

# Legitimacy, Justice and Public International Law

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*Distributive justice – communal relationships*

Communal relationships are constellations among people who have a common claim to certain goods (e.g. because they have inherited them or produced them through their cooperative work) or a common responsibility to bear some burdens (e.g. because they jointly have agreed to take care of something). In other words: individuals are involved in a communal relationship, or a community, when they share common goods or common burdens or both. Justice demands that the goods and burdens of a community are to be distributed in a way that is acceptable to all members. Although there are many different forms of community that are subject to varying context-dependent criteria of distributive justice, there is one general and fundamental principle that works for the distribution of the goods and burdens in all communities, provided that their members respect each other as equals. This is the *principle of equal treatment* according to which the goods and burdens of a community are to be distributed equally among its members unless an unequal distribution is justified by reasons that are acceptable to all parties concerned from an impartial point of view. This principle, which is the basic demand of distributive justice within modern moral and political thinking, relying on the idea that every human person is to be respected equally, is admittedly very vague, since it leaves open what reasons may be appropriate for justifying unequal shares. These reasons vary with the social function and structure of particular communities, but, in general, one can say that they refer to three features of their members: their respective contributions and achievements, their vested rights and liberties, and their basic needs.<sup>8</sup>

*Corrective justice – wrongness relationships*

What I call a wrongness relationship is a social situation that comes into being when people commit wrongdoings, e.g. by flouting binding norms of social order, violating the rights of other persons, or breaching their duties towards others. Such relationships require a correction of the respective wrongs in order to restore the social order, compensate the victims, or punish serious crimes. Corrective justice consists of two parts: on the one hand, *restitutive* justice which deals with the compensation of

<sup>8</sup> See J. Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 62; J. Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), 99ff.; D. Miller, *Social Justice* (Oxford University Press, 1976), 24ff.

damages, and, on the other hand, *retributive* justice that focuses on the question as to when and to what extent wrongdoings call for punishment. Both parts include a variety of problems which, however, cannot be discussed in the present context.<sup>9</sup>

I conclude my brief survey on the various basic kinds of justice by emphasising once again that their objects are *elementary types of social interaction* rather than complex social relationships. Since, in social reality, people form more or less complex networks of social relationships in which all these types of interaction are interlinked in manifold ways, the kinds of justice and their respective demands are highly interdependent. A family, for instance, represents a network of enduring relationships among its members which certainly includes a number of communal matters subject to distributive justice, but usually also raises problems of transactional, political and corrective justice, when its members conclude contracts among each other, make authoritative decisions binding for others or commit wrongs to others. Furthermore, I should mention that the kinds of justice and their respective demands are also conceptually interrelated. Most significant in this context is the fact that distributive justice, insofar as it does apply to a social arrangement, has priority to the other kinds, because transactional, political and corrective justice presuppose an acceptable initial or previous distribution of the relevant rights and assets of the individuals involved, a fact which itself eventually relies on standards of distributive justice. When the various basic demands of justice, taken together, are applied to complex social orders, they facilitate the construction of more complex ideas of justice in regard to the orders under consideration. If applied to the order of modern societies, they amount to the idea of *social justice*, and they suggest the idea of *international* or *global justice*, if applied to international relations or the entire global order. On the basis of these considerations on justice in general, I now turn to the idea of global justice.

### The idea of global justice

For a first approximation, I suggest to interpret the notion of global justice as a comprehensive concept that includes a plurality of demands

<sup>9</sup> See, for example, J.P. Sterba, *The Demands of Justice* (Notre Dame and London: University of Notre Dame Press, 1980), 63ff.; J. Coleman, *Risks and Wrongs* (Oxford University Press, 1992), 197ff.

of justice in regard to international and global affairs. So I would like to define global justice as the *totality of demands of justice that apply to international relations and the global order*. And I want to argue that all kinds of justice and their respective demands come into play: international affairs and the global order are subject to transactional justice to the extent in which different nations as a whole or their members maintain trade and exchange relationships; to political justice insofar as authorised power is either actually exercised by international or supranational agents or requisite for a peaceful and just global order; to distributive justice in regard to those affairs that are in some sense communal to a plurality or the totality of nations; and eventually, it is subject to corrective justice in the case of severe wrongs among nations that require compensation or retribution. The different demands of justice are interconnected in various ways, in which distributive justice again has priority to the extent in which it determines the nations' legitimate claims to common resources in the context of international transactions, power relations, and wrongs. Now, I want to take a closer look at the various demands of justice in order to check to what extent they apply to international law and the global order.

### *Transactional justice – international trade*

The global order is subject to transactional justice when different nations as a whole or their members maintain trade and exchange relationships. Accordingly, international trade relations and global market processes are required to take place under *fair rules and framing conditions* which make sure that all participating peoples and nations can derive benefit from them. To this end, these rules and framing conditions must make sure that no nation is able to dictate unilaterally the terms of trade to its own advantage, and that international exchange transactions are not distorted by asymmetrical market restrictions. International trade differs from domestic trade in the respect that the government of each country defines the conditions under which its citizens may enter into international trade relationships. And a prudent government will tend to rule these relationships in a way that they are to the best benefit of its own country, even if this may harm other countries. One possible means to this end, which, however, can be used only by mighty countries towards weaker ones, consists in exercising political pressure on other countries, or their governments respectively, in order to impose on them biased trade conditions. This is *imperialism*, which, of course, is highly unfair.

