

## **Global distributive justice\***

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### **Distributive justice: domestic versus global**

Distributive justice is achieved when entitlements to economic goods are allocated to people as they ought to be. Throughout most of the history of political philosophy, the attempt to specify the principles of distributive justice so conceived has been pitched at the domestic level: it has been concerned with distribution between the inhabitants of a city, the citizens of a country, the members of a society. But as the “globalization” of communication and economic activity started being perceived, conceptualized and named, there were fewer and fewer people whose city was their world, and more and more for whom the world had become their city. From grass-root activists to armchair philosophers, serious thought started being given to the idea that the demands of distributive justice should be pitched primarily at the global level, at the level of mankind as a whole. For those following this track, it would seem natural that whatever conception of justice was deemed plausible for the distribution of resources between members of a particular society should also provide a suitable characterization of global distributive justice (see Barry 1973: ch.12, and Beitz 1979: part III, for some early philosophical formulations). Yet, this view, as we shall see, turns out to be very controversial.

Any plausible conception of domestic distributive justice — so at least I shall here take for granted — reflects the idea that the members of a society should regard each other as equals and therefore owe each other a justification they can accept as equals for any inequality in the entitlements which their society's institutions define. Hence, while distributive justice need not require equal income or equal wealth, it will typically justify only two categories of economic inequalities: those which can plausibly be attributed to people's personal responsibility, rather than to morally arbitrary contingencies, and those which, though not stemming from choices and tastes for which people can be held responsible, can plausibly be claimed to benefit everyone, including their “victims”. This conception of domestic distributive justice comes in many

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variants, the most influential among which is encapsulated in Rawls's (1971) second principle of justice, which requires social positions to be equally accessible to all for given talents (principle of fair equality of opportunity) and the social and economic advantages associated to the worst among these positions to be as large as they can sustainably be (difference principle).

So, should global distributive justice simply be conceived as a planet-wide blow-up of domestic distributive justice so conceived? Rawls (1993, 1999) himself, it turns out, firmly rejects this option, and so do a wide range of other political philosophers committed to an egalitarian conception of domestic justice. This rejection helped generate one of the most intense controversies in contemporary political philosophy. The key question is whether there are any features that distinguish the domestic realm from the global realm so decisively that while egalitarian distributive justice is appropriate to the former, it is not to the latter.

### **Peripheral global justice: reparative, commutative, cooperative**

Before turning to this key question, it is important and fair to note that those who deny that global distributive justice should be conceived on the egalitarian model of domestic distributive justice need not deny that there are nonetheless considerations of justice that constrain the international distribution of economic resources between countries. To start with, there are three types of considerations that do affect the allocation of economic goods but can only operate on the background of a prior distribution of just entitlements.

Firstly, suppose that some legitimate entitlements of at least some members of a particular society were transgressed in the past by members of another society, typically in the form of enslavement, occupation or colonization. In such cases, one can easily admit that restitution is owed by the perpetrators to the victims or, since in most cases restitution is impossible, at least reparation, i.e. adequate material compensation for the damage caused by the transgression. If perpetrators and victims have all died, the unrequited debt is passed on to their presumptive heirs, which can sometimes be roughly identified with the whole population of the relevant countries. Admittedly, the retrospective assessment of how serious the transgression was, who was responsible for it, who suffered from it and how much, is often so cluttered with uncertainty and imprecision that little guidance can be derived from it. But in principle at least it is possible to assert on this basis that a transfer of resources is owed by one country to another on grounds of justice, while consistently resisting anything like egalitarian global justice (see e.g. Walzer 1995: 292-3).

Secondly, there is the idea that trade between countries must not only bring some gain to each, which it can be expected to do if no transgression of entitlements is involved, but that it must be "fair". One ambitious interpretation of the ideal of "fair trade" is to be found in the literature on "unequal exchange" (Emmanuel 1969) but raises all the problems intrinsic to the labour theory of value understood as a normative theory of fair prices (see Barry 1979: §5; Van Parijs 1993: ch.7). A more modest interpretation consists in requiring that poorer countries should not suffer from prices that systematically diverge from those a competitive market would yield, whether because of monopoly positions or because of a very unequal access to relevant information, which can again be done while staunchly rejecting egalitarian global justice (see e.g. Miller 2003: 204-09).

