by permitting significant social and economic inequalities in the life prospects of individuals “depending on their social origins, their realized natural endowments, and the chance opportunities and accidents that have shaped their personal history.”<sup>135</sup> Importantly, such inequalities in life prospects are not voluntarily chosen. This becomes especially conspicuous if we consider that many of these institutions are often backed up by the coercive power of the state. Contracts, for example, are regulated by law that is, in turn, enforced by the state.

Such fundamental inequalities in life prospects call for regulation by justice. The basic structure acquires significance because it shapes these inequalities to a fundamental extent, and once it is just, inequalities stemming from other reasons can be dealt with more easily.<sup>136</sup>

The second type of consideration in favour of having the basic structure as the main subject of inquiry for a theory of justice is the following. For liberals, it is an attractive idea that social conditions should evolve in accordance with free agreements between persons. In order for such conditions to be morally acceptable, however, they must have been arrived at through interpersonal agreements that are entered into under conditions that are fair.<sup>137</sup> This necessitates maintaining an equal measure of basic rights, liberties, and opportunities, and a fair distribution of resources that precludes large differentials in bargaining power. It is only

---

<sup>134</sup> Rawls (1999a: 7)

<sup>135</sup> Rawls (1993a: 270)

<sup>136</sup> Rawls (1993a: 271)

<sup>137</sup> Rawls (1993a: 266)

against the background of such fair conditions that free agreements are morally binding. Excessive social and economic inequalities violate this ideal. A scheme of institutions that fails to maintain (as Rawls puts it) background justice by appropriately regulating and adjusting background conditions is unjust, however free and voluntary individual interactions may seem in themselves.<sup>138</sup> Does this observation support taking the basic structure the proper subject of a theory of justice? Is it not possible to devise and impose on individuals such rules that could take care of the problem of free interpersonal agreements under fair conditions? In this case principles of justice would apply to individual conduct rather than to schemes of institutions. To this suggestion, however, Rawls replies that even if individuals act fairly, through time the cumulative effect of several transactions that are by themselves fair will generate social conditions that are unfair, and against this background individual transactions will be unacceptable, however freely entered into they might seem.<sup>139</sup> The reason why this vicious invisible hand cannot be counterbalanced by applying better and more sophisticated rules to individual conduct is that “there are no feasible and practicable rules that it is sensible to impose on individuals that can prevent the erosion of background justice.”<sup>140</sup> The joint effects of individual actions lead into the indefinite future, and individuals cannot reasonably be expected to foresee all their ramifications. Rules guiding individual conduct “cannot be too complex, or require too much information to be correctly applied”, otherwise they burden individuals excessively.<sup>141</sup>

On the basis of these considerations, Rawls sees the basic structure as being of central importance for the problem of justice. In *Theory* he argues for a conception of justice by availing himself of the construct of an original position with parties behind a suitably defined veil of ignorance rationally choosing principles of justice on the basis of their self-

---

<sup>138</sup> Rawls (1993a: 266)

<sup>139</sup> Rawls (1993a: 266)

<sup>140</sup> Rawls (1993a: 267)

<sup>141</sup> Rawls (1993a: 267)

interest for assessing alternative ways of arranging the basic structure. The two principles of justice Rawls defends in the course of this argument read as follows:

First principle: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.<sup>142</sup>

Second principle: social and economic inequalities are to be arranged so that they are both: (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>143</sup>

Having set out Rawls's reasons for holding the basic structure of society as the proper subject of justice, in the remaining part of this chapter I examine Rawls's own ideas of extending the scope of his theory to the global domain as they are presented in his later book, *The Law of Peoples*.<sup>144</sup> Then, in the next chapter, I continue by presenting a different kind of extension of Rawls's theory of justice to the global realm, more in line with the framework of *Theory and Political Liberalism* I have just reviewed. That extension will be inspired by the Rawlsian theory of domestic justice, however, it goes against Rawls's own ideas about the nature of international affairs as developed in *The Law of Peoples*.

## 2. Rawls's Law of Peoples

### 2.1. From the Law of Nations to the Law of Peoples

John Rawls develops his ideas about the nature and justification of principles regulating the conduct of international affairs in his monograph *The Law of Peoples*. This book, representing in his own words the "culmination of (Rawls's) reflections on how reasonable citizens and peoples might live together peacefully in a just world"<sup>145</sup>, offers a wide-ranging

---

<sup>142</sup> Rawls (1999a: 53)

<sup>143</sup> Rawls (1999a: 72)

<sup>144</sup> Rawls (1999b)

<sup>145</sup> Rawls (1999b: vi)

and systematic discussion of a surprisingly broad array of issues covering subjects from the justification of human rights to the morality of war to the ethics of statesmanship. The book offers a significant modification and elaboration of Rawls's brief remarks about "the law of nations" in *Theory*, and it revises and expands his 1993 Amnesty Lecture with the same title.<sup>146</sup>

In *Theory*, Rawls addressed the problem of international justice very briefly in Section 58. There he claims that the law of nations, i.e. norms regulating international conduct of states, would consist of such principles that representatives of states would affirm under appropriately defined conditions.<sup>147</sup> There Rawls argues, parties would agree to some familiar principles of international affairs, such as the principle of self-determination, the requirement of non-intervention, the right of self-defence, the requirement that treaties are to be kept, and certain rules of the conduct of just war.<sup>148</sup>

His book, *The Law of Peoples*, modifies and elaborates on these brief remarks. This book formulates the fundamental requirements that should govern the foreign policies of liberal democratic states. Here Rawls not only gives a statement of his favoured principles for regulating international affairs, but he also places them in a broader philosophical framework and contrasts this theory with what he regards as its major competitor, cosmopolitanism. His approach is to provide an ideal conception of international relations and then to further develop this theory to give guidance for nonideal circumstances. The major parts of the theory are a set of principles for governing the foreign policy of liberal and "decent nonliberal" peoples as members of an ideal conception of a "Society of Peoples"; an account of their justification employing the construct of original position to the international domain; and requirements derived for the conduct of foreign policy by liberal

---

<sup>146</sup> Rawls (1993b)

<sup>147</sup> Rawls (1999a: 331-3)

<sup>148</sup> Rawls (1999a: 332)

states in nonideal circumstances. The latter include constraints on the uses and conduct of war and a duty to assist societies burdened by unfavourable natural and historical conditions in building decent institutions.

For Rawls, the fundamental problem of international political theory is to find norms regulating international affairs mutually acceptable for peoples with differing institutions and political cultures. He regards cultural and political pluralism among societies as a permanent characteristic of the circumstances of international politics, just as pluralism among individuals is a fact of life in free societies. Not all societies conform to liberal standards of social justice, but Rawls thinks it is conceivable that there could be nonliberal societies that meet certain criteria of decency making them acceptable for liberal societies as “equal participating members in good standing of the Society of Peoples.”<sup>149</sup> This is because of the central place Rawls accords to the idea of toleration and to the requirement of international stability in his theory of international affairs. Toleration, Rawls argues, requires that liberal societies do not impose their values on those nonliberal societies that meet a moral threshold. The possibility of a world in which liberal and decent nonliberal peoples peacefully coexist depends on finding a basis on which reasonable peoples can willingly cooperate in the circumstances of international pluralism.

The solution provided by Rawls to this problem is the Law of Peoples. It consists of eight principles:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.

---

<sup>149</sup> Rawls (1999b: 59)

5. Peoples have the right of self-defence but no right to instigate war for reasons other than self-defence.
6. Peoples are to honour human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.<sup>150</sup>

These principles form the basic charter of the Society of Peoples, which is composed of liberal and decent nonliberal peoples, i.e. “well-ordered societies” as Rawls together refers to them. The principles regulate the conduct of foreign policy by liberal peoples. Not only are peoples the primary agents to which the Law of Peoples applies, they also play a foundational role in the justification of the principles. It is ultimately the interests of peoples that counts when assessing the principles proposed for the Law of Peoples. As for their characteristics, peoples as Rawls understands them are in effect nation-states with an exclusive system of law and the monopoly of the enforcement of the law on their territory.<sup>151</sup> They lack, however, some powers that have been regarded by Realists as part of state sovereignty such as the power to go to war with other states for reasons other than self-defense. Rawls lists three major features they possess: 1) they have a just or decent system of institutions; 2) their citizens are tied together by feelings of loyalty; 3) they recognize moral constraints on their actions.<sup>152</sup>

It needs to be pointed out that only liberal or decent peoples are members of the ideal conception of the Society of Well-Ordered Peoples. In the world as we know it, however, there are societies, which are neither liberal nor decent. Therefore Rawls makes the

---

<sup>150</sup> Rawls (1999b: 37)

<sup>151</sup> Rawls (1999b: 23-6)

<sup>152</sup> Rawls (1999b: 23, 27-30)

following classification of different kinds of political regimes for the aims of his theory of international relations. Liberal societies are characterized by three features. They possess an institutional regime that respects certain familiar basic rights and liberties equally for all its citizens. Next, they give priority to the protection of these rights and liberties over other values. Finally, they provide some measure of redistribution in order that citizens can make productive use of these freedoms.<sup>153</sup>

The category of decent peoples is broader than that of liberal peoples, and encompasses both liberal and decent hierarchical peoples. They need to satisfy two conditions. First, they are not aggressive in their foreign policy and respect the freedom and independence of other societies. Second, they endorse some human rights; they treat their subjects as bearers of rights and obligations; and finally their officials interpret the law as representing a “common good idea of justice”.<sup>154</sup> It must be noted, however, that the list of human rights decent societies endorse does not include some of what have come to be regarded as human rights in international human rights documents, such as rights to political participation, freedom of expression, equal liberty of conscience, and prohibitions against torture, arbitrary arrest, detention, exile, and discrimination.<sup>155</sup>

Three types of non-decent societies listed by Rawls are the following. First, he mentions societies burdened by unfavourable conditions, which require additional resources to become well-ordered.<sup>156</sup> The second group of societies, which Rawls refers to as “outlaw states”, represents societies which are aggressive and tend to violate human rights.<sup>157</sup>

---

<sup>153</sup> Rawls (1999b: 14-5, 23-5)

<sup>154</sup> Rawls (1999b: 63-78)

<sup>155</sup> Rawls (1999b: 65)

<sup>156</sup> Rawls (1999b: 105-13)

<sup>157</sup> Rawls (1999b: 80-1, 90)



Finally, benevolent absolutisms honour some basic human rights but, unlike decent societies, do not consult their subjects when making political decisions.<sup>158</sup>

The final aim of the Law of Peoples is to enable peaceful coexistence among decent and liberal peoples, and bring eventually all states into the family of well-ordered peoples.<sup>159</sup>

Rawls develops the argument for his eight principles by again relying on the device of an original position. In the international original position all decent peoples are represented, however non-decent societies are not. From this respect membership in the international original position, in contrast to the domestic case, is selective.<sup>160</sup> The international original position also differs from the domestic one in that the units of representation featuring in it are peoples, not individuals, and the criterion of fairness for the Law of Peoples is that it should be acceptable from the points of view of reasonable peoples. Rawls justifies the acceptability of his Law of Peoples by imagining two international original positions: the first represents the perspective of liberal democratic peoples, whereas the second represents the interests of nonliberal decent peoples in addition to liberal ones. Rawls considers the proposed principles from both perspectives and argues that the in each case the parties, situated behind a suitably defined veil of ignorance in a condition representing the freedom and equality of peoples, would find it reasonable and rational to endorse the same principles as a basis of their foreign policy.<sup>161</sup> There are two peculiar features of his reasoning that leads Rawls to believe that parties would choose his principles. First, the characterization of the international original positions substantially differs from that offered in the case of domestic justice. The goods parties, i.e. peoples, are fundamentally interested in obtaining are not primary goods but the protection of their

---

<sup>158</sup> Rawls (1999b: 63)

<sup>159</sup> Rawls (1999b: 5)

<sup>160</sup> Pogge (2001b: 246)

<sup>161</sup> Rawls(1999b: 30-5)

political independence, their security, territory, and the good of their citizens.<sup>162</sup> They are not motivated to obtain as much of these as possible, only a sufficient measure.

Second, unlike in the procedure for deriving principles for domestic justice, Rawls does not consider alternative sets of principles, thus the justification of the Law of Peoples does not take place by comparing it to alternatives and demonstrating that it is superior to them. Instead, what he does is merely to make a noncomparative claim that the parties in both international original positions would find it rational and reasonable to endorse the proposed principles.

Rawls's Law of Peoples has been criticized for a number of reasons. For instance, its list of human rights have been viewed as too restrictive, excluding some of the rights that have been declared as human rights in several international human rights documents.<sup>163</sup> Furthermore, its unorthodox justification of human rights, not based on their importance to individuals, has been regarded as misguided.<sup>164</sup> Next, its idea of toleration of nonliberal peoples has been viewed as disregarding the interests of those citizens they oppress, hence as being unpersuasive and contradicting Rawls's own considerations of toleration in domestic societies.<sup>165</sup> Leaving aside discussion of these problems with the theory for another occasion, I will focus on its arguments about international distributive justice, this being the topic of my thesis.

## **2.2. International distributive requirements**

The Law of Peoples envisions a limited role for international distributive requirements. Such requirements are not the central focus of the eight principles. The only principle that

---

<sup>162</sup> Rawls (1999b: 34, 69)

<sup>163</sup> Moellendorf (2002: 11)

<sup>164</sup> Beitz (2000: 683-8), Teson (1995: 79-99)

<sup>165</sup> Caney (2002: 95-112)

makes reference to such requirements prescribes a duty of assistance to burdened societies. In addition to this, another international requirement that might be relevant for distribution is the reference to provisions for fairness of trade. With regard to the latter, Rawls makes the claim that parties to the international original position “would agree to fair standards of trade to keep the market free and competitive”<sup>166</sup>, however, these rules for fair trade seem to leave room for large and constantly increasing international inequality.<sup>167</sup>

The only distributive principle in the Law of Peoples, the duty of assistance, pertains to nonideal theory: it holds for cases where societies cannot meet their obligations towards their members. It is not a requirement of distributive justice that regulates economic inequalities among societies in an ongoing manner.<sup>168</sup> It is targeted at helping burdened societies to be able to manage their own affairs in accordance with their distinctive conception of the common good or justice as well-ordered societies.<sup>169</sup> When they met this threshold, they will be able to secure some basic human rights to their subjects, including their right to subsistence, therefore there will be no further international distributive requirements to fulfil.

The overall picture Rawls draws in his theory about international distributive requirements is the following. On this view there is a division of moral labour between domestic and international societies: the well-being of individuals is primarily the responsibility of their domestic societies, while the international community is required to create and uphold conditions among which well-ordered domestic societies can operate.<sup>170</sup> International principles consider the interests of states or politically organized peoples, not individuals. The main negative thesis of *The Law of Peoples* is that there are no principles of

---

<sup>166</sup> Rawls (1999b: 43)

<sup>167</sup> Pogge (2001b: 251)

<sup>168</sup> Rawls (1999b:106)

<sup>169</sup> Rawls (1999b: 111)

<sup>170</sup> Beitz (1999b: 518)

distributive justice applying at the international level.<sup>171</sup> It acknowledges international distributive obligations, but holds that principles regulating such obligations are not equivalent to, not even continuous with, those liberal egalitarian principles that are expected to regulate domestic obligations in Rawls's domestic theory of justice. International distributive obligations have three important characteristics. First, they hold between states and not individuals. Second, they are not egalitarian in the sense that they do not demand an ongoing process of distribution maintaining equality among nations or individuals globally. The theory specifies a threshold level of assistance, above which international aid is no longer a requirement. Finally, our distributive obligations to outsiders are conceived of as duties of assistance, and thought to represent a humanitarian concern rather than demands of justice.

What is the main point of contrast between Rawls's domestic theory of justice and the Law of Peoples? In the domestic case the well-being of individuals is foundational in designing principles for just institutions. When institutions are unjust, they are condemnable because of their effects on the well-being of those individuals to whom injustice is done. In the international case as presented in *The Law of Peoples*, by contrast, Rawls's ultimate concern in justifying international principles is that just societies can flourish. Even though he may regard individual well-being as foundational in designing domestic principles of justice, he regards it as playing at best a derivative role in justifying principles for international affairs. As concerns distributive justice, so long as domestic societies are internally just or at least decent, and a set of principles for international conduct maintains conditions under which such domestic institutions can flourish, there is no further question about the global distribution among individuals.<sup>172</sup> This is because of the discontinuity between the justification of domestic and that of international principles, i.e. because of the

---

<sup>171</sup> Rawls (1999b: 115-20)

<sup>172</sup> Rawls (1999b: 119-20)

foundational role *The Law of Peoples* attributes to the character of domestic social and political institutions when designing international principles. Since in *The Law of Peoples* the main aim of designing principles for international affairs is that each society can become and remain just or decent, and this aim they can achieve with very low level of natural resources, there is no need for substantial international redistribution. As Rawls writes: “there is no society anywhere in the world – except for marginal cases – with resources so scarce that it could not, were it reasonably and rationally organized and governed, become well-ordered.”<sup>173</sup> Therefore any distributive obligation in excess of fulfilling the duty of assistance would be unnecessary.

One important consequence of this picture is that the Law of Peoples does not impose any direct constraint on the domestic distribution of resources among individuals. Indirectly it does require the satisfaction of some material minimum in well-ordered societies, since they by definition satisfy a number of basic human rights, including the right to subsistence. However, there is no further question about the extent of domestic inequalities in the theory, which thus seems to allow for differences well beyond those Rawls’s theory of justice allows for the domestic case.<sup>174</sup>

With regard to international distributive requirements, a prominent difference between the duty of assistance and domestic requirements of justice is that the former applies in nonideal theory only, whereas the latter pertains to ideal theory too. After countries have the means for securing human rights for their subjects and for upholding well-ordered institutions, international distributive requirements no longer hold. In Rawls’s words, the practical difference between the duty of assistance and obligations of distributive justice applying on the national domain is that the former does not require constant transfers

---

<sup>173</sup> Rawls (1999b:108)

<sup>174</sup> Beitz (2000: 688)

between countries: as Rawls puts it, it has a “target and a cutoff point”<sup>175</sup>. The world’s poor are to be assisted up to a point where their societies are just or decent. Even though all societies should secure a material minimum for their members, the primary responsibility for providing for this rests with national political societies. The duty of assistance by other states is activated only if the national political society in question is incapable of securing some basic human right.

In *The Law of Peoples* Rawls advances several arguments in favour of his restriction of the scope of distributive justice to the domestic domain, as against demands for more substantial international distributive requirements. In the following sections I will consider four of them, and examine whether they are compatible with facts and the main tenets of the liberal egalitarian theory of justice Rawls defends in his earlier work.

### **2.3. Domestic causes of the wealth of nations**

The first argument I present starts from considerations of the causes of the wealth or poverty of nations. Rawls targets it against the demands by theorists like Charles Beitz and Thomas Pogge who have argued for more egalitarian international redistribution than what the Law of Peoples allows for.<sup>176</sup> As against these suggestions, Rawls argues that the primary determinants of a society’s level of well-being are internal to the society. The most important factors influencing society’s well-being are the public culture and “the religious, philosophical, and moral traditions” of the society, as well as “the industriousness and cooperative talents of its members”.<sup>177</sup> A set of background economic institutions fostering innovation and investment, a culture that is conducive to economic achievement, and stable

---

<sup>175</sup> Rawls (1999b: 119)

<sup>176</sup> Beitz (1979: Part III); Pogge (1989). I present these theories in more detail in the next chapter.

<sup>177</sup> Rawls (1999b: 108). In making this argument he draws heavily on the work of David Landes. See Landes (1998).

political institutions are likely to result in higher average level of well-being than what a different set of economic institutions, unstable political culture, and a culture less conducive to economic development would engender. The significance of variations in per capita levels of natural resources among countries is only marginal in variations in well-being. Given that the crucial factors in the country's well-being are internal to the country's institutions, there is no need for the application of more robust principles of international justice than the duty of assistance.<sup>178</sup> If the primary determinants of a country's wealth are indeed internal, the conclusion that seems for Rawls to follow from this is that ongoing distributive transfers to outsiders would be supererogatory and what cosmopolitans think are requirements of international distributive justice are in fact superfluous.<sup>179</sup>

This argument has invited criticism on empirical grounds. Its opponents challenge the empirical claim that the sources of global poverty are primarily domestic.<sup>180</sup> Natural resource endowment and domestic social and political culture are not the only factors in determining how a country fares. An important additional factor is provided by those external influences on national economy that stem from neither of these two elements. It can be doubted whether domestic political and economic culture and institutions are so powerful as to override these external influences on a country's well-being. Today every country is subject to external influences, enmeshed as they are in a structure of global institutions, and far from being self-sufficient. Their economy depends heavily on international cooperation, therefore the assumption implicit in the Rawlsian argument that societies are self-sufficient does not hold. This means that the empirical question of the primary reasons for a country's wealth is not settled.

---

<sup>178</sup> Rawls (1999b: 117)

<sup>179</sup> Beitz: Afterword to Beitz (1999a: 205), Beitz (2000: 689)

<sup>180</sup> For an elaborate discussion of this claim, drawing on a rich pool of empirical data, see Pogge (2002). See also Buchanan (2003: 209-15).

Furthermore, the argument from the domestic origin of differences in economic growth presupposes that there is a clear-cut distinction between external and domestic determinants of a society's wealth, and it is the domestic causes that carry the day. However, as Thomas Pogge has forcefully argued, in the global division of labour domestic and external causes are not independent. External factors may significantly determine what effect domestic factors have. First, it may be the case that domestic economic and political institutions have a specific effect on a country's development only because a given set of international factors operate. With a different set of international institutions the effect of domestic institutions would be different. Second, what domestic culture and institutions develop in a given society may also be significantly influenced by external factors. For example, dependence on foreign capital markets, and vulnerability to the policies of international financial institutions may have a lasting effect in shaping the domestic economic structure. Similarly, certain regulations of international law may strongly influence a society's political institutions and political culture.<sup>181</sup> Therefore, even if domestic factors indeed significantly influence a country's status in world economy, it is not at all true that external factors are not at least as important. These factors may determine society's capacity to develop and the direction of its development through shaping domestic political and economic culture and institutions. If external factors significantly influence a country's well-being either directly or indirectly, Rawls's position that there is no case for international principles of distributive justice is not justified. Surely, there may be no clear distinction between the effects of domestic and external factors, and therefore theorists may have to face serious epistemic difficulties in distinguishing factors and evaluating their impacts on growth. What we have to note here is, again, the fact that this is an empirical issue which requires careful assessment on the basis of social scientific data. Rawls fails to

---

<sup>181</sup> Pogge (2001a: 20-1). Pogge's examples include the international borrowing policies and the acceptance of governments' resource privilege.



provide arguments for his position, hence his restriction of international distributive requirements to a duty of assistance is not supported by his empirical thesis.<sup>182</sup>

However, in order to see the real force of the argument I propose to bracket the debated empirical issue, and concentrate instead on what seems to be the most important consideration underlying the argument. Suppose it turned out to be true that people are badly off in a given country primarily because of domestic causes: either because of their public culture, economic and political institutions, political decisions, or because their government is corrupt, oppressive, or incompetent. What does this fact imply with regard to the demands of justice on the international domain? The answer suggested by Rawls rests on considerations of national collective responsibility.

#### **2.4. National responsibility and the unfairness of international redistribution**

The reformulation of the previous argument rests on considerations of national collective responsibility for the development or backwardness of a society. How a country fares, Rawls argues, largely depends on its own political decisions. What bundle of freedoms, opportunities, and resources are available to members of a society depends on the political decisions they have collectively taken. If we redistribute from wealthier to poorer countries, we unfairly penalize societies that have been responsible in the conduct of their economic and political affairs, and unfairly benefit societies that have not.<sup>183</sup> In order to bring out the contrast between his theory and theories demanding international redistribution on grounds of justice, Rawls proposes a thought experiment. Imagine two societies with identical initial conditions: suppose they have the same level of wealth and the same size of population. Society A decides to industrialize, while the B prefers leisurely life, thus it does not

---

<sup>182</sup> For an attempt to put flesh on Rawls's position and to solve the philosophical problem about global justice by relying on data from development economics see Risse (2005b: 81-117).

<sup>183</sup> Rawls (1999b: 117-8). For a similar argument see also Miller (1999: 194), and Miller (2003).

industrialize. In A, as a consequence, throughout several decades both productivity and the per capita domestic product have increased, while B remained where it was. Standards of living in B are now significantly lower than in A. Under these circumstances, it may seem that those advocating international justice would require redistribution from A to B, since standards of living in B are not only lower than in A, but are getting worse in relative terms too. Rawls argues that redistributing from A to B under these circumstances would be unfair, since it would require members of A to undertake some burden that would not have been necessary, had B conducted its affairs more responsibly. The same argument would apply to the case of population policy: a country that now has a lower per capita domestic product because it has failed to carry out an effective policy of controlling population growth, does not have a fair claim to resources from a country that is richer because it has effectively controlled its population. Presumably the argument in both cases rests on the assumption that political societies have political features in virtue of which they should be treated as agents responsible for their decisions, and accountable for their results. Since members of A have in both cases made sacrifices – consumed fewer resources, raised fewer children than they would have ideally liked – it would be unfair to require them to make up for the irresponsible choices of the people in B.