Another means, which also works among equally strong nations, is *protectionism*, i.e. measures that obstruct the import of foreign goods and/or foster the export of domestic products. In order to avoid a destructive escalation of such measures, countries are in the habit of concluding international trade agreements which determine the conditions of their mutual transactions. In recent decades, a great many countries have entered into a series of agreements, the GATT, which has led to a successive liberalisation of global trade.<sup>10</sup>

A system of free trade, however, is not necessarily a fair system. Yet, a well-known theory of international trade, the theory of comparative advantage, maintains that free international trade relationships are to the benefit of all countries involved, even if these countries may start from very different initial stages of economic development, provided that their markets are equally open.<sup>11</sup> Although this theory seems to be correct in general, it does not take into consideration some significant features of contemporary international trade: the role of transnational companies and the effects of the international credit system. Consequently, one may say that transactional justice implies the following requirements on a system of international trade: first of all, equal openness of markets, unless exceptions are justified by other requirements of justice; second, sufficient control of transnational companies, in order to prevent them from causing market distortions by their activities; and third, an unbiased international credit system which operates to the benefit of all countries.<sup>12</sup>

### *Political justice – international power constellations*

Political justice applies to international and global affairs insofar as they include or require authorised power. Insofar as such power is required

<sup>10</sup> See J. H. Jackson, *The World Trading System. Law and Policy of International Economic Relations* (Cambridge, MA and London: MIT Press, 1997), 31ff.; H. Sautter, *Weltwirtschaftsordnung. Die Institutionen der globalen Ökonomie* (Munich: Franz Vahlen, 2004), 85ff.; M. J. Trebilcock and R. Howse, *The Regulation of International Trade*, 3rd edn (London and New York: Routledge, 2005), 1–48.

<sup>11</sup> Cf. P. Krugman, *Pop Internationalism* (Cambridge, MA and London: MIT Press, 1996); J. Bhagwati, *Free Trade Today* (Princeton and Oxford: Princeton University Press, 2002).

<sup>12</sup> See Oxfam International, *Rigged Rules and Double Standards. Trade, Globalisation, and the Fight against Poverty* (Oxford: Oxfam, 2002); A. B. Zampetti, *Fairness in the World Economy* (Cheltenham, UK and Northampton, MA: Edward Elgar, 2006), 98ff.; J. E. Stiglitz and A. Charlton, *Fair Trade for All. How Trade Can Promote Development* (Oxford University Press, 2005); E. B. Kapstein, *Economic Justice in an Unfair World. Toward a Level Playing Field* (Princeton and Oxford: Princeton University Press, 2006), 45ff.

for a peaceful and orderly co-existence of nations, it must aim at an *impartial enforcement of international law* and the *provision of public goods* in the interest of all nations concerned.<sup>13</sup> In order to circumvent the difficult question as to whether a just global order needs a comprehensive supranational power system in the form of a world state or nothing more than a more or less decentralised system of global governance managed by a network of international organisations,<sup>14</sup> I just want to underline some obvious demands of political justice with respect to the international order.

First of all, global political justice certainly requires a form of transnational politics that effectively copes with the most severe problems of the present world: first, *gross and massive violations of fundamental human rights*, such as genocide, ethnic cleansing and avoidable famine; second, the *irreversible destruction of global natural resources*, such as the oceans, earthly climate conditions and rainforests; and, third, the *dangers of the ongoing proliferation of means of mass extermination*, such as nuclear and chemical weapons. Furthermore, any form of authorised power at the international level ought to be in control of inter- or supranational institutions that apply the rules of international law in an impartial way in the common interest of all peoples rather than for the sake of mighty nations only.<sup>15</sup>

### *Distributive justice – international communal issues*

The most contested topic of global and international justice is the question as to whether and to what extent distributive justice applies to

<sup>13</sup> Cf. T. M. Franck, *Fairness in International Law and Institutions* (Oxford University Press, 1995), 173ff.; I. Kaul, I. Grunberg and M. A. Stern (eds.), *Global Public Goods. International Cooperation in the 21st Century* (New York and Oxford: Oxford University Press, 1999); W. D. Nordhaus, 'Global Public Goods', in W. Krull (ed.), *Debates on Issues of Our Common Future* (Weilerswist: Velbrück, 2000), 143–54.

<sup>14</sup> As far as this issue is concerned, see M. Zürn, *Regieren jenseits des Nationalstaats. Globalisierung und Denationalisierung als Chance* (Frankfurt a.M.: Suhrkamp, 1998); O. Höffe, *Demokratie im Zeitalter der Globalisierung* (Munich: C. H. Beck, 1999), 229ff.; S. Gosepath and J.-C. Merle (eds.), *Weltrepublik. Globalisierung und Demokratie* (Munich: C. H. Beck, 2002); M. Lutz-Bachmann and J. Bohman (eds.), *Weltstaat oder Staatenwelt? Für und wider die Idee einer Weltrepublik* (Frankfurt a.M.: Suhrkamp, 2002); D. Held and A. McGrew (eds.), *Governing Globalization. Power, Authority and Global Governance* (Cambridge: Polity Press, 2002); D. Held and M. Koenig-Archibugi (eds.), *Taming Globalization. Frontiers of Governance* (Cambridge: Polity Press, 2003).

<sup>15</sup> Cf. Franck, *Fairness*, 173ff.; A. Buchanan, *Justice, Legitimacy, and Self-Determination. Moral Foundations for International Law* (Oxford University Press, 2004), 233ff.

international and global affairs.<sup>16</sup> A number of thinkers, including Rawls,<sup>17</sup> advocate the view that distributive justice does not have any significance in the context of international or global justice. I want to contradict this view and argue for a concept of global justice that integrates distributive justice in a differential way. Accordingly, the international order is subject to distributive justice to the extent in which it has distributive effects in regard to the communal affairs of different nations or humankind as a whole. In the context of this interpretation, it is clear that the impact of distributive justice on international relations depends on contingent facts, namely the actual structure of the world, especially the degree of international and global interdependencies. The more the individual nations and peoples become mutually interconnected and interdependent by the external effects of their domestic political orders, their activities across borders, and their cooperation based on division of labour, the greater is the domain of their communal affairs that create problems of distributive justice. When we consider the present constellation of the world, we encounter at least three issues that concern communal affairs among nations and, therefore, give rise to the demand for distributive justice: the extent of political autonomy of individual nations, the negative effects of societal activities across borders, and international economic cooperation.