Thirdly, there is cooperation between or across countries which does not take the form of trade, but of the production of global public goods (Kaul & al. 1999), such as world peace, the prevention of damaging climate change, the guarantee of mutual aid in case of natural disasters, or the availability of a global lingua franca. Sometimes, an explicit deal needs to be struck for the public good to be produced, but sometimes the interest of some of the parties is sufficient for them to produce at least some of desired amount of the public good, thus enabling other parties to free ride. In either case, some notion of fair distribution of the burdens and benefits of cooperation is in order. It might require, for example, that the total net benefit should be distributed equally among all cooperators, as would follow, under some conditions, from David Gauthier's (1986) criterion of maximin relative benefit, or that the ratio of cost incurred to benefit enjoyed should be equal for all of them (Van Parijs 2002). Whichever criterion is chosen, fair cooperation can only be specified using as a baseline each party's independently established legitimate entitlements which define their fallback position in the absence of cooperation. Those who object to egalitarian global justice can feel comfortable with cooperative global justice (see e.g. Rawls 1999: 42-3).

### **Minimal global justice: natural resources and basic needs**

The three dimensions of global justice explored so far can be regarded as “peripheral”, in the sense that they all rely on a prior worldwide definition of legitimate entitlement to economic goods. Once these entitlements are specified, all three forms of peripheral justice are fairly uncontroversial in their principle, if not in their implementation. But the fundamental question concerns the specification of the background entitlements. Two very different considerations challenge the claims sovereign states make to the economic resources under their jurisdiction, while still falling far short of egalitarian global justice.

Firstly, it is widely felt that a country's natural resources should be given a special status: they are “something for which its inhabitants (present or past) can take absolutely no credit and to whose benefits they can lay no claim” (Barry 1982: 451). From Thomas Paine's “agrarian justice” and Henry George's “single tax” to contemporary left libertarians (Steiner 1999, 2001, 2002), many conceptions of justice incorporate an equal right to natural resources, domestically but also worldwide, which does not extend to other resources. Even those who do not want this right to be so restricted believe that the argument they offer can be particularly unqualified (Beitz 1979: 136-43) or is particularly compelling (Barry 1982: 448-51) in the case of natural resources. Thus, according to Pogge (1994), Rawls's (1993, 1999) appeal to an “original position” in which the representatives of peoples gather to choose principles of international justice should at least favour, on grounds of justice, a global “resource dividend” that would share among all peoples the value of the natural resources each of them happens to be endowed with. Rawls does not endorse this conclusion but not, it seems, on the ethical ground that no such natural resource egalitarianism would emerge from his original position, but only on the basis of the empirical claim, backed by David Landes's (1998) work, that “the crucial element in how a country fares is its political culture — its members' political and civic virtues — and not the level of its resources” (Rawls 1999: 117). Similarly, despite his vigorous resistance to egalitarian global justice in general, David Miller (1999: 191-7), concedes its appeal in the case of natural

resources, while dismissing it in the end on the ground that our world is too culturally diverse to allow a sensible valuation and fair distribution of natural resources.

There is a second way of conceiving minimal distributive justice on a world scale, which does not focus on the special nature of some resources, but on minimal claims of all human beings. Among those who reject an egalitarian conception of global justice, some recognize only a humanitarian duty to come to the rescue of other human beings wherever they are (Walzer 1995: 293; Nagel 2005: 131). Humanitarian duties fall short of duties of justice, not because they are morally less obligatory, nor because they cannot be legitimately enforced, but most plausibly because they are not meant to track entitlements: they do not help define what people justly possess but rather what they ought to do with what they justly possess (see Barry 1982: 455-62).