Is this argument against international principles of distributive justice sound? Note that it depends on the self-sufficiency assumption that has been questioned in the previous section. The argument has force only if we accept that the factors that explain A's choosing responsible policies and B's choosing irresponsible ones are mostly internal to these societies. The presumption is that people in B decide to retain their leisurely life, and not to control their population, because they hold certain beliefs and share certain values. As we have seen, beliefs and values in a society may not be the most important, let alone only, determinants of domestic policy decisions. Characteristics of a country's involvement in the

world political economy can be just as important, if not more important. However, for the sake of argument, I propose to grant this assumption to the Rawls. Suppose, it is largely because of the beliefs and values prevalent in B, and the decisions taken by B's government, that the difference between A's and B's standard of living has come about. Does it follow that Rawls is right about the absence of international principles of distributive justice?

I believe it does not. In order to see this, we should look at the conception of responsibility Rawls's argument employs. The argument is based on a conception of collective responsibility of the political society for the decisions of the government. The force of the argument is likely to flow from its supposed analogy with individual responsibility. An intuition shared by egalitarian liberals and libertarians is that individuals should be held responsible for their circumstances only if they result from their voluntary choices, however imprudent or unwise they may have been. Therefore if X is worse-off than Y because he prefers surfing to working hard, society should not compensate him for his relative disadvantage.<sup>184</sup> Society's responsibility is to maintain just background conditions in which individuals can freely decide how to conduct their lives, and individuals should live with the results of their voluntary choices.<sup>185</sup>

However, even if we grant the validity of the intuition for the case of individual responsibility, first we have to notice that in that case there are two principles at work: the principle of individual responsibility, and the principle of background equality.<sup>186</sup> That is, individuals are expected to bear the costs of their choices only if these choices are made against the background of fair initial conditions, that is, an initial equality is secured by social institutions. In the supposedly analogous case of international principles, however,

---

<sup>184</sup> Robert Nozick famously made use of this argument in his case for the minimal state. Nozick (1974: 170)

<sup>185</sup> For defences of this theory see Arneson (1989), Dworkin (2000), and Cohen (1989). For contrary position see Anderson (1999), Scheffler (2003b), and Daniels (2003).

<sup>186</sup> Here I follow Ronald Dworkin, who sees as the two fundamental principles of ethical individualism the principle of equal importance, and the principle of special responsibility. Dworkin (2000: 5-6)

there are no international institutions that would maintain background justice among collectivities such as states or peoples. Therefore, Rawls, if he wants to defend the argument from collective responsibility, has to argue for a principle of initial equality among collectivities at the same time, that is, for the establishment of institutions capable of securing background equality at the international level. International principles should be such that they maintain appropriate background conditions against the background of which political societies can autonomously decide how they conduct their internal affairs. Even if we require that societies take responsibility for their collective decisions affecting their resource endowments, there must be institutions compensating for the unequal global per capita distribution of resources and correcting for the adverse effects of global markets.<sup>187</sup>

Second, there is a serious problem with carrying the analogy over from the individual case to political societies, which brings into question the legitimacy of the conception of collective responsibility itself. In the case of individual responsibility the burdens fall on the same individual whose earlier voluntary choices resulted in the disadvantage. This is far from being universally the case in political societies, where individuals often have to suffer the consequences of the decisions of others.<sup>188</sup> First, policy decisions may have been made by those in power without the participation of citizenry, hence without reflecting their informed preferences. This might well be the case in nonliberal decent societies where subjects are consulted about political decisions but, at least for some groups, “their views may be systematically and routinely ignored.”<sup>189</sup> For instance, as Simon Caney argues, a decent society is compatible with denying some of their subjects’ democratic voting rights either by lacking democratic institutions altogether, or by

---

<sup>187</sup> For similar argument see Wenar (2002: 58).

<sup>188</sup> Beitz (2000: 692), Beitz (1999b: 527)

<sup>189</sup> Caney (2002: 116)

restricting their democratic institutions only to a privileged class or race in society.<sup>190</sup> Second, even in a properly functioning liberal democracy there may be people who disagree with or voted against the policy that has been democratically chosen. It would be difficult to hold these dissenters responsible for the results of these democratic decisions by any conception of responsibility that links responsibility with individual action.

In reply to this objection, it has been suggested by David Miller that although dissenters are not morally responsible for a democratic choice, they are accountable for the costs resulting from the country's following a certain policy for reasons of fairness. Since those who find themselves in minority in the case of a particular decision may be on the winning side in other cases, so the argument runs, they are required by fairness to share the costs when these decisions turn out to bring with them disadvantages.<sup>191</sup> In reply, there are two things to note. First, considerations of fairness do not apply in the case of decent nonliberal societies which exclude certain sections of their population from political decision-making. Second, even if this argument may hold for the decisions of contemporaries in democracies, it certainly cannot justify bearing the consequences of the choices of previous generations. Considerations of fairness cannot justify such requirement, since we do not have duties of fairness to our predecessors who by assumption cannot benefit from our decisions. If someone is born into a country that is resource-poor because of the past decisions of previous generations, and thus faces the prospect of a much lower standard of living, life expectancy etc. than people living in resource-rich countries, she cannot plausibly be held responsible for bearing the costs of irresponsible policies in the past. In these cases many of those suffering disadvantage are more realistically described as the victims of the choices of others, rather than the authors of those choices themselves.<sup>192</sup>

---

<sup>190</sup> Caney (2002: 101)

<sup>191</sup> See Miller (2003). It is assumed, of course, that there are no permanent minorities.

<sup>192</sup> Beitz (2000: 692), Pogge (2001b: 253)

The analogy with individual responsibility does not hold in the case of societies. It rests on a conception of collective responsibility that is in contradiction to a fundamental element of the liberal doctrine which, as we will see in the next chapter, is shared by Rawls in the case of domestic justice. There he holds that only individual interests should be taken into account when evaluating the justice of institutions, and that these interests be given equal weight. The analogy with individual responsibility does not take equally into account the interests of those individuals who have to bear the costs of the decisions of others.

## **2.5. States' responsibility for maintaining resources**

I now want to examine a further reason Rawls summons up against the applicability of requirements of distributive justice to the global domain. As he argues, an essential function of governments is to “be the representative and agent of a people as they take responsibility for their territory and its environmental integrity, as well as for the size of their population.”<sup>193</sup> The rationale provided for this view is analogous to the way Rawls sees the institution of property is justified. In his view the point of the institution of property is to prevent some asset from deteriorating by assigning a specific agent responsibility for maintaining it, and to require that the agent bear the costs of not doing so.<sup>194</sup> The agent is assigned consequential responsibility for exhausting the resource. This creates an incentive for agents to preserve the resource, rather than to deplete it.

The territorial state too, in Rawls's view, performs this function: in this case the asset is the territory's natural resources and its capacity to support those living on the territory *in perpetuity*.<sup>195</sup> To this effect prudent social and economic policies should be

---

<sup>193</sup> Rawls (1999b: 39)

<sup>194</sup> Rawls (1999b: 8)

<sup>195</sup> One important way it might do so is by playing a role in overcoming “tragedy of the commons”- type situations. For a general description of these see Hardin (1968).

pursued within a territory: e.g. population growth should be controlled, investment and savings rates should be kept at an appropriate level. In principle this consideration is compatible with a wide range of institutional schemes. However, Rawls argues that the system it justifies is a system of states, i.e. a system consisting of territorially based, decentralized political units with exclusive jurisdiction over their territory. The reason for this is that because of collective action problems responsibility for taking care of resources cannot be left to individuals, thus there must be a territorial state capable of issuing and enforcing authoritative commands over the use of resources on their territory. Following Kant's remarks in *Perpetual Peace*, Rawls rules out performance of this function by a world-government.<sup>196</sup> He thinks a government with global reach, vested with the powers to make and enforce authoritative decisions, would not be desirable, because it would result in either global despotism or constant fight between subgroups among whose members affinity is stronger for reasons having to do with common culture. In order for liberal institutions to motivate support for themselves, they must rely on shared feelings of loyalty and fellow feeling among those they purport to govern. These features, Rawls assumes, are possessed by peoples, since they are united by "common sympathies".<sup>197</sup> A world-government, by contrast, would not be able to generate support this way, and consequently it would have to rely on coercive despotism.<sup>198</sup>

This argument also invokes the notion of responsibility. This time the claim is not that it is unfair to demand of people in A to cover the costs of irresponsible choices by B, as in the second argument. The current argument is forward-looking, and has as its main concern the importance of preserving natural and social resources. A system of nation-states, each taking responsibility for the assets on its territory, is seen as the best institutional

---

<sup>196</sup> Kant (1992: 113)

<sup>197</sup> Rawls (1999b: 23)

<sup>198</sup> Rawls (1999b: 36, 48)

configuration for preserving resources. If the global application of principles of justice were incompatible with this institutional setup, that would presumably provide a consideration against them. For instance, it could be thought that governments would not have an incentive to efficiently perform their function of preserving natural and cultural resources on their jurisdiction if there was a demand for substantial international transfers. Demanding redistribution may create perverse incentives for governments to behave irresponsibly, i.e. to pursue policies that result in a lower level of average well-being, because they could expect aid from other societies. For example, a country may decide to keep its savings and investment rate low and consume a large part of its product instead, or not to control population growth rate, and expect aid from other countries that fare better as a result of their policies. In such a case there are reasons against direct redistribution between countries. Does this provide a consideration against the global application of principles of distributive justice? In response to this possibility, two observations are in order.

First, as Charles Beitz argues, in a theory of justice we must distinguish between the problem of justification of principles of justice and that of their implementation. The fact that a just scheme of institutions cannot be implemented starting from the current scheme and current motivational characteristics of individuals does not imply that a just scheme cannot be implemented under more favourable conditions.<sup>199</sup>

The above instrumental considerations of the undesirability of inter-country transfers rely on a reasoning that presupposes the existence of territorial states in their current form with governments in charge of making and enforcing distributive decisions within their territory. However, in a theory of international justice inspired by Rawls's theory of justice, the system of nation-states is not allowed to play a foundational role and to be exempt from assessment on grounds of justice. As we shall see in Chapter 6, the two alternative

---

<sup>199</sup> Beitz (2000: 683)



institutional setups Rawls considers, i.e. a world-state with powers analogous to nation-states, vs. a system of autonomous nation-states, does not exhaust the set of all possible alternatives for a global institutional setup. I will argue that political authority need not necessarily be located at one level, and if there is a system of institutions that is capable of solving the problem of resource preservation while at the same time maintaining international distributive justice, it is superior to the other two alternatives. I will show there are various other alternative schemes, out of which I defend a multilayered global institutional system consisting of a mixture of territorially and functionally defined authorities. For now, the important thing to note is the fundamental precept of liberal theory, according to which any kind of institutional scheme must be justified ultimately by taking the interests of individuals affected by the institution into account. This consideration applies to the case of global institutions too, and it cannot be simply assumed that the current system of nation-states is in any sense exempt from moral scrutiny. As long as Rawls has not shown the impossibility of a superior set of institutions, on grounds of the value of the functions performed by nation-states he cannot hold that there exist no principles of international justice.<sup>200</sup>

Second, leaving aside until the next chapter the justification of requirements of global justice on Rawlsian grounds, I want to reply by a different objection to Rawls's argument against international distributive justice on the analogy with property. This objection concerns the problem of implementation. As we saw Rawls's argument against the world-state rests on a specific motivational assumption about affinity among compatriots. He suggests, this stronger affinity could help generate support for state institutions and carry out the demands of justice, and that this element is missing or significantly weaker at the global level. We have to note, however, that the circle of affinity is historically variable, and

---

<sup>200</sup> Pogge: 'Cosmopolitanism and Sovereignty' in Pogge (2002), Pogge (1994), Kuper (2000: 656)

with time the range of feelings of solidarity may extend to ever larger groups of people.<sup>201</sup> Rawls recognizes this possibility with regard to affinity between peoples, but then it is hard to see why this could not be the case with affinity among individuals worldwide.<sup>202</sup> It is obvious that large, multicultural states could not have developed in absence of support by their subjects if this were not so. Their existence is a proof of the weakness of the Rawlsian argument. Motivational capacities are variable and subject to change under the influence of institutions themselves. Thus, even though they may be needed to be built into a nonideal theory of global justice, which needs to take into account existing constraints when aiming to find guidance for the reform of the existing institutional setup, nevertheless in an ideal theory that concerns the justification of global distributive requirements they are out of place.

## **2.6. Derivative reasons for equality**

Finally, I examine a reason Rawls refers to when denying the existence of egalitarian international obligations of distributive justice above the duty of affluent societies to secure background conditions for just institutions in poor countries and to provide for a threshold of subsistence for the desperately poor. This argument is based on the absence of intrinsic reasons underlying the demand for egalitarian distribution, and on the lack of derivative reasons for it in the global domain. Equality is not a value in itself, so the argument runs: a more egalitarian distribution is not *prima facie* better than a less egalitarian one. However, following T. M. Scanlon, Rawls considers three reasons for favouring egalitarian distribution which are not based on the value of equality itself. Equality on this view is not a good in itself, but it is good in certain contexts because of its effects. Such derivative

---

<sup>201</sup> Beitz (2000: 683)

<sup>202</sup> Rawls (1999b: 113)

reasons for equality do exist in the domestic case, Rawls argues, however they are absent at the international level. From this he concludes that, in contrast with the domestic case, there is no reason for reducing international inequality as such. I will consider these reasons individually, and examine whether they support Rawls's claim.

### *2.6.1. The reduction of deprivation*

One reason for reducing inequality within domestic societies is to reduce the absolute deprivation of the poor.<sup>203</sup> The needs of poorer people are presumed to be more urgent than those of the rich, therefore reducing inequality helps to reduce more urgent needs while leaving less urgent needs unsatisfied. Promoting equality is valuable only derivatively, because this is the way the absolute deprivation of the poor can be reduced.<sup>204</sup> This reason itself, however, does not support the argument that all persons be equal in wealth even in the domestic case. Above some threshold, where each individual has sufficient resources "to make intelligent and effective use of their freedoms and lead reasonable and worthwhile lives", there is no further need to narrow the gap between the rich and the poor.<sup>205</sup> Above this threshold, therefore, the derivative case for narrowing inequality ceases to hold. The same applies to the international case. Where people have just or decent government that secures their human rights, including rights to subsistence, there is no further need to narrow the gap between rich and poor nations. There are no distributive responsibilities above the duty of assistance.<sup>206</sup> This consideration, therefore, would be in harmony with Rawls's restriction of international distributive requirements to securing a level of material minimum

---

<sup>203</sup> Rawls (1999b: 114), Scanlon (2003: 203)

<sup>204</sup> Strictly speaking this is not an argument for the value of equality per se. Rather than being an egalitarian argument, it is more helpfully classified as sufficientarian. On the differences between the two kinds of considerations see Frankfurt (1988: 134-58), Scanlon (2003: 203), Parfit (1995).

<sup>205</sup> Rawls (1999b: 114)

<sup>206</sup> Rawls (1999b: 114)

for the poor by way of a duty of assistance. On the other hand, it would not demand an egalitarian distribution in the domestic case either, thus the domestic and international cases would be equivalent.

#### *2.6.2. The avoidance of stigmatization*

The second derivative reason for reducing inequality in domestic societies is that the gap between the rich and the poor results in a sense of inferiority in those worse-off.<sup>207</sup> People can feel as being treated inferior not only by conferring privileges of rank, or discrimination on the basis of gender or race. Large differences in material well-being also can be objectionable on this ground, when the standard of living in one section of the society sets the standard to which the other groups are compared. Given that the standard is set by the way of life of the affluent, “those who are much worse off will feel inferiority and shame at the way they must live.”<sup>208</sup> This stigmatization of citizens is thought to be unjust, because it undermines a person’s dignity and self-respect, a good Rawls thinks is the most important among primary goods. In order to avoid it, an egalitarian distribution must be secured by institutions. This argument for equality, in contrast with the previous one, rests on a comparative judgement of the amount of goods available to persons. It provides a reason for reducing or eliminating inequalities rather than for the improvement of the position of those worse off. Here again, however, the inequality in the social and economic position of individuals is not intrinsically bad: it is bad only because of its effect on the self-respect of individuals. Inequalities between persons should be reduced because by doing so we can secure the necessary basis for their self-respect. Does this provide an argument in favour of

---

<sup>207</sup> Rawls (1999b: 114)

<sup>208</sup> Scanlon (2003: 204)

Rawls's position about the contrast between domestic and international distributive requirements?

Rawls argues that interpersonal inequalities wounding self-respect are unjust *provided* that these feelings of inferiority are themselves justified. With regard to international distributive obligations, he claims that above the level of the duty of assistance these feelings among the global poor and rich are unjustified. This is because by securing the conditions for just or decent domestic political institutions the international community enables each community to decide for itself "the significance and importance of wealth of its own society".<sup>209</sup> Rawls's argument, of course, rests on his construction of the international original position in which representatives of peoples decide about the principles for the conduct of international affairs. The units of representation in his international theory are political communities, and their motive in choosing principles is to secure material conditions necessary for maintaining or establishing just or decent domestic institutions. Thus, in their choice of principles for international affairs they are not directly concerned about the well-being of their members. This assumption about the parties in the international original position is very questionable. As we shall see in the next chapter, it would be more in line with Rawls's normative individualism that characterizes his domestic theory of justice to have individuals, rather than peoples, represented when deriving principles for regulating global institutions.

However, even if we accept Rawls stipulation that the members of the international original position are communities, not individuals, we might still question the other characteristic of his construct, viz. the assumption that communities are not concerned about material differences between them above the minimum material resources the community collectively needs for maintaining just or decent institutions. Pogge argues that, as concerns

---

<sup>209</sup> Rawls (1999b: 114)

the motivation of the parties in the original position, we could more plausibly assume that communities are motivated by a concern to improve the well-being of their members, in which case the principles yielded by the international original position would be more egalitarian.<sup>210</sup> Peoples would not be satisfied by being secured a minimum threshold of resources on the basis of which they could sustain their institutions. If individual self-respect is harmed by excessive differences in economic conditions among individuals, by parallel argument we could show that the self-respect of communities is harmed by excessive differences among communities, given their desire to increase the well-being of their members.<sup>211</sup> Therefore, the argument for reducing inequality on the basis of the harm done to self-respect is unlikely to support Rawls's claim about the lack of international obligations of justice. There might be at least some self-respect based considerations for reducing inequalities among societies.

### *2.6.3. Securing procedural fairness*

A further derivative reason Rawls advances for reducing inequality domestically but not internationally rests on considerations of procedural fairness.<sup>212</sup> Social inequalities are objectionable partly because they disrupt the fairness of political and social processes. When inequalities in well-being among participants in political life are considerable, they are detrimental to the fairness of political processes because they lead to large differences in influence on political decisions among citizens. Similarly, fairness in social processes can also be undermined by material inequalities through their negative effects on equality of opportunity. It is a familiar rationale for demanding equality of opportunity that "background conditions such as inequalities in training and resources can render the

---

<sup>210</sup> Pogge (1994: 208-9)

<sup>211</sup> Beitz (2000: 693)

<sup>212</sup> Rawls (1999b: 115), Scanlon (2003: 205)

competition unfair.”<sup>213</sup> Even though fairness may require pursuing some sort of economic equality in society, equality of opportunity is compatible with large levels of inequality, and in itself is unlikely to support a fully egalitarian distribution. Nevertheless, as Scanlon argues, procedural fairness can provide a reason for a more egalitarian distribution than what equality of opportunity would demand. Equality of outcomes can also be demanded by fairness: if members of a group have equal claim to a certain form of benefit, fairness in the distributive procedure distributing this benefit requires that it be responsive to this equality.<sup>214</sup> Of course, the egalitarian conclusion depends on the satisfaction of the substantive premise about the equal claims of members of a group to the benefit to be distributed. Scanlon argues the most plausible case for equal claims is made on the basis of the distribution of benefits produced by participants in a mutually beneficial cooperative enterprise, most prominently in the basic institutions of a society. Outside such cooperation, there may not be a *prima facie* case for the equal distribution of the benefits.<sup>215</sup>

What follows from this about equality on the international domain? Rawls thinks fairness is an important consideration not only within societies but also between them. However, he argues that contrary to the domestic case, in the international case the relevant form of fairness is not fairness between individuals: it is fairness in interaction between political communities that aim to preserve their independence and to maintain just or decent domestic institutions.<sup>216</sup> Not only are the agents among whom the requirement of fairness arises different in the international case from those in the domestic one, but also the content of fairness. Rawls thinks that by abiding by some provisions for “fairness for trade” the international community meets the requirement of fairness, since by doing so communities are equally represented in international cooperation. Again, these provisions for fairness of

---

<sup>213</sup> Scanlon (2003: 205)

<sup>214</sup> Scanlon (2003: 206)

<sup>215</sup> Scanlon (2003: 206-7)

<sup>216</sup> Rawls (1999b: 42-4, 115)

trade are not requirements of justice, since their objective is to “keep the market free and competitive”, hence they do not demand an ongoing correction of adverse distributive effects of free market processes which Rawls thinks background justice would require. Even though Rawls talks about standards for fairness for trade as having to be regulated by the “basic structure of the Society of Peoples”<sup>217</sup>, these provisions are contrasted with international requirements of distributive justice which are presumed by Rawls to be more substantive. These additional requirements, Rawls suggests, cannot be grounded in the value of fairness.<sup>218</sup>

Once again, this argument depends partly on Rawls’s own construction of the original position from which peoples choose principles for regulating international affairs. Rawls stipulates that peoples’ main motive in finding principles for regulating their relations is to maintain or develop just domestic institutions, and to preserve their own independence. However, as I argued with Pogge in response to the self-respect based argument for equality, this stipulation is implausible, as peoples are likely to have at least some interest in increasing the material well-being of their members. If so, then even if we concede to Rawls that parties in choosing principles for regulating international affairs represent peoples not individuals, considerations of fairness are likely to justify more substantial international distributive responsibilities than Rawls allows for. It is easy to see why.

We saw that both political and social processes raise considerations of fairness, and we can apply these considerations to international politics as well. As concerns political processes, in keeping with the assumption that actors in the international political scene are states, we can show with an argument analogous to the domestic case that their enjoyment of the fair value of political liberties requires that they enjoy distributive shares that are not

---

<sup>217</sup> Rawls (1999b: 43)

<sup>218</sup> Rawls (1999b: 115-20)



disproportionate.<sup>219</sup> For example, granting equal voting rights to both rich and poor countries is not enough to make the working of international cooperative organizations fair, since the difference in influence among two countries might still be immense because of their differential level of resources.<sup>220</sup> Equal voting rights are often coupled with huge differences among countries in their bargaining power. To take an important example referred to by Peter Singer, the agenda to be discussed in WTO is “set by informal meetings of the major trading powers”, so “once these powers have reached agreement, the results are presented to the formal meeting, but by then they often are a fait accompli.”<sup>221</sup> This is a very likely explanation of the striking fact that the terms of international agreements are often unfavourable to poor countries.<sup>222</sup> For similar reasons, the fairness of economic processes is likely to be undermined by excessive differences between states’ levels of wealth. We need only to recall the obvious fact that free bargaining among parties with formally equal rights but substantially differing endowment with resources is likely to undermine the fairness of the social process unless there are background institutions in place that balance out excessive differences. This applies to the international case too. When international economic processes arise out of free bargaining among parties, rich countries can use their greater bargaining power to shape terms of agreement in their own favour. In order to protect the vulnerable from the adverse cumulative effects of such processes, international background institutions must modify and constrain the terms of cooperation. These considerations about the fairness of political and social processes make it likely that more substantial distributive requirements among peoples are demanded by procedural fairness than Rawls admits. A duty of assistance securing a minimum threshold for societies, and

---

<sup>219</sup> Pogge (2001b: 251)

<sup>220</sup> Beitz (2000: 693-4)

<sup>221</sup> Singer (2002: 76)

<sup>222</sup> Beitz (2001: 119)

standards of fair trade to enable the working of competitive markets, are insufficient to neutralize the unfair cumulative effects of free bargaining among highly unequal parties.<sup>223</sup>

Having said this, we need to recall that equality of opportunity does not entail full-blown egalitarian requirements similar in scope to those Rawls prescribes for the domestic case. However, considerations of fairness raise some larger issues about the characteristics of the particular Rawlsian contractualist setting for international affairs, and the distributive requirements it yields. Narrowing the focus of egalitarianism to the domain of national political communities is problematic also because it violates not only fairness among societies, but also fairness among individuals. As we saw from Scanlon's argument, there are reasons of fairness to call for equality of distribution when members of a group have equal claim to some benefit.<sup>224</sup> One notable instance of this is when benefits are produced in a cooperative scheme.<sup>225</sup> A case for egalitarian distribution in cooperative schemes can especially be compelling when they indeed have profound effects on individual lives, which as we saw is Rawls's rationale for focusing on the basic structure as the subject of justice. However, even if we accept Scanlon's interpretation that the Rawlsian case for equality is based on cooperation in a mutually beneficial scheme, the scope of social and economic cooperation may not coincide with national boundaries. If cooperation in the required sense exists between agents at the global level, by the Scanlonian-Rawlsian argument from fairness benefits must be distributed equally among them. Given that such cooperation produces significant benefits and burdens that have significant effect on the life-prospects of individuals, these benefits and burdens must be distributed in a manner that preserves fairness among individuals. This would require a modification of the international original position in a way that it feature representatives of individuals rather than peoples so that it

---

<sup>223</sup> Pogge (2001b: 249-51)

<sup>224</sup> For an illuminating discussion of cases when this condition is satisfied, see Nagel (2002: 113-33).