The first issue, the *extent of political autonomy of the nations*, is already present in a world where the countries' national economies are relatively separated and independent, but its importance increases with the process of globalisation. I assume that a just international order ought to grant to each nation the right to equal political self-determination to the greatest extent that is compatible with certain internal and external requirements. As to these requirements, I interpret them in a rather weak way as follows: internally, a domestic political order must respect and protect the basic human rights, including social and economic rights; and externally, it must not be detrimental to a peaceful co-existence among nations.<sup>18</sup>

The second issue, the *negative effects of societal activities across borders*, concerns the social and economic affairs of individual societies

<sup>16</sup> See Buchanan, *Justice*, 191ff.

<sup>17</sup> J. Rawls, *The Law of the Peoples* (Cambridge, MA and London: Harvard University Press, 1999), 113ff.

<sup>18</sup> Cf. U. Marti, 'Globale distributive Gerechtigkeit', in Kohler and Marti (eds.), *Konturen*, 345–61.

whose ways of production and consumption have negative effects on other countries and even the whole world. For the time being, a great deal of natural resources that belong to the common heritage of humankind are endangered by industry, traffic and leisure activities; many other natural goods are progressively exploited and decimated; and there is also an increasing proliferation of technical facilities, such as energy plants and military systems, that cause significant dangers and injuries across borders or even threaten humankind as a whole. All these facts raise distributive problems among nations which imply the demand for a just distribution of the benefits and costs of border-crossing social and economic activities. In my view, this demand requires that, insofar as useful activities unavoidably cause negative effects across borders, the distribution of these effects among nations must be in proportion to the benefits which the individual nations get from those activities. If such a distribution cannot be achieved by market regulations, the nations who fare better ought to pay appropriate compensation to those who are worse off.<sup>19</sup>

Third, there is the issue of *international economic cooperation* which results from the fact that individual nations, though not all to an equal extent, increasingly grow together to more comprehensive units of social and economic cooperation based on division of labour in which all of them contribute to a certain degree to the production of earthly wealth, but also become more and more dependent from each other. Even though this cooperation is mainly coordinated through market transactions, it creates a need for distributive justice, because market processes alone can never secure a just distribution of their outcomes. On the one hand, markets already presuppose a just initial distribution of assets among their participants, in order to generate just outcomes; and, on the other, even if they start from a just initial distribution, they may lead to unacceptable outcomes, since their inherent dynamics, such as rationalisation processes, shifts in production lines and locations, and business cycles, can create self-enforcing economic, social and political inequalities that distort the subsequent market transactions. Consequently, the demand of distributive justice also applies to the benefits and burdens of any close international cooperation based on division of labour.

<sup>19</sup> Cf. B. Barry, 'Humanity and Justice in Global Perspective', in B. Barry, *Democracy, Power and Justice. Essays in Political Theory* (Oxford: Clarendon Press, 1989), 434–62, 448ff.; P. Singer, *One World. The Ethics of Globalization* (New Haven and London: Yale University Press, 2002), 14ff.



Perhaps, this demand can be put in a rough way as follows: the global order has to make sure that the international economic cooperation is to the benefit of all peoples, in particular the less developed and poor nations. And this does certainly not admit that some nations take the benefits, while others are left with empty hands.<sup>20</sup>

*Corrective justice – international wrongs*

Is it plausible to apply corrective justice to international affairs at all, if the wrongs under consideration were committed by nations or states rather than particular human individuals? If organised nations or states are conceived of as collective bodies that act through their political powers or authorised agents on the basis of their rules or collective decisions, there are in fact good reasons to assume that they are responsible for gross wrongdoings that were committed on their behalf. And, in principle, it seems also plausible that a state that has inflicted serious harm on another nation or its members by violating valid norms of international law or fundamental duties of humanity should, as a whole, be liable to appropriate restitution or compensation. In practice, however, this demand raises considerable difficulties that grow with the time-distance to the respective wrongs.<sup>21</sup>

Even in most cases of a recent or current wrong inflicted by a nation on another it is extremely difficult to determine the precise scale of appropriate compensation, because there are no widely accepted and sufficiently concrete normative standards of corrective justice and, very often, there is also considerable disagreement about the relevant empirical facts. The situation becomes much worse in cases of historical wrongs committed by nations a long time ago. The demand for a correction of such wrongs involves not only the problem of how to assess the scale of the wrongs under consideration and their appropriate compensation, but also the danger that it may create a great deal of international conflict, rather than peace. Therefore, one should be cautious in raising the demand of corrective justice in the context of international affairs. At any rate, it should not be taken as a requirement of primary importance.

<sup>20</sup> Cf. Singer, *One World*, 51ff.

<sup>21</sup> See E. Barkan, *The Guilt of Nations. Restitution and Negotiating Historical Injustices* (Baltimore and London: Johns Hopkins University Press, 2001); O. O'Neill, *Bounds of Justice* (Cambridge University Press, 2000), 129ff.; L. H. Meyer, *Historische Gerechtigkeit* (Berlin and New York: Walter de Gruyter, 2005), 135ff.

However, it may serve as a subsidiary argument that can support and supplement the other demands of justice.

So much about the demands of international and global justice flow from the basic principles of general justice by applying them to international affairs and the global order. In my opinion, these demands combine to create a substantial conception of international and global justice which provides us with a solid ground for a critical assessment of the present international system.