For Rawls, the “meeting of basic needs” is not a matter of global distributive justice either, but it does follow from the conjunction of two aspects of his view. First, as a matter of domestic distributive justice, all liberal or decent peoples must honour the human rights of their members, including the right to “minimum economic security”. And second, all liberal and decent peoples have a duty of assistance to burdened societies, i.e. societies prevented by their socio-economic circumstances from achieving a just or decent well-ordered regime (Rawls 1999: 37, 6, 116). Other opponents of global egalitarian justice, such as David Miller (1999a: 198-204), are willing to concede more directly that there is, as a matter of non-comparative global justice, a basic right to “conditions that are universally necessary for human beings to lead minimally adequate lives”, including a “right to subsistence”. However, the primary responsibility for realizing this right lies with each political community. It is only when the latter fails that richer countries have a duty to intervene, including by constraining the operation of the governments of poorer countries so that they can secure themselves as soon as possible the basic rights of all their citizens.

How close Rawls’s or Miller’s position gets in practice to egalitarian global justice obviously depends on how generously one proposes to interpret basic needs. It also depends on the particular variant of egalitarian justice one is considering. Take, for example, Amartya Sen’s (2000) conception of distributive justice as the securing of everyone’s basic capabilities. If Rawls’s “minimal economic security” or Miller’s conditions for a “minimally adequate life” amount to the satisfaction of these basic capabilities, there may seem little to choose between. Even then, however, there remains a difference of some practical importance, namely whether there is a principled reason, or only, under some factual assumptions, a pragmatic one, for giving the domestic community the primary responsibility for the satisfaction of everyone’s basic needs. And there also remains a fundamental philosophical difference, namely whether the affluent countries’ duty of assistance to the poor of the world should be regarded as fundamentally distinct from the egalitarian principles appropriate between members of a particular society. What justifies this distinction? What is the crucial feature or set of features that particular countries possess and that the world as a whole does not possess but would need to possess for demands of egalitarian global justice to be legitimate?

## **No global justice without a global people?**

According to a first view, what would be needed is a global people, or a global community in a sense that implies both cultural similarity and mutual identification. This view can arguably be attributed to Rawls when he mentions as one of the key defining features of what

he calls a people that its members should be “united by common sympathies” and in particular, in the standard case on which he concentrates, “united by a common language and shared historical memories” (Rawls 1999: 24-25). Such national unity is indispensable to the conception of just international relations Rawls proposes in *The Law of Peoples*. In its absence, peoples could not be regarded as “reasonable moral agents”, whom it makes sense to imagine entering a global original position. Some of these peoples are liberal, i.e. possess a constitutional democratic regime, while others are decent yet not liberal, i.e. are governed by some non-liberal “common good conception of justice”. The principles they come up with in the original position are the standard principles of international law listed as a specification of the “law of nations” in *A Theory of Justice* (Rawls 1971:§58), to which he subsequently added the respect for human rights and the duty of assistance to burdened societies referred to above (Rawls 1993, 1999:37). These principles do not include anything as egalitarian as a global difference principle. In the example Rawls uses to illustrate how counterintuitive such a principle would be, cultural similarity and mutual identification are taken for granted. To the extent that they can be, it is natural to regard peoples as moral agents responsible for the consequences of their choices. Rawls invites us to consider two countries similar at the start but making different choices: one decides to industrialize, while the other opts for “a more pastoral and leisurely society”. After a while, the first country is much wealthier than the second. “Should the industrializing country be taxed to give funds to the second ? [...] This seems unacceptable. » (Rawls 1999: 117). This view is not that different from the one defended by Michael Walzer (1983, 1995) and, most explicitly, by David Miller (1999a, 1999b). Their own egalitarian conception of justice—whether characterized as “complex equality” or in terms of a set of principles of distributive justice applying to distinct spheres —, applies only to the domestic level because it requires a community of a sort that mankind as a whole is far from having become. Apart from being politically organized into a state, such a community must possess two mutually reinforcing features: a common identity with the associated bonds of solidarity, and a common culture with the system of shared values and understandings it involves (Miller 1999a: 189-91, 1999b: 18-19). It is only when these features are present that egalitarian justice can be given a specific content and can command people’s allegiance; and no one can plausibly claim that they are present at the level of mankind as a whole. At this level, Walzer similarly emphasizes, there is no “set of common meanings”, and hence the sort of egalitarian conception of justice he advocates is irrelevant (Walzer 1983: 29-30; see also Walzer 1995: 293).