<sup>225</sup> Scanlon (2003: 207)

could provide for fairness among persons in social and economic processes. As we saw when discussing Rawls's reasons for focusing on the basic structure in his domestic theory of justice, the requirement to maintain fairness in society necessitates that interpersonal agreements take place against the background of fair conditions securing an equal measure of rights, liberties, and opportunities, and a fair distribution of resources that precludes large differentials in bargaining power. In the absence of such background conditions the cumulative effects of a series of agreements will be unjust, no matter how free and fair each transaction may be when looked at in isolation. This would be a serious defect in a system of cooperation that has profound effects on individual lives. If we can show that there exists an international analogue to the system of cooperation Rawls postulates for the domestic case, producing significant benefits and burdens determining the life-prospects of individuals, it follows that these have to be distributed among them equally. That is, we have an argument for global egalitarian distributive justice that is based on the interests of individuals rather than states.

Does the antecedent of this argument hold true? Is there an international cooperation producing significant benefits and burdens with large material effects on individual lives, that need to be distributed equally? Many authors have supported their argument for international egalitarian justice by arguing that an international cooperation in the required sense already exists.<sup>226</sup> If this is so, considerations of fairness do not confine the scope of egalitarian principles to domestic society: they make a strong case for international justice. To this kind of argument I turn in the next chapter. On the other hand, there are instances other than the joint production of benefits when a group of people might have equal claim to resources. As we shall see in Chapter 6, cosmopolitans claim that every person has an equal

---

<sup>226</sup> Beitz (1979: Part III), Pogge (1989), Kuper (2000), Caney (2002), Buchanan (2003: 209-15), Moellendorf (2002: 68-101)

claim to the earth's natural resources, and they think this claim justifies an international distribution of resources that is responsive to this equal claim.

### 3. Summary and conclusion

The chapter began with outlining some main elements of the liberal theory of justice set forth by John Rawls in *Theory and Political Liberalism*. It focused on the problem of social justice as Rawls understands it, and the subject of justice in the Rawlsian theory, as well as Rawls's rationale for focusing on the basic structure as the subject of justice. It then presented Rawls's ideas about the nature and justification of the right principles for the conduct of international affairs as developed in his *The Law of Peoples*. In doing so, it focused on some of Rawls's major objections to global requirements of distributive justice. I hope to have shown that none of these arguments of Rawls are satisfactory either because of their lack of factual support or because of their incompatibility with some fundamental values of liberalism Rawls himself subscribes to. The chapter pursued a mainly negative argumentative strategy against Rawls's restriction of the domain of distributive justice to domestic institutional schemes. Thus, its conclusion does not amount to a vindication of the case for international justice: the positive argument for applying principles of distributive justice to the global domain still has to be made. However, some of the objections I raised against Rawls's position point into the direction of such positive argument. If we look at Rawls's justification of the subject of justice in the domestic case again, we can see that there are strong reasons for extending the theory's scope to the global domain, while retaining its concern for improving the situation of those worst-off through no fault of their own. This will be the subject of the following chapter.

## Chapter 5

### Rawlsian justice globalized

I start the chapter by recapitulating some key points of the account in Chapter 4 about the problem and subject of social justice as Rawls understands it in *A Theory of Justice* and *Political Liberalism*. I continue by presenting the extension of the Rawlsian domestic theory of justice to the global domain as proposed by some liberals defending global principles of distributive justice. I argue that there exists a global basic structure relevantly similar to the domestic ones, and that the same reasons Rawls argues call for the application of distributive justice in the domestic case require the global application of principles of justice. Next, I outline some arguments made against the applicability of Rawlsian principles of justice in the global domain. These objections to global distributive justice are presented in the chapter as internal to the Rawlsian theory as set out in *Theory*, in contrast with the objections offered by Rawls in *The Law of Peoples*. In turn, I defend claims of global justice by pointing out that these objections do not warrant limiting the scope of justice to the domestic level, since some central elements in the Rawlsian domestic theory that call for the application of the principles of justice do exist in the global domain.

#### 1. The global extension of Rawlsian theory

##### **1.1. Basic structure as the subject of Rawlsian justice**

As we saw in the previous chapter, Rawls regards the basic structure of society as being the subject of distributive justice. The basic structure is “the way in which the major social institutions distribute fundamental rights and duties and determine the division of

advantages from social cooperation.”<sup>227</sup> The problem of Rawls’s theory of justice is to formulate principles in accordance with which benefits and burdens from social cooperation get distributed by the basic structure in a fair manner. The basic structure is the *only* subject of distributive justice in Rawls’s scheme: its principles do not apply to individual conduct, to the working of associations or individual institutions taken separately, or, as Rawls argues, to international affairs between states.<sup>228</sup> From this respect the theory operates on a “domain restriction”, as it applies to some aspects of social life but not to others.<sup>229</sup>

The rationale Rawls gives for the special importance of the basic structure in a theory of distributive justice is, as we saw earlier on, the following. First, the basic structure has profound effects on the life-prospects of individuals subject to it.<sup>230</sup> It achieves this by shaping individual aims and aspirations, by influencing the development and realization of individual talents and abilities, and by permitting significant and unchosen social and economic inequalities in the life-prospects of individuals, “depending on their social origins, their realized natural endowments, and the chance opportunities and accidents that have shaped their personal history.”<sup>231</sup> The basic structure is of pre-eminent importance since it shapes socioeconomic inequalities among individuals to a fundamental extent, making individuals’ life-prospects largely depend on unchosen factors, often backed up by institutional coercion.<sup>232</sup>

Second, the desirability for liberals of social relations to evolve in accordance with free agreements necessitates some moral constraints on the circumstances in which these agreements are bound to take place. Interpersonal agreements are morally acceptable only if

---

<sup>227</sup> Rawls (1999: 6)

<sup>228</sup> Rawls (1999a: 6-7), Rawls (1993: 261), Rawls (2001: 10-11)

<sup>229</sup> Caney (2002: 97)

<sup>230</sup> Rawls (1999a: 7)

<sup>231</sup> Rawls (1993a: 270). See also Rawls (2001: 10)

<sup>232</sup> Rawls (2001: 40)

they are made freely, under conditions that are fair.<sup>233</sup> Excessive social and economic inequalities work against the fairness of social conditions. Without the role played by the basic structure in maintaining an equal measure of basic rights, liberties, and opportunities, and a fair distribution of resources, interpersonal agreements will not have been freely made under fair circumstances. The basic structure performs this function by appropriately regulating and adjusting background conditions in a way that precludes large differentials in bargaining power, and social relations' mapping unjustified inequalities in social and natural resources. The basic structure is essential for maintaining the fairness of social and economic processes since, even if individual transactions are fair when considered in isolation, the cumulative effects of an indefinite series of such fair transactions will be unjust.<sup>234</sup>

On the basis of these considerations, Rawls sets the basic structure as the subject of justice. As we saw, he argues for an ideal conception of justice that consists of two principles which are to regulate the basic structure. The first of these prescribes equal basic liberties, whereas the second demands fair equality of opportunity and requires that socioeconomic inequalities should be to the benefit of the least advantaged.<sup>235</sup>

The argument for these principles makes use of the construct of an original position with parties behind a suitably defined veil of ignorance rationally choosing principles of justice for assessing alternative ways of arranging the basic structure on the basis of their self-interest. The veil of ignorance excludes parties' knowledge of their conceptions of the good, their "place in society", their "class position or social status", and their endowment with natural assets such as intelligence or strength.<sup>236</sup> They are also not allowed to know the

---

<sup>233</sup> Rawls (1993a: 266)

<sup>234</sup> Rawls (1993a: 266)

<sup>235</sup> Rawls (1999a: 53), Rawls (1999a: 72)

<sup>236</sup> Rawls (1999a: 11)

“economic or political situation of their society”, or its “level of civilization or culture”.<sup>237</sup>

These pieces of information are excluded from the decision procedure when choosing principles of justice because Rawls thinks the distribution of resources should not be allowed “to be improperly influenced” by factors that people have done nothing to deserve, such as sex, race, the social class of their parents, and their inborn natural endowments.<sup>238</sup>

In what follows, I examine the possibility of extending the scope of the Rawlsian theory of justice to the global domain.

## **1.2. Extension to the global domain**

As we have seen, the subject of justice in the Rawlsian theory is the basic structure of the society’s major social, economic and political institutions. The question arises: what are the outer limits of the reach of Rawlsian principles of justice? In *Theory*, Rawls preempts the need for raising this question by stipulating that he constructs principles of justice for the basic structure *of a society* which is a “closed system isolated from other societies.”<sup>239</sup> In what follows I will examine whether this stipulation is justified, and what follows for the Rawlsian theory if it is not.

Rawls’s stipulation is even at first sight questionable. The growing interdisciplinary literature under the headings of globalization, development studies, or structural dependency, attests to the fact that there exists a vast web of international economic and social interdependence, as a consequence of which no society can be self-contained as Rawls assumes.<sup>240</sup> People living in distant parts of the globe are related in various ways. Their lives are intermingled through the movement of goods, capital, and persons that has

---

<sup>237</sup> Rawls (1999a: 118)

<sup>238</sup> Rawls (1999a: 62-3)

<sup>239</sup> Rawls (1999a: 7)

<sup>240</sup> For a rich account of international interdependence, see Held and McGrew (1999), Held and McGrew (2000), and Keohane (2002). See also Wood (1986), Frank (1970), and Hancock (1989).



risen to an unprecedented degree. International transactions produce substantial benefits and costs that spread across the world. Furthermore, these transactions take place against the background of institutions and practices, often subject to a global regulatory structure.<sup>241</sup> Financial and monetary institutions, trade agreements, international political and legal institutions have a tremendous impact on the global distribution of resources. We need only to recall the working of international financial and economic regimes such as the International Monetary Fund, the World Bank, or the World Trade Organization, which largely determine the terms on which resources are produced and distributed worldwide. As a consequence of this global interdependence, benefits and costs are produced that would not exist if the world indeed consisted of self-contained societies.

Those Rawlsian theorists who argue for the global application of Rawlsian principles of justice start out from this fact. The argument they make is the following. The current form of international social and economic interdependence constitutes a scheme of social cooperation relevantly similar to the one to which requirements of distributive justice are thought by Rawls to apply. Therefore, so the argument goes, principles of distributive justice apply globally.<sup>242</sup> Since there exists a global scheme of cooperation in the form relevant for distributive justice, national boundaries do not have the foundational significance for principles of justice Rawls attributes to them. Given that state boundaries do not coincide with the limits of social cooperation, they do not form the outer limit of the concern of justice either. Due to these institutional interdependencies, Pogge argues, states cannot “peacefully agree to disagree” about distributive justice, each “committing itself to a conception of justice appropriate to its history, culture, population size and density, natural

---

<sup>241</sup> For a seminal work on the subject see Keohane (1984). See also Beitz (1979: 148), Pogge (1989) and Pogge (2002).

<sup>242</sup> The argument was first elaborated in Beitz (1979), and the position was forcefully argued by Pogge (1989). The point was also made in Barry (1973) and Scanlon (1989).

environment, geopolitical context, and stage of development.”<sup>243</sup> There must be some one set of principles regulating the working of the already existing global institutional architecture, as its institutions “can at any time be structured in only one way.”<sup>244</sup> Hence, the restriction of the scope of principles of justice to states is unwarranted, and we should rather seek principles of justice by the device of a global original position for distributive justice at the world at large.<sup>245</sup> In addition to screening out information about parties’ socioeconomic position and natural assets, the veil of ignorance in the global original position would block parties’ knowledge of their membership in specific schemes of political institutions.

Assuming further that the content of principles of justice is independent of their scope, these theorists argue that principles of justice for the global domain must be the same as those Rawls prescribes for the basic structure of national societies.<sup>246</sup> There seems to be nothing in the Rawlsian theory to suggest that the mere fact of enlarging the scope of the original position should lead to the choice of principles different from those applying to the domestic case. So the two principles of justice Rawls defends in the case of domestic justice, should be applied globally.<sup>247</sup>

### **1.3. The rationale behind the global extension of Rawlsian justice**

What are the concerns that justify the extension of the scope of principles of justice to the global domain? Rawlsians defending global requirements of justice argue that these are the very same reasons as those Rawls uses to justify his focus on the basic structure for domestic justice. As we saw earlier, one main rationale for his focus on the basic institutions

---

<sup>243</sup> Pogge (2002: 33)

<sup>244</sup> Pogge (2002: 33)

<sup>245</sup> Beitz (1979: 150 ff.) and Pogge (1989: 240-1)

<sup>246</sup> Beitz (1979: 151), Pogge (1989: 249-50), Barry (1973: 129)

<sup>247</sup> Beitz in a later article rejects the relevance of interdependence for the emergence of demands of justice. See Beitz (1983: 595).

of society is that interpersonal agreements are morally justified only if they are freely entered into under conditions that are fair. In order for this to be the case, background justice must be maintained by the institutions of basic structure.<sup>248</sup> However, the conditions calling for institutions to maintain background justice in the basic structure exist on the global level too. States are not self-sufficient entities; people living in different countries interact in various ways on a regular basis. Interpersonal agreements take place against the background of conditions characterized by substantial inequalities in bargaining power, information, rights, liberties, and opportunities. These inequalities are often defined by institutions with a global reach. Such global inequalities must be regulated by the global basic structure so as to ensure that international interactions among persons and collectivities be fair. As Rawls argues with regard to the domestic basic structure, “free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity.”<sup>249</sup> Otherwise, the accumulated result of a large number of international interactions would constitute grave injustice. Excessive international social and economic inequalities are no less unjust than domestic ones.

Second, as Rawls indicates, one main reason for the importance of focusing on the basic structure of the society is the fact that its effects are profound and present from start, i.e. that it shapes one’s life prospects from the moment of birth without being under the control of the individual herself.<sup>250</sup> Those defending the global application of Rawlsian principles of justice argue that the same holds for the international basic structure: the country where one is born is another deep contingency, not resulting from one’s own

---

<sup>248</sup> Rawls (1993: 266)

<sup>249</sup> Rawls (1999a: 63)

<sup>250</sup> Rawls (1999: 7)

voluntary choice, which decisively shapes one's life-chances.<sup>251</sup> Such inequalities in starting positions are not exclusively, nor even primarily, due to causes internal to individual countries, given that there exists a global basic structure that decisively shapes these inequalities. Since there exists a global institutional order that produces significant benefits and burdens largely determining individual life-prospects, the whole of this order – including the system of states – is to be evaluated by the standards of the two principles of justice. If there are superior institutional alternatives that make the worst off representative person better-off, they are to be preferred to the current system of nation-states. States are not allowed to have moral priority in a Rawlsian theory of justice in the sense of being immune from scrutiny on grounds of their effects on individual lives.<sup>252</sup>

This assessment of global institutions takes place against the standard of the two principles of justice derived with the help of the device of a global original position. What should this global original position look like? Assuming that the global original position would include parties rationally choosing principles on the basis of their self-interest behind a suitably defined veil of ignorance, competing proposals have been put forward concerning the total number of original positions and about the entities parties to the global original position represent. First, international principles can be derived either from a separate session, subsequent to the one for domestic principles<sup>253</sup>, or from one single session, covering both domains. Second, parties to the original position from which international principles are derived can represent either individuals or states. Beitz and Pogge argue that parties to the global original position should represent individuals rather than states, and that there is no need for two separate sessions for choosing principles for domestic and then for

---

<sup>251</sup> Pogge (1989: 247), Beitz (1979), Barry (1973: 129)

<sup>252</sup> Pogge (1989: 247-8)

<sup>253</sup> As it is suggested in Rawls (1999a) and Rawls (1999b)

international justice. They argue that one single session should incorporate both domains, in which parties at once choose principles for the global as well as domestic basic structures.<sup>254</sup>

The main argument for taking parties to the global original position as representing individuals rather than states is the following. If parties in the global original position represented states, whose interests consisted in the maintenance and preservation of a just scheme of their domestic institutions, in granting equal basic liberties for all their citizens, and in maximizing the position of the worst-off among their citizens, there would be no limit to possible differentials among the positions of individuals living in different countries. A global order consisting of several internally just states, allowing for large differences in life prospects between individuals living in different countries, would be seen as acceptable for parties representing states instead of individuals. However, states are not closed, self-sufficient schemes. The lives of individuals living in distant countries are interrelated in various ways along the lines of globalized interaction and global institutions. These processes produce significant benefits and burdens that must ultimately be borne by individuals whose life-prospects are strongly influenced by them. Under modern circumstances, the social forces that so strongly influence our life-chances in the domestic case operate just as strongly at the international level. Hence, if excessive social and economic interpersonal inequalities are unjust by the fair equality of opportunity principle and the difference principle in the case of domestic societies, by the very same reason they must be unjust internationally, if they are due to the same type of causes as domestic inequalities are. Given that such interpersonal inequalities result to a large extent from the working of international institutions, they should be governed by principles of justice. Since the reasons that make Rawls to focus his two principles of justice on the basic structure hold in the global domain as well, the scope of the two principles is global. They provide the

---

<sup>254</sup> Pogge (1989: 247); Beitz (2000: 693)

standard for evaluating alternative global institutional schemes on the basis of their differential effects on the globally worst individual position. It is the globally worst-off representative person whose position matters for justifying alternative institutional schemes.<sup>255</sup>

The main motivation behind representing individuals rather than states in the global original position lies in the methodological individualism of Rawls's theory of justice. It is individuals whose interests are ultimately to be taken into account when assessing alternative schemes of institutions. The fact that Rawls recognizes only individuals as "self-originating sources of valid claims"<sup>256</sup> precludes weighing the interests of states – taken separately from the interests of individuals they represent – against those of individuals. Given Rawls' insistence on the individualism of his theory of justice, the claims of states should not be given independent consideration in a global original position.<sup>257</sup>

Hence, there are compelling reasons for being concerned with the interests of individuals when assessing alternative principles for the evaluation of the global institutional structure. Furthermore, as Pogge and Beitz argue, within the Rawlsian theory there are reasons for deciding about the favoured global institutional scheme in one single original position rather than in two separate sessions. The main reason for one single original position is that it avoids arbitrarily demarcating domestic institutions from international ones where the distinction is not at all clear, and also taking for granted one important institution, that of the modern system of states representing "a particular form of political and economic organization centering around governments that have eminent domain in a demarcated territory, control overwhelming force within it, and interpret and

---

<sup>255</sup> Pogge (1989: 247-8), Beitz (1979: 152)

<sup>256</sup> Rawls (1980: 543)

<sup>257</sup> Pogge (1989: 247), Beitz (1979: 153)

enforce international law beyond its borders.”<sup>258</sup> A separate global original position, already taking for granted the system of states and just domestic institutions, would fail to take account, for example, of the effects of the domestic institutions of one state on individuals living in other countries. It would also fail to compare the effects of the current system of nation-states on individual lives with those of other feasible global institutional setups. Given normative individualism, it would be unjustified to grant immunity to this hugely important scheme of institutions – the system of states with their prerogatives – from assessment in terms of its effects on all individuals concerned. If an alternative scheme of institutions turned out better to promote the position of the globally least advantaged representative individual, it would be preferred by a Rawlsian conception of justice.

## 2. Arguments against the global extension

The Rawlsian-type argument for the global application of principles of distributive justice does not go uncontested, however. In the previous chapter I surveyed some arguments given by Rawls himself and others against global distributive justice. I regard these arguments as external to Rawls’s own theory of justice as laid out in *Theory* and in *Political Liberalism*. Now I turn to the presentation and assessment of some other objections to the global extension of Rawlsian justice, which I take to be internal to the Rawlsian domestic theory of justice. A common feature of these arguments against a global Rawlsian distributive justice is that they debate that there exists an international scheme of cooperation in the sense relevant for justice. They do not question the existence of international economic, social, political, and legal interdependence, but they make the claim that interdependence in itself does not constitute cooperation in the relevant sense. They argue that interdependence is necessary but not sufficient condition for the application of Rawlsian principles of justice,

---

<sup>258</sup> Pogge (1989: 257)

and that there are other necessary conditions to be taken into account, which are not satisfied for the international domain. Objections of this kind proceed by a strategy of pointing out that there are special factors at the global or, alternatively, at the domestic level which make it inappropriate to apply the Rawlsian principles globally. Several objections along this line have been put forward.

### **2.1. Insufficient international cooperation**

First, it can be argued that although it is true that international interdependence exists, it is insignificant as compared with the domestic one.<sup>259</sup> The greater intensity of domestic social cooperation can thus be thought to give rise to stronger domestic distributive requirements than international interaction does. A thought experiment illuminating this objection asks us to imagine a world of self-sufficient national societies, say with two autarkic islands, A and B.<sup>260</sup> By assumption, in such a scenario distributive justice does not impose requirements on distribution among these societies along the lines of a Rawlsian difference principle, since there is no interaction between them whatsoever. Next, if the condition of self-sufficiency is slightly altered, and some very low element of interaction is introduced (e.g. members of society A start to trade their apples for B's pears), it seems far-fetched to require that the difference principle be applied with full force to the world comprising these two societies. In reply to this suggestion, Beitz argues that we can grant that there is a threshold of interdependence above which the difference principle applies and, at the same time, argue that international interdependence is above the threshold.<sup>261</sup> As we saw, a crucial feature of the basic structure that makes it the appropriate subject of justice according to Rawls is that it comprises a nonvoluntary system of institutions that defines individual starting positions

---

<sup>259</sup> This point is argued in Risse (2005b)

<sup>260</sup> I adapt the example from Beitz (1979).

<sup>261</sup> Beitz (1979: 165-7)



and assigns rights and duties. International interdependence does not resemble the apples and pears case because it involves a large element of institutional interaction, institutional rules setting the framework for individual action.<sup>262</sup> Participation in many of these institutions is not voluntary: we are simply born into them. Furthermore, the effect of this institutional scheme on individual well-being is not marginal, as it was presumed to be in the apples and pears case.<sup>263</sup> International interdependence is relevantly similar to the domestic basic structure in that it involves a nonvoluntary institutional architecture governing transactions, having a determining influence on individual life prospects.<sup>264</sup>

There is controversy about the actual effects of the global institutional scheme on individual lives. Some theorists argue that this scheme has harmed the poor by making them worse off than some relevant baseline.<sup>265</sup> The other camp holds that international institutions have in fact made the poor better off than at least some relevant baseline.<sup>266</sup> This debate can be bracketed for the aims of the current argument, however. As long as there is agreement about the claim that the global scheme of institutions has unchosen and pervasive effects on the lives of most humans, the rationale for applying principles of justice to the basic structure also holds in the case of the global scheme of institutions. Significant benefits and burdens are produced in international cooperation that ought to be distributed in a just manner.<sup>267</sup>

---

<sup>262</sup> For a rich account of institutional interaction at the global level, see Keohane (2002).

<sup>263</sup> For the pervasive effects of the global institutional scheme on individual lives see the rich account in Pogge (2002).

<sup>264</sup> Beitz (1979: 166), Pogge (1989: 262-3)

<sup>265</sup> The most elaborate argument to this effect is found in Pogge (2002). See also O'Neill (1974), and Nagel (1977).

<sup>266</sup> For an argument to this effect, see Risse (2005a).

<sup>267</sup> Beitz (1979: 152)

## 2.2. Digression: the significance of the state system

Before turning to the next objection to the global application of Rawlsian justice, I make a brief digression about the interpretation of global cooperation. In order to appreciate the significance of cooperation in the Rawlsian sense, I want to examine how an important feature of the current world fits into it. I look at the question whether the currently existing system of states with ownership over and control of natural resources on their territory represents a form of global cooperation relevant for the Rawlsian theory. In order to do this, I propose to consider one argument, given by Charles Beitz, for a resource redistribution principle in the absence of cooperation. Beitz argues that, even in the absence of international interaction, there would be a case for redistribution on the basis of the uneven distribution of natural resources among societies. He claims that parties in an international original position would adopt a resource redistribution principle even if all states are self-sufficient. Assuming that everyone has an equal right to the earth's natural resources, and that natural resources are unevenly distributed among societies, parties would view the distribution of natural resources as morally arbitrary, and hence would favour a principle that demanded redistribution of resources or the benefits derived from them.<sup>268</sup> He suggests, the argument for such a principle would be analogous to the informal argument Rawls gives for the two principles in *Theory*, according to which the distribution of natural endowments is morally arbitrary, hence an unequal distribution of primary goods cannot be justified on the basis that they are deserved by the more talented. By analogy, Beitz argues, parties to a global original position would conclude that the fact that some people are located more advantageously with respect to natural resources does not justify the exclusion of others from the benefits from these resources on this ground. From this it follows that there needs

---

<sup>268</sup> Beitz (1979: 138)

to be an international redistribution of natural resources or the benefits deriving from their use.<sup>269</sup>

To this suggestion it has be replied that it overlooks the fundamental role of social cooperation in giving rise to concerns of justice. In the absence of a world-wide scheme of cooperation there would simply be no occasion for a global original position that could yield principles for regulating the distribution of benefits from the use of natural resources among self-contained societies.<sup>270</sup> The construct of the original position itself would not be valid for such a world. Rawls takes the object of social justice to be the basic structure that by definition involves cooperation among its participants. If such cooperation among persons is lacking, there is simply no object to which principles of justice could apply to.