### **Injustices in the present international system**

When I speak of the international system, I conceive of it in a comprehensive way that comprises both international law as its normative order and international politics as its actual practice. Now, I want to look at the present international system against the background of the demands of global justice previously mentioned in order to identify its most severe injustices. For this purpose, however, I need to make use of various empirical assumptions which I shall simply take for granted, since I cannot discuss them here in detail. Again, I am going to deal with the various sorts of justice step by step.

#### *Global markets – international trade and credit system*

When we take a closer look at the global economy, it becomes pretty clear that it grossly violates the requirements of transactional justice, in particular as far as the relationships between rich and poor countries are concerned. I just want to mention two striking features of the present global economic system that reveal its blatant injustice: one is the liberalisation of the world market and its management, the other the international credit system and the politics of its leading institutions.

The ongoing *liberalisation of the world market*, which has been pursued for some decades with GATT and other international agreements, has certainly provided significant advantages to many countries and fostered their economic development, but it has also led to an increased worsening of the situation of a great many less developed and poor countries whose economies have been ruined because of their insufficient competitiveness in international markets. Furthermore, it turns out that the World Trade Organisation (WTO), that has been established for the enforcement of the rules of free trade, operates in a way that systematically favours the interests of the mighty and rich countries to the

disadvantage of the poor, because it provides the rich countries with free access to the markets of the poor, whereas it does not prevent them from protecting their own economies against international competition by export subsidies and import restrictions, particularly in sectors where the poor countries would have competitive advantages, like in agriculture, textiles and low-skill industrial products.<sup>22</sup>

The existing *international credit system* often contributes to a further deterioration of the socio-economic situation of poor countries, rather than improving it. This system includes two parts. One part consists in the official financial institutions associated with the United Nations, particularly the World Bank (IBRD) and the International Monetary Fund (IMF), which are almost completely dominated by the rich countries. Despite their function to support countries in cases of economic emergency with favourable credits, their actual lending policy works to the opposite effect, because they usually make their loans dependent on the condition that the borrowing countries pursue a rigid cost-cutting policy which mostly shortens their expenditures for education, health-care, social security and public services at the cost of the lower classes of their population, particularly the poor.<sup>23</sup> The other part of the international credit system is represented by private banks that want to make profit and, therefore, are in the habit of tying the interest rates for their credits to the economic performance of the borrowing countries, so that poor countries have to pay the highest rates. Although this policy is pretty reasonable from the economic viewpoint of the banks involved, it is not only a major cause of bad government in poor countries, but also leads to the bizarre constellation that the expenditures which poor countries annually spend only on the interest of their loans highly exceeds the entire amount of money which they gain from foreign trade. So there is a permanent flow of wealth from the poor to the rich countries.<sup>24</sup>

<sup>22</sup> See N. Woods, 'Order, Globalization, and Inequality in World Politics', in A. Hurrell and N. Woods (eds.), *Inequality, Globalization, and World Politics* (Oxford University Press, 1999), 8–35; World Bank, *Globalization, Growth, and Poverty. Building an Inclusive World Economy* (New York: Oxford University Press, 2002), 3ff.; Oxfam, *Rigged Rules*, 64ff.; Singer, *One World*, 51ff.; Stiglitz and Charlton, *Fair Trade*, 1ff.

<sup>23</sup> See J. Stiglitz, *Globalization and its Discontents* (New York: Norton, 2002); Oxfam, *Rigged Rules*, 122 ff.; Oxfam International, *Kicking the Habit: How the World Bank and the IMF are Still Addicted to Attaching Economic Policy Conditions to Aid* (Oxford: Oxfam, 2006, Briefing Paper 96).

<sup>24</sup> Cf. W. Hinsch, 'Die Verschuldung ärmster Entwicklungsländer aus ethischer Sicht', in M. Dabrowski, A. Fisch, K. Gabriel and C. Lienkamp (eds.), *Die Diskussion um ein*

*Transnational politics – distorted structure  
of international power*

That the present international system is far from satisfying the demands of political justice is common knowledge. When we just look at the global level, we encounter a peculiar situation: on the one hand, there is a global legal institution, namely the United Nations, which, in principle, would be responsible for coping with the global evils previously mentioned; yet, it is obvious that this institution is not only greatly ineffective, but also suffering from highly arbitrary and distorted decision-making procedures. On the other hand, there is a very small group of real super powers, particularly the United States and China, who successfully dictate the course of global affairs according to their own alleged national self-interest rather than the common good of the global community.

As a result, the present international system is characterised by a power structure that fails to meet the demands of political justice in a twofold way by containing both too little and too much power: it comprises too little authorised power which an effective and impartial transnational politics would require, and it includes too much informal and arbitrary power which makes such a politics impossible.<sup>25</sup>

*Global community – national sovereignty and unequal benefits*

In my view, distributive justice applies to the international system to the extent in which this system involves common affairs among various nations with distributive effects. I have argued that there are a number of such affairs, including three issues: the nations' political autonomy, the negative effects of societal activities across borders, and international economic cooperation. Here, I restrict myself to the first and the second.

As to *political autonomy*, the prevailing international system, that is based on the principle of national sovereignty, assigns to the government of any state two rights, which, following Thomas Pogge, may be addressed as the 'resource' and 'borrowing' privileges: first, the right of exercising control of its country's natural resources at will, including

*Insolvenzrecht für Staaten* (Berlin: Duncker & Humblot, 2003), 17–43; N. Hertz, *I.O.U. The Debt Threat and Why We Must Defuse It* (London: Fourth Estate, 2004); Oxfam International, *Beyond HIPC. Debt Cancellation and the Millennium Development Goals* (Oxford: Oxfam, 2005, Briefing Paper 78).