This approach does not lack appeal. It is consonant, for example, with French “republicanism”, which identifies the nation with “a space of accepted redistribution” (Rosanvallon 1995). It is also consonant with the demands of nationalist movements in (comparatively affluent) parts of multinational states such as Spain or Belgium, which stress the distinction between the strong solidarity which must govern a generous redistribution between the members of the national community they claim to represent and the much weaker solidarity which must govern a more parsimonious and conditional assistance from the richer national communities to the poorer ones. However, this approach raises at least three serious problems.

In the first place, those who believe in the relevance of egalitarian justice at the domestic level while denying it for the reason indicated cannot but be disturbed by the growing multiculturalisation of domestic societies. As Walzer (1983: 28-9, 1994: 27-8), Miller (1999b: 261-3) and Rawls (1999: 24) all recognize, the populations of many states become less and less peoples in the required sense. The permanent cohabitation, within the same territory, of people with quite different cultures is becoming a worldwide phenomenon, as a result of growing levels

of migration combined with cheap travelling, trans-border media and other factors that tend to secure the indefinite survival of the immigrants' cultures in the host country. Barring a ferociously assimilationist policy, Walzer's or Miller's egalitarian justice may soon make as little sense on the domestic scale as they say it makes on the global scale. If "the sharing [of intuitions and sensibilities] takes place in smaller units", then we should perhaps "look for some way to adjust distributive decisions to the requirements of those units" (Walzer 1983: 29). But for anyone not too keen on apartheid, this strategy does not hold much promise. Rawls has arguably less to fear from this process, as his own version of egalitarian domestic justice does not rely on thick "common understandings" and should therefore be able to "satisfy the reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds" (Rawls 1999:25). Yet the unity through "common sympathies" within peoples which he needs to be able to think of worldwide justice as justice between peoples is getting dangerously tenuous.

This first trend is all the more relevant, when seen in conjunction with a second one, hardly less powerful. National identity, to which a strenuous process of nation building had managed to give great prominence, is now for most people very far from being the main, let alone the exclusive focus of collective identity. Moreover, it is less and less the identity in which all other identities are nested. As emphasized by Amartya Sen (2002), our world is a world of multiple non-nested identities, a world of criss-crossing "common sympathies", a world in which, for many people, identifying trans-nationally with fellow women, or fellow doctors, or fellow Muslims, or fellow Mac fans, matters a great deal more than their identification with their compatriots. With the nation as each person's paramount collective identity, it may be attractive to think about justice with the help of a combination of two "original positions", two thought experiments designed to yield impartial principles: one in which we are represented as individuals to adopt principles for our nation, and one in which we are represented through the nations with which we identify to adopt principles for the world. But with multiple competing non-nested identities, this two-stage procedure loses whatever obviousness it may possess on the background of Rawls's own increasingly surrealistic picture of the world. It does not follow that we need a whole family of original positions, each corresponding to one dimension of our identities. It rather suggests, in conjunction with the first trend, that the world population is gradually being knit together by a complex network of cultural proximities and criss-crossing identifications that is turning it, in this respect, into something not deeply different from what national populations have more or less laboriously become. If one persists in finding egalitarian justice relevant in the domestic context, therefore, one must find it relevant in the global context too.

There is, however, a third and more fundamental problem with an approach that makes the existence of peoples, defined by common cultures and identities, a necessary condition for the demands of egalitarian justice to apply. For peoples so defined are not given in the way in which individuals are. The formation and consolidation of democratic states did not fit neatly into the borders of peoples pre-defined by a common language, a common religion, a common history, a common culture. More often than not, they did not match anything that could be truthfully described as pre-existing nations. And when this was the case, they engaged in vigorous nation-building by imposing, if not a common religion, at least a common language and hence, as time went by, a common culture, and soon also a common history, both real as a mechanical outcome of sharing political institutions and mythical as a result of reconstructing the more remote past so as to fit into a plausible national narrative. Along the way, they fashioned a strong national

identity, which enabled them to count on some degree of patriotic self-sacrifice on the part of their citizens. The common culture and the shared identity generated by this process are arguably conducive to the realization of egalitarian distributive justice on whatever scale they exist (Van Parijs ed. 2004). And this needs to be taken into account when institutions are being designed. But how close people are to each other by virtue of their cultures and how much they identify with one another cannot sensibly provide an authoritative guide to choosing what criterion of justice should apply to them. Whether or not there are “common sympathies” between some country’s cultural majority and one of its cultural minorities, for example, cannot possibly determine whether the latter should, as a matter of justice, be treated as equals. Feelings ought to be shaped by just institutions. They ought not to dictate which institutions should be regarded as just (see Weinstock 2003: 274-6).

