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Race, Rights, and Justice



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consistently respected, such a principle would serve to maintain stability between peoples with good intentions regarding a reasonably just global order. Perhaps additional principles of remedial justice are needed to complement Rawls' principles of global justice.

Justice, Cosmopolitan Style

As one commentator puts it: "A lot is at stake in the current debate about the most desirable type of world order and this is why we need to examine carefully the arguments of those who assert that with the end of the bipolar world the opportunity now exists for the establishment of a cosmopolitan world order."²² My discussion considers some of the arguments by leading cosmopolitan critics of Rawls' Law of Peoples, and considers cosmopolitan liberalism on its own terms. But it does not highlight the various differences between cosmopolitan theories.²³ Rather, it seeks to concentrate on some ideas that most, if not all, cosmopolitan liberals share with each other.

Among the various differences between cosmopolitanism and Rawls' Law of Peoples is that the former indexes the subjects of international justice to individual persons, while Rawls places the emphasis on justice between states. One of numerous examples of this view is found in the assertion that "We must come to see all humanity as tied together in a common moral network. . . . Since morality is universalistic, its primary focus must be on the individual, not the nation, race, or religious group."²⁴ One is struck, however, by the unreasonableness of being asked to choose between focusing concerns about global justice on either individuals or collectives, and one is left wondering precisely why this is a choice one *must* make, especially when it is not conceptually absurd to simultaneously affirm the need to *both* address concerns of justice between individuals and those between groups. This leads to a second difference between these theories, as cosmopolitan liberals criticize Rawls' position for not being equipped to address questions of injustice within states since the point of Rawls' theory of international justice is justice between states. Thus, it is argued by cosmopolitan liberals, Rawls' Law of

²² Chantal Mouffe, *On the Political* (London: Routledge, 2005), p. 90.

²³ Samuel Scheffler, "Conceptions of Cosmopolitanism," *Utilitas*, 11 (1999), pp. 255–276; reprinted in Samuel Scheffler, *Boundaries and Allegiances* (Oxford: Oxford University Press, 2001), Chapter 7.

²⁴ Louis Pojman, "The Moral Response to Terrorism and Cosmopolitanism," in James Sterba, Editor, *Terrorism and International Justice* (Oxford: Oxford University Press, 2003), p. 146.

Peoples fails to address deeper injustices in the form of inequalities within states, and this will lead to toleration of states that mainstream injustices in the form of inequality.²⁵

Of course, the cosmopolitan position here is often charged with a kind of cultural imperialism in the form of Bernard Boxill's objection from cultural diversity,²⁶ or in legal terms, paternalism. This point of criticism is latent in Rawls' own theory of domestic justice when he states that "the principle of fair opportunity can only be imperfectly carried out, at least as long as the institution of the family exists."²⁷ And Boxill extends Rawls' reasoning to the global context: so long as there are variations in how families raise their children, and analogously, as long as there are variations in how states behave culturally, the principle of fair equality of opportunity is limited in its application. If cultural ideals, for instance, interfere with the ideals favored by other cultures, this might well amount to a barrier to the implementation of the Rawlsian principle of fair equality of opportunity in global contexts. Indeed, Boxill argues, fair equality of opportunity might very well abolish cultural diversity!²⁸ For it would be paternalistic and imperialistic (or, as Boxill argues, "invidious and presumptuous") to insist according to which values equality ought to be realized.²⁹ And there are degrees to which paternalism can manifest itself. While few would endorse hard paternalism wherein the state is justified in intervening into the affairs of citizens whenever it sees fit and despite the fact that the actions are voluntary because such an interference violates personal autonomy, others might endorse a softer

²⁵ It is important, however, to understand that it is quite possible that the difference between Rawlsian statism and cosmopolitan liberalism on the basic structure of international law might well turn out to be less than well-grounded. As Buchanan points out,

Once we take the idea of bundling sovereignty seriously we must consider the possibility that the contrast between a "state-centered" and a "world-state" system will become blurry. The more political differentiation there comes to be within states . . . and the stronger international legal structures become, the more difficult it will be to draw a sharp contrast between a state-centered and a world-state system (Buchanan, *Justice, Legitimacy, and Self-Determination*, p. 57).