<sup>25</sup> Cf. Franck, *Fairness*, 218; E.-O. Czempel, *Weltpolitik im Umbruch. Die Pax Americana, der Terrorismus und die Zukunft der internationalen Beziehungen* (Munich: C. H. Beck, 2002), 108ff.

selling them (resource privilege); and second, the right of raising credits on behalf of its country that bind future governments (borrowing privilege). These two rights certainly do not satisfy the demand that the nations' political autonomy ought to be compatible with the protection of basic human rights and international peace. In fact, they represent fundamental structural defects of the existing international law, since they not only entice corrupt regimes to enrich themselves at the cost of the people by disposing of their land's resources and raising credits, but they also encourage warlords to usurp political power with the means of military force in order to plunder the land's riches as they like.<sup>26</sup>

The second issue, the *border-crossing negative effects of societal activities*, ought to be dealt with in a way that a nation's costs and disadvantages from such effects are in proportion to the benefits which it derives from those activities. There is plenty empirical evidence which clearly shows that the current practice greatly violates this requirement. I mention just a few examples: the enormous demand for energy in developed countries not only increases the costs of energy, but also contributes to a change of climate conditions to the disadvantage of developing regions; huge fishing companies in industrialised countries exploit the seas all over the world at the cost of poorer nations who cannot afford the technical facilities in order to compete; the mighty nations take measures to improve their military systems by establishing new technologies whose risks are increasingly externalised to weaker regions; and there are many other cases to the same effect.<sup>27</sup>

### *Correcting wrongs – historical wrongs and continuing harm*

As, in my opinion, corrective justice is not of primary importance in international relations, I restrict myself to a few remarks concerning the wrongness relationships between the rich countries in the North and the least developed countries in the South. There are two plausible reasons to maintain that the peoples in the South who are suffering from extreme poverty have a legitimate claim to some compensation from the rich northern nations: first of all, the *historical wrongs* that European and North American nations have inflicted on peoples in Africa, Latin America and South Asia through wars of conquest, colonialism, slavery,

<sup>26</sup> T. Pogge, *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002), 112ff., 146ff.

<sup>27</sup> Cf. Singer, *One World*, 14ff.; Wuppertal Institut für Klima, Umwelt, Energie (ed.), *Fair Future. Begrenzte Ressourcen und globale Gerechtigkeit* (Munich: C. H. Beck, 2005).

genocide and imperialism; and second, the *continuing harm* which the poor in the South incur because of various injustices of the present international system to the benefit of the rich nations in the North.<sup>28</sup> Even though, in the light of these reasons, the present international system appears also unjust from the viewpoint of corrective justice, it remains highly unclear how to deal with this fact in a reasonable way. However, since corrective justice, when applied to global affairs, widely overlaps with the demands of transactional, political and distributive justice, it may be used in order to support and strengthen these other demands.

If my previous considerations on the normative requirements of global justice and my empirical assumptions about the present international system are by and large sound, then it appears pretty obvious that this system is suffering from gross injustices, because it actually violates each of those requirements to a considerable extent. And this assessment becomes even more evident when one considers that these injustices mutually reinforce and strengthen each other due to the fact that virtually all of them work to the benefit of the rich and mighty nations at the cost of the poor. Consequently, I think it still true that our task is not only to interpret the world, but also to change it.

### Conclusion

The proposed analysis of the injustices of the existing global system provides a rough guideline on a policy of its reform. I would like to conclude my chapter with some preliminary remarks on a policy of reform by which this system could be changed in a gradual way that would decrease its injustices. The requisite measures of such a reform policy may be split into three steps according to their political feasibility: relatively simple remedies for the biased practices of the international trade and credit system; more far-reaching measures aiming at a repair of the international economy; and a comprehensive renovation of the basic structure of the global political order.

First of all, there are some *relatively simple remedies* that could be taken in order to rid the present international trade and credit system of its most blatant moral deficiencies. Here, I contemplate mainly the following points: the abolition of protectionist practices on the part of industrialised countries, such as import restrictions and export subsidies for agricultural and low-skill industrial products; an appropriate

<sup>28</sup> See Pogge, *World Poverty*, 201ff.

representation of poor countries in the relevant international institutions, especially the WTO, the IMF and the World Bank; and, furthermore, an effective regulation and control of transnational companies in developing countries, particularly their strategies of direct investment, their working and social standards and their conduct towards domestic subcontractors.

Second, a policy of making the present world system more just also requires a number of *more far-reaching measures* of reform. I assume that these measures should include the following elements: a limitation of the resource and borrowing privileges of national governments by making these privileges dependent on a government's proper conduct, namely its respect and protection of basic human rights; a global regulation of the use of international natural resources that guarantees all peoples a fair share of these resources and evens out unequal border-crossing negative effects of their use; and redistributive transfers for diminishing the inequalities which result from the biased structure of international economic cooperation, for instance by establishing a global fund dedicated to support poor countries in improving their educational, medical and social systems.

Finally, the developing idea of global justice will demand a further step, namely a *comprehensive renovation of the whole global political order*. In my view, its main target has to be the creation of a system of effective and impartial transnational politics that must gradually replace the traditional international system based on the principle of national sovereignty in order to cope with the challenges of the ongoing process of globalisation. In this context, two tasks are of particular importance: a global authority for the maintenance of peace, the protection of human rights and arms control on the one hand, and a transnational regime for the governance of international economic and ecological affairs on the other. Since there already are a number of international institutions, such as the UN, the ILO and the UNCTAD, that were designed to fulfil these tasks, but have not yet become sufficiently effective, it may appear a promising way to pursue that goal through a progressive extension and strengthening of those institutions.

I should add that the previous classification of the steps to reform the present international system merely focuses on their technical degree of difficulty without paying attention to their actual political probability which depends on the open question of whether a sufficient number of national governments are willing to take the respective measures. I guess, however, that, at the time being, this is not even the case in regard to the

relatively simple measures of the first step. If so, the prospects of a rapid change of the prevailing situation are actually quite limited. In view of this fact, one cannot do much more than to contribute to the emergence of a worldwide social movement that may be able to put growing pressure on the relevant national and international powers to build up a better global order according to the demands of justice.