### **No global justice without global democracy?**

The rise of modern nations has been closely linked to the rise of democratic regimes, and those who were intuitively inclined to adopt the first view just discussed may therefore easily be convinced to eschew its difficulties by shifting to a second view. For the demands of egalitarian justice to apply, what we need is not an ethnos but a demos, not a homogenous people with a common culture and a shared identity, but a self-governing people or a democracy, a society whose collective decision-making regime grants equal political rights to all its members.

At first sight, this view could be attributed to the John Rawls of *A Theory of Justice*, who presents his own egalitarian conception of justice as “the most appropriate moral basis for a democratic society” (Rawls 1971: viii). What the latter expression refers to, however, is not a particular form of government, but a society whose members regard one another as equals, treat others and expect to be treated by others with an equal concern and respect, and must therefore be assumed to be capable of a sense of justice (see Cohen 2003: § 2.2). It can reasonably be hoped, and plausibly be supposed, that the operation of a democratic regime, and in particular of a deliberative democracy, will tend to nurture such attitudes and capacities, and there is little doubt that any egalitarian conception of justice would endorse, both for intrinsic and instrumental reasons, a democratic regime (Rawls 1971: §36). But such a democratic regime does not need to be in place before Rawls’s conception of justice as fairness can be appealed to and elaborated, in particular with the help of the original position device, whose purpose is precisely to spell out the normative demands constitutive of the “democratic society”.

This is not quite the case for Jürgen Habermas (1992), whose “discourse principle” requires that principles of distributive justice be constructed through a process of appropriately framed actual deliberation between the people concerned. However, “the correct assumption that duties of justice are only well-defined on the basis of democratic processes should not be confused with the faulty claim that duties of justice cannot arise in their absence” (Rummens 2006: 9). From Habermas’s perspective, therefore, claims of justice based on the equal moral worth of all human beings are intelligible before any political institutions are in place at the relevant level and indeed can motivate and support the urge to create the democratic institutions that could specify and implement what justice demands. Habermas’s (2004, 2005) own endeavour to imagine a multi-layered coherent system of democratic institutions can therefore consistently be interpreted as

guided by a concern for global justice, even though it is up to the actual global deliberation thus rendered possible to determine how egalitarian a distribution global justice will require.

Thomas Nagel comes closest to asserting that the latter could only make sense on the background of a pre-existing global democracy. For demands of egalitarian justice can only legitimately arise, in his view, to the extent that society does not only hold us responsible for obeying its laws, but also “makes us responsible for its acts, which are taken in our name and on which, in a democracy, we may even have some influence”: for egalitarian justice to be triggered, we need to be both the subjects and the co-authors of the coercive laws (Nagel 2005: 129). Thus, the reason why Nagel (2005: 144) refuses to view the European Union as a whole, rather than each of its member states, as the level appropriate for claims of egalitarian distributive justice is that we still cannot see “a genuine European federation with some form of democratically elected representative government”.

However, Nagel himself does not stick to this view. When faced with the question of whether appeals to egalitarian justice can meaningfully be made in colonial regimes, he shifts to “a broad interpretation of what it is for a society to be governed in the name of its members”. The crucial feature turns out to be that a “normative engagement” to uphold the coercive legal system is expected from the subjects, and hence that those who wish to impose it must claim that “it is intended to serve their interests even if they are not its legislators” (Nagel 2005:129 fn14). We are back from the democratic regime to the democratic society. What is needed is simply that those human beings who have some say over the prevailing coercive rules should be expected to provide a justification for these rules to those expected to comply with them (see Julius 2006: 179-81): not just motives to obey them, such as the sheer fear of sanctions, but reasons to accept them as human beings entitled to equal concern and respect. What is needed, in other words, is mutual acceptance as members of the same “justificatory community” (Cohen 1992: 282-3).