There are two possible replies to this objection by someone wanting to defend egalitarian principles of justice with a global reach. The first type of answer remains within the Rawlsian framework. It would claim that, even though Beitz seems to interpret cooperation in a more restricted sense, the state system itself represents a form of international cooperation sufficient to trigger Rawls's principles of justice for the global domain. For purposes of justice-based assessment even a system of territorial states with a property right or eminent domain over natural resources itself counts as a scheme of cooperation. Such right is not part of the natural distribution of resources, but is defined by a set of rules that governs utilizing such resources by certain collectivities and determine the division of advantages and disadvantages among members of a society and nonmembers. For instance, let us take the hypothetical case of societies which are self-sufficient, sustaining themselves merely from the benefits of cooperation among their members, including the benefits from extracting the natural resources on their territory. Even in this scenario, it makes a huge difference what rules govern internationally the ownership of and

---

<sup>269</sup> Beitz (1979: 138)

<sup>270</sup> Pogge (1989: 241)

control over natural resources, such as the distribution of benefits from the extraction of resources across societies. According to one set of rules all the benefits from natural resources would go to the members of the society that extracted them, and outsiders would receive nothing. This is not the only possibility however, and in a Rawlsian framework, not even a privileged one serving as the natural baseline. There are alternative possible sets of rules that would regulate the division of advantages from the extraction of natural resources differently, for instance in the form of a global resource tax that would allocate a share of the benefits to those who are not members of the society that extracted them.<sup>271</sup>

The effects of any of these alternative sets of rules on individual life-prospects of insiders and outsiders are profound and present from the start, thus they stand in need of justification, and are subject to assessment by the principles of justice. From the fact that members of one society extract a certain quantity of natural resources it does not follow that they are entitled to all the benefits from their use. Nor is it the case that societies automatically have a right to the exclusive control over natural resources: what rules govern the ownership of and control over natural resources is itself subject to assessment in terms of the Rawlsian principles. Consequently, the distribution of benefits from natural resources should be governed by rules subject to Rawls's principles of justice, which should fit into the best feasible scheme of rules governing cooperation.

Cooperation in this sense is wider than Beitz's proposal for the resource redistribution principle and his analogy with individual natural endowments would suggest. On this interpretation of Rawlsian theory, even in the case of seemingly self-sufficient societies, each extracting the resources on their own territory, there is global cooperation relevant for Rawlsian justice: viz. a worldwide cooperation in accordance with a certain set of rules governing ownership of and control over natural resources.

---

<sup>271</sup> For such a proposal see Pogge (1989) and Pogge (2002: 196-215).

The second type of reply to the objection to natural resource redistribution would concede that it is not demanded by Rawlsian theory, since the states system itself does not represent international cooperation in the sense required by the Rawlsian theory of justice. It would, however, argue directly for the conclusion that international redistribution is prescribed by justice on the basis of an equal claim held by every human being to a share of the earth's resources. I will consider this type of argument in the following chapter, but now I turn to a second objection to the global application of Rawlsian justice.

### **2.3. Barry's argument**

The second argument against the global application of the Rawlsian principles was put forward by Brian Barry. Barry argues that the two principles of justice, including the difference principle, cannot be applied globally, since the world at large does not constitute a cooperative scheme in the sense relevant for justice.<sup>272</sup> Barry interprets Rawlsian justice as justice as fair play. The duty of fair play requires that participants deriving benefits from an ongoing practice contribute their fair share in maintaining it, on pain of being unfair to other participants.<sup>273</sup> Since Rawls regards society as a scheme of institutions providing benefits to all its members, Barry interprets him to be claiming that the duty of fair play applies to all members of the society. Once there is a scheme of social cooperation providing benefits to its participants, all participants are required by justice to contribute their fair share in maintaining social cooperation.

Various forms of international interdependence do not constitute cooperation of the relevant kind for two reasons, according to Barry. First, a practice's being mutually beneficial is not sufficient to give rise to the duty of fair play, hence to requirements of

---

<sup>272</sup> Barry (1991: 193-5)

<sup>273</sup> Rawls (1999a: 96). Another important condition Rawls includes in the definition is that the scheme must also be just.

distributive justice, since not all mutually beneficial practices constitute cooperation relevant for justice. Such cooperation that triggers the duty of fair play arises only from certain forms of social relations, such as the provision of public goods, or quasi-insurance schemes for mutual aid.<sup>274</sup> Such relations, typically found in domestic regimes, do not exist at the global level, Barry argues. International trade, however widespread and mutually beneficial, does not trigger the duty of fair play, since it is too thin a relation to give rise to such duty. Hence, despite the fact of international interdependence and contrary to what Beitz argues, the Rawlsian principles of justice do not apply globally.

To this objection it can be replied that international trade does not take place in the form of isolated and infrequent individual transactions, but involves a large number of exchanges taking place against the background of a global regulatory structure consisting of financial and monetary institutions, trade agreements, and legal institutions. As we have seen, this is a nonvoluntary institutional architecture that decisively shapes individual life-prospects across the globe. This international institutional scheme can be seen as representing a form of cooperation in the sense required by Barry, since parties to it are required to contribute to the maintenance of the scheme by foregoing some of their liberty for the sake of the possible benefits that are likely to accrue from the long term operation of the scheme. Thus it can be argued that the global scheme of cooperation should be subject to Rawlsian principles of justice since it is capable of triggering the duty of fair play for those participating in it.<sup>275</sup>

However, Barry rejects this suggestion for the following reason. He claims that even if we take into account the various existing international institutions representing some form of worldwide cooperation such as the UN, IMF, or World Bank, these forms of cooperation

---

<sup>274</sup> Barry (1991: 194)

<sup>275</sup> For an elaborate attempt to ground political obligation on a duty of fairness in the case of states, see Klosko (1992) and Klosko (2005).

do not represent cooperation in the relevant sense for justice as fair play. International cooperation is not sufficient to trigger the distributive requirements of Rawlsian justice because the duty of fair play applies in the case of mutually beneficial cooperation only, and these forms of cooperation are not yet mutually beneficial.<sup>276</sup> For example, rich countries would not find it attractive to institute an international scheme of mutual aid redistributing benefits from affluent countries to countries in distress. The reason for this is that the flow of benefits in the foreseeable future would be one-way, and thus rich countries would be unlikely to benefit from the scheme. On the whole, they would do better without any international cooperation than with a global scheme of institutions satisfying Rawlsian principles of justice. So, Barry argues, the conditions triggering the duty of fair play do not exist at the international level, since it is not true that all parties benefit – or stand to benefit – from a Rawlsian scheme.

This argument against the international applicability of Rawlsian justice rests on a mistaken interpretation of the Rawlsian theory. It suggests that, in order for principles of justice to apply to a scheme of cooperation, the transition from the unjust actual scheme to a just one should itself be mutually beneficial. This line of reasoning implies that if advantaged participants under an existing unjust scheme would be worse-off under a hypothetical just scheme as compared to the benchmark of their position in the unjust scheme, the hypothetical scheme is not mutually beneficial, thus by consequence, it is not required by Rawlsian justice. As Pogge suggests, this is a very unlikely interpretation of Rawls.<sup>277</sup> For it amounts to entrenching any kind of unjust scheme by precluding the application of Rawlsian principles to them. In effect, principles of justice would not apply to any scheme that is not already just, and this is absurd. Rawls does not hold that cooperation in a just scheme should be beneficial to all, including those unjustly advantaged in the

---

<sup>276</sup> Barry (1991: 195)

<sup>277</sup> Pogge (1989: 263-4)

current unjust scheme, as compared to their current position. Barry in his argument employs the wrong kind of benchmark: the comparison should be made not between the holdings of individuals or societies in an unjust cooperative scheme and those in a just scheme, but between holdings in the just scheme and a benchmark of complete equality.<sup>278</sup> Distributive equality is the appropriate benchmark in Rawlsian theory since it reflects the moral equality of persons that is a fundamental element in the theory.<sup>279</sup> Distributive equality follows from this requirement since Rawls thinks distinctions of social class and physical and mental endowments are morally arbitrary, hence they should not be reflected in the distribution of social resources.<sup>280</sup> Distributive equality ensures that those already privileged do not benefit from distributive principles “twice over”.<sup>281</sup> Contrary to Barry’s proposal, reciprocity in Rawls does not privilege existing holdings.

Against this benchmark of equality, the difference principle, by construction, embodies a criterion of mutual advantage. By requiring the maximinizing of individual social positions across alternative schemes, a domestic or global basic structure satisfying this criterion can be presumed to be mutually beneficial for all the participants. For instance, a more egalitarian scheme may produce for the least advantaged a smaller overall share of resources, even though their relative share is higher. In this case, assuming there is at least one alternative scheme that produces a higher overall share for the least advantaged, this scheme would be favoured by the difference principle. The more advantaged are also better off under the difference principle than in a scheme of perfectly egalitarian distribution, given that they could benefit from their position if it is also to the benefit of the least advantaged. So, in order to argue that global redistribution would violate the condition of mutual advantage, the global rich would have to show that such redistribution would leave

---

<sup>278</sup> For an argument to this effect see Moellendorf (2002: 72-4)

<sup>279</sup> I discuss further implications of the moral equality of persons for resource distribution in Chapter 6.

<sup>280</sup> Rawls (1999a: 63-4)

<sup>281</sup> Rawls (1999a: 88)



them worse off than they would be under conditions of distributive equality.<sup>282</sup> This would be a very implausible claim to make.

#### **2.4. Lack of political institutions**

The third argument against the international application of Rawlsian principles of justice appeals to the importance of political institutions in giving rise to principles of justice. Mere economic interactions, however widespread and regular, do not constitute a cooperative scheme in the relevant sense, the argument runs, since the Rawlsian basic structure comprises the political institutions of the state as well. To recall, Rawls defines the basic structure, i.e. the subject of principles of justice, as “the way major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.” And he adds, by major social institutions he understands “the political constitution and the principal economic and social arrangements.”<sup>283</sup> The basic structure is the primary subject of justice since the political system and economic and social circumstances largely determine individual life prospects. The international domain, by contrast, does not contain political institutions capable of making decisions and enforcing authoritative commands. Thus the argument can be made that there is a relevant difference between the domestic basic structure with its social and political institutions defining individual starting positions on the one hand, and international economic interaction that takes place against the background of intergovernmental bargaining, diplomacy, and transnational organizations, on the other hand.<sup>284</sup>

---

<sup>282</sup> Moellendorf (2002: 73)

<sup>283</sup> Rawls (1999a: 6)

<sup>284</sup> Various versions of the argument have been made by Thomas Nagel in Nagel (2005), Michael Blake in Blake (2001), and Debra Satz in Satz (1999).

We can interpret this objection in two major ways. We can see it as emphasizing the role of political institutions either in the justification of principles of justice, or in their implementation. When we look at justification, political institutions can be seen as playing a constitutive role in the emergence of requirements of justice. What form would the objection take in this case? If taken to apply within ideal theory, i.e. in the case of strict compliance and among conditions favourable for justice, the objection is unlikely to be able to draw support from Rawlsian theory. I argued that we can distinguish two main types of reason in the Rawlsian theory for focusing on the basic structure as the primary subject of justice. First, the institutions of the basic structure have a profound effect on individual life-prospects from the moment of birth for everyone subject to them; moreover the terms of these institutions are not voluntarily chosen by individuals. Second, the institutions of the basic structure are important in maintaining background justice without which interpersonal agreements could not be said to have been freely undertaken against conditions that are fair. Now, these reasons do not necessarily involve the political institutions of the nation-state in the form they currently exist. International institutions seem adequately to meet both characteristics of the basic structure Rawls regards important: they have a profound effect on the life-prospects of every individual subject to them without their voluntary consent, and they represent background conditions against which transactions take place.

However, we can try to formulate the objection by viewing it as applying within nonideal theory. We can argue that there are other reasons for the importance of the basic structure for distributive justice in addition to the two reasons Rawls mentions, ones that necessarily refer to political institutions. To take one such argument, political institutions may be seen as playing a constitutive role in the emergence of requirements of distributive justice because political communities are associative groups that impose on their members special egalitarian requirements. This is, as argued in Chapter 3, one possible interpretation

of Ronald Dworkin's theory of political authority. There I argued against it from a cosmopolitan perspective. Since currently we are concerned with the global extension of Rawlsian theory, however, here it suffices to note that such considerations do not form part of Rawls's theory of justice, thus the objection would be external to Rawlsian theory. When justifying the importance of the basic structure as the subject of justice Rawls does not make reference to a prior associative relationship between those subject to its institutions.

Alternatively, we can argue that the Rawlsian description of the basic structure makes implicit reference to the coercive institutions of the state, and thus try to salvage the objection by focusing on the differential requirements imposed in Rawlsian nonideal theory on law-subjects as opposed to outsiders. In Rawlsian nonideal theory there may be certain distributive requirements that apply within states only, stemming from the fact that we do recognize special moral requirements that burden states vis-à-vis their subjects, and vice versa. These special moral requirements are due to the special nature of politics which is, and is bound to remain, the domain of nonideal theory as Rawls understands it.<sup>285</sup> Perhaps most important of these requirements is that of political obligation. States claim their subjects' moral obligation to obey their laws regardless of whether they have consented to or agree with them. There is disagreement about what justice demands in terms of distribution because there is disagreement both about the appropriate principles of justice and about their correct interpretation. Governments have the right to authoritatively settle debates about distributive justice, and to apply these decisions to their subjects. Using their monopoly of legitimate force, they will enforce laws even on those subjects who disagree with these. Disagreement about justice is unlikely to be a temporary feature of human life; it seems to be an unalterable fact that has to be taken into account when justifying the scope of application of principles of justice, and determining the duties individuals have with respect

---

<sup>285</sup> Rawls (1999a: 309-11)

to political institutions. It is not by chance that Rawls formulates the natural duty of justice as consisting of two distinct parts: we have to comply with just institutions that apply to us, and to promote the establishment of those not yet existing<sup>286</sup>. The first part directs subjects to comply with not only fully just institutions, but also with institutions that are reasonably, though not entirely, just and apply to them.<sup>287</sup> This duty imposes special requirements on the law-subjects: they have to comply with laws and government policies they find unreasonable or even unjust, and they are required to bear the distributive consequences of laws and policies they disagree with. Their compliance will be secured by threat of coercion on behalf of state authorities. In this sense their relation to the political institutions of their country is special and different from the way outsiders are related to the very same institutions. There is an asymmetry between the two types of relations because outsiders are only required not to obstruct or undermine the working of reasonably just political institutions, whereas the subjects of these institutions are required to support and comply with them, on pain of being coerced by the authorities. This latter duty is substantially more demanding. This asymmetry between the relations of subjects to state institutions and outsiders to state institutions can be thought to ground special distributive requirements within societies governed by common political institutions. It can be argued that the bipartite formulation of the Rawlsian natural duty of justice is meant to separate the stronger requirement of upholding reasonably just institutions from the weaker demand of promoting the establishment of new just institutions, and reforming existing unjust institutions.

This argument for applying differential distributive requirements within and across countries emphasizes the special demands burdening law-subjects as opposed to outsiders. As we recall, this is the essence of Nagel's argument for his political conception of justice. As against this, perhaps the most powerful objection I made invoked the claim that this

---

<sup>286</sup> Rawls (1999a: 99)

<sup>287</sup> Rawls (1999a: 310)

conception loses sight of the distributive burdens national political institutions impose on outsiders. Even though it is true that the only obligation of outsiders with respect to the institutions of another liberal democratic state is that of not obstructing or undermining their operation, their lives are directly or indirectly significantly affected by the working of these institutions without their consent. It is not immediately obvious that the distributive burdens imposed by state institutions on subjects are more significant than the burdens imposed by the same institutions on outsiders. The two kinds of claims, those of insiders and those of outsiders, must be evaluated on grounds of justice.

I conclude that at the level of justification Rawlsian principles of justice are not limited to the domain of the political institutions of states. It can be argued, however, that political institutions limit the scope of justice because of the role they play in its implementation. In this case we can put the objection in the following way. Even though there is a range of international rules, policies, and decisions significantly influencing individual life-prospects within various states, and there are in turn international mechanisms for enforcing such rules, policies, and decisions, these mechanisms are not reliable enough for providing assurance that international norms will be effectively enforced even against opposition by powerful governments.<sup>288</sup> This makes it unlikely that any principle with strong distributive implications, such as Rawls's two principles of justice, can be implemented on the international domain.

Charles Beitz argues against the objection focusing on the problems of implementation that it is misconceived. He claims that the recognition that at present there are obstacles to implementing principles of justice yielded by Rawlsian theory is insufficient to demonstrate that the principles we arrived at are wrong. In order to show that, it further needs to be proven that the obstacles to putting these principles into practice are fixed and

---

<sup>288</sup> The argument is invoked and refuted in Beitz (1979: 154-8).

incapable of modification by human beings. If, however, the obstacles at present are modifiable, the conclusions of the theory remain unaffected, and it will be the task of nonideal theory to suggest ways of overcoming them.<sup>289</sup> Beitz goes on to argue that the lack of international political institutions does not amount to an unalterable feature of the social world, hence it does not affect the conclusions of the theory.<sup>290</sup> Even if at present there may not be political institutions at the international level that are capable of performing the same functions as domestic ones, most importantly that of making and enforcing authoritative norms, there is no evidence that such institutions cannot evolve in the future. If this were the case, Rawlsian principles of justice should be used to guide institutional reform at the global level, in order that global institutions required for maintaining justice can be created.

This claim needs to be justified, however. Even though political institutions do not play a delimiting role in the justification of Rawlsian principles of justice, they may still be indispensable in the implementation of justice. Their existence may be an unalterable fact of social life in the sense that, in their absence, there would be no way to implement Rawlsian justice. In order to see if Beitz's claim is justified, I will examine in the next two chapters what role political institutions in fact play in the implementation of principles of justice, and whether these roles make it necessary to have a system of states in its current form. Rather than concentrating on their making differential demands on their subjects and outsiders, I suggest that we should frame the special significance of political institutions in terms of their role in making determinate the demands of justice, resolving disagreement, and preserving resources under their control. However, I will argue that these functions, important as they are, do not override considerations of global justice, but are in fact constrained by them. These considerations may eventually prescribe the replacement of the

---

<sup>289</sup> Beitz (1979: 156)

<sup>290</sup> Beitz (1979: 156-7)

state-system in its current form to some alternative global institutional arrangement that is more sensitive to the demands of global justice.

### 3. Summary and conclusion

The chapter summoned the main characteristics of basic structure in Rawlsian theory, and Rawls's reasons for focusing on the basic structure as the subject of justice. It continued by presenting some arguments for the global extension of the Rawlsian domestic theory of justice to the global domain. The argument proceeded by showing that there exists a global basic structure relevantly similar to the domestic ones, and that the same reasons Rawls gives for the application of principles of justice to the basic structure hold for the global domain too. Next, the chapter surveyed three possible objections to the global extension of the Rawlsian principles of justice, which were taken to be internal to the Rawlsian theory of justice. By refuting these, the chapter argued that these objections do not warrant limiting the scope of principles of justice to the domestic level. From this the temporary conclusion can be drawn that, assuming we accept the key premises of the Rawlsian theory of justice, Rawlsian principles of egalitarian justice apply globally. In what follows, I will present a cosmopolitan revision of the Rawlsian theory.

## Chapter 6

### Egalitarian cosmopolitanism and territorial institutions

The chapter presents a cosmopolitan revision of the Rawlsian theory. Its first part describes the general characteristics of cosmopolitanism about justice. Questioning Rawls's premise that requirements of justice emerge only in institutionally governed schemes of cooperation, it argues that cosmopolitanism is committed to seeing the problem of justice as the problem of finding fair principles for distributing scarce resources among all humans, who have an equal *prima facie* claim to the earth's resources. Next, the chapter describes the main characteristics of and the rationale behind egalitarian cosmopolitanism, as opposed to other forms of cosmopolitan theories. It is not meant as a defense of egalitarian cosmopolitanism: it does not aim to provide an argument strictly speaking for the position, it only presents an intuitive case for it and argues that, if there are reasons to accept distributive egalitarianism in the domestic case, there are equally compelling reasons to accept it for the global domain. The second part of the chapter gives a first statement of the role of political institutions in an egalitarian cosmopolitan theory of justice, focusing on the territorial nature of political rule. By doing so, it argues for an alternative global institutional scheme that needs to replace the system of nation-states due to modern developments and permanent justice-based considerations.



## 1. Cosmopolitan justice

### 1.1. Cosmopolitanism in first approximation

In this section I attempt to describe cosmopolitanism as it refers to justice. The object of inquiry in this work is cosmopolitanism in its modern and contemporary sense. I do not attempt to provide a detailed account of earlier forms of cosmopolitanism, since, I think, in the premodern era the term was used in a different context than in which its contemporary defenders use it. The term originally goes back to ancient Greek times. In the form of *cosmopolitês* – ‘citizen of the universe’ – it was first used by Cynics and Stoics, referring to an ethical stance that does not regard one’s political membership as having any foundational relevance for one’s identities, loyalties, and responsibilities. In its Stoic use at least, however, cosmopolitanism was viewed as part of an ethical doctrine that regarded humans as citizens of a perfect order instituted by the law governing the cosmos, which made the cosmos look like a polis with all rational beings as its citizens. Living in agreement with the cosmos, in accordance with the law governing it, is a requirement of foundational importance in Stoic ethics.<sup>291</sup>

Contemporary cosmopolitans, by contrast, want to avoid making reference to citizenship and to a rational order of universe in any form, and focus instead on what standards institutions should meet, what policies should be pursued by governments, and what actions individuals are required to take, considering the interests of all humans, in the face of certain facts about the world as it exists today. Contemporary cosmopolitans usually start their writings by drawing attention to the facts of global starvation and poverty. That these facts call for attention and action in relatively wealthy countries is rarely disputed. The spread of charitable actions and organizations that are meant to support the global poor

---

<sup>291</sup> Brown and Kleingeld (2002)

evidence that people in affluent countries think they must do something about global poverty and starvation. The question cosmopolitans pose addresses, however, the nature of and basis for these obligations. More specifically, they investigate whether we have duties of justice to do something about global poverty, and if so, on what basis.

Cosmopolitans claim that affluent people have a duty of justice to do something about global poverty. This position is usually contrasted with humanitarian considerations demanding assistance to the desperately poor worldwide. Humanitarian considerations emphasize the absolute levels of need of people we are in a position to help. When faced with early deaths due to mass starvation, severe malnutrition, or easily preventable diseases, it is rarely disputed that inhabitants of affluent countries have a duty to provide humanitarian assistance to the desperately poor, at least when this can be done at relatively little cost. The chief target of such duty is to raise the desperately poor to a level of well-being where they no longer have to face such terrible prospects. Justice, by contrast, though a controversial concept, is thought by some to concern not only absolute levels of need, but also the relative levels of well-being people have, and the causes for inequality between them. In other words, justice is often seen as involving a substantial comparative element in evaluating distribution in addition to noncomparative considerations.<sup>292</sup>

In the next section I am going to lay out the theoretical foundations of cosmopolitan conceptions of justice, then I will move on to presenting one egalitarian version of this group of views.

---

<sup>292</sup> On the distinction between comparative and noncomparative justice, see Feinberg (1980: 266-306).

## 1.2. Individualist moral universalism

Cosmopolitanism is a position about global justice that derives our duties of justice from a requirement of equal concern that we owe to all our fellow human beings in virtue of their status of being human. The ground for this cosmopolitan outlook is a general individualist moral universalism, which grew out of Enlightenment ideals. As we briefly saw in Chapter 2, the defining features of this outlook are the following.<sup>293</sup> First, it is *individualistic*, in the sense that it holds that all moral requirements must ultimately be justified by reference to their effects on individual well-being. In the justification of moral requirements only individual well-being plays a foundational role, and the value of other things, e.g. institutions, community, culture, relationships, etc. is always derivative. As Thomas Pogge formulates this feature of cosmopolitanism, the “ultimate units of moral concern” are individuals, not societies or peoples.<sup>294</sup> Second, cosmopolitanism is *universalistic* in the sense that it demands that all moral requirements be derivable from fundamental principles that consider the well-being of all humans. The ultimate scope of moral consideration is universal. Implicit in this feature is its *weak egalitarianism*, in the sense that it prescribes an equal consideration of the interests of all individuals. Since all human lives are equally valuable, morality must prescribe an equal consideration of human interests, and, because of its individualistic outlook, it must not allow a division of humankind into states or peoples to have a fundamental role in determining how one individual should treat the interests of another. Finally, the scope of morality is *general*: all moral requirements must be based on fundamental principles that hold for everyone, not only for some subset of individuals, such as compatriots, fellow-religionists etc.<sup>295</sup>

---

<sup>293</sup> This characterization follows the description offered by Thomas Pogge in Pogge (2002: 169).