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## Global justice: Problems of a cosmopolitan account

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### Introduction

The current debate between cosmopolitans and the defenders of a so-called political conception of justice<sup>1</sup> focuses mainly on two questions: first, what is the site and scope of justice; and second, whether problems such as drastic worldwide economic inequalities and vast differences in life chances between the members of wealthy and poor countries can be tackled only by transcending the traditional nation-state order.

Cosmopolitans argue that issues like world poverty and the severe unfairness of social opportunities amount to problems of justice, moreover global justice, since their moral relevance transcends ethnic as well as state borders. The claim of cosmopolitans concerns the *site* as well as the *scope* of justice. World poverty and severe social and economic inequalities are global problems since they cannot be explained and understood apart from the current system of international economic relations and agreements (regulating access to markets, market subsidies, trade barriers, flow of capital, currency exchange conditions, credit-worthiness). These agreements and regulations, enacted and controlled by powerful global institutions like the International Monetary Fund, the

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<sup>1</sup> For a cosmopolitan position see T. Pogge, *World Poverty and Human Rights*, second edition (Cambridge: Polity Press, 2008) (all further references are to the second edition of Pogge's book); C. R. Beitz, 'Cosmopolitanism and Global Justice', *The Journal of Ethics*, 9 (2005), 11–27. A political conception of justice (following Rawls) is taken by, for example, T. Nagel and M. Risse. See T. Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33 (2005), 113–47; M. Risse, 'How Does the Global Order Harm the Poor', *Philosophy and Public Affairs*, 33 (2005), 349–76.

World Bank and the WTO, do have, cosmopolitans point out, substantial effects on the life prospects and economic opportunities of individuals. The strong impact of these international organisations on the social and economic conditions of persons allows us therefore to assume the existence of a global basic structure.

In addition to this empirical thesis about the global site of justice, cosmopolitans adopt a normative premise concerning the scope of justice. Since problems like poverty and inequality are mainly due to the currently unjust global economic order, they create strong moral obligations and duties of justice on the side of those better off who eventually profit from the unfair status quo.

Cosmopolitans are also critical of the nation-state system. Since nation-states display strong partiality towards the interests of their members (for example, by enacting restrictions on immigration, residence, citizenship and entrance to labour markets), they present an obstacle to the achievement of global justice. An additional reason why cosmopolitans think that issues of justice should be addressed independently of the nation-state perspective is this: if nation-states were the parties to a global contract or agreement on principles of justice, then intrastate discrimination against particular individuals or specific ethnic or social groups who live under unjust and unfavourable conditions would not become visible.<sup>2</sup> Therefore individuals, not institutions like the nation-state or political unions like peoples, should be the moral units of theories of global justice. What is relevant is the way individuals' basic rights are respected or violated and their autonomy for leading a decent and worthwhile life is enhanced or thwarted.

Defenders of a political conception of justice claim that justice applies to the basic structure of a particular society (nation-state), and, moreover, that duties of justice in a strict sense hold merely between the members of a particular society (nation-state). We do have obligations to severely poor and marginalised people outside our nation-state; these obligations, however, are of a humanitarian kind and not duties of justice in a strict sense. Duties of justice are associative obligations, obligations owed to those with whom we have political relations within a state order. Defenders of a political conception of justice basically follow Rawls's

<sup>2</sup> A. Buchanan objects that Rawls's conception, as Rawls develops it in the *Law of Peoples*, does not allow issues of intrastate conflict and ethnic autonomy aspirations to be dealt with. See A. Buchanan, 'Rawls's Law of Peoples: Rules of a Vanished Westphalian World', *Ethics*, 110 (2000), 697–721, here 716–20.

position as he outlined it in the *Law of Peoples*: peoples do have a duty to assist 'other peoples living under unfavourable conditions that prevent their having a just or decent political social regime'.<sup>3</sup> However, there are no duties of justice created by an application of a cosmopolitan or global principle of distributive justice. Rawls's arguments for rejecting distributive responsibilities on the global level are as follows: first of all, global inequalities are mainly due to the internal political organisation of a society and its social and cultural traditions; and second, there might be no cut off point in transfers of wealth and income from better off to worse off societies which might create unjust burdens on the side of better off societies.<sup>4</sup> Recently, defenders of a political conception of justice have added a further argument why humanitarian duties of assistance, but not strict duties of justice, hold on the global level: the realisation of actual justice demands coercion by the state; since such a global coercive sovereign power does not exist, the idea of global justice in a strict sense cannot be defended.<sup>5</sup>

In the current literature, political conceptions of justice have been sharply criticised. A main objection is that advocates of political conceptions of justice are stuck in a historically outdated framework of a 'vanished Westphalian World' and have missed recent global developments.<sup>6</sup> Moreover, the distinction they draw between duties of justice and duties of assistance amounts to a scandalous ignorance towards the moral weight of grave inequalities in the social global order: poverty can,

<sup>3</sup> J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 37. Rawls uses the term 'peoples' to indicate his distance to the traditional conception of sovereign states (as determined by rational self-interest and having the right to go to war) and to stress that his central aim in the *Law of Peoples* is to construct a political morality for international relations. Buchanan objects that Rawls would have been clearer if he had used the term 'peoples organised in states'. Buchanan, 'Rawls's Law of Peoples', 699.

<sup>4</sup> One might say that Rawls applies the principle of luck egalitarianism (individuals only deserve compensation for brute bad luck, not option luck) to the case of societies. He offers the following example: two societies, A and B, start with an equal level of wealth but choose different policies. The first society opts for investment, industrialisation and a high rate of saving; the second society chooses none of these policies with the result that some decades later the first society would be much wealthier than the second society. A global distribution principle (along the line of a cosmopolitan difference principle) would require that transfers are made from A to B; Rawls thinks this to be unjustified. See Rawls, *The Law of Peoples*, 117.