The key condition we thus end up with is not the factual one of the existence of a democratic regime, but a normative view about what relations should prevail between human beings. However, it must be conceded that such a normative view cannot make much sense unless some factual conditions are fulfilled, essentially that the people concerned should be able to picture their relations with one another as relations between individuals rather than only between groups and as conversational relations which allow arguments to be formulated, understood and discussed. The functioning of a deliberative democracy within a country routinely creates and recreates such factual conditions at the domestic level. But they are also fostered beyond national boundaries by the expansion of travelling and trans-national media, by the spreading of lingua francas and the internet, by the transnational activities of churches and NGOs, by Davos as well as by Porto Alegre, by the multidimensional widening and thickening of a global civil society. So, why could we not regard mankind as a whole as a society of equals to which egalitarian justice should apply?

## **No global justice without a global state?**

The answer may simply be that mankind does not form a society, i.e. a set of human beings whose life is organized by a common social structure. Once admitted that democratic co-authorship is not a necessary condition for egalitarian justice to apply, Nagel can still maintain, as

others did before him, that subjection to a coercive legal system, currently absent at the global level, constitutes such a condition. No egalitarian justice, in other words, without a state, i.e. an authority, whether democratic or not, able to create and enforce a coercive framework that powerfully constrains the options open to the individuals subject to it (Blake 2002: 265-6, 279-80; Nagel 2005: 120-1, 139-40).

According to both Blake (2002: 283-4) and Nagel (2005: 123), this is the fundamental reason — rather than the “common sympathies” contingently associated with states — why Rawls rightly restricts the application of his two principles of justice to the level of sovereign nation states. Throughout his work, Rawls consistently asserts that the primary subject of justice is the “basic structure of society”, i.e. “the way in which the major social institutions distribute fundamental rights and duties and determine the distribution of advantages from social cooperation”, and that this needs to be the case because the effects of the basic structure “are so profound and present from the start” (Rawls 1971: §2). At the global level, however, as stressed by Samuel Freeman (2006: 61) in defence of the line taken by Rawls in *The Law of Peoples*, “there is no global structure mainly because there is no world-state, with all it would entail”. For example, “since there is no world-state, there is no independent global property system to apply a principle of distributive justice to, such as the difference principle”. On this account, the reason why global justice makes no sense is not that there is no global people, nor that there is no global democratic state, but simply that there is no global state. This claim raises two main difficulties.

The first one is, again, that the stylized picture of the world on the background of which the claim can be expressed most comfortably is in the process of losing touch with reality. That there is no unitary sovereign authority with a truly global reach is uncontroversial. But do sovereign states still exist? In today’s world, coercive laws are multi-layered. In several federal states, many laws with effects both “profound and present from the start” emanate from federated entities endowed with a firmly entrenched autonomy. Above the level of nation-states, a regional supranational entity such as the European Union has developed extensive legislative powers (see Rawls & Van Parijs 2003). Reducing these to voluntary intergovernmental agreements has become increasingly illusory, firstly because of the growing legislative role of the European Parliament and other non-intergovernmental bodies, secondly because of qualified majority replacing unanimity in intergovernmental decisions, and thirdly because of the right of secession becoming increasingly notional. The massive legislation accumulated at the EU level undoubtedly generates countless effects, again “profound and present from the start” on all EU residents, backed with a set of sanctions admittedly implemented by national administrations, police forces and courts, but themselves subjected to binding verdicts by the European Commission and the European Court of Justice. Does this make egalitarian justice as relevant to the EU as a whole as Nagel believes it is to the United States? If the imposition of a coercive legal framework is the relevant criterion, rather than the democratic standard invoked by Nagel (2005: 144) to disqualify the European Union, the answer, it seems, should be positive.

And if it is, should we not go further? The second half of the twentieth century has witnessed the development of a growing number of worldwide supranational organizations with competences extending to distributive matters, such as the World Bank, the International Monetary Fund, the International Labor Organization, the United Nations Development Programme and, most impressively, the World Trade Organization (see Cohen and Sabel 2006), with the effective power of imposing binding rules on all its member countries and with again for most of these a merely formal possibility of withdrawal which is becoming increasingly notional.