<sup>294</sup> Pogge (1989: 38, 113)

<sup>295</sup> Pogge: (2002: 169)

Thomas Pogge and Charles Beitz call this general individualist moral universalism *moral cosmopolitanism*, and they contrast it with *legal* or *institutional cosmopolitanism*, which in their view concerns the particular form global political institutions are required to take.<sup>296</sup> I do not follow them in characterizing this general moral stance as cosmopolitanism, however, as it is compatible with a wide range of theories of justice, some of which can hardly be considered cosmopolitan. It is compatible, for example, with theories holding that the requirement of justice applies only among a group of persons subject to common political authority, where the requirement of obedience to law plays a constitutive role in giving rise to requirements of justice.<sup>297</sup> Similarly, moral universalism is compatible with a scheme of nation-states where everyone is to give priority for the interests of her compatriots, if it can be shown to be the most efficient scheme for discharging universal duties.<sup>298</sup> Because of its compatibility with such a wide range of theories of justice, moral universalism does not give a proper account of the problem of justice as cosmopolitans understand it. In order to get a clearer view on cosmopolitanism about justice, we have to see what the problem of justice is according to cosmopolitans.

### 1.3. The problem of justice

On the cosmopolitan view, the key problem of justice is how to distribute scarce natural and social resources among all humans, who have competing claims over them. Individuals are assumed to have competing desires or, more broadly, conceptions of the good, the fulfillment of which requires these resources. The distribution of resources is required by justice to be made in a manner that pays equal concern or respect to the interests of all.

---

<sup>296</sup> Pogge: (2002: 169), Beitz (1994), Beitz (1999c: 286-7), Afterword to Beitz (1999a: 199).

<sup>297</sup> As I argued in Chapter 3, Ronald Dworkin and Thomas Nagel have proposed theories of this kind.

<sup>298</sup> See the argument by Robert Goodin to this effect in Goodin (1988: 685). My characterization of Goodin clearly diverges from the one given by Beitz, who sees Goodin's theory as a version of cosmopolitanism. See his Afterword in Beitz (1999a).

There is a variety of cosmopolitan theories, depending on the content of justice they advocate, corresponding to different interpretations of what equal concern actually requires with regard to the distribution of scarce resources.<sup>299</sup> Various forms of cosmopolitanism that have been put forward include, for instance, utilitarian, laissez-faire, or egalitarian cosmopolitanism.<sup>300</sup> What is common to them is that all these theories hold that the scope of the concern of justice, i.e. that of equal concern, is universal: on the cosmopolitan view competing claims to resources are those of every human being, not only those of a limited subclass of them, such as participants in institutional schemes, or subjects of states. Our fellow-humans are equals to us, thus we should give their interests equal consideration in the distribution of scarce resources.<sup>301</sup>

Cosmopolitan theories of justice are a special application of the general universalistic view of morality to the distribution of scarce resources among individuals whose claims on them might potentially conflict. These theories share the features of individualism, universalism, and weak egalitarianism that we saw characterizing individualist moral universalism. In evaluating the justice of institutions, conduct, or distribution it is ultimately individual well-being that matters; the interests of all humans must be taken into account; and these interests should be given equal consideration. What distinguishes cosmopolitan theories from other theories of justice accepting the premise of moral universalism is that on the cosmopolitan view some immediate distributive

---

<sup>299</sup> This distinction between the abstract requirement of equal concern and its competing interpretations corresponds to the distinction developed by Ronald Dworkin between the requirement to treat others as equals and distributive principles, among which the requirement to treat others equally is one. See Dworkin (1985: 190). The distinctions follow the earlier one developed by H. L. A. Hart and John Rawls between a concept of justice and its competing conceptions. Hart (1997: 155-9) and Rawls (1999a: 5, 8-9).

<sup>300</sup> Utilitarian cosmopolitans include Peter Singer and Peter Unger; a version of laissez-faire cosmopolitanism was proposed by Hillel Steiner; egalitarian cosmopolitanism is represented by Allen Buchanan and Onora O'Neill, among others. See Singer (1972), Unger (1996), Steiner (1994), Buchanan (2003), O'Neill (2000).

<sup>301</sup> This cosmopolitan stance goes back at least to Kant, who says in *Perpetual Peace* that humans own the earth in common. See Kant (1992: 106). Contemporary cosmopolitans do not need to make such a strong claim about common ownership of the earth's resources. It suffices for them to hold that no-one has any special antecedent claim to resources.

implications follow from the fact that no person has an antecedent claim to natural resources. On the basis of this negative claim, cosmopolitans make the positive one that all humans have an equal *prima facie* claim to the earth's resources. The link between the two claims is provided by the thesis that in cases when there are no relevant grounds for thinking that one person has better claim to a given resource than anyone else, then the resource has to be distributed equally among them.<sup>302</sup> Of course, what counts as a relevant ground for deciding about claims to resources is a crucial question, and competing theories of distributive justice disagree largely about this issue. However, cosmopolitans of all colours agree that, in the case of natural resources, no one has better claim to a particular amount of resources than any other person. Since this is the case, natural resources or the benefits flowing from their use must be distributed equally among all inhabitants of the earth.

Thus, as cosmopolitans see it, the problem of justice arises, at least in the case of natural resources, for humankind as such by virtue of being humans. We have to note, however, that the scope of some of the theories that are not cosmopolitan in my understanding but nevertheless rely on the ideas of moral universalism might be coextensive with that of cosmopolitan theories: for instance, the globalized Rawlsianism I presented in the previous chapter, which takes the global institutional scheme as the appropriate subject of justice is not, in my view a cosmopolitan theory. The reason for this is that its scope is only contingently global: it depends on the existence of a global institutional scheme generating the problem of justice for the world at large. In the absence of such a scheme the problem of global justice would not arise. Cosmopolitan theories, by contrast, see the fact of our shared existence on the planet, together with the scarcity of its resources on which individuals make competing claims, by itself giving rise to a problem of distributive justice:

---

<sup>302</sup> See for instance Steiner (1994).

cosmopolitans want to know how to distribute scarce resources in what might be called the “circumstances of cosmopolitan justice”.<sup>303</sup>

What role does this view assign to institutions? As cosmopolitans understand it, and contrary to how Rawls and Rawlsians see it, the problem of distributive justice makes no reference to institutions, at least with regard to some kinds of resources: it concerns the distribution of scarce resources among all humans, who have competing claims over them. In the case of these resources, justice is not an institutional matter at the foundational level. Institutions might have relevance for justice, but only in a secondary sense: for instance, they might be necessary for securing a just distribution. It may be impossible to live on just terms with others with whom we do not share institutions, but institutions do not generate the problem of justice in the way Rawls postulates.

#### **1.4. Egalitarian cosmopolitanism**

Now I turn to one of the most influential and most popular versions of cosmopolitan theory, egalitarian cosmopolitanism. It was inspired by some aspects of the Rawlsian theory, even though Rawls himself rejects the conclusions and some presuppositions of egalitarian cosmopolitanism. What egalitarian cosmopolitans emphasize in Rawlsian theory is the intuitive case Rawls makes in defence of his principles of justice. In his unofficial argument for his second principle of justice, Rawls argues that inequalities in people’s life prospects are often caused by factors that people have done nothing to deserve, such as sex, race, the social class of their parents, and their inborn natural endowments. As Rawls formulates it,

---

<sup>303</sup> This characterization does not regard as cosmopolitan the powerful arguments put forward by Charles Beitz and Thomas Pogge that derive requirements of global justice from the working of a global institutional scheme. This point is also raised in reference to Nagel’s claims by Cohen and Sabel (2006: 152) and Julius (2006: 178).

these sources of inequality are morally arbitrary.<sup>304</sup> Because they are so arbitrary, the distribution of resources should not be allowed “to be improperly influenced” by them.<sup>305</sup> Rawls claims in the 1971 edition of *A Theory of Justice*, his conception of justice “nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in [a] quest for political and economic advantage.”<sup>306</sup> The underlying idea is that there is a morally significant difference between inequalities resulting from people’s choices, and inequalities that are non-voluntary. Many egalitarian theorists have drawn the conclusion, on the basis of these remarks of Rawls, that egalitarian justice properly interpreted is based on a requirement to equalize those interpersonal inequalities that can be traced back to causes not subject to individual choices, and only inequalities resulting from voluntary individual choices are justified.<sup>307</sup> For instance, Dworkin argues for a theory of egalitarian justice that prescribes a distribution of resources that is endowment-insensitive and ambition-sensitive: a theory that makes people’s resource bundles depend on their choices but not on their natural endowments or other unchosen circumstances.<sup>308</sup> His claim is that a commitment to two principles is special to liberal egalitarianism. The principle of equal importance holds that the distribution of resources should not reflect inequalities in people’s unchosen circumstances or natural endowments. The principle of special responsibility, on the other hand, holds that individual fortunes should reflect, to the extent that it is possible, the choices individuals have made.<sup>309</sup>

Cosmopolitan egalitarians extend this requirement to a global level. Surely, it seems no less arbitrary to have significantly lower life-prospects just because one is born into a

---

<sup>304</sup> Rawls (1999a: Chapter II)

<sup>305</sup> Rawls (1999a: 63)

<sup>306</sup> Rawls (1971: 15)

<sup>307</sup> See Arneson (1989), Dworkin (2000), Cohen (1989). This requirement does not go uncontested even among egalitarians, however. It has been challenged in, for example, Anderson (1999), Scheffler (2003b), Daniels (2003).

<sup>308</sup> Dworkin (2000: 89)

<sup>309</sup> Dworkin (2000: 5-6)



poor rather than a rich country than it is arbitrary to have lower life-prospects than others in the same country because of the wealth of one's parents. If morally arbitrary causes of inequality are objectionable domestically, they seem just as well objectionable internationally. The place where one is born seems hardly a matter of choice, still this is perhaps the most important factor in determining what prospects we face at birth for our entire life. As we saw in the Introduction, the poorest 44 per cent of the world's population, those living below the \$2 a day international poverty line, consume only 1.3 per cent of the global product, whereas the high-income countries, with 15 per cent of the global population, consume about 81 per cent of it.<sup>310</sup> The most striking differences concern the prospects faced by children under the age of 5 in the poorest and the wealthiest countries. If born in one of the least developed countries, one has significantly greater probability to die before reaching the age of 5 than someone born in one of the high-income countries.<sup>311</sup> In poor countries we can often find rates of under-5 malnutrition of 30 per cent to 40 per cent. As a FAO report puts it, "two out of five children in the developing world are stunted, one in three is underweight and one in ten is wasted"<sup>312</sup>, while children in developed countries do not have to face such grim prospects for their lives. These inequalities are in no way trivial: they represent vast inequalities in individual life-prospects for which these individuals themselves are not responsible.

In the face of the arbitrariness and significance for life prospects of one's place of birth, cosmopolitan egalitarianism would prescribe an equal global distribution of resources, in the sense that interpersonal distributive differences should reflect only the choices of individuals themselves, and should not reflect their social circumstances or natural endowments. This egalitarian ideal raises several interesting questions, not specific to its

---

<sup>310</sup> World Bank (2003: 235)

<sup>311</sup> The ratio is more than 25 to 1. See UNICEF (2006).

<sup>312</sup> FAO (1999: 11), quoted in Pogge (2002: 97).

globalized application. The theory is not limited to differences resulting from differential access to external goods, such as natural resources. For example, it would demand redistribution on the basis of differential access to cultural goods as well. It holds that no individual or group has special privilege to its cultural resources, such as language, art, education etc. Therefore those distributional differences that can be traced back to the operation of these factors and not to the choices individuals themselves made need to be equalized globally. Similarly, differential natural endowments – or “germ-line genetic information” – give rise to claims to redistribution according to the theory. These are also unchosen factors that might have a substantial role in determining what distributive share one has throughout her life, thus differences resulting from differential endowments should also be equalized.

These radical implications explain why egalitarianism, even in the domestic case, is a much contested idea. First of all, it has traditionally been subject to widespread external criticism by non-egalitarians.<sup>313</sup> It has been argued by critics, for instance, that the pursuit of equality is futile, since there is an endless variety among individuals as a result of which no two individuals are really equal: the diversity of individual talents, ambitions, social identities, and circumstances ensures that any attempt to achieve equality in some dimension will inevitably generate inequality in others.<sup>314</sup> Others object to the pursuit of equality on the ground that it is wasteful because egalitarianism would enjoin throwing away goods that cannot be evenly divided rather than letting some people have more than others.<sup>315</sup> Even worse, it may require levelling down people’s talents and abilities when they cannot be lifted to the same level.<sup>316</sup> More recently, debates internal to the egalitarian camp have intensified: some egalitarians have questioned the philosophical plausibility and moral

---

<sup>313</sup> See for instance Hayek (1960); Nozick (1974); Raz (1986).

<sup>314</sup> Hayek (1960: 87)

<sup>315</sup> See the “leveling down objection” of Joseph Raz in Raz (1986: 227).

<sup>316</sup> Nozick (1974: 229)

appeal of what they call “luck egalitarianism”.<sup>317</sup> What they question is, in essence, the meaningfulness and applicability of the choice-luck divide to issues of distributive justice. These critics claim that applying the distinction to issues of distributive justice is both philosophically implausible and morally unappealing. This chapter does not aim to adjudicate in these debates, internal and external to egalitarianism. It merely assumes the intuitive force of egalitarian claims, and argues that if egalitarianism is a plausible position domestically, then there are compelling reasons to accept it internationally as well. The underlying idea in egalitarian cosmopolitanism would be that our claims to natural and social resources compete with those of others whose interests are just as important as ours, and that no-one has a special antecedent claim to these resources. These resources ought to be distributed equally unless inequalities between persons are due to their own individual choices.<sup>318</sup>

Egalitarian cosmopolitanism, just as other forms of cosmopolitanism, does not view institutions as having a foundational role in its theory of justice. Arbitrary inequalities among the life-prospects of individuals are unjustified, regardless of how institutions figure in generating them. Since individuals have an equal *prima facie* claim to the earth’s resources, benefits from their use must be shared equally among humans, regardless of the existence of institutional ties between their groups.

---

<sup>317</sup> The term was coined by Elizabeth Anderson, who provided a powerful critique of luck egalitarianism in Anderson (1999). Similar critiques have been made by, among others, Samuel Scheffler in Scheffler (2003b), and Jonathan Wolff in Wolff (1998).

<sup>318</sup> I speak of the demand for equal distribution in a broad sense. For instance, when it comes to determining the actual formulation of fundamental distributive principle(s), the current egalitarian view is compatible with Rawls’s formulation of his principles of justice. Hence, in the debate about the actual content of principles of distributive justice, I am noncommittal between those who advocate Rawls’s equal opportunity and difference principles, and those arguing for other kinds of egalitarian principles.

## 2. The role of institutions

As we saw, cosmopolitan theories of justice do not regard institutions as having a foundational role in giving rise to the problem of justice. This does not imply, however, that institutions have no role to play whatsoever in a cosmopolitan theory of justice. They might have secondary relevance in these theories, in particular they might be necessary for the implementation of justice. As I will argue in more detail in Chapter 7, the role political institutions play in a theory of justice is not merely instrumental in individuals' discharging their preinstitutional duties of justice: institutions have a constitutive role to play with regard to the duties individuals have in promoting and upholding justice. In the remaining part of this chapter, I aim to present some considerations explaining the importance of institutions in the implementation of a cosmopolitan theory of justice. I present two main types of considerations emphasizing the significance of institutions. The first group of considerations has to do with the central role of markets in defining standards for interpersonal comparisons of resource levels, whereas the second emphasizes the significance of the territorial character of political rule.

### **2.1. The role of market institutions in egalitarian cosmopolitanism**

Institutions, though not constitutive of the problem of justice, might turn out to be indispensable for the applicability of principles of justice to actual distributive issues. One main reason for this is that markets may be essential for defining the value of resources to be distributed in accordance with principles of justice. This might be the case, for instance, if distributive egalitarianism is cast in terms of equality of resources, as in Ronald Dworkin's theory.

In this theory, the scope of justice might be conditional on the existence of a market that enables transactions between individuals. In order to be able to arrive at a just distribution of resources, we need the operation of markets – either actual or hypothetical – to determine the value of resource bundles belonging to individuals. The problem is the following. Natural resources are very heterogeneous, and individuals assign differing value to them. In order to overcome the problem of determining the value of resources to be distributed, Dworkin proposes a thought experiment, in which people, using a token currency distributed equally at the outset, participate in a series of auctions until everybody has such holdings that nobody envies anybody else's bundle of goods. At this point, we can say that everyone has an equal share of resources, Dworkin argues. This series of auctions works only as an analytical device, however: for various reasons it would be unfeasible to conduct repeated auctions until we reach an equilibrium.<sup>319</sup>

When it comes to the actual measurement of the value of resources we want equally to distribute, Dworkin in some of his remarks suggests that hypothetical markets are not sufficient, and that actual markets are needed.<sup>320</sup> The reason for this is that in Dworkin's theory the only way to measure the value of some resource allocated to one person is to ask what the actual costs of his having that particular resource are for others.<sup>321</sup> This question can be answered only by letting some market mechanism to work it out. If markets have a role to play in equality of resources, not merely as an analytical device to model hypothetical decisions, but also as an actual institution which is the only means to measure how certain goods are valued by individuals, in the absence of actual markets there may be no way for an interpersonal comparison of resource-endowments to take place, thus for finding out what requirements follow from Dworkin's egalitarian theory of justice in actual

---

<sup>319</sup> Dworkin (2000: 71-2)

<sup>320</sup> Dworkin (2000: 66)

<sup>321</sup> Dworkin (2000: 70)

practice. The theory would then be so underdetermined as to be inapplicable, since without institutions we may be unable even to define what a just distribution is.

This reliance of Dworkin's theory on the operation of markets, however, does not necessarily present an insurmountable difficulty for a cosmopolitan version of resource egalitarianism. We can see this when we consider the notion of market in play in Dworkin's thought experiment illustrating the character of his theory of justice. In this, Dworkin tells a story about shipwreck survivors arriving at a desert island, deciding to divide their resources equally. In the story there is no reference to a pre-existing market defined by a complex set of rules, specifying rights and duties related to the property items to be distributed. The only sense in which a market exists on the island is that the survivors know how many of them landed, and that there is a possibility of trading resources among them. This understanding of market is so thin that the only cases it excludes are those when there is no possibility for interaction whatsoever. This thin understanding makes the theory almost automatically applicable to a world where we are aware of the numbers of humans inhabiting it.

This shows that actual markets may not be required for applying the theory. The reason for applying a thin conception of market is that in an egalitarian theory like Dworkin's actual distribution resulting from the operation of markets as they currently exist will not yield a just distribution. The market in Dworkin's thought experiment is highly idealized. First of all, built in it is the principle that people's initial resource shares ought to be equal in order to be able to participate in the auction on equal terms.<sup>322</sup> Second, the theory needs to account for differential natural endowments – talents and handicaps – as well. Dworkin uses a hypothetical insurance market scheme to take into account these considerations in the theory and outline a scheme of compensation. However, if what we need for determining an equal distribution of resources is hypothetical markets that correct

---

<sup>322</sup> Dworkin (2000: 70)

for the tendencies of actual markets to yield inegalitarian distributions, global principles of justice are not worse off than domestic ones, since we do not have at hand such just domestic institutions either. Therefore, the objection to a cosmopolitan version of equality of resources is not a real threat: it cannot limit the theory's scope to domestic institutions on the basis of a presumed asymmetry between the existence of domestic markets and the lack of them in the global domain.

## **2.2. The territoriality of political rule**

In addition to markets, political institutions also play a crucial role in the implementation of principles of justice. They have an important role to play in filling out the content of justice by translating abstract principles of justice into specific rights and obligations for individuals by way of law-making and policy-making. This role is tied up with the territorial nature of political rule.

Governance in modern politics has been intimately linked with territoriality. The system of modern states that formed in the late renaissance period in Europe, and has grown to encompass virtually the whole of the planet by the 20<sup>th</sup> Century, includes a significant territorial dimension in the exercise of political authority and in the distribution of resources. The state system is characterized by two central features: territoriality and sovereignty. Modern state is territorial in the sense that in the state system “rule is defined as exclusive authority over a fixed territorial space.” Territory becomes one of the defining features of political rule: reference to a particular geographical area is not only derivative, as it is in feudalism for example, but constitutive of this particular form of governance.<sup>323</sup> On the other hand, the modern state is regarded as sovereign, in the sense that “it claims final

---

<sup>323</sup> Spruyt (1994: 40)

authority and recognizes no higher source of jurisdiction.”<sup>324</sup> Of course the two features are closely related: when states claim sovereignty, they claim final authority within a particular *territory*. However, as we shall see later, sovereignty and territorial rule are separable.

This system of territorial states, though in a much modified form, still characterizes the world’s political setup at the beginning of the 21<sup>st</sup> Century. For the time being, I focus on the territorial nature of political rule to which modern states claim to have a right to. In the following paragraphs I am going to lay out its main characteristics and its implications to considerations of global distributive justice.

Territorial states, when claiming political authority, do not merely assert the fact of their actual power over a number of people, or over a circumscribed area. What they claim is rights of various sorts that are claimed to have a moral grounding. We can sort these rights claimed by states into three categories.<sup>325</sup> First, states claim rights over their subjects. Second, states claim rights against aliens. Finally, they claim rights over the use of their territory. Each of the three categories has a territorial dimension, as we will shortly see. Let us see in detail what particular rights have traditionally been thought to belong under these three categories of rights claimed by states.

The first group of rights is perhaps the most widely discussed in the political philosophy literature, mainly in connection with the issue of political obligation. States claim rights over subjects in the sense that they are regarded as entitled to be the exclusive imposer and enforcer of legal requirements on their subjects, i.e. mainly all those within their territory, who in turn are thought to have a corresponding moral obligation to obey these requirements. These rights have a territorial dimension because, as a central case, the state’s jurisdiction, i.e. the scope of its subjects is defined with reference to the territory over which the state claims rights of control. Those persons who find themselves on the territory

---

<sup>324</sup> Spruyt (1994: 35)

<sup>325</sup> I borrow this typology from Copp (1999: 18, 22-3), and Simmons (2001: 302-6).



of a state are by this fact regarded as bearers of legal obligations and rights imposed and enforced on them by this state. I refer to this as the central case because there are exceptions to it: citizens of state A residing in state B are still bound by the laws of state A, even though they are not within A's territory.<sup>326</sup> Conversely, residents of state A who are not its citizens are not bound by some of A's laws.

Rights against aliens include a state's right not to be interfered with in governing their subjects or territory by other persons, groups of persons, or states, and a right to control and prohibit movement across their borders.<sup>327</sup> The latter is perhaps the most conspicuous of these rights: most of us travelling abroad encounter states' control of movement across their borders, and large numbers of people also experience that states claim a right to restrict and fully control immigration to their territories. States' claims to rights of non-interference, on the other hand, are related to claims of self-determination, self-government, or external sovereignty, which are also regarded as important for states' exercise of political authority.

Finally I turn to states' rights over territory. Though the rights belonging to this group are much less discussed in the political philosophy literature, they are often taken for granted at the level of political practice.<sup>328</sup> These include various rights claimed by states such as "rights to reasonably full control over land and resources within the territory that are not privately owned", rights to specify property by enacting a property law regime governing the acquisition and transfer of property, as well as laws in criminal law against force and fraud in seizing property, and also rights to restrict the uses of property on their territory (e.g. by zoning laws, laws regulating the exploitation of natural resources, laws

---

<sup>326</sup> See Simmons (2001: 305).

<sup>327</sup> In including the right to control and prohibit movement across the state's borders under this category I diverge from the categorization provided by Simmons (2001: 306).

<sup>328</sup> Among the few notable exceptions in the political philosophy literature that do attempt to justify such rights we find Copp (1999); Baldwin (1992); Simmons (2001); and Schmidtz (1991).

restricting hazardous activities in populated areas etc).<sup>329</sup> Importantly, states claim the right to tax and regulate uses of even privately owned resources on their territory, which plays an important role in maintaining the conditions of background justice in which free interactions among persons can lead to a just distribution.

I set aside for a moment the important question about how many of these rights claimed by states, if any, are justified in the face of cosmopolitan egalitarianism. It may turn out on reflection that many of them are unjustifiable, or can be justified only in a much modified form. I will discuss such possibility in the next section. For now, we can observe that the implications of these rights claimed by states, especially of those under the second and third category, for the implementation of principles of distributive justice are very significant. Suppose we have reached an agreement on the principles of global justice, which turn out to prescribe an egalitarian distribution. As we have seen, cosmopolitan conceptions of justice are individualistic in the sense that, when determining principles of justice to govern distribution, they allow for taking into account only the interests of individuals at the foundational level. Egalitarian cosmopolitanism then prescribes a globally equal distribution of natural and social resources, with the proviso that interpersonal distributive inequalities are justified only to the extent that they result from the voluntary choices of individuals. Institutions must be so designed that they meet the requirement of a globally equal distribution of resources.

However, we have to distinguish between the ground for requirements of justice, and the manner in which they are implemented. Even though the underlying theory of justice that is supposed to guide the distribution of resources does not see institutions as playing a constitutive role in giving rise to the need for justice, the access of individuals to resources is not immediate even under a just distribution. Even if we can justify the claim that an

---

<sup>329</sup> Copp (1999: 22-3)

equal distribution of resources is a demand of distributive justice without making reference to institutions, and accept the claim that it is only individual well-being that matters when assessing the justice of institutions or distributions, individuals can have access to their fair share of resources only through political institutions they are subjects of. While the *object* of justice is individual well-being, the *addressees* of claims of justice are political institutions, and not separate individuals. Individuals make claims of justice on the political institutions of their states, and on global institutions if they exist; they do not make claims to resources vis-à-vis other individuals as individuals. We can see this if we consider the ways in which claims of justice are made on states both by subjects and by non-subjects. Let us seem them in turn, and also some considerations that might support this role of political institutions.