<sup>5</sup> For such a position see Nagel, 'The Problem of Global Justice'.

<sup>6</sup> See Buchanan, 'Rawls's Law of Peoples'; A. J. Julius, 'Nagel's Atlas', *Philosophy and Public Affairs*, 34 (2006), 176–92.

and does, entail the loss of life. Equally, the connection between justice and coercion has been rejected.<sup>7</sup>

In this chapter I take a closer look at the controversy between cosmopolitans and the advocates of a political conception of justice. I will defend a political conception of justice, although I suggest some revisions. A cosmopolitan approach is often connected with *monism*, i.e. the claim that the same sort of normative principles should apply to institutions and to individual choices. A political conception of justice presupposes *dualism*, namely a separation between the principles of justice guiding the design of institutions and the moral principles applying to individual choices. In the second section of the chapter I discuss Thomas Pogge's cosmopolitan position and try to show that Pogge shifts from a dualistic account of justice to a monistic account when it comes to the problem of world poverty; therefore Pogge's treatment of world poverty is vulnerable to the objections which he himself raises against monism. Moreover, in the third section, I argue that Pogge's exclusive focus on negative duties is implausible and creates excessively heavy burdens on the side of better-off individuals. In the fourth section I argue that there is no need to consider the nation-state as a hindrance to the realisation of a more global justice. I end with some suggestions as to how a political conception of justice can be modified to meet some of the criticisms cosmopolitans have rightly raised.

### Monism, dualism and world poverty

Even if we consider the basic structure as the primary object of justice, it is still controversial whether we should also accept the strict distinction some theorists of justice, for example Rawls, draw between those normative standards which ought to guide the design of institutions and those standards that are meant to regulate individual practices and actions. Some philosophers have argued that a thorough concern with issues of justice requires us to apply the same sort of principles to institutional design and to individual attitudes and choices.<sup>8</sup> A problematic consequence of that strategy is that requirements of justice addressed to institutions are translated into very demanding individual moral obligations.

<sup>7</sup> See A. Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice', *Philosophy and Public Affairs*, 35 (2007), 308–58, esp. 352, 321.

<sup>8</sup> A prominent example is G. A. Cohen. See G. A. Cohen, 'Where the Action Is: On the Site of Distributive Justice', *Philosophy and Public Affairs*, 26 (1997), 3–30.

A paradigm case motivating such a transfer of normative obligations from public or political morality to individual morality is the problem of world poverty.<sup>9</sup> World poverty is considered by many moral philosophers as the most pressing moral issue at present. The dramatic differences in the living standard and levels of wellbeing are striking.<sup>10</sup> The urgency of the problem is certainly intensified by the fact that one small part of the world population is not only well off, but exceptionally better off than a large group of other people. The facts are so grave and depressing that many philosophers consider the policy of delegating the problem to a reform of current institutions or a set-up of new institutions to be morally intolerable. In their view more efficient and immediate relief seems necessary. It often seems to make more sense to care directly for the wellbeing of others than to delegate the problem to the normative construction of institutions, as Liam Murphy points out:

But it could not be right that an individual, rich First Worlder is required to devote her resources to the Quixotic task of promoting just international institutions. Such a person could clearly do so much more to alleviate suffering or inequality by doing what she can on her own – by giving money to humanitarian aid agencies.<sup>11</sup>

Consequently, many have sympathised with an account that puts remarkable weight on the moral duties of individuals. It is quite common among cosmopolitans to hold that requirements of global justice have to be discharged to a remarkable extent by individuals.

Does the urgency of a problem like world poverty suggest that we should give up the separation between the principles guiding our promotion of just institutions and those guiding our personal choices? A closer look at the distinction between monism and dualism helps to clarify the question.

*Monism* holds that those normative principles that guide the sphere of public morality equally ought to guide our personal choices and ways of

<sup>9</sup> By 'individual morality' I mean those principles and norms that apply to our personal actions and attitudes; the terms 'public morality' and 'political morality' refer to the norms and principles of justice that determine the basic structure of society.

<sup>10</sup> Thomas Pogge cites the following numbers: '[I]t is estimated that 830 million human beings are chronically undernourished, 1,100 million lack access to safe water, 2,600 million lack access to basic sanitation, 1,000 million lack adequate shelter, and 1,600 lack electricity. About 2,000 million lack access to essential drugs, some 774 million adults are illiterate, and there are 218 million child laborers.' See Pogge, *World Poverty and Human Rights*, 2.

<sup>11</sup> L. B. Murphy, 'Institutions and the Demands of Justice', *Philosophy and Public Affairs*, 27 (1998), 251–91, here 281.

acting. In the version put forth by G. A. Cohen, monism amounts to a modification of Rawls's theory of justice: the principles of justice that guide our design of institutions should equally apply to the set of informal practices that determine and structure our personal relations to others. Within the basic structure of society, so the argument goes, there is room for informal discriminatory practices that sum up to severe injustices. A theory of justice must also reflect these patterns of informal discrimination that are expressions of personal attitudes. According to Cohen's account, not only institutions but also the attitudes of persons belong to the realm of justice. Cohen argues that monism allows us, for example, to consider the harmful consequences of sexist or racist attitudes as questions of justice.<sup>12</sup> Social justice, as he emphasises, cannot be gained merely by creating just institutions; it also requires a *social ethos* which is created if individuals apply the principles of justice to their personal conduct and attitudes.<sup>13</sup> So the difference principle should also guide the attitudes and choices of individual persons:

It is generally thought that the difference principle would be used by government to modify the effect of choices which are not themselves influenced by the principle, but, so I claim, in a society of wholehearted commitment to the principle, there cannot be so stark a contrast between public and private choice. Instead, citizens want their own economic behaviour to satisfy the principle and they help to sustain a moral climate in which others want the same.<sup>14</sup>

*Dualism* maintains a strong distinction between the spheres of individual morality and public morality. The paradigmatic example of a dualist account is Rawls's theory of justice. Rawls's principles of justice, i.e. the principle of equal freedom, the principle of fair equality of opportunity, and the difference principle, apply to the normative structure of institutions but

<sup>12</sup> The case of gender injustice in the family despite appropriate family legislation has been one issue that motivated Cohen's defence of monism.