Global organizations may have no police and no army at their disposal, and hence no law enforcement tool as usually conceived. But in a world in which countries have become increasingly dependent on exchange with one another, trade sanctions can be at least as effective as armed intervention. If powerful common coercive rules are the key criterion, Nagel's "statism" should be replaced by a weaker "political institutionalism" as a specification of what triggers egalitarian justice. The patchwork of global supranational organizations sketched above falls far short of what a global state would be. But they are the setting of complex decision processes, often opaque and inegalitarian, that produce coercive rules to which powerful distributive effects can now plausibly be ascribed. This is especially the case if these effects are understood, as they should be, not simply as the difference the supranational organizations made with respect to the past, but as the difference between the situation that currently obtains and the many other situations which they have become able to bring about. Consequently, there seems to be more than enough by way of global state-like institutions for there to be a global basic structure, and hence for egalitarian justice to make global sense even on Nagel's "statist" view.

### **No global justice without a global basic structure?**

More fundamentally, however, it can be objected that the existence of a common legal framework developed by global state-like authorities is by no means required for a global basic structure to exist, i.e. for there to be "major social institutions" that "distribute fundamental rights and duties and determine the distribution of advantages from social cooperation" at the global level. This is taken for granted, for example, by Thomas Scanlon (1973: 1066-7) in one of the earliest in-depth discussions of Rawls's Theory of Justice: "considerations of justice apply at least wherever there is systematic economic interaction; for whenever there is regularized commerce there is an institution in Rawls's sense, i.e. a public system of rules defining rights and duties etc. Thus the Difference Principle would apply to the world economic system taken as a whole as well as to particular societies within it."

This global Rawlsianism was subsequently developed by Charles Beitz (1979: 129-83): the international interdependence generated by economic interaction creates the conditions for the application of a global difference principle. However, what is it exactly that this principle is supposed to govern? If what triggers global justice is cooperation between nations, should the scope of global justice not be restricted to the cooperative surplus? "Roughly, it seems that there is a threshold interdependence above which distributive requirements like a global difference principle are valid, but below which significantly weaker principles hold." (Beitz 1979: 165) If cooperation is what matters we are obviously back to one of the peripheral notions of global justice briefly discussed at the start.

However, Rawlsian justice is best understood not as a matter of distributing impartially some cooperative surplus between the economic agents who helped produce it, but as a matter of treating impartially all those expected to cooperate in the distinct sense of complying willingly with the coercive rules imposed on all of them. So at least Brian Barry (1982, 1989) has forcefully argued, while stigmatizing Rawls's misleading formulations and emphasizing the crucial importance of this distinction in the global context. Even in the domestic context, the fact that there is precious little an individual could achieve in the absence of some social cooperation

(Rawls 2001: §21) does not make the cooperative surplus coincide with the whole social product, to all of which the difference principle would therefore apply unproblematically. For substantial subsets of the country's population could conceivably withdraw, or meaningfully speculate about what they could achieve in the absence of collaboration with the rest, and argue that this should be justly exempted from the country-wide distribution of the burdens and benefits of cooperation. Such speculations are obviously even more straightforward at the international level. But they are irrelevant if justice is not about the fair sharing of the cooperative surplus but about the impartial distribution of the benefits and burdens allocated within the framework of a coercive structure with which people are expected to comply. This clarification is taken on board in Beitz's later reformulation of his "Rawlsian" approach to global justice: the fundamental point is not that there is cooperation for mutual benefit, but that "this world contains institutions and practices at various levels of organization — national, transnational, regional and global — which apply to people largely without their consent and which have the capacity to influence fundamentally the courses of their life" (Beitz 1999: 204). Whether or not it consists to a significant extent in rules determined by supranational organizations, there is a global basic structure, to which egalitarian justice applies.

A similar assumption underlies Thomas Pogge's (2001, 2002) position. There is an international economic order consisting of institutions and practices, sometimes the outcome of multilateral agreements, sometimes unilaterally imposed by some countries on others. It covers the rules governing trade and investment, but also for example the international borrowing and resource privileges conferred on a country's rulers. So conceived, this international economic order obviously has a major influence on worldwide inequalities. By supporting it, Pogge argues, the citizens of the richer countries harm the poor of the world. To trigger significant transfers from the North to the South, we therefore need to appeal to nothing more controversial than the sheer negative duty not to harm. But what counts as harming the poor?