From inside the state, subjects have special claims on their states because it is only through the political institutions that they can have access to their fair share of resources, as defined by justice. We do not typically make claims of justice on our fellow-citizens individually, even if we think we are unjustly disadvantaged under the existing institutional scheme and some of them are unjustly advantaged. For instance, if I think A has more resources than he would have under an egalitarian distribution, and I have less, I do not demand that he should pay some amount over and above his fair share to my account. This is so even if his payment to me could cancel some injustice. Why is this so? Does it have to be so? Here I briefly mention two possible considerations supporting an affirmative answer, and I will provide a detailed argument in Chapter 7.

Both considerations rest on the recognition that political institutions play a noninstrumental role with regard to individual duties of justice. First, the demands of egalitarian justice are substantially underdetermined, and institutions can help make them determinate. So, in many cases what our fair shares of resources are cannot be determined without there actually being political institutions specifying these. Second, even if fair

shares of resources could in principle be determined without institutions, there still is disagreement in every society about the most basic things about justice. People disagree about the right principles of justice and, even if they agree on these, they disagree about the correct interpretation of such principles. In cases of such fundamental disagreement we need political institutions that coordinate individual conduct and provide assurance by making and enforcing authoritative decisions, thereby preventing individuals from acting on their own judgement about what justice requires in a given situation. So, it is our political institutions on which we make claims of justice because they make the demands of justice determinate and resolve disagreement about the right principles and their application. Of course, institutions are not ontologically distinct entities: they are systems of rules upheld by the conduct of individuals. So, the demands we make on political institutions ultimately boil down to a collective responsibility of individuals whose conduct make them up. Thus, the claims made by insiders on their political institutions represent a collective responsibility of the political community.

On the other side of the coin, claims of justice are made on political institutions not only from inside, i.e. by the subjects, but also from outside, i.e. by people not subject to their authority. Outsiders are excluded, at least to a certain extent, from access to a state's territory as well as, to a certain extent, from control over and access to resources within a state's territory. We can see this the most easily when we consider some rights claimed by states under the categories I called rights against aliens and rights over territory. For instance, with regard to rights against aliens, in most cases individuals are not free to take up residence in a country of their choice because of states' claim to right to control and prohibit movement across their borders. However, when exercising this right, states can be and have been held to account on grounds of justice, for instance on behalf of refugees

seeking asylum due to political or economic reasons. These claims of justice are made on political institutions and not on citizens one by one.

Also, with regard to rights relating to resources on their territory, we have seen that states claim rights to control resources that are not privately owned, rights to regulate property by a property law regime and by criminal law, rights to restrict the uses of property, and also the right to tax and regulate uses of privately owned resources. These rights exclude, to varying degrees, outsiders from access to and control over resources who, not being citizens, cannot influence the way decisions about regulation are made. This would not be a problem if outsiders had no stake in the way resources are used and distributed domestically. However, this is not the case. There are significant external effects which must be taken into account when we want the global distribution of resources to be just. Here again, however, claims of justice with reference to resources on a state's territory are addressed to political institutions governing their use and distribution, and not to separate individuals subject to their authority.

Can we find a justification for excluding outsiders from access to territory and resources? Here again, we need to consider the functions political institutions play. As I pointed out earlier, political institutions, by regulation and control, coordinate the use of resources and their distribution in accordance with justice on their territory. A further important function they have is that they are assigned responsibility for taking care of resources on their territory. As we have seen in Chapter 4, John Rawls argues in *The Law of Peoples*, an essential function of governments is to “be the representative and agent of a people as they take responsibility for their territory and its environmental integrity, as well as for the size of their population.”<sup>330</sup> The function of a territorial state as he sees it is to preserve the territory's natural resources and its capacity to support those living on the

---

<sup>330</sup> Rawls (1999b: 39)

territory *in perpetuity*.<sup>331</sup> This represents a collective responsibility of the subjects. Regulating the use of resources, population control and controlling immigration enables states to discharge this responsibility. Governments act in behalf of their subjects; however, their responsibility for the resources of their jurisdiction entails duties vis-à-vis outsiders as well. Governments have to regulate resource use and movement across borders in a way that is compatible with the requirements of global justice. Principles of global justice function as constraints on domestic policies.

As we have seen, the fact that in many cases claims of justice are addressed to political institutions and not to individuals is due to the territorial dimension of various rights claimed by states, and may be a permanent characteristic of politics. For some functions of governance at least, it may not be a contingent matter that they are performed on a territorial basis. However, as we will shortly see, the justification of specific territorial arrangements for the performance of these functions is significantly constrained by considerations of global justice.

### **2.3. The place of territorial political institutions in cosmopolitan justice**

As it has become clear from the previous section, the role territorial states may play in a theory of justice is not constitutive: it is not territorial rule that gives rise to a demand for justice. On the other hand, territorially based political units are indispensable for discharging principles of distributive justice, thus they have an important role to play in the theory. One important qualification is in order, however.

From what has been said the only thing that follows is that some sort of territorial governance is necessary for discharging the requirements of distributive justice and,

---

<sup>331</sup> For an illuminating account of how territorial states might perform this function, see Schmidtz (1991).

perhaps, that political units in a just global order will have various rights to territory. It does not follow, however, that particular states have rights to particular territories, with all the rights traditionally associated with territorial states. Nation-states' claim to territorial rights is not the last word in a cosmopolitan theory of justice. There might be several reasons why nation-states in their current form are not the appropriate bearers of at least some of these territorial rights, hence why the state-system as we know it needs to be replaced by some alternative global political regime. In the remainder of the chapter I will concentrate on two kinds of reasons calling for such reform: contingent, and permanent.

Contingent considerations might lead us to the recognition that some territorial rights usually associated with states have become outdated in the sense that, due to modern developments, either most states are no longer capable of exercising certain functions traditionally thought to justify these rights, or it is desirable that functions previously exercised by territorial states be transferred to supranational institutions. Recent social, economic, ecological, and technical developments have brought about the demand for supranational coordination in many areas. For instance, financial markets have become supraterritorial because of the liberalization of foreign exchange movements and the global volatility of capital due to developments such as the use of electronic transfer. As a result, global finance cannot be regulated and taxed by any single territorial state. This has been seen as a huge problem as states' control over resources has significantly diminished, and their vulnerability has increased. One very significant element of states' rights over their territory, that of restricting outsiders' control over and access to resources has in the case of many states come to be symbolic. The unprecedented rapidity of capital movements has made access to resources for foreign residents very easy in most countries. Responding to this problem has required supranational coordination and transnational cooperation.<sup>332</sup>

---

<sup>332</sup> Scholte (2002: 192-5)

Similarly, much of modern information technology, most notably the Internet, has developed features making it unsuitable for territorially based regulation. Alternatives to nation-state based territorial regulation have been introduced in the form of supranational regulatory bodies, transnational regulation by intergovernmental networks and by private regulation.<sup>333</sup> Also, due to the increase of the prospects for external effects of domestic economic activities, growing concern about cross-border environmental problems calls for regional and global coordination. Regulation by territorial states is now clearly incapable of decreasing global environmental risks.

Permanent considerations, on the other hand, might emphasize that not all the rights states have claimed may be justified on a cosmopolitan basis, and we may find that some of them are to be rejected. Perhaps the most obvious and the least contested case concerns the group of rights I termed as rights over subjects. The view that human rights place a significant limit to what states may do to their subjects has gained an ever increasing acceptance since at least World War II. It is now widely believed that states ought not to impose and enforce legal requirements on their subjects which are gravely unjust and, in the limiting case, violate basic human rights. However, in addition to domestic justice, considerations of global justice as well put a limit to state sovereignty. From among the group of rights I referred to earlier as rights against aliens, states' right to prohibit movement across their borders is significantly qualified by the aliens' right to free movement, for example. A right to cross-border migration may be justified, for example, by pointing out that someone is persecuted in her home country, or cannot fulfil even her basic needs due to crushing poverty. It can be claimed that prohibiting immigration in these cases would violate principles of justice, thus states do not have an unqualified right to do so. In a similar vein, from among the group of rights I called rights over territory, states' control

---

<sup>333</sup> Perri 6 (2002: 149-56)



over resources within their territory is qualified by considerations of justice. For instance, a state's laws regulating the exploitation of natural resources might be constrained by justice-based considerations, given a cosmopolitan commitment to an equal right of all humans to a share of the earth's resources, or given the requirement to avoid causing harm by environmental pollution to people outside the state.

Justice-based considerations give us compelling reasons to replace the state-system with an alternative global political regime. For example, nothing in the argument for territorial rule has as yet ruled out the possibility that a world-state or a worldwide federation could or should possess the territorial rights usually associated with nation-states. There are cosmopolitan theorists who advocate this solution, though a world-state is not the only, not even the most desirable, alternative to the system of nation-states.<sup>334</sup>

One ingenious alternative was presented by Thomas Pogge in 'Cosmopolitanism and Sovereignty'. He proposes a multilayered global institutional scheme in which authority is "vertically dispersed" rather than concentrated almost entirely at the level of nation-states. This system would be superior to the system of nation-states because, by dispersing authority over various levels rather than concentrating it in states, it could significantly reduce the likelihood and the intensity of conflicts within and among states, "thereby reducing the incidence of war, poverty, and oppression".<sup>335</sup>

Pogge's scheme would represent a significant improvement over the current system of nation-states, however, it is still characterized by an exclusive focus on territorial rule. It operates on the assumption that sovereignty is properly exercised over territorially defined units.<sup>336</sup> However, this assumption has been shown untenable by developments over the last decades. As we have seen, numerous economic, environmental, and political issues have

---

<sup>334</sup> For a proposal for world-government see Nielsen (1988: 263-82).

<sup>335</sup> Pogge (2002: 181-9)

<sup>336</sup> Kuper (2000: 657)

arisen that cut across state boundaries and defy territorial regulation, such as crime on the Internet, regulation of financial markets, prosecution of violation of human rights, and environmental protection. Such issues support the claim that, for a range of human activities, territorial governance may not be a good, or the best, way of regulation.

As we have seen, an increasing number of functionally defined, nonterritorial bodies are already in place. Thus territorial political authority has in practice already been supplemented by a horizontally dispersed, functionally defined system of global governance. This multilayered system is very complex and its development does not point in the direction of a unitary world-government. It is rather a mixture of various levels and forms of governance making up a system with “criss-crossing lines of authority”.<sup>337</sup> Jurisdictions within it are not clear-cut, but often competing or overlapping, “generating ambiguities about the principal location of authority and political responsibility.”<sup>338</sup> Some of the institutions making up this system have powers of enforcement, others operate on the basis of voluntary self-regulation. Some of them have territorial jurisdiction, others do not, and even when territorially defined, authority is often not located at the level of nation-states (see the institutions of the EU). Some of these institutions perform a limited set of functions, others have a wider scope of authority.<sup>339</sup> Some of them have supranational authority such as the UN network, others are transnational, such as transgovernmental and business networks, NGOs, yet others operate at the substate level, such as community associations and city governments.<sup>340</sup> This is a complex, multilayered scheme of institutions performing supra- and transnational, regional, and local governance with a mixture of functionally and territorially defined authority.

---

<sup>337</sup> Kis (2001: 223)

<sup>338</sup> Held and McGrew (2002: 10)

<sup>339</sup> Kis (2001: 223)

<sup>340</sup> For an illuminating account of the working of intergovernmental networks and of their increasing significance for transnational governance, see Slaughter (2004).

The elements of this scheme have been set up for various reasons, prudential and moral. Considerations of global justice may not figure very prominently behind many of these. However, requirements of global justice do push us further in the direction of relying on some of the existing elements, reforming others so that they better fit principles of global justice, and establishing new ones, rather than returning to the system of territorially defined nation-states.

### 3. Summary and conclusion

I began the chapter by presenting the outlines of cosmopolitanism about justice in general, and egalitarian cosmopolitanism in particular. I have argued that cosmopolitanism is committed to seeing the problem of justice as the problem of finding fair principles for distributing scarce resources among all humans, who have an equal *prima facie* claim to the earth's resources. It is committed to the requirement of a distribution which pays equal concern or respect to the interests of all humans by virtue of their being humans. As a specific version of it, egalitarian cosmopolitanism demands that people's fates should depend on the choices they make, and should be insensitive to the social circumstances they are born into, or to their natural endowments. This commitment calls for global redistribution on the basis of justice. Next, I argued that though egalitarian cosmopolitanism does not regard institutions as having a foundational role in giving rise to the problem of justice, institutions in general, and political institutions in particular, might be indispensable for the implementation of principles of global justice. I presented several considerations that might support this view of the role of institutions. First, institutions might be indispensable for implementing principles of justice if they are necessary for determining the value of resources to be distributed. If this is the case, the scope of justice might be conditional on the existence of actual markets enabling interpersonal comparisons of resource-bundles to

take place. I argued, however, that hypothetical markets suffice for this purpose, thus the scope of justice is not conditional on the scope of actually existing markets. Next, I showed that territorially demarcated political institutions might be necessary for the performance of some functions indispensable for securing justice. Such institutions make the demands of justice determinate, resolve disagreement, and prevent resources on a territory from deteriorating by bearing responsibility for their preservation. However, the various roles played by institutions in the implementation of principles of justice, important as they are, do not override considerations of global justice, but are constrained by them. Reasons of global justice may prescribe the replacement of the current system of nation-states by a feasible alternative that is more sensitive to the demands of global justice. Such a reform is likely to proceed in the direction of a horizontal dispersal of sovereignty among territorially defined political units, and a vertical dispersal of authority by a growing emphasis on functionally defined authority in global governance. In order to further clarify the place of institutions in a cosmopolitan egalitarian theory of justice, I turn to examining in the last chapter the role they play with regard to the duties binding individuals.

## Chapter 7

### The role of institutions in cosmopolitan justice

The chapter focuses on a distinction between two kinds of theories about the role of institutions in cosmopolitan justice. Some philosophers claim that principles of egalitarian justice apply to institutional schemes only, and do not apply to the actions of individuals. Others think that principles of egalitarian justice apply also to the actions of individuals. I aim to clarify this debate with a view on cosmopolitan justice by examining whether institutions can make a non-instrumental difference to what people ought to do with regard to distributive justice. The starting point is the outlining of two positions concerning the significance of institutions in cosmopolitan justice. The first position argues that institutions enable a more effective discharging of individual preinstitutional duties, however both institutions and individual conduct are to be evaluated with the same fundamental principles. The second position aims to establish the special significance of institutions in global justice by regarding them as possible channels of collective harm. In contrast to these two strategies, I provide an argument for regarding institutions as making a non-instrumental difference to what people ought to do with regard to cosmopolitan justice. The argument purports to establish that some fundamental cosmopolitan principles of justice do not apply to individual conduct directly. It emphasizes the constitutive role of global institutions in distributive justice on the basis of the conditional character of moral duties and of the systematicity of institutional schemes. The thesis is justified by reference to institutions' capacity to solve coordination problems and conflicts raised by the fact of disagreement, and their capacity to determine a unique set of just distributive rules, given the essentially underdetermined character of the demands of justice.

## 1. Two variants of cosmopolitan theory

In the previous chapter I defended a cosmopolitan version of egalitarian justice that does not regard institutions as having a foundational role in giving rise to some demands of distributive justice. I want to conclude the argument of this thesis by examining what role institutions do play in a cosmopolitan theory. In particular, I want to examine how individual duties relate to the principles of justice cosmopolitan egalitarians defend, and what difference institutions make to the duties of individuals. Doing so is important for the following reason. The recent philosophical literature about distributive justice focuses on institutions. Discussions concern what principles a scheme of political and economic institutions must satisfy in order to qualify as just. However, institutions are sustained and reformed by individuals. In order for political philosophy to have any normative significance for individual conduct, it must tell us about the duties of individuals sustaining these institutions.

This holds for theories of global justice too. Most of the proposals concerning global distributive justice focus on the role of global institutions. They emphasize the role of institutions either in the justification of extending the scope of principles of justice to the global domain, or in the implementation of principles with a global scope. In order to clarify the role of institutions in global justice, I propose to frame these theories along the lines of a distinction between two types of such theories with regard to how they relate the justice of institutions to the duties of individuals. Some theories of global justice – to which I refer as ‘institutionalist’ – claim that some fundamental principles of egalitarian justice apply to institutional schemes only, and do not apply to the actions of individuals. On the opposite end we find theories – to which I refer as ‘non-institutionalist’ – that claim that all

fundamental principles of egalitarian justice also apply to the actions of individuals.<sup>341</sup> If it is a fundamental principle of justice that “an egalitarian distribution of resources ought to be promoted” then, on the institutionalist position, this principle may not apply to individual conduct, but it does apply to institutions. On the non-institutionalist position, by contrast, this principle should directly guide individual conduct as well as institutional design. Therefore the principle “everyone ought to promote an egalitarian distribution of resources” would be a fundamental principle of individual conduct according to non-institutionalists. The two types of theories employ different strategies in defending principles of justice with global application. Most theorists defending the institutionalist strategy argue that there exist global institutions subject to assessment in terms of justice, which trigger the demand of distributive equality. The existence of such institutions gives rise to obligations of justice among people living in different countries. Participants in these institutions ought to promote the reform of unjust institutions, and sustain just ones.<sup>342</sup> Theorists who pursue the non-institutionalist strategy argue, by contrast, that everyone has to promote equality globally, regardless of the existence of global institutions, and the role one plays in them.<sup>343</sup> This chapter seeks to clarify this debate by examining whether institutions can make a non-instrumental difference to what people ought to do with regard to distributive justice. That is, to examine whether the role played by institutions is more than merely instrumental in discharging individual egalitarian duties existing prior to and independently of the rules or

---

<sup>341</sup> Cosmopolitan or domestic versions of both types of these theories have been defended by several authors recently, most notably by John Rawls, G.A. Cohen, Joshua Cohen and Charles Sabel, A. J. Julius, Thomas Pogge, and Liam Murphy. See Rawls (1999a), Cohen (2000), Cohen (2001), Cohen and Sabel (2006), Julius (2006), Pogge (2000), and Murphy (1999). The debate is usually framed in broader terms than a debate about egalitarian duties. Thus Murphy speaks of a distinction between ‘dualism’ and ‘monism’, where monists hold the position that “all fundamental normative principles that apply to the design of institutions also apply to the conduct of people”, whereas dualists deny it. See Murphy (1998: 252). Pogge in Pogge (2002), on the other hand, does not speak about egalitarian cosmopolitan duties as such, but only about cosmopolitan duties. I shall focus on the requirements of egalitarian justice, but the argument of the chapter will be relevant for that broader distinction too.

<sup>342</sup> See Pogge (2002).

<sup>343</sup> Murphy (1999: 281)

commands of institutions. Finding an affirmative answer could help illuminate what is at stake in the debate between institutionalists and non-institutionalists, and also provide a plausible defence of a qualified institutionalist position. In order to approach the problem, I present two alternative positions about whether or not all fundamental principles of egalitarian justice apply also to the actions of individuals. One of them answers this question in the affirmative, and regards institutions as enabling a more effective discharging of individual egalitarian duties. The second position holds that there are some fundamental egalitarian duties that do not apply to individuals directly, since it sees institutions as possible channels of collective harm. I conclude the chapter by presenting a third alternative which gives the outlines of a case for justifying the claim that institutions make a non-instrumental difference to what we ought to do.

To recall, I follow Rawls in defining an institution as a “public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like.”<sup>344</sup> An institution exists when a number of people regularly and knowingly follow its rules. In this sense institutions are constituted by the conduct of individuals upholding it. It remains to be seen, however, whether, by following the rules of institutions, individuals are also subject to the same moral requirements as are institutions conceived as systems of rules. On the other hand, this definition of institutions stands in contrast with another way of understanding them, also present in ordinary language, as collective bodies, or organised agencies, such as firms or universities. Rawls’ definition of an institution as a practice is theoretically more helpful, since it does not presuppose collective decision-making capacity, so I will adhere to it in the chapter.

---

<sup>344</sup> Rawls (1999a: 55)



## 2. Non-institutional egalitarianism

The first group of theories I examine holds that all fundamental principles of egalitarian justice apply to the actions of individuals, even when some of them applies to institutional schemes too. I shall refer to this group as ‘non-institutionalism’, and I regard it as a version of monism. The term ‘monism’ was introduced by Liam Murphy to refer to the view that “any plausible overall political/moral view must, at the fundamental level, evaluate the justice of institutions with normative principles that apply also to people’s choices.”<sup>345</sup> Non-institutionalism is a special application of monism when applied to egalitarian justice, i.e. when concerned with specifically egalitarian principles. Institutionalism holds, by contrast, that there are some fundamental principles of egalitarian justice that do not directly apply to the actions of individuals.<sup>346</sup> Recently, this view has been famously defended by Rawls, who holds that different principles are appropriate for different types of subjects, depending on their normatively significant features: “the correct regulative principle for a thing depends on the nature of that thing.”<sup>347</sup> As we saw, his principles of justice are designed to regulate neither the personal conduct of individuals, nor the working of private associations, nor the international relations of states, but only the basic structure. It is true, institutions are systems of rules which only exist when individuals regularly and knowingly follow them. They are upheld and reformed by individuals. For this reason, a theory of justice must say something about what duties individuals have with regard to justice. Rawls’s answer to this problem is to postulate a natural duty of justice. He claims that individuals have a natural duty to “support and comply with just institutions that exist and

---

<sup>345</sup> Murphy (1999: 254)

<sup>346</sup> Murphy terms the alternative to monism as dualism, viz. the view that “the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle.” Murphy (1999: 255). It has been suggested that dualism is an unhappy name for that view, since individual conduct and institutional design do not jointly exhaust the set of moral domains, hence pluralism would be a better term. See Pogge (2000: 154), Nagel (2005: 122), Cohen and Sabel (2006: 159).

<sup>347</sup> Rawls (1999a: 25)

apply to [them]”, and they also have a duty to “further just arrangements not yet established, at least when this can be done without too much cost to [themselves].”<sup>348</sup> An important feature of this duty is that it is natural, hence preinstitutional. For Rawls, this means the conjunction of two things: such duties apply to individuals regardless of their voluntary acts, and they apply to them prior to and independently of the rules of institutions. As Rawls puts it, the content of such duties “is not, in general, defined by the rules of [institutions].” On the other hand, the content of this duty is different from the content of principles of justice which apply on Rawls’s view exclusively to the basic structure of the society.

The Rawlsian view contrasts with monistic theories such as utilitarianism, which use the same criterion to evaluate all the moral domains. Non-institutionalism in this respect is similar to utilitarianism: the difference between the two lies in the content of fundamental principles they use for evaluating both personal conduct and institutions. Now, of course even on the non-institutionalist view there might be political principles that do not apply to personal conduct. One such principle, referred to by Murphy, is the principle that “taxation should be levied according to taxpayers’ ability to pay.” Such principles are not fundamental, however. What non-institutionalism rejects is that, in defending such non-basic principles, we can appeal to fundamental egalitarian principles that “do not also apply directly to people’s conduct.”<sup>349</sup> So if we suppose it is a fundamental principle of egalitarian justice that “an egalitarian distribution of resources ought to be promoted” then this principle should directly guide individual conduct, in addition to being a standard for institutional design. In other words, we would then have a principle of morality, applying to individuals, stating that “everyone ought to promote an egalitarian distribution of resources.”

---

<sup>348</sup> Rawls (1999a: 99)

<sup>349</sup> Murphy (1999: 254)

### 3. The more effective discharge of pre-existing individual duties

Even though they do not regard institutions as being of foundational importance in egalitarian justice, those advocating the non-institutionalist view do not downplay the importance of institutions. They regard them as having special significance in a theory of justice in that they are seen as very often the most effective means to carry out the preexisting duties individuals have independently of their participation in institutions.<sup>350</sup> We can construct an argument for this position along the following lines.

Suppose individuals have a natural duty to promote an egalitarian distribution of resources. In complex societies it would be immensely difficult for an individual to know exactly how to act in order best to promote overall equality. In order to know what to do, we have to have access to all sorts of relevant information, such as that about the current distribution and the expected effects of all possible courses of action available to us. But this requirement represents an insuperable informational difficulty for individuals. We are not in the position of the imaginary 'Impartial Observer' of moral theories: we lack perfect rationality and perfect endowment with all relevant information. We have limited time and other resources available to make sure of what the morally optimal action is. With regard to the demands of egalitarian justice, most often we are not in a position to determine what course of action would best promote equality at any specific moment. Because of these significant limitations, individual actions aiming at promoting equality, if based on the judgement of each by her own reason alone, could achieve the goal with significant waste only. The aims of egalitarian justice can be achieved more effectively by creating and maintaining just institutions, i.e. systems of rules following which we are more likely to achieve the egalitarian aims than could our independent individual actions intended to bring about the same effect. We can think of cases like this very easily. For instance, a social

---

<sup>350</sup> This point was made in Murphy (1999: 278-84). See also Shue (1996: 166-73).

division of labour, involving experts with special skills or knowledge, and the assignment of special rights and responsibilities, might make attempts to pursue equality more effective. In cases like this individuals are not to follow a course of action which they personally think would best promote equality. They have a duty to follow the rules of just institutions if they exist, and create new institutions when they are not yet in place, in order to bring about equality in the most effective way.

