# Global Justice and Institutional Scope

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## Introduction

A basic question in global justice debates concerns the issue of institutional scope – as a matter of justice, what types and scales of institutions should we have? Underlying this question is the more general issue of the relationship between principles and institutions or political practice. The issue of institutional scope is, in a significant regard, conditioned by a more basic understanding of the nature of regulative principles, and the relationship between them. Institutional scope, however, is not necessarily a direct implication of the nature of principles. It is plausible that universal principles can be reconciled with institutions without global range. It is also plausible that a case for the necessity of political boundaries can be reconciled with the evolution of their scope, be it their retraction or expansion.

One way to frame these issues is asking whether there are 'continuous principles' that appropriately regulate different levels of governance, or are the relevant functions, relations, identities, and so forth sufficiently different as to compel a set of discontinuous principles, and thus different types of institutions. This paper examines differences and similarities between associative and cosmopolitan positions on this issue, providing criticisms of some of their main claims, made largely from a third, 'political', approach to global justice. It also develops the political approach, and indicates reasons for finding its understanding of the relationship between institutions and norms of justice attractive.

It considers three bases on which theorists develop arguments for continuous or distinct principles, and as a result global or bounded communities of justice. The first concerns the nature of different rights appealed to in institutional justification, and specifically whether or not human rights and the rights of social justice are conceptually distinct or part of a spectrum. The argument for continuity appeals to political considerations of the shared practice of human rights and social justice as regulative principles for legitimate institutional functioning.

The second section considers how the nature of political obligation conditions the application of rights. It gives reasons against a fixed associative view of political obligation, and argues further against Miller's attempt to reconcile bounded communities of justice with the expansion and emergence of political communities.

The final section argues against the 'basic structure' argument for discontinuous principles and bounded systems of justice. It further address the way institutional considerations fit into disagreement between institutional and moral cosmopolitans as to the application of universal obligations. In critiquing both, it draws again on a political conception of justice, and argues that nascent forms of global governance are properly taken as subjects of justice, despite institutional differences with domestic governance. A political approach to justice suggests

continuous principles, but holds that institutions themselves trigger the operation of normative political principles, not consideration of prior moral obligation. Thus, while both domestic and transnational institutions are potential sites of justice, it need not follow that they be regulated by the exact same constellation of egalitarian norms.

**Rights**

The idea of rights, and differences between types of rights, is at the basis of many conflicting theories of the application of normative regulative principles to different institutions. Often this question is approached as concerning the conceptual relationship between human rights and the rights associated with social justice – are they foundationally distinct principles, or ultimately part of a more continuous spectrum? A continuous view weighs in favour of institutions of justice with global scope, while a discontinuous view suggests bounded communities of justice within a global human rights regime.

Many cosmopolitan theories of justice ground the justification of justice-producing institutions with global scope in human rights entitlements and obligations. Jones, for example, argues that basic human rights, and related obligations, are the 'proper first step' in developing a theory of global justice (84). While basic human rights (i.e., subsistence rights) are the 'lowest rung on the ladder of individual and collective moral responsibility', they are nevertheless part of justice-based entitlements and obligations. As a result, their violation is the most 'urgent' global injustice (Ibid.). Institutions with global scope designed for human rights protection are, in this view, the foundation of global justice.

Critics of continuous principles, on these grounds, suggest that human rights are in fact not properly seen as foundationally connected to principles of justice, and flow instead from a separate political morality (Rawls 1999; Nagel). In this view, justice regulates the relationship between individuals in a closed political community bound by the institutions of sovereign, coercive political authority. Human rights, in contrast, properly apply to non-situated persons and to institutional connections lacking the specified features of states that trigger norms of justice (e.g., coercion, cooperation, complicity). Human rights, in a discontinuous view, are taken as part of a pre-political morality between persons, whereas social justice is a virtue of the relationship between citizens.