²⁶ Boxill, "Global Equality of Opportunity and National Integrity," 148f. Basically, the objection is that "the world is made up of different societies with different cultures and different standards of success" and that these pose insurmountable roadblocks before the cosmopolitan liberal attempt to successfully apply the Rawlsian principle of fair equality of opportunity.

²⁷ Rawls, *A Theory of Justice*, p. 73.

²⁸ Boxill, "Global Equality of Opportunity and National Integrity," p. 150.

²⁹ Boxill, "Global Equality of Opportunity and National Integrity," p. 148.

version of it, wherein the state is sometimes justified in interfering into the affairs of its citizens only when it is to prevent serious harm to other citizens and where the actions of said citizens are voluntary. This Millian position is endorsed by, among others, Joel Feinberg and Gerald Dworkin, respectively.³⁰ And it is vital to see how Boxill's objection from cultural diversity serves as a challenge to cosmopolitan liberalism's reliance on a rather strong principle of global equality of opportunity.

Since the goal of this chapter is not to provide a comprehensive account of cosmopolitan liberal theories, but rather to juxtapose certain aspects of them to the Rawlsian account of international justice, I shall provide a set of claims with which I believe most, if not all, cosmopolitan liberals³¹ concur:

- (1) Various global structures (political, economic, cultural, etc.) eventuate, intentionally or not, in conditions that create and sustain injustice for millions of persons globally;
- (2) The injustices in (1) include, but are not limited to, inequalities of opportunity to realize basic and essential conditions of living;
- (3) The global structures in (1) are often, if not typically, those of the ruling and wealthiest countries in the world;
- (4) Those who cause the injustices in question have duties to address them systemically by way of humanitarian intervention;
- (5) Corresponding to the duties of those responsible for the injustices in (1) are rights that all persons in the world possess to equality of opportunities to realize the basic and essential conditions of living.

³⁰ On paternalism, see John Stuart Mill, *On Liberty* (Indianapolis: Hackett Publishing Company, 1978); Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), Chapter 5; Gerald Dworkin, "Paternalism," in Joel Feinberg and Hyman Gross, Editors, *Philosophy of Law*, 5th Edition (Belmont: Wadsworth Publishing Company, 1995), pp. 208–19; Gerald Dworkin, "Paternalism: Some Second Thoughts," in Joel Feinberg and Hyman Gross, Editors, *Philosophy of Law*, 5th Edition (Belmont: Wadsworth Publishing Company, 1995), pp. 219–223. Also see Patrick Devlin, *The Enforcement of Morals* (Oxford: Oxford University Press, 1965), Chapter VI.

³¹ Some of the leading philosophical proponents of some version or another of cosmopolitan liberalism include: Brian Barry, *Liberty and Justice* (Oxford: Oxford University Press, 1989); Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979); Buchanan, *Justice, Legitimacy, and Self-Determination*; Darrel Moellendorf, *Cosmopolitan Justice* (Boulder: Westview Press, 2002); Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996); Thomas Pogge, *World Poverty and Human Rights* (London: Polity Press, 2002); Fernando Teson, *A Philosophy of International Law* (Boulder: Westview Press, 1998).

We must bear in mind that there may be some cosmopolitan liberals who do not subscribe to all of these claims, as “there is no consensus among contemporary philosophers and theorists about how the precise content of a cosmopolitan position is to be understood.”³² Nonetheless, the above claims seem to capture a sufficiently robust version of what I shall refer to as “justice cosmopolitanism”³³ that is helpful in our quest to assess some of its central tenets. As Samuel Scheffler notes in describing this version of cosmopolitanism:

Cosmopolitanism about justice is opposed to any view that posits principled restrictions on the scope of an adequate conception of justice . . . it opposes any view which holds, as a matter of principle, that the norms of justice apply primarily within bounded groups comprising some subset of the global population. For example, this type of cosmopolitanism rejects communitarian and nationalistic arguments to the effect that the principles of distributive justice can properly be applied only within reasonably cohesive social groups . . . cosmopolitanism about justice is equally opposed to liberal theories which set out principles of justice that are to be applied in the first instance to a single society. . . . While remaining otherwise sympathetic to Rawls’s ideas, these cosmopolitan critics have sought to defend the application of his principles of justice to the global population as a whole.³⁴