With an eye to the debate between the institutionalist and non-institutionalist, we have to attend to what this argument is actually capable of establishing. It does not show that institutions do make a non-instrumental difference with regard to individual duties of justice. What it establishes is merely that we have to *conform to* the rules of institutions because doing so will promote equality better than could our individual actions following our independent judgements. That is, we have to perform the same acts as are required by the rules of institutions, but not *because* they are required by the rules of institutions. In principle, the two kinds of reasons – those enjoined by institutions and those required by independent moral duties – may come apart. Were it to be the case that at least on some occasions I know precisely what I have to do in order to promote equality in the overall distribution, I would be obliged to act upon my judgment, regardless of what the institution commands me to do in that case. According to the argument from institutional effectiveness, I have to act on the balance of reasons applying to me when deciding whether or not to follow the institution's instructions. Since by conforming to the rules of an institution I have a higher chance of being able to promote equality than by acting on my own judgement, my duty to promote equality, together with the empirical thesis about the effectiveness of institutions, prescribe for me conforming to the rules of the institution. However, the fact that we have to decide on the balance of reasons whether or not to do as the institution says means that the same rules apply to the conduct of individuals as to the design of institutions.

It just happens to be the case that by acting in conformity with the rules or commands of institutions individuals are more likely to meet their individual duties that exist prior to and independently of these rules or commands.<sup>351</sup> That institutions may prescribe a duty does not add anything substantial to our individual duties existing prior to and independently of institutional rules. This argument does not show that we have a duty to *comply with* the rules of institutions. Since this is so, the institutionalist position is not supported by considerations of effectiveness, hence we have to look for other considerations to see if the institutionalist cases can be defended.

#### 4. Institutions as channels of collective harm

The second position about global justice I want to examine belongs to the institutionalist camp. It argues for the special significance of institutions on the basis of the recognition that individuals can do wrongs to one another collectively, with the mediation of institutions, that they cannot do individually. Thomas Pogge takes such an institutionalist position in Pogge (2002). There, Pogge distinguishes between what he calls interactional and institutional understandings of cosmopolitanism. He claims that on the institutional understanding, “fundamental principles of social justice” apply to institutional schemes, and only indirectly to individual conduct, whereas on the interactional view, moral principles apply to individual conduct directly.<sup>352</sup> In this section I look at how this might be so by interpreting some statements of Pogge, although there is no suggestion that in making these statements he is concerned with this particular point discussed here. Nevertheless, putting them into the context of the stated problem helps to illuminate some important points about the debate between the institutionalist and the non-institutionalist.

---

<sup>351</sup> The distinction between *conforming to* and *obeying* the rules of a political institution is discussed in Raz (1984: 141), and further elaborated with great clarity in Kis (2002). The distinction relies on a prior one between *conforming to* and *complying with* reasons for action. See Raz (1990: 178-9).

<sup>352</sup> Pogge (2002: 170)

Pogge argues that “by significantly cooperating in the imposition of social institutions we acquire a shared negative responsibility for at least their foreseeable and avoidable effects”.<sup>353</sup> By creating and maintaining an unjust institutional scheme advantaged participants are causally responsible for the injustice, and acquire moral responsibility by violating the basic duty not to harm others. Institutions have special significance with regard to justice, because – so the argument runs – our negative responsibility for what we bring about is significantly weightier than our responsibility for what we allow to happen, and institutional injustice represents the violation of a negative duty.<sup>354</sup>

Pogge offers two interpretations of the claim that by cooperating in the imposition of an unjust institution people violate their negative duty not to harm others, unless they at least make compensatory effort. The difference between the two interpretations lies in the way they relate the notions of harm and justice. First, we can understand claims of justice in terms of harm, which notion is in turn specified independently of justice. On this view, injustice has been done only if someone has been harmed by others: in this sense, harm is the primary concept, while justice is secondary to it. Now, the concept of harm necessarily makes reference to some baseline to which the actual situation is being compared. Thus, in judging whether harm has been done, what baseline we employ makes a significant difference. Pogge considers two such baselines. One is diachronic, i.e. it involves a comparison of the current state of the relevant person with the position of this person at some earlier time. The second baseline is subjunctive: it compares the current state of the person with the hypothetical situation which would obtain “had some earlier arrangements continued undisturbed.”<sup>355</sup> An example of the latter is a state of nature that would obtain in

---

<sup>353</sup> Pogge (2000: 166)

<sup>354</sup> Pogge (2002: 65, 133)

<sup>355</sup> Pogge (2005a: 4)

the absence of any kind of institutional interaction, and where individuals would be entitled to an equal share of the earth's natural resources.<sup>356</sup>

It would follow from this first interpretation of Pogge's claim that advantaged participants of an institution have violated their duty not to harm others if they have made other participants worse-off as compared to the relevant baseline.<sup>357</sup> If this is the case, Pogge goes on to argue, they have to stop harming the poor, and have a corresponding duty to compensate for the harm. The ground for this duty would be that everyone has a negative natural duty not to harm others, and by imposing on others an institutional scheme that harms them, some participants have violated this duty.

This interpretation would see the justice of institutions as deriving from the pre-institutional duty of those upholding the institution not to harm others. Institutions would be evaluated on the basis of the harm people cause to one another through them. This interpretation of the harm-based case for the special significance of institutions may run into a number of difficulties if it relies on a commonsense notion of harm. In order to prove that we have individually harmed others in this sense through institutions, ordinary morality suggests a number of necessary conditions. One such condition is that the fact of harm must be correctly attributable to our actions. Our actions must be causally firmly related to the change in the well-being of the victim, that is we must be seen as *causing harm* to her. Related to this is the requirement that the position of the person harmed must be worse-off than some relevant baseline. As we saw, Pogge considers two such historical baselines: diachronic, which looks at actual history, and subjunctive, which relies on a fictional history.

---

<sup>356</sup> Pogge (2005a: 3)

<sup>357</sup> Actually, Pogge argues that the global rich have made the global poor worse-off as compared to both baselines. (Pogge 2002).

Critics have objected that the application of these conditions to the justice of institutions is problematic. Attributing individual responsibility for harming others may be questionable in the case of participants in large-scale institutions, where the effect of individual actions on the well-being of others is very small or zero, and where the conditions for holding someone responsible for the harm might not hold. Thus it may be problematic to translate the injustice of an institutional scheme into a moral standard of negative individual responsibility.<sup>358</sup> Attributing responsibility for harm to participants in an institutional scheme has been challenged for another reason too. It has been argued that what would follow from the application of a hypothetical non-cooperative baseline is merely that the rich must compensate the poor up to their counterfactual level of well-being, implying that large social inequalities would be permissible if the poorest of the society are at least as well-off as they would be in the absence of institutional interaction with others. This claim, in addition to being highly speculative, seems to demand too little from the rich and is not intuitively appealing.<sup>359</sup>

These objections may or may not be persuasive, depending on what one thinks of the validity of the precepts of ordinary morality. Granting for the sake of argument that participants in an unjust institution in fact harm others, let us see what the first interpretation can establish with regard to the institutionalist case, and what it cannot. This interpretation is suggested as one possible justification for the claim that – by being channels of collective harm – institutions make a difference to duties individuals have prior to their participation in institutions. Having laid out the argument, we see that this interpretation is insufficient to show that institutions make a real difference to individual duties in this sense. It takes the individual negative duty not to harm others as basic, and derives our duties concerning unjust institutions from this duty. Institutions are unjust insofar as through them individual

---

<sup>358</sup> Satz (2005: 50-3). For a general description of this problem see Scheffler (2001: 38-47).

<sup>359</sup> Murphy (1999: 273), Patten (2005: 24)



participants harm others. With the mediation of institutions we merely violate the negative individual duty we have even in the absence of any institution. Being implicated in unjust institutions we have a correlative duty to compensate those adversely affected by the institution for the harm we have caused to them, but this duty also applies to us directly.

To see that the same principles apply to individual conduct and institutional design, let us consider two cases. The first is the ideal-theory case: suppose we collectively participate in a just institutional scheme under which no one is harmed according to the relevant baseline. In this case, in order to avoid harming others unduly, we would have a duty to do our fair share under the just scheme, whereas institutions would have to make sure that everyone contributes her fair share. From this it follows that the same principles apply to individuals and institutions.

Now let us change the scenario to one in which we participate in an unjust institutional scheme. In this case those unjustly advantaged, on pain of unduly harming those unjustly disadvantaged, have a corresponding duty to contribute their share in compensating for the harm. The required amount of compensation would depend on the baseline we employ in measuring the level of harm. Nevertheless, with both baselines, we would have to make up for our share in the harm by compensating those unjustly disadvantaged. On the other hand, institutions ought to be so reformed that they make sure that everyone contributes and receives the amount of compensation that is due to them in order to bring about a just state of affairs. Again, the same principles apply to individual conduct and institutional design. The general reasons for this is that, in both the ideal-theory and nonideal-theory cases, there is an independently specifiable share we are required to contribute in order to avoid harming others, and institutions are to make sure that everyone contributes exactly this share. The claim that requirements of distributive justice apply only to institutions, and do not apply to individual conduct, is not warranted.

The second interpretation Pogge offers of our responsibility for the injustice of institutions employs a nonhistorical baseline. It reverses the way harm and justice are related, as it defines harm partly “in terms of an independently specified conception of social justice.”<sup>360</sup> Participants in an unjust scheme of institutions can be seen as violating their duty not to cooperate in imposing on others unjust institutions, and as having a corresponding duty to promote the reform of the scheme in order to make it more just. On this interpretation, those unjustly advantaged under an unjust scheme are seen as having collectively violated their duty not to harm others insofar as they “collaborate in imposing” on them unjust institutions, that is, institutions that predictably lead to outcomes that are worse from the point of view of justice than those of the best available institutional scheme. From the viewpoint of egalitarian justice, if some alternative scheme were more egalitarian than the current one, by being implicated in the current scheme the wealthy are harming other participants, notably those who fare worse than they would under the more egalitarian scheme.<sup>361</sup>

Let us see if this interpretation succeeds in separating individual duties from the justice of institutions. In order to be just, institutions ought to be so arranged as to yield an egalitarian distribution among their participants. Individuals have a duty not to impose unjust institutions on others, at least not without compensating them for the injustice. Correspondingly, those who are implicated in unjust institutions have a duty to promote the reform of those institutions or compensate those unjustly disadvantaged for the share of the collectively caused harm for which they are responsible.<sup>362</sup> Pogge uses this caveat about fair shares of compensation for collectively caused harm in order to avert the criticism that such

---

<sup>360</sup> Pogge (2005a: 5)

<sup>361</sup> Pogge does not cast the theory of justice relevant for this form of harm in egalitarian terms. The rather minimal conception of justice he employs is concerned with human rights fulfilment only. This difference does not affect my argument, however, so I refer to an egalitarian baseline in the chapter.

<sup>362</sup> Pogge (2005b: 60-1)

a duty would end up being as demanding as an unlimited positive duty to assist those unjustly disadvantaged. We do not have a duty to promote an egalitarian distribution endlessly; only up to a point when we have made up for our share in the collective wrongdoing.<sup>363</sup>

This second reading of the harm-based case for the special significance of institutions is still open to the objection, raised against the first interpretation, that it cannot establish that institutions make a real difference to pre-institutional duties. The same fundamental principles apply to the design of institutions and to individual conduct.

In order to see that this is so, consider again an ideal-theory and a nonideal-theory case. Suppose we collectively participate in a just institutional scheme under which everyone gets what is due to her under an egalitarian distribution of resources. In this case participants, on pain of being unjust to others, have a duty to do their fair share in upholding the scheme, whereas institutions have to make sure that everyone contributes and receives her fair share.

In the nonideal case, by being implicated in an unjust scheme, advantaged participants acquire a duty to contribute their fair share in compensating those unjustly disadvantaged, i.e. in working towards an egalitarian distribution of resources. Presumably they do not have a duty to promote an egalitarian distribution in a state of nature: they only have a duty not to collaborate in imposing on others an inequalitarian scheme without making “compensatory protection and reform efforts for its victims.”<sup>364</sup> In this sense, some kinds of institutional interaction generate a new duty which does not exist in the absence of institutional interaction. Once we do participate in an unjust scheme, however, we are

---

<sup>363</sup> When specifying the amount of compensation participants in unjust schemes are required to make, Pogge says they would be required to contribute “as much as would be necessary to eradicate the harms if others similarly placed made analogous contributions (regardless of what they actually contribute)”. Pogge (2002: 245, footnote 246). In making this claim he relies on the idea of collective consequentialism, which was first formulated by Derek Parfit in Parfit (1984: 31).

<sup>364</sup> Pogge (2005b: 69)

required to do our share in compensating the victims. This new requirement clearly applies to individual conduct,<sup>365</sup> as well as it guides the reform of institutions. Again, as in the case of the first interpretation, there is an independently specifiable share individuals are required to contribute and are due to receive in order to make the distribution just. Institutions are to make sure that everyone contributes and receives exactly this share. Thus the non-institutionalist position still holds, since the same principles apply to individual conduct and institutional design. There is no difference in the *content* of individual duties and principles used for evaluating institutions.<sup>366</sup> Pogge's arguments may turn out to be successful in establishing that the current global order is unjust, and that by being implicated in it those more advantaged are harming the worse-off, but they cannot show that principles of justice do not also apply to individual conduct.

The explanation for the failure of this kind of theory to show that institutions make a noninstrumental difference to individual duties might be the following. The duty of individuals implicated in an unjust institution to contribute, if based on their share in a collective wrongdoing, does not depend constitutively on the content of the commands or rules of any institution. It is based on the pre-institutional duty of each individual not to harm others collectively by imposing on them inequalitarian institutions, and, once implicated in an unjust scheme, to do their share in compensating those unjustly disadvantaged for the harm. The content of duties binding individuals under just or unjust institutional schemes is fully specified independently of and prior to the rules or commands of institutions. If participants in an unjust practice had enough information to determine

---

<sup>365</sup> This reading of Pogge's statements is supported by the following claim of his: "The word 'compensate' is meant to indicate that how much one should be willing to contribute toward reforming unjust institutions *and* toward mitigating the harms they cause depends on how much one is contributing to, and benefiting from, their maintenance." Pogge (2002: 50, emphasis added).

<sup>366</sup> See Murphy's claim that we can formulate a monist version of Pogge's argument according to which institutional interaction would define the scope of obligations of egalitarian justice, where individuals would have a duty to promote equality among those with whom they are interacting. The present interpretation of Pogge says in effect that this is indeed what Pogge's statements suggest. Murphy (1999: 274-5)

what in a given situation their fair share to contribute to the reform would be, so as to eliminate the disadvantages of other participants, they would have a duty to contribute exactly this share, regardless of institutional commands. In the terminology Joseph Raz uses in describing the problem of political obligation, the existence of an institution does not replace our reasons for acting in a certain way, it only adds some new consideration we have to weigh against others in order to decide how to act.<sup>367</sup> So the argument from a collective causal responsibility for harming others does not show that institutions make a non-instrumental difference to individual duties. Hence, in order to make a case for the institutionalist position, I propose to return to the argument from effectiveness, and modify it in a way that is capable of establishing the non-instrumental significance of institutions.

## 5. Institutions making a difference

I try to provide an argument for the institutionalist position by focusing on the coordinating role of institutions. In order to proceed, I return to the picture drawn by the effectiveness argument for institutions, and propose to modify it slightly. As we recall, the starting point for that argument was that humans are fallible beings, with a limited capacity to collect and process information, and that they are imperfectly rational and imperfectly motivated to act upon purely impartial considerations. In addition we know that this is so not only with ourselves, but with most other people too: individuals are symmetrically based. We also know that the outcome and moral evaluation of our actions depend not only on what we do, but also on what other people do. Many of our duties are conditional on the actions of others. This is because of the further assumption that in many cases the morally required consequence is brought about only if everyone in a group, or a sufficiently large number of

---

<sup>367</sup> See Raz (1986: 42-6) for a characterisation of political institutions that makes it a necessary condition of political authority that its commands replace the subjects' prior reasons.

people follow the same course of action.<sup>368</sup> However, in many cases we are uncertain about what other people think is the morally best action, and what action they would follow on the basis of their independent judgement. In such cases coordination is needed among individuals to create the assurance that the others act in certain ways.<sup>369</sup> Now, let us look at instances when it is morally desirable that people follow the same course of action.

Suppose my doing A would result in the morally optimal outcome if others followed suit. However, my doing A may be counterproductive if others follow a different course of action, B. In such a case my action will produce an outcome that is worse than what would result from my doing B. This is so even if I am right about that our joint action A would be the morally best action. Even in this case our joint action B may produce a morally superior outcome than the outcome that results from diverging actions. Institutional rules are an effective means to provide individuals with the requisite assurance to secure coordination.<sup>370</sup> With regard to equality, we may be required to comply with the rules of institutions instead of acting in a way that we think would bring about a more equal outcome.

An analogous argument can be produced on the basis of conflict resolution. Suppose morality requires that individuals perform the same action. Suppose further that people disagree over the morally best course of joint action. Disagreement may arise because of self-interest, but not necessarily so. Individuals may disagree in good faith about the impartially best joint action, regardless of how they individually fare under it. In both cases, however, the structure of the conflict is the same since we assume that, due to the importance of the case, parties may find it advantageous to enforce their preference and rule out alternatives by applying force. Being placed symmetrically and without having assurance to the contrary, they can expect others to be similarly motivated to enforce their

---

<sup>368</sup> Waldron (2003: 50)

<sup>369</sup> See Waldron (2003: sections IV-V)

<sup>370</sup> Kis (2002)

preferred option and exclude dispreferred ones. This being so, they will find it rational to inflict preventive attack on others.<sup>371</sup> Applying force, however, is morally wrong. This moral wrong is additional to the failure of a joint action to be realized since individuals ought to avoid violence in any case.<sup>372</sup> In order to avoid violating this duty parties have a duty to overcome such conflictual situations.<sup>373</sup> Institutions, by yielding and enforcing authoritative decisions, are capable of supplying assurance to individuals subject to them, and hence make preventive attack unnecessary. Thus, parties are morally required to comply with institutional directives, even if they judge some alternative course of action morally superior, so that with regard to equality, they think it would bring about a more equal outcome.<sup>374</sup>

These arguments to the effect that institutions do make a difference to what individuals ought to do were based on the need for assurance to coordinate action and solve conflicts due to certain individual characteristics of the parties involved. However, in other cases it can be the characteristics of moral duties that necessitate setting up institutions. The content of moral duties is very often underdetermined. The moral importance of regulating human conduct in such instances often requires prescribing some determinate course of action for agents, because such moral duties are in need of further specification.<sup>375</sup> For example, we have a duty not to kill. However, under certain circumstances we are permitted to kill: self-defence is one such instance. So it is of enormous importance to distinguish properly between unjustified killing and killing in self-defence. However, the term self-defence inevitably makes reference to vague predicates such as that the reaction to the threat

---

<sup>371</sup> As it has already become familiar, this is the structure of the Hobbesian account of conflict among individuals in the state of nature.

<sup>372</sup> See Kant's "irresistible veto" of practical reason prohibiting violence, proclaiming that "There is to be no war". See Kant (1991: 160, 354)

<sup>373</sup> See Jeremy Waldron's interpretation of Kant's social contract theory along Hobbesian lines in Waldron (1999a: Chapter 3).

<sup>374</sup> See the general argument for the value of democracy along these lines in Waldron (1999b).

<sup>375</sup> Kis (2002)

must have been “proportional”, and that the agent’s belief about the threat must have been “reasonable” under the circumstances.<sup>376</sup> These predicates are vague, and very often their vagueness cannot be reduced by collecting more information or by performing more careful reasoning by the agent. However, the moral importance of resolving such cases necessitates some sort of settlement even when vagueness in moral concepts is persistent. In cases like these individuals cannot rely on their own interpretation of their moral duties, and act accordingly. This is because diverging interpretations are likely to result in disagreement, which cannot be dissolved with more information and better reasoning. However, individuals have to act in a concerted manner, and need to have grounds for forming reasonable expectations about the actions of others involving large stakes. Furthermore, they need to have assurance that their reasonable expectations about such actions are going to be met. Underdetermined duties must be specified before we may act on them.

Institutions are capable of specifying underdetermined duties, and if there is an institution in place that does just this, individuals are duty-bound to comply with the rules or commands of the institution, because the institutional settlement makes individual moral duties sufficiently determinate.

## 6. The case of egalitarian justice

The previous section has indicated that institutions can sometimes make a difference to individual duties either because of the existence of disagreement about duties or because of the indeterminacy of those duties. Since we are interested in egalitarian duties, it remains to be seen whether a duty to promote equality is likely to present the same problems, and thus necessitate institutional settlement. If it were the case, we could show that institutions do make a genuine difference to egalitarian individual duties, since it would be either morally

---

<sup>376</sup> The example comes from Kis (2002).



counterproductive for individuals to act according to the demands of justice by following their own judgement, or it would be impossible to tell what individuals ought to do in the absence of the institution.

Now, suppose we accept the principle that “egalitarian justice ought to be promoted”. Furthermore, we know that institutions often provide more efficient means of promoting egalitarian justice than independent individual action does. In these cases individuals are required by morality to follow the rules of such institutions. As we have seen above, this fact by itself could not establish that institutions can make a real difference to individual duties. Individuals would have to conform with the rules of institutions because this is a more effective way to discharge their individual duties. However, an important observation with regard to egalitarian justice is that egalitarian distributive principles can be realised by more than one kind of institutional scheme. Several combinations of tax, welfare, and educational schemes can achieve egalitarian justice to the same extent. However, the importance of justice being done makes it necessary that exactly one particular institutional setup be settled on for the whole society, and that, once one such a setup is settled on, every member of the society must follow the rules of its institutions. We cannot independently follow courses of action that we think we would be required to follow under our favoured egalitarian scheme: justice can be done only if we act in concert. Sometimes decision about various particular setups can be made on the basis of which of these is more likely to approach egalitarian justice, given the specific circumstances and culture of the society. In other cases, however, no such ground is available on the basis of which a decision could be made. In the remainder of the chapter I briefly introduce two problems, under the headings of disagreement and systematicity of institutional schemes, that call for institutional settlement.

Suppose first that there is disagreement in a society about which of the various possible institutional schemes is most likely to achieve egalitarian justice, given the specific circumstances of the society. There are two main schemes that are likely to yield an egalitarian distribution in the society. Scheme A would rely more heavily on a progressive income tax and would keep taxes on consumption low, whereas scheme B would operate with higher consumption taxes and would tax incomes less heavily. Some people think it is scheme A that best promotes equality, others think it is scheme B. Suppose further that both schemes are reasonably just. Given that most people comply with A, the need for coordination and conflict resolution makes it necessary for an individual to comply with the rules of A, no matter whether that individual thinks it is the best possible egalitarian scheme, and whether he is right in his judgement. An individual is not permitted to act in a way that she thinks best promotes equality instead of complying with A. Here institutions make a difference to what individuals ought to do with regard to egalitarian justice, because of disagreement and the need for coordination and conflict resolution in a society.

The second case for the difference-making capacity of institutions derives from instances when even considering all contingent facts about the society is unlikely to narrow down the number of institutional alternatives to exactly one. There are likely to be several combinations of institutions within schemes that are just as egalitarian.<sup>377</sup> This point is emphasized in Rawlsian theory by its requirement that the institutions of a society must be assessed as a single scheme for the purposes of justice.<sup>378</sup> It makes no sense to say that the tax rate applying to a person is just as long as we do not look at the whole scheme of institutions including property regulations, welfare provisions, and educational system. In order to settle on one particular combination an arbitrary decision must be made about which particular setup the scheme must meet. Once a decision is made, individuals to whom

---

<sup>377</sup> Waldron (1993: 24)

<sup>378</sup> Rawls (1999a: 3-4, 6-7)

the scheme applies must comply with its rules in order to secure egalitarian justice to the greatest possible extent. They are not to follow what they, in their own judgement, think justice requires in part because it is the institutions that impose on them sufficiently determinate duties. Institutions specify the essentially underdetermined demands of egalitarian justice by marking out a unique set of just distributive rules. Without institutional rules it would be impossible to tell what justice requires us to do. Again, institutions make a difference as to what individuals ought to do, this time because of the objective characteristics of moral principles in general, and egalitarian principles of justice in particular.

Having seen two important cases when institutional settlement is necessary for promoting egalitarian justice, it only remains to note that these examples are central to a cosmopolitan theory of egalitarian justice. Both disagreement about the demands of egalitarian justice and the indeterminacy of their content are a permanent characteristic of politics.<sup>379</sup> As for disagreement, John Rawls insists that “a diversity of conflicting and irreconcilable comprehensive doctrines” is “not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy.”<sup>380</sup> Reasonable pluralism, Rawls argues, results from “the work of free practical reason within the framework of free institutions.”<sup>381</sup> Moral concepts, including the concept of justice, involve various “burdens of judgement” which make disagreement a permanent feature of life even under free institutions.<sup>382</sup> Also, the complexities of social life under institutions render the demands of egalitarian justice indeterminate. We need institutions to resolve disagreement and make the demands of justice determinate for us. These observations apply with just as great, if not greater, force in the global domain, as in domestic societies.

---

<sup>379</sup> An important argument for authority emphasizing this point is provided in Waldron (1999b)

<sup>380</sup> Rawls (1999c: 474)

<sup>381</sup> Rawls (1993a: 37)

<sup>382</sup> For an explanation of why this is so, see Rawls (1993a: 54-8).