As several critics have argued (Gilbert 2004, Risse 2005a, 2005b), this notion is far from clear. If harming the poor is making them worse off than they would have been, one could not really say that the international economic order harms them, as most of them would not have been born had it not been for the dramatic fall in child mortality that can plausibly be ascribed to some aspect of that order. If it is making them worse off than they could have been, the proposition becomes trivially true as it could confidently be asserted for the rich and the poor alike. As subsequently clarified by Pogge (2005), harming the poor should rather be understood as making them worse off than they should have been, i.e. how well off they would have been had the international economic order been just. To know what "harming" is, one therefore needs to know what justice requires (not the other way round). In order to gather a wide consensus, Pogge's plea for global redistribution tends to use a deflated conception of justice reducing either to the sharing of part of the value of natural resources (Pogge 1994) or to the fulfilment of the human right to freedom from severe poverty (Pogge 2001). However, once the international economic order, the pervasive causal impact of which Pogge persuasively stresses, is identified as a global basic structure, it is natural, in a Rawlsian perspective, to regard it as governed by a global difference principle and hence to consider that the world's poor are being harmed if there is a sustainable way of making them better off, without making anyone else worse off, than they currently are.

## **Borders between equals**

The practices and institutions which Scanlon, Barry, Beitz and Pogge have in mind when asserting that there is a global basic structure despite the absence of a global state tend to be institutions that regulate the interaction and collaboration between nations as such or subsets of their populations. But there is one obvious and powerful component of the global structure which takes a different form and arguably provides the most straightforward basis for demands of global justice: the sheer existence of national borders (see e.g. Cavallero 2006). The latter implies that people are being prevented, by virtue of where they happen to be born, from taking advantage of opportunities open to people born elsewhere. Again, this has a major effect on people's lives, both "profound and present from the start", and to establish that the rules embodied in borders are coercive, it is hardly necessary to point to the many people who were killed while attempting to trespass or died as a result of not daring to try. The complex system formed by the conjunction of border-crossing rules, some internationally negotiated, most unilaterally imposed, form a highly significant portion of a coercive global basic structure, which applies, be it differentially, to all of us and which strongly constrains, very unequally, where we can travel, settle and work. In a world in which communication was so limited or travelling so risky or expensive that few considered moving, this set of coercive laws was of little importance. But in today's interconnected world, the impact of these coercive laws on people's living conditions is conceivably greater than that of any other aspect of legislation.

To trigger demands of egalitarian global justice, from this perspective, we need far less than a global democracy, far less than a global state, far less than global political institutions, far less even than a socio-economic order that could be said to apply across the globe. It is enough to have our life prospects significantly affected by constraints which are not natural necessities but coercive rules on which at least some of us human beings have some grip. Joined with the recognition that those whose choices are constrained by these rules are not inferior beings but persons we regard as fundamentally equal, it is this particular form of interdependence — the dependence of people's fate across the globe on coercive rules imposed, and hence alterable, by some of them — which constitutes a necessary and sufficient condition for egalitarian global justice to apply. On the global level just as on the domestic level, once there are coercive rules with which we expect other human beings to comply, however badly they fare under them, our regarding them as equals forces us to come up with a justification, with good reasons for people who are our equals to accept them. No more is needed, on this view, than for human beings to knock at our nation's door and, if we do not let them in, for us to agree that we owe them a justification they can accept.

Suppose we adopt such a minimalist conception of what is necessary and sufficient for the demands of egalitarian justice to kick in. Under present conditions — with a global basic structure that has become the subject of a global conversation —, global distributive justice should then evidently be given logical priority over domestic distributive justice. It would not follow that states and nations ought to vanish, that borders ought to be erased or peoples dissolved. But they must all be demoted from the framework to the toolbox. Instead of seizing them in a desperate attempt to halt the irresistible globalization of our sense of justice, we must

urgently think about how they can best be constrained, reconfigured and empowered in the service of distributive justice for a global society of equals.

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