In casting cosmopolitanism primarily in terms of considerations of justice, I am not ignoring “cultural cosmopolitanism,” which normatively construes persons as citizens of the world instead of nationalistic ones. My discussion shall focus mainly on justice cosmopolitanism, though I shall delve into issues that raise concerns about culture. In fact, the issues I raise about cosmopolitan liberalism’s denial of the moral relevance of culture, ethnicity, etc.³⁵ amounts to a disrespecting of the rights to compensatory justice for various groups that were and are oppressed by certain states and those organizations and individuals supporting them.

While it is admirable that cosmopolitan liberals seek a global order that would hold countries and nongovernmental organizations to duties of justice in making sure that those without have enough to make it in the world, it is unclear how such duties are to be well-grounded so as to avoid a kind of

³² Scheffler, *Boundaries and Allegiances*, p. 111.

³³ A similar view is referred to as “moral cosmopolitanism” in Charles Beitz, “Cosmopolitanism and Global Justice,” *The Journal of Ethics*, 9 (2005), pp. 11–27.

³⁴ Scheffler, *Boundaries and Allegiances*, p. 112.

³⁵ Consider Martha Nussbaum’s assertion that “To count people as moral equals is to treat nationality, ethnicity, religion, class, race, and gender as ‘morally irrelevant’—as irrelevant to that of equal standing” [Martha Nussbaum, “Reply,” in Joshua Cohen, Editor, *For Love of Country* (Boston: Beacon Press, 1996), p. 133].

“fuzzy innocence” against which Richard Falk cautions.³⁶ Just what is the duty in question? Is it a duty of assistance to relieve *poverty*, as Thomas Pogge and many other cosmopolitan liberals advocate? Or, is it a duty of assistance to address those truly in *need*? For as Larry Temkin argues, an individual or a group can be poor relative to others within their society, but be relatively wealthy, globally speaking. This suggests that poverty is a comparative notion, though the concept that seems to justify a duty of assistance seems to be one of need (another comparative concept), not poverty.³⁷

Cosmopolitanism, Equality, and the Duty of Humanitarian Assistance

Once bases of need are determined, *can* they be realized in the way that cosmopolitan liberalism seems to suppose they can? This question poses an “ought implies can” problem for global justice, as it might be argued that there are genetic differences between humans that prevent conditions of equality from obtaining even with significant efforts to equalize humans. It is noteworthy, however, that genetics does *not* support such a skepticism about global equality.³⁸ Moreover, precisely how ought these duties to be distributed? Just who or what has them? The moral duty to provide for those in need who are victims of natural disasters, I think, can be well-grounded in the duty of assistance based on anti-bad Samaritan laws at the state level. And a corollary duty can be well-grounded at the international level, though cosmopolitan liberals need to explain precisely the content of such an international duty along these lines and how it might be incorporated into international law. That much is relatively uncontroversial, so long as the duty is construed as an imperfect one, and the duty’s fulfillment does not pose an unreasonable risk of harm³⁹ to those carrying out the duty in good faith.

But a number of difficulties arise here for the cosmopolitan liberal account of global justice and equality. G. A. Cohen points out that the Marxist notion

³⁶ Richard Falk, “Revisioning Cosmopolitanism,” in Joshua Cohen, Editor, *For Love of Country* (Boston: Beacon Press, 1996), p. 57.

³⁷ Larry Temkin, “Thinking About the Needy: A Reprise,” *The Journal of Ethics*, 8 (2004), pp. 412–413. For a discussion of global poverty and need, see *The Journal of Ethics*, 8:4 (2004); Garrett Cullity, *The Moral Demands of Affluence* (Oxford: Oxford University Press, 2004); Paulette Dieterlen, *Poverty* (Amsterdam: Rodopi, 2005).