## 7. Conclusion

These considerations provide us with what is the most plausible interpretation of what Rawls calls our natural duty of justice. As we saw, he claims that the natural duty of justice “requires us to support and comply with just institutions that exist and apply to us”, and “it also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.”<sup>383</sup> This duty plays a fundamental mediating role between principles applying to institutional design and the responsibility of individuals. The chapter argued that in certain cases individuals do not have to aim at promoting a just distribution directly because they simply *cannot* do so. This is either because such an effort would be morally counterproductive due to the subjective characteristics of individuals and the lack of assurance for reaching the morally desirable goal resulting thereof or because it would be impossible to determine, in the absence of institutions, what the just distribution is. We have to comply with existing institutions and further not yet existing ones in order to achieve a morally required aim we cannot individually achieve.

What is the bearing of the foregoing discussion on the debate between the institutionalist and the non-institutionalist? To recall, the institutionalist holds the position that there are some fundamental principles of egalitarian justice that apply to institutional schemes only that do not apply to individual conduct. By contrast, the non-institutionalist claims that all fundamental principles of egalitarian justice apply also to the actions of individuals. The conclusion of the argument about the difference-making capacity of institutions with regard to the demands of egalitarian justice shows that – assuming the principle “an egalitarian distribution of resources ought to be promoted” is a fundamental principle of egalitarian justice – the non-institutionalist is wrong, and the institutionalist is

---

<sup>383</sup> Rawls (1999a: 99)

right. This principle in itself is not determinate enough to guide individual conduct. It applies only to schemes of institutions capable of issuing and enforcing sufficiently determinate rules and commands.

Next, to clarify further the institutionalist versus non-institutionalist debate, it is important to see what institutions are *not*. First they are not constitutive of the requirement of distributive equality itself. The position I have defended in the thesis goes against positions that assign constitutive roles to institutional schemes in the justification of fundamental principles of distributive justice, claiming that the requirement of distributive equality is not derivable from principles of individual morality. This would be the case if some distinctive features of institutions, not present among the characteristics of individual morality, would necessarily figure in the justification of distributive equality.<sup>384</sup> However, the argument in the present chapter does not support this conclusion.

Nevertheless institutions do not play a merely instrumental role in the more effective discharging of individual natural duties existing prior to and independently of institutions. The argument presented in the chapter does not derive the demands of distributive equality directly from the principles of individual morality. According to the argument, on the one hand institutions make sufficiently determinate the essentially underdetermined demands of egalitarian justice by marking out a unique set of just distributive rules. On the other hand, they coordinate individual conduct and provide assurance in cases of disagreement about justice. This position regarding the role of institutions occupies an intermediate ground between those who claim that institutions play a constitutive role in the emergence of a requirement to promote equality, and those who argue that institutions are mere devices for more effectively carrying out what our pre-institutional duty to promote equality requires us to do anyway.

---

<sup>384</sup> The theories of Ronald Dworkin and Thomas Nagel I examined earlier belong to this family. See Ronald Dworkin (1986: Chapters 5 and 6) and Dworkin (2000: Introduction and Chapters 4 and 5); Nagel (2005).

The implications of this result for cosmopolitan justice and international institutions are limited but important. What the argument establishes is that, given the cosmopolitan requirement that global equality ought to be promoted, individuals are sometimes required to comply with the commands of institutions rather than to try to promote global equality directly. If so, such institutions must be created and sustained that are capable of making individual duties determinate globally. They must specify the duties of each person so that the global distribution can meet the demands of egalitarian justice. What these institutions should look like, and what their scope should be, is an open question. It may be the case that a global egalitarian distribution is achievable with institutions that do not have a global reach. Nevertheless, even if these institutions are limited, the reach of principles they ought to specify and administer is global. The requirement of global equality is not conditional on the existence of global institutions. Regardless of whether such institutions exist, individuals must work towards the establishment of institutions that specify and administer individual duties in a way that achieves global equality, prescribed by our cosmopolitan duty.

## Conclusion

The thesis has focused on the role of institutions in the problem of global justice. Throughout this enterprise, my aim has been twofold. First, in looking for an answer to the question concerning the existence of global requirements of justice, I have examined whether social, economic, or political institutions play a foundational role in giving rise to the demands of justice distributive egalitarians advocate, and what follows from the answer to this question with regard to the existence of global requirements of justice. Second, I have attempted to clarify the role of political institutions in the implementation of requirements of cosmopolitan justice.

With regard to the first problem, I have argued for a cosmopolitan conception of egalitarian justice according to which institutions do not play a foundational role in giving rise to at least some demands of egalitarian distributive justice. There are some egalitarian requirements we owe others in virtue of our common humanity and our competing claims to scarce resources. In the course of the argument, I have presented and argued against competing views that either limited the scope of the concern of distributive justice to national political communities, or grounded all egalitarian distributive requirements of distributive justice in the existence of institutional schemes. First, I outlined a group of theories that advocate the thesis that the interests of compatriots should be given priority as a matter of justice. One of these theories relies on a relativistic view of justice, limiting the scope of justice to national communities on the basis of an argument from the relativity of the social meanings of goods to be distributed. I refuted it by pointing out its falsity as an empirical matter and its bias towards certain conceptions of the good. The other, non-relativistic, arguments for national partiality I surveyed, on the other hand, emphasize the instrumental and intrinsic value of national attachments respectively. I argued against them

by claiming that neither form is capable of justifying the nationalist thesis, since they would have to rely on implausible empirical premises or standards of value in order to do so. Next, I presented a position that is individualistic about value, but sees the scope of distributive justice as limited to political communities because it regards them as playing a constitutive role in its justification. It holds that the case for distributive equality derives from the requirement to justify the use of coercive force by states against their subjects and from their corresponding obligation to obey its laws. It argues for the restricted scope of egalitarian requirements on the basis of an associative conception of political obligation and a collective view of moral agency. I argued that although this theory can explain some of our egalitarian intuitions and practices, it neither can successfully ground the political authority of the state, nor is it acceptable from the point of view of outsiders, hence it has to be rejected. As the next step in the argument, I made a transition towards the outlines of systematic account of global justice. In doing so, I first presented some main features of the Rawlsian theory of justice, focusing on the central role Rawls attributes to the basic structure of the society as the subject of justice. Arguing against his later ideas and criticisms by some other theorists, I defended the extension of the scope of validity of Rawlsian principles of justice to the global domain by pointing out that there exists a global basic structure relevantly similar to domestic ones, and that the same considerations that call for the application of distributive justice in the domestic case require the global application of Rawlsian principles of justice.

As a final step in the argument for cosmopolitan justice, I presented a cosmopolitan revision of the Rawlsian theory and defended a cosmopolitan egalitarian view that does not regard institutions as having a foundational role in giving rise to some demands of justice. Questioning Rawls's premise that requirements of justice emerge only in institutionally governed schemes of cooperation, the cosmopolitan egalitarian conception I have defended



holds that the need to find fair principles for distributing scarce resources among all humans with an equal *prima facie* to the earth's resources issues in some egalitarian requirements that have a global reach. It demands that people's fates should depend on the choices they make, and should be insensitive to factors that are beyond their control such as the social and economic circumstances they are born into, or their natural endowments. On the basis of this outlook, I argued that the current system of nation-states ought to be replaced with a feasible alternative global scheme of institutions that is more sensitive to the demands of global justice.

With regard to the second of the problems I investigated in the thesis, I have put forward arguments showing that, although institutions do not play a foundational role in giving rise to some fundamental requirements of justice, they do play an important role in their implementation, by making a non-instrumental difference to preinstitutional individual duties. I have argued that some fundamental principles of cosmopolitan justice do not apply to individual conduct directly by emphasizing the conditional character of moral duties and the systematicity of justice. The thesis was justified by reference to institutions' capacity to solve coordination problems and settle disagreement, and to their capacity to determine a unique set of just distributive rules, given the essentially underdetermined character of the demands of justice. Due to these considerations, territorially demarcated political institutions may be necessary for the performance of some functions indispensable for securing justice, however the importance of these functions does not override considerations of global justice, thus their discharge is constrained by them.

## Bibliography

- Anderson, Elizabeth. 1999. What is the Point of Equality? *Ethics* 109, January: 287-337.
- Arneson, Richard. 1989. Equality of Opportunity for Welfare, *Philosophical Studies* 56: 77-93.
- Baldwin, Thomas. 1992. 'The Territorial State' in H. Gross and R. Harrison (eds.) *Jurisprudence: Cambridge Essays*. (Oxford, Oxford University Press)
- Barry, Brian. 1973. *The Liberal Theory of Justice* (Oxford: Oxford University Press)
- Barry, Brian. 1991. 'Humanity and Justice in a Global Perspective' in *Liberty and Justice* (Oxford: Clarendon Press)
- Beitz, Charles R. 1979. *Political Theory and International Relations* (Princeton: Princeton University Press)
- Beitz, Charles R. 1983. Cosmopolitan Ideals and National Sentiment, *Journal of Philosophy* vol. 80, no. 1: 591-600
- Beitz, Charles R. 1994. 'Cosmopolitan Liberalism and the States System' in Chris Brown ed. *Political Restructuring in Europe* (London: Routledge)
- Beitz, Charles R. 1999a. *Political Theory and International Relations* 2<sup>nd</sup> ed. (Princeton: Princeton University Press)
- Beitz, Charles R. 1999b. Social and Cosmopolitan Liberalism, *International Affairs* vol.75, no.3: 515-29
- Beitz, Charles R. 1999c. International Liberalism and Distributive Justice: A Survey of Recent Thought, *World Politics* 51: 697-721
- Beitz, Charles R. 2000. Rawls's Law of Peoples, *Ethics* 110, July: 669-696
- Beitz, Charles R.. 2001. 'Does Global Inequality Matter?' In Thomas W. Pogge ed. *Global Justice* (Oxford: Blackwell)

- Blake, Michael. 2001. Distributive Justice, State Coercion, and Autonomy, *Philosophy and Public Affairs*, vol. 30, no. 3: 257-96
- Brown, Eric and Kleingeld, Pauline. 2002. Cosmopolitanism in *Stanford Encyclopedia of Philosophy*
- Buchanan, Allen. 2000. Rawls's Law of Peoples: Rules for a Vanished Westphalian World. *Ethics* 110. no.4: 697-721.
- Buchanan, Allen. 2003. *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press)
- Caney, Simon. 2002. Cosmopolitanism and the Law of Peoples, *The Journal of Political Philosophy* vol.10: 95-123.
- Chen, Shaohua and Ravallion, Martin. 2004. How Have the World's Poorest Fared Since the Early 1980s? *World Bank Research Observer* 19
- Cohen, G. A. 1989. On the Currency of Egalitarian Justice, *Ethics* 99: 906-44.
- Cohen, G.A. 2000. 'Political Philosophy and Personal Behavior' in *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, Mass.: Harvard University Press)
- Cohen, Joshua. 2001. Taking People as They Are? *Philosophy and Public Affairs* vol.30, no.4: 383-86
- Cohen, Joshua and Sabel, Charles. 2006. Extra Republicam Nulla Justitia? *Philosophy and Public Affairs* vol.34, no.2: 147-75.
- Copp, David. 1999. The Idea of a Legitimate State, *Philosophy and Public Affairs* vol.28, no.1: 3-45
- Daniels, Norman. 2003. 'Democratic Equality: Rawls's Complex Egalitarianism' in Samuel Freeman ed. *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press)

- Dworkin, Ronald M. 1985. *A Matter of Principle* (Cambridge, Mass.: Harvard University Press)
- Dworkin, Ronald M. 1986. *Law's Empire* (Cambridge, Mass.: Harvard University Press)
- Dworkin, Ronald M. 1996. *Freedom's Law: The Moral Reading of the American Constitution* (New York: Oxford University Press)
- Dworkin, Ronald M. 2000. *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press)
- Dworkin, Ronald M. 2003. *Rights and Terror*. Paper presented to the New York University School of Law Colloquium in Legal, Political, and Social Philosophy. A shortened version also appeared as *Terror and the Attack on Civil Liberties* in *New York Review of Books* 2003 no.17
- FAO (United Nations Food and Agriculture Organization). 1999. *The State of Food Insecurity in the World in 1999*. [www.fao.org/news/1999/img/sofi-e.pdf](http://www.fao.org/news/1999/img/sofi-e.pdf)
- Feinberg, Joel. 1980. 'Noncomparative Justice' in *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press)
- Franck, Thomas M. 1995. *Fairness in International Law and Institutions* (Oxford: Clarendon Press)
- Frank, Andre Gunder. 1970. *Latin America: Underdevelopment or Revolution* (New York: Monthly Review Press)
- Frankfurt, Harry. 1988. 'Equality as a Moral Ideal' in *The Importance of What We Care About* (Cambridge: Cambridge University Press)
- Goodin, Robert E. 1988. What is So Special about Our Fellow Countrymen? *Ethics*, vol.98 no.4: 663-686
- Hancock, Graham. 1989. *Lords of Poverty: The Power, Prestige, and Corruption of the International Aid Business*. (New York: Atlantic Monthly Press)
- Hardin, Garrett. 1968. The Tragedy of the Commons, *Science* 162: 1243-8

- Hart, H. L. A. 1997. *The Concept of Law* 2<sup>nd</sup> ed. (Oxford: Oxford University Press)
- Hayek, F. A. 1960. *The Constitution of Liberty* (Chicago: The University of Chicago Press)
- Held, David and McGrew, Anthony eds. 1999. *Global Transformations* (London: Polity Press).
- Held, David and McGrew, Anthony eds. 2000. *The Global Transformations Reader* (Malden, Mass.: Polity Press)
- Held, David and McGrew, Anthony. 2002. 'Introduction' in *Governing Globalization* (Cambridge: Polity Press)
- Hurka, Thomas. 1997. 'The Justification of National Partiality' in Robert McKim and Jeff McMahan eds. *The Morality of Nationalism* (Oxford: Oxford University Press)
- Julius, A. J. 2006. Nagel's Atlas, *Philosophy and Public Affairs* vol.34, no.2: 113-47
- Kant, Immanuel. 1991. *The Metaphysics of Morals* ed. Mary Gregor (Cambridge: Cambridge University Press)
- Kant, Immanuel. 1992. 'Perpetual Peace' in *Political Writings* ed. Hans Reiss (Cambridge: Cambridge University Press)
- Keohane, Robert O. 1984. *After Hegemony* (Princeton: Princeton University Press)
- Keohane, Robert O. 2002. *Power and Governance in a Partially Globalized World* (London: Routledge)
- Kis, János. 2001. 'Nation-Building and Beyond' in Will Kymlicka and Magda Opalski: *Can Liberal Pluralism Be Exported?* (Oxford: Oxford University Press)
- Kis, János. 2002. *Natural Duties Regarding Institutions*, Budapest, unpublished manuscript.
- Klosko, George. 1992. *The Principle of Fairness and Political Obligation* (Oxford: Rowman and Littlefield)
- Klosko, George. 2005. *Political Obligations* (Oxford: Oxford University Press)
- Kuper, Andrew. 2000. Rawlsian Global Justice, *Political Theory* Vol.28: 640-74.

- Landes, David S. 1998. *The Wealth and Poverty of Nations* (London: Little, Brown)
- MacIntyre, Alasdair. 1985. *After Virtue: A Study in Moral Theory* (London: Duckworth)
- Margalit, Avishai and Raz, Joseph. 1994. 'On National Self-Determination' in Joseph Raz ed. *Ethics in the Public Domain* (Oxford: Oxford University Press)
- Miller, David. 1995. *On Nationality* (Oxford: Clarendon Press)
- Miller, David. 1999. 'Justice and Global Inequality' in Andrew Hurrell and Ngaire Woods eds. *Inequality, Globalization, and World Politics* (Oxford: Oxford University Press)
- Miller, David. 2003. 'National Responsibility and International Justice' unpublished manuscript.
- Moellendorf, Darrel. 2002. *Cosmopolitan Justice* (Boulder: Westview Press)
- Moore, Margaret. 2001. *The Ethics of Nationalism* (Oxford: Oxford University Press)
- Mulhall, Stephen and Swift, Adam. 1992. *Liberal and Communitarians* (Oxford: Blackwell)
- Murphy, Liam B. 1999. Institutions and the Demands of Justice, *Philosophy and Public Affairs* vol.27, no.4: 251-91
- Nagel, Thomas. 1977. 'Poverty and Food: Why Charity is Not Enough' in Peter Brown and Henry Shue eds. *Food Policy: The Responsibility of the United States in the Life and Death Choices* (New York: The Free Press)
- Nagel, Thomas. 2002. 'Justice and Nature' in *Concealment and Exposure* (Oxford: Oxford University Press)
- Nagel, Thomas. 2005. The Problem of Global Justice, *Philosophy and Public Affairs* vol.33, no.2: 113-147.
- Nielsen Kai. 1988. 'World Government, Security, and Global Justice' in Steven Luper-Foy (ed.) *Problems of International Justice* (Boulder: Westview Press)
- Nozick, Robert. 1974. *Anarchy, State, and Utopia* (New York: Basic Books)
- O'Neill, Onora. 1974. Lifeboat Earth, *Philosophy and Public Affairs* vol.4. no.3: 273-92

- O'Neill, Onora. 2000. *Bounds of Justice* (Cambridge: Cambridge University Press)
- Parfit, Derek. 1984. *Reasons and Persons* (Oxford: Oxford University Press)
- Parfit, Derek. 1995 (1991). *Equality of Priority?* The Lindley Lecture (Lawrence: University of Kansas, Department of Philosophy)
- Patten, Alan. 2005. Should We Stop Thinking about Poverty in Terms of Helping the Poor? *Ethics and International Affairs* 19, no.1: 19-27
- Perri 6. 2002. 'Global Digital Communications and the Prospects for Transnational Regulation' in David Held and Anthony McGrew: *Governing Globalization* (Cambridge: Polity Press)
- Pogge, Thomas W. 1989. *Realizing Rawls* (Ithaca: Cornell University Press)
- Pogge, Thomas. 1994. An Egalitarian Law of Peoples, *Philosophy and Public Affairs* vol.23, no.3: 195-224.
- Pogge, Thomas W. 1995. Three Problems With Contractarian-Consequentialist Ways of Assessing Social Institutions, *Social Philosophy and Policy* vol.12, no.2
- Pogge, Thomas W. 2000. On the Site of Distributive Justice: Reflections on Cohen and Murphy, *Philosophy and Public Affairs* vol.29, no.2: 137-69
- Pogge, Thomas. 2001a. 'Priorities of Global Justice' in Thomas Pogge ed. *Global Justice*. (Oxford: Blackwell)
- Pogge, Thomas W. 2001b. Rawls on International Justice, *The Philosophical Quarterly* Vol.51: 246-53.
- Pogge, Thomas W. 2002. *World Poverty and Human Rights* (Cambridge: Polity Press)
- Pogge, Thomas W. 2005a. World Poverty and Human Rights, *Ethics and International Affairs* 19, no.1: 1-7
- Pogge, Thomas W. 2005b. Severe Poverty as a Violation of Negative Duties, *Ethics and International Affairs* 19, no.1: 55-84

- Rawls, John. 1971. *A Theory of Justice* (Cambridge, Mass.: Harvard University Press)
- Rawls, John. 1980. Kantian Constructivism in Moral Theory, *Journal of Philosophy*, 77 (September 1980)
- Rawls, John. 1993a. *Political Liberalism* (New York: Columbia University Press)
- Rawls, John. 1993b. 'The Law of Peoples' in Stephen Shute and Susan Hurley eds.: *On Human Rights: The Oxford Amnesty Lectures* (New York: Basic Books)
- Rawls, John. 1999a. *A Theory of Justice* rev. ed. (Cambridge, Mass.: Harvard University Press)
- Rawls, John. 1999b. *The Law of Peoples* (Cambridge, Mass.: Harvard University Press)
- Rawls, John. 1999c. *Collected Papers* (Cambridge, Mass.: Harvard University Press)
- Rawls, John. 2001. *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press)
- Raz, Joseph. 1984. The Obligation to Obey: Revision and Tradition, *Notre Dame Journal of Law, Ethics and Public Policy* 1: 139-55
- Raz, Joseph. 1986. *The Morality of Freedom* (Oxford: Clarendon Press)
- Raz, Joseph. 1990. *Practical Reasons and Norms* (Oxford: Oxford University Press) 2<sup>nd</sup> ed.
- Risse, Mathias. 2005a. Do We Owe the Global Poor Assistance or Rectification? *Ethics and International Affairs*, vol.19, no.1: 9-18.
- Risse, Mathias. 2005b. What We Owe to the Global Poor, *The Journal of Ethics*: 81-117.
- Sandel, Michael J. 1982. *Liberalism and the Limits of Justice* (Cambridge : Cambridge University Press)
- Satz, Debra. 1999. 'Equality of What among Whom?' in Ian Shapiro and Lea Brilmayer eds. *Global Justice* (New York: New York University Press)
- Satz, Debra. 2005. What Do We Owe the Global Poor? *Ethics and International Affairs* 19, no.1: 47-54



- Scanlon, T. M. 1989 (1975). 'Rawls's Theory of Justice' in Norman Daniels ed. *Reading Rawls* (Stanford: Stanford University Press)
- Scanlon, T. M. 2003. 'The Diversity of Objections to Inequality' in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press)
- Scheffler, Samuel. 2001. *Boundaries and Allegiances* (Oxford: Oxford University Press)
- Scheffler, Samuel. 2003a. 'Rawls and Utilitarianism' in Samuel Freeman ed. *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press)
- Scheffler, Samuel. 2003b. What is Egalitarianism? *Philosophy and Public Affairs* vol.31, no.1: 5-39
- Schmidtz, David. 1991. *The Limits of Government* (Boulder: Westview Press)
- Scholte, Jan Aart. 2002. 'Governing Global Finance' in David Held and Anthony McGrew: *Governing Globalization* (Cambridge: Polity Press)
- Shue, Henry. 1996. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* 2<sup>nd</sup> ed. (Princeton: Princeton University Press)
- Simmons, A. John. 1996. Associative Political Obligations, *Ethics* 106, no.2: 247-73.
- Simmons, A. John. 2001. On the Territorial Rights of States in *Philosophical Issues*, 11
- Singer, Peter. 1972. Famine, Affluence, and Morality, *Philosophy and Public Affairs* vol.1 no.3: 229-43
- Singer, Peter. 2002. *One World* (New Haven: Yale University Press)
- Slaughter, Anne-Marie. 2004. *A New World Order* (Princeton: Princeton University Press)
- Spruyt, Hendrik. 1994. *The Sovereign State and Its Competitors* (Princeton: Princeton University Press)
- Steiner, Hillel. 1994. *An Essay On Rights* (Cambridge: Blackwell)
- Taylor, Charles. 1989. *Sources of the Self* (Cambridge, Mass.: Harvard University Press)

- Taylor, Charles. 1994. 'The Politics of Recognition' in Amy Gutmann ed. *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press)
- Teson, Fernando. 1995. The Rawlsian Theory of International Law, *Ethics and International Affairs* 9.
- Unger, Peter. 1996. *Living High and Letting Die: Our Illusion of Innocence* (Oxford: Oxford University Press)
- UNDP (United Nations Development Programme). 1996. *Human Development Report 1996* (Oxford: Oxford University Press)
- UNDP (United Nations Development Programme). 2004. *Human Development Report 2004* (New York: UNDP)
- UNICEF (United Nations Children's Fund). 2005. *The State of the World's Children 2005* (New York: UNICEF)
- UNICEF (United Nations Children's Fund). 2006. *The State of the World's Children 2006*. (New York: UNICEF)
- Waldron, Jeremy. 1993. Special Ties and Natural Duties, *Philosophy and Public Affairs*
- Waldron, Jeremy. 1995. 'Money and Complex Equality' in David Miller and Michael Walzer ed. *Pluralism, Justice, and Equality* (Oxford: Oxford University Press)
- Waldron, Jeremy. 1999a. *The Dignity of Legislation* (Cambridge: Cambridge University Press)
- Waldron, Jeremy. 1999b. *Law and Disagreement* (Oxford: Oxford University Press)
- Waldron, Jeremy. 2000. What is Cosmopolitan? *Journal of Political Philosophy*, Vol.8. no.2: 227-243.
- Waldron, Jeremy. 2003. 'Authority for Officials' in Meyer, Paulson, and Pogge eds. *Rights, Culture, and the Law* (Oxford: Oxford University Press)
- Walzer, Michael. 1983. *Spheres of Justice* (New York: Basic Books)

- Wenar, Leif. 2002. 'The Legitimacy of Peoples' in Ciaran Cronin and Pablo DeGreiff: *Global Justice and Transnational Politics* (Cambridge, Mass.: The MIT Press)
- Wolff, Jonathan. 1998. Fairness, Respect, and the Egalitarian Ethos, *Philosophy and Public Affairs* vol. 27, no.2: 97-122
- Wood, Robert. 1986. *From Marshall Plan to Debt Crisis: Foreign Aid and Development Choices in the World Economy* (Berkeley and Los Angeles: University of California Press).
- World Bank. 1999. *World Development Report 1999/2000* (Oxford: Oxford University Press)
- World Bank. 2003. *World Development Report 2003* (Oxford: Oxford University Press)
- WHO (World Health Organization). 2004. *The World Health Report 2004* (Geneva: WHO), also available at <http://www.who.int.whr/2004>.