In this approach human rights are theorized in the spirit of natural rights, rather than conventional rights, and as part of the general, universal, non-institutional morality between persons. The naturalistic view of human rights implies a 'minimalist' notion of their political requirements, given the universal and pre-institutional conception of the interests at their foundation. Moreover, this moral status suggests a fixed view of their content, as well as an absolute and non-comparative view of their status (Beitz, 2003). And indeed, 'natural' theories of human rights are frequently accompanied by skepticism as to their expansive scope (e.g., Cranston).

A major political concern with the 'natural rights' version of the discontinuous view is that it fails to capture much of the actual contemporary

practice of human rights. Actual human rights practice and declarations extend far beyond a minimalist conception. Extensive human rights have both institutional and normative force spanning numerous jurisdictional boundaries. They cover a significant range of interests that are best understood as institutionally determined. The major social function of human rights is setting out 'concrete institutional standards' and 'conditions of political legitimacy' (Beitz 2003: 38-9). That is, human rights are responses to general interests arising from exposure to the functioning of particular institutions. Functionally, human rights are 'social and political guarantees recognized by the international community as necessary for a life of dignity in the contemporary world' (Donnelly: 9).

Because of the connection to institutions, the relevant interests and thus content of human rights, are open to development, which is seemingly ruled out by the natural rights idea. Moreover, the idea of a 'life of dignity in the contemporary world' weighs in favour of human rights as comparative principles, rather than an absolute baseline, since the conditions of any dignified life are socially determined (Barry: 173-74). As Beitz suggests, the 'natural rights' approach does not 'take account of the functions that the idea of a human right is meant to play, and actually does play, in practice' (2009: 8).

Theorizing human rights as principles of institutional functioning seems to indicate in the direction of continuous principles, rather than treating justice and human rights as foundationally distinct. However, Beitz further argues against 'holding that human rights simply *are* the rights of social justice' (2009: 142). In doing so, he points to relevant differences in their respective 'practices'. Drawing this contrast, Beitz takes a rather 'ideal' approach to justice, in which its principles do not arise from, nor principally regulate, existing institutions, but function at a higher level of abstraction by selecting and justifying specific institutional structures (128). Justice, according to Beitz, provides answers to foundational institutional questions including; should there be bounded communities such as states, 'layered' authorities, or institutions with global reach?

Human rights, on the other hand, are less ideal and take 'certain basic facts about the world's political structures as fixed', namely the state system, and function to establish the basic conditions of their legitimacy. Human rights, he argues, are domestic 'matters of international concern, and it is not plausible that the international community should take responsibility for the justice of its component societies' (142). This speaks to differences in the 'urgency' between the interests related to human rights (decent standards of living) and justice (equality).

Establishing discontinuity between principles of justice and human rights on these grounds can be questioned in a range of ways. First, Beitz's understanding of global governance, and the function of human rights therein, is overly narrow. He suggests that international society remains a society of states, and that the emergent 'global order is constituted by a system of norms that facilitates states' interactions and organizes cooperation to supply collective goods' (2009: 129). In this view, global governance is not a *sui generis* source of collective benefits, but instead augments the predominant state system. The basic function of human rights, then, is to regulate the behaviour of states. But a more robust conception of global governance that takes it as a free-standing source of collective benefits – 'as the

collective capacity to identify and solve problems on a global scale' (Slaughter: 83) – suggests an expanded function for human rights norms to regulate the distributive patterns of these institutions. This move in large part clears away the problems of 'urgency' and motivation associated with external actors (states) assisting in the affairs of different domestic settings, and sets up an endogenous and emergent conception of human rights in different systems of governance.

Moreover, Beitz's very ideal understanding of justice is at least open to question in its capacity to account for actual practices of justice. Recall that for Beitz justice identifies what institutions we should ideally have. But it is far from clear that a theory of justice properly operates at this level of abstraction. Rawls's theory of justice, for example, establishes principles to regulate an already known institutional structure by those deliberating in the original position (1999a). Sen's 'idea of justice' is even less ideal than Rawls's, arguing against a view of justice in which it functions to determine perfectly just institutions, in favour of treating justice as grounds for making comparisons between individuals' actual 'social realizations' and for proposing practical institutional reforms (2009). These approaches to justice at least indicate the possibility of thinking of justice as articulating regulatory principles for actual institutions. Thus while it may be right to say that a 'theory of human rights is not a theory of ideal global justice', the same foundational distinction seems less likely in the case of what are at least plausible less ideal theories of justice.