³⁸ Theodosius Dobzhansky, *Genetic Diversity & Human Equality* (New York: Basic Books, Inc., 1973).

³⁹ For an analysis of the concept of harm, see Joel Feinberg, *Harm to Others* (Oxford: Oxford University Press, 1984).

of voluntary equality within a state assumes plenary abundance driven by capitalist modes of production. But Marxism is problematic in its insistence on equality in light of the lack of effectively limitless productive power.⁴⁰ This “pre-green” mentality has an interesting parallel to cosmopolitanism in that the global equality that cosmopolitan liberals advocate seems unrealistic in light of the realities of quite limited powers of production coupled with the lack of abundance of food, shelter, and clothing relative to the ever-increasing numbers of humans on earth. Thus it is unclear that the cosmopolitan ideal of wealthier states and nongovernment organizations assisting those in poverty can succeed in the long run, though with proper education, perhaps this problem can be dealt with in part by convincing all states and individuals to cease overpopulating the earth such that now dwindling natural resources will in fact sufficiently serve humans in the future. For just as it is “unrealistic to hope for voluntary equality in a society which is not rich,”⁴¹ it is unrealistic to hope for global equality in a world wherein most individuals and societies continue, for whatever reasons, to overpopulate with reckless abandon, thereby threatening the viability of future generations with a significant lack of sufficient natural resources. Nonetheless, the cosmopolitan liberal may counter with a cautious optimism, “. . . we may envisage a level of material plenty which falls short of the limitless conflicts-dissolving abundance projected by Marx, but which is abundant enough so that, although conflicts of interest persist, they can be resolved without the exercise of coercion.”⁴² So it is at least logically possible, and even practically so, to evade this pragmatic concern with cosmopolitan egalitarian distributive justice. But precisely how probable this prospect is in light of history is, of course, unclear.

Related to the problem of over-population of humans, however, is a difficulty confronting Marxists and equality, one that seems to also face cosmopolitanism insofar as it is committed to the latter. “Starving people,” Cohen argues, “are not necessarily people who have produced what starving people need; and if what people produce belongs by right to them;⁴³ . . . then

⁴⁰ G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), p. 127. See also G. A. Cohen, *If You're an Egalitarian, How Come You're So Rich?* (Cambridge: Harvard University Press, 2000), p. 114.

⁴¹ Cohen, *Self-Ownership, Freedom, and Equality*, p. 129.

⁴² Cohen, *Self-Ownership, Freedom, and Equality*, p. 131.

⁴³ “The great cry of world Justice today is that the fruit of toil go to the Laborer who produces it” [W. E. B. DuBois, *An ABC of Color* (New York: International Publishers, 1963), p. 109].

starving people who have *not* produced it have no claim on it.”⁴⁴ Now as Cohen ingeniously explains, this

... forces a choice between the principle of a right to the product of one’s labor embedded in the doctrine of exploitation and the principle of equality of benefits and burdens which negates the right to the product of one’s labor and which is required to defend support for very needy people who are not producers and who are, *a fortiori*, not exploited.⁴⁵

When those who suffer dire need can be conceived as those coinciding with, or as a subset of, the exploited working class, then the socialist doctrine of exploitation does not cause much difficulty for the socialist principle of distribution according to need. But once the really needy and the exploited producers no longer coincide, then the inherited doctrine of exploitation is flagrantly incongruent with even the minimal principle of the welfare state.⁴⁶

And what Cohen reveals about these Marxist principles, seemingly assumed or even adopted explicitly by cosmopolitan liberals, concerning states appears to apply globally. Given the environmental crises we have been facing for decades, it is far from obvious that material consumption will be matched by material production such that cosmopolitan ideals of global equality can be realized without posing serious problems for the well off. This poses the problem of good Samaritanism, which states that there are duties of assistance to endangered strangers, but that such duties hold only to the point at which those assisting others are themselves placed at genuine risk of their own well-being. And it is an empirical question as to how much worse off the better off must become for the cosmopolitan ideal of global equality and redistributive justice to be deemed unreasonable. Cohen states the problem in cautionary terms:

When aggregate wealth is increasing, the condition of those at the bottom of society, and in the world, can improve, even while the distance between them and the better off does not diminish, or even grows. Where such improvement occurs (and it has occurred, on a substantial scale, for many disadvantaged groups), egalitarian justice does not cease to demand equality, but that demand can seem shrill, and even dangerous, if the worse off are steadily growing better off, even though they are not catching up with those above them. When, however, progress must give way to regress, when average material living standards must fall, then poor people and poor nations can no longer hope to approach the levels of amenity which are now enjoyed by the world’s well off. Sharply falling average standards mean that settling for limitless improvement, instead of equality, ceases to be an option, and huge disparities of wealth become correspondingly more intolerable, from a moral point of view.⁴⁷

⁴⁴ Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* p. 106.

⁴⁵ Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* p. 108.

⁴⁶ Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* pp. 110–111.

⁴⁷ Cohen, *If You’re an Egalitarian, How Come You’re So Rich?* pp. 113–114.

This leads to a related problem for cosmopolitan liberalism, call it the “economic imperialism objection to global equality.”⁴⁸ It is related to Boxill’s objection from cultural diversity, and states that as cosmopolitan liberals are inclined to argue, poverty may prevent people from realizing many ideals, cultural and otherwise. But, this objection presses, if to eradicate such poverty means that exclusively Western values must be implemented, then to the extent that economics dictates culture, which implies that Western values will control the values of Westerners and non-Westerners alike, it will threaten to destroy non-Western cultures and ways of being. The point of this objection is not to insist on the immutability of cultures, Western or otherwise. Rather, cosmopolitan liberals, if they want to demonstrate a genuine concern for cultural differences, must explain how combating and preventing global poverty will not pressure unnecessarily those in non-Western cultures from succumbing to Western ideals when they would not otherwise desire to do so. The replication of any ideals—Western or not—ought always to be done voluntarily, not because one is economically coerced to do so in order to survive or to avoid dire poverty. This is especially the case where the consequences of poverty and need can be averted without cultural change. As Boxill exclaims, “. . . we may not yet be in a position to confidently claim that poor countries must replicate the West to escape from poverty.”⁴⁹

Given the above considerations and what is at stake, it would appear that cosmopolitanism has an empirical burden of demonstrating how cultural diversity can be maintained in the midst of addressing the needy. For “if cultural diversity can thrive in a world without poverty, and if the distinct cultures can, while changing, yet retain distinct standards of success, global fair equality of opportunity may remain an unapproachable ideal.”⁵⁰ Why is the preservation of cultural diversity important? This is where Boxill grounds the objection from cultural diversity in the objection from individual self-respect. As Boxill notes, cultural diversity lies at the heart of self-respect,⁵¹ which is, he implies, a necessary condition of justice. There simply cannot be a just social order, domestically or globally, without those in it being respectful of themselves. And community life is essential to cultural elements that ground self-respect. After all, “By what reasoning do we know that desires for higher incomes will be satiated before pluralism is obliterated? And if they are not, why should we believe that any ideal will displace the sole and triumphant desire for

⁴⁸ The idea behind this objection is borrowed from Boxill, “Global Equality of Opportunity and National Integrity,” pp. 150–151.

⁴⁹ Boxill, “Global Equality of Opportunity and National Integrity,” p. 152.

⁵⁰ Boxill, “Global Equality of Opportunity and National Integrity,” p. 152.

⁵¹ Boxill, “Global Equality of Opportunity and National Integrity,” p. 154.

wealth?”⁵² The concern, of course, is to realize a world of autonomous, sovereign, and culturally diverse states, each with its own sustaining power of growth⁵³ within environmental limits. Yet “a nation which is less affluent than others can still be autonomous. A nation which is the least-advantaged class of other nations is likely to lose its autonomy, and to have to order its affairs according to their dictates.”⁵⁴ A prime example of this problem is the Westernization of Mexico and Latin American countries that see as their way out of poverty the adopting of Western values, values that to a certain extent can and often do endanger the family values that are so central to our way of life as Latinos/Hispanics. One way this occurs is when so many of us Latinos cross the U.S. border for employment, and end up adopting Western values that are incongruent with our original ones. It is unclear whether this happens as a natural process of acculturation in the meeting of peoples, or whether it is necessary in order to secure and maintain the employment so desperately needed to survive. In either case, it strongly suggests a caution that the equality that cosmopolitan liberals advocate must concern itself with safeguards against the threats to cultural and ethnic identity that lie at the foundation of self-respect.