<sup>13</sup> Cohen is aware of the limits of legal regulations in fighting problems of discrimination. Therefore, he emphasises the impact of justice-based ethical conventions and practices that bind us and form our attitudes (*social ethos*). The regulative effect of these conventions and practices should ideally be as powerful as legal regulations. Cohen does not want persons whose social practices do not conform to the principles of justice to be prosecuted; social sanctions, he argues, should be enough. The problem is that this suggestion, if put into practice, might create a terrible social climate of control and reproaches.

<sup>14</sup> G. A. Cohen, 'Incentives, Inequality, and Community', in S. Darwall (ed.), *Equal Freedom: Selected Tanner Lectures on Human Value* (Ann Arbor: The University of Michigan Press, 1995), 331–97, here 380.



are not relevant for the guidance of individual actions.<sup>15</sup> The principles and standards of personal morality are different from the principles of justice.<sup>16</sup> Rawls's main argument for this separation is that otherwise implausible consequences and normative ambiguities would result. The obvious objection against monism is that the principles of justice apply, as in Rawls's theory, merely to the basic structure of society, i.e. the political constitution, the system of property rules, and the family. The reply of Cohen is that if patterns of discrimination are persistent despite existing legal restrictions and regulations, the basic structure argument seems to lose its plausibility.

A similar frustration with a basic structure account of justice in the case of global inequality and world poverty motivates cosmopolitans to come close to monism, by putting more weight on individual duties and applying the principles of justice to individual choices. Interestingly enough, when it comes to the problem of world poverty, we find such a tendency towards monism in the work of authors who otherwise are critical of monism, such as Thomas Pogge.

In the general debate between dualists and monists Pogge sides with dualism. Pogge rejects the view that the moral assessment of social institutions should depend on a comprehensive moral conception that also governs personal conduct. Principles of personal conduct should be distinguished from the principles of justice guiding the design of institutions.<sup>17</sup> According to Cohen, a social ethos would develop if the difference principle guided the choices of individuals as well. As an example of a specific moral climate created by a commitment to the difference principle, Cohen cites the relatively moderate differences between managers' and workers' salaries in post-war Germany compared with the striking differences in incomes between managers and workers in the post-war US; Cohen attributes the lower income differentials between

<sup>15</sup> See J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993): '[T]he principles of justice, in particular the difference principle, apply to the main public principles and policies that regulate social and economic inequalities' (282).

<sup>16</sup> In *A Theory of Justice* Rawls states: 'There is no reason to suppose that the principles which should regulate an association of men is simply an extension of the principle of choice for one man ... [T]he correct regulative principle for anything depends on the nature of that thing.' See J. Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press, 1999), 25. Rawls uses this passage to argue against utilitarianism; however, his remarks can be taken as a general warning to confound principles for the normative design of institutions with principles guiding personal choices. Compare also Rawls, *A Theory of Justice*, § 19, 98ff. and § 51, 293ff.

<sup>17</sup> T. Pogge, 'On the Site of Distributive Justice: Reflections on Cohen and Murphy', *Philosophy and Public Affairs*, 29 (2000), 137–69, esp. 139.

managers and workers in post-war Germany to the stronger social ethos in the German *Wiederaufbau* area.

Pogge considers Cohen's hope that a social ethos might have inequality-reducing effects as unrealistic. He objects that the lower income differentials in post-war Germany were simply a consequence of different tax laws: US tax laws allow higher salaries for managers.<sup>18</sup> In opposition to Cohen's social ethos conception Pogge affirms the basic-structure argument and the regulative power of laws and institutional decrees.

Pogge, moreover, rejects the idea of applying the difference principle to individual choices altogether. His critical argument is that an application of the difference principle to individual choices would require highly talented and efficient people, who might contribute substantially to the improvement of the situation of the worst off, to adopt jobs that they do not want to accept.<sup>19</sup> Pogge's objection amounts to saying that monism entails a violation of a basic principle of political liberalism, namely the right to choose one's form of life. However, in Pogge's work on world poverty the principle of liberal autonomy seems restricted in a way which is open to his own objections against monism.

An interpretation of Rawls's theory along monistic lines clearly results, I think, in a nightmare of responsibilities and demands, if applied to the problem of global inequalities. The difference principle, in particular, would make demands on persons that are highly implausible: persons in one country who are better off, maybe only slightly better off, than persons in another country would have to devote their moral strength to improving the situation of others. Therefore, persons slightly better off in China would have to do all they can to improve the situation of poor people in India who are worse off. But what if the people in India whom they helped were to experience an economic boom shortly afterwards and become much better off than the Chinese? The problematic consequence is not only an excess of responsibilities, but also an absurd game of giving and demanding on a piecemeal basis which does not reflect our common understanding of justice.

The adoption of the difference principle as a guideline for individual behaviour would severely restrict the autonomy of individuals to develop and pursue their own plan of life. They would have to pursue life plans that contribute to an increase of social goods so that the situation of the worst off members of society can be improved. However, the right to

<sup>18</sup> *Ibid.*, 149–51.    <sup>19</sup> *Ibid.*