A very ideal conception of justice does not capture the practice of justice in the world. Few institutional structures are designed for realizing justice. The main practice of justice is a regulatory and evaluative role of existing institutions, themselves designed for other cooperative purposes. As institutional scope expands, justice in a sense catches up, largely through the mobilization and advancement of disadvantaged interests, and by shifting ideational structures surrounding acceptable inequalities. If the function of justice is prescribing ideally justified types of institutions, then justice has had little, if any, impact on the political world. But a sense of justice has motivated myriad reformist movements; criticism and contestation of oppression and inequality is the historical practice of justice.

It appears plausible, then, to take human rights and social justice as continuous principles. This removes certain conceptual restrictions on theorizing the development of institutions of justice beyond domestic governance. With this view, institutionalized global governance is a potential site of justice, and human rights norms and practices are a significant part of this 'emergent' politics.

However, a defence of continuity between human rights and the rights of social justice is not decisive with respect to the issue of institutional scope – that is, it does not necessarily ground the requirement of institutions with global reach. It is possible that these principles of right, continuous or otherwise, are themselves relational in some way. One way rights are bounded is by linking them to the idea of associative moral obligations. In this view, rights held in relation to institutions in a political setting flow from prior, relational moral obligations.

## Obligations

According to associative theorists political obligations are best taken as 'one species of the genus 'associative obligations'' (Horton 2006: 429; also Dworkin: 190-206; Simmons). While there are, of course, significant differences within associative theory, a basic view is that political obligations reflect a type of moral bond, and are constitutive of the ethical relationship between members of a political community. They are thus distinct from, and generally more robustly egalitarian than, the general duties we owe to non-situated persons. Whereas a cosmopolitan account of obligation is derived from the 'subject-centered' needs and entitlements of other persons, associative political obligations are derived from prior relationships and membership in a shared community.

A major plank of associative theory concerns the actual felt and experienced nature of political obligation. The notion of universal obligations (like a natural duty of justice) underpinning political obligation, according to associativists, does not capture the actual felt nature of obligations in political society. For associativists, special ties of community membership, particularly a national community, are a significant part of our sense of our relationships and obligations to political institutions. According to Horton, we relate to our polity in a unique way, both to our government and to fellow community members, as well as to outsiders. In accounting for these experiences, 'we employ 'thick' ethical concepts and ideas to characterize that understanding' (2007: 4). Thus, the inherent embeddedness of identity has moral significance. In the associative view, the political obligations to our country are special, and cannot be directly generalized to other sites of governance – they are a unique answer to the question of what *we* owe *our* state (Waldron: 3). While associativists must assign some instrumental value to social cooperation and institutions to ground the polity as an obligation generating association, this is not a necessary condition for obligation because it does not account for 'why we have a special relationship to the *particular* polity of which we are members' (Horton 2007: 10). Further ideas of relational identity are required to justify special obligations, and this is 'where the associative argument comes in' (Ibid.).

A basic critical claim of associativism is that universalism (e.g., a universal natural duty of justice) is deficient because it cannot account for these special allegiances – it 'cannot explain the moral force of *my country*' (Waldron: 5). Ultimately, political obligation must be of a 'special character' given its close relationship to deeper ethical commitments. These impose necessary 'range-limits' on the nature of principles of justice, and thus for the scope of institutions as well.

The immediate implication of this view of political obligation for institutional scope is that political boundaries should track on to community boundaries. Political principles should reflect the deeper moral landscape, and political relationships should be restricted to the scope of ethical ones. Since the legitimacy of political obligations flows from the nature of moral duties, institutions lacking the appropriate associative underpinning will suffer from a lack of legitimacy. For associativists, it is differences of principles for domestic and transnational levels of governance, themselves rooted in different ethical relationships and obligations,

which maintain political boundaries and distinct political moralities for domestic and global spheres.