It is dubious, then, that cosmopolitan liberalism’s quest for global distributive justice is realizable in that of the problems that it seems to pose for diverse cultures, which serve as bases of self-respect, which in turn is necessary for justice. Global poverty and need must be dealt with in ways that retain cultural diversity as much as practically possible, and when that is not possible, cultures ought not to be modified or changed by economic or other coercive means. Intuitively, it seems possible to address at least most needs of global peoples with no economic or cultural strings attached. But this sort of an approach to the needy tests the motives of those addressing the needs. And some of Rawls’ principles for global justice are precisely intended to speak to this problem, delimiting the conditions under which it is justified to assist in the eradication of need.

But what about need and injustices that are caused, wrongfully, by humans? Do the victims of such harmful wrongdoings have *rights* that are global insofar as who the duty-bearers are concerned? It would seem to distort plausible notions of collective responsibility to think that anyone but those who are significantly responsible for nonnatural harmful wrongdoings

⁵² Boxill, “Global Equality of Opportunity and National Integrity,” p. 155.

⁵³ Boxill, “Global Equality of Opportunity and National Integrity,” p. 168.

⁵⁴ Boxill, “Global Equality of Opportunity and National Integrity,” p. 158.

have duties *of compensation* to address the problems. But as Temkin states in terms of good Samaritanism⁵⁵ and the pool lounge case:

After all, I *can* have a moral obligation to save a drowning child that someone else has thrown in a pool, or to drive a bleeding hit and run victim to the hospital. Of course, . . . my obligations towards others can be limited by the extent to which I can effectively aid them and the costs to me of my doing so, but the mere fact that another agent is responsible for someone's plight is not sufficient to automatically absolve me of obligations towards them.⁵⁶

Thus there might be a duty to assist, either in a causally focused or a causally amorphous manner,⁵⁷ those in need either by results of natural events beyond their control or due to the actions of others. And while the former kinds of cases are relatively unproblematic in that most everyone believes that it is morally problematic to not assist those who are victimized by way of famines caused by, say, natural disasters beyond our control or predictability, the latter kinds of cases fall clearly within the purview of anti-bad Samaritan statutes and in no way excuse from responsibility those who could assist those in need without undue cost to themselves. But these are not duties of compensation, but of assistance. For duties of compensation pertain to those that are bound to make the injured parties as whole as they were prior to being injured. There are, rather, duties of assistance to those in need because of circumstances not of their own doing. In such cases, then, the well-off cannot simply ignore the needy without being subject to serious moral criticism.⁵⁸

Cosmopolitanism and Compensatory Justice

But the problem of poverty or genuine need caused by harmful wrongdoing requires a more fine-grained analysis of who is or ought to be responsible for what. It is implausible to argue, as many cosmopolitan liberals do, that an entire country has a duty to assist in the eradication of global poverty and to address long-term issues of inequality if in fact only a certain, say, powerful elite in that country were indeed responsible for the problems in question, due to fraud, nepotism, etc. And this is true despite the fact that

⁵⁵ For discussion of anti-bad Samaritanism, see Joel Feinberg, *Freedom and Fulfillment* (Princeton: Princeton University Press, 1992), Chapter 7; John Kleinig, "Good Samaritanism," *Philosophy and Public Affairs*, 5 (1975), pp. 382–407.

⁵⁶ Temkin, "Thinking About the Needy: A Reprise," pp. 421–422.

⁵⁷ This distinction is borrowed from Peter Unger, *Living High and Letting Die* (Oxford: Oxford University Press, 1996), p. 48.

⁵⁸ Temkin, "Thinking About the Needy: A Reprise."