Because of its largely experiential and attitudinal, rather than principled, account of obligation, a prominent argument against associativism is that it is ultimately focused on the wrong thing. What is of ultimate concern regarding legitimacy is the nature of what institutions are doing. Simmons (1996) claims that the appeal to shared moral experience and familial analogies, confuse 'felt' obligations and 'real' obligations. Just because we feel we have unique obligations to compatriots does not make it so, and is not a sufficient argument for the legitimacy of discontinuous principles and political boundaries. Simmons makes similar arguments of confusion with respect to differences between 'political acquiescence' and legitimacy, as well as the difference between regularity-bred expectations and actual obligation-based entitlement.

While there are strong reasons to suggest that felt association alone is too minimal and undefined to ground legitimate political obligation, this criticism is too quickly dismissive of the informal, habitual and attitudinal dimensions of legitimacy, in addition to the formal and principled elements of legitimacy judgments. To be a responsive concept, and thus theoretically useful, legitimacy must in some way include consideration of the attitudes, perspectives, beliefs and so forth of the persons subject to authoritative institutions towards those structures. These types of factors will account for the extent of solidarity surrounding institutions and thus for their stability, range and vibrancy. As T.H. Marshall famously argues with respect to the democratic welfare state, it is primarily the shared experiences and expectations given rise to by entitlement rights that creates attachments and interests conducive to egalitarian social provision. When these diminish and fracture, political stagnation, atomism, ungovernability and inegalitarian reform can occur and can easily coincide with reasonably high levels of formal compliance, but nevertheless constitute problems of political legitimacy. According to Horton (2006), 'it seems hard to imagine how social life could proceed in complex societies…unless there were some obligations explicable in terms of reasonable expectations' (432). Thus, political obligations must in some way be felt, and instrumentally, institutions will both reflect and cultivate this sort of attitudinal solidarity.

Here, though, associativism faces problems of conceptual ordering. For associativists, the polity is a unique type of association that gives rise to special obligations and thus specific types of institutions. It is not, in other words, simply a type of instrumental association that captures or nests universal norms. The concern here is that the modern, liberal polity must be seen as the result of the development of institutions. Shared identity within a polity had to catch up to expanding political scales, replacing more particular attachments. This transformation of identity occurs through more or less direct acts of nation-building, and institutions of different sorts have been the principal instruments of creating shared political identities. Indeed, justice itself plays a prominent role in the nation-building activities of liberal states (Marshall; Rothstein). Rather than being the outgrowth of associative obligations, institutions, as well as socio-political rights and duties, are in many ways constitutive of that very identity. According to

Ciocaud, 'one's feeling of belonging to a collectivity cannot be separated from the way in which individuals perceive their rights and duties' (205). It is unintelligible, then, to theorize the institutions of political community as mechanisms designed to realize prior obligations, and thus to have their functional scope be limited by them. A system of social justice, as Rawls argues, must be able to 'generate its own support', and not rely on prior identities and doctrines for its stability (1999a: 230). The institutional basis of political community suggests an inherent flexibility in institutional scope and the reach of obligations, which associative theory largely wishes to deny.

In a recent article, Miller (2009) attempts to reconcile an associative view in which justice remains a virtue of certain types of, not purely cooperative, relationships and non-continuous principles, with the potential for the evolution of political community or boundaries. While justice presumes the presence of boundaries, they not need be seen as fixed but will follow political development and changes to the scope of governance. Arguing against a fixed view of political boundaries and communities of justice, he holds that 'where we find forms of economic cooperation arising at transnational levels or where people being to acquire new identities, say of a regional kind, then the scope of distributive justice will also enlarge even in the absence of coercive political institutions' (306). This notion, if plausible, improves upon associative views of discontinuous principles fixing boundaries in accordance with a non-voluntary, pre-institutional conception of political solidarity.

Miller's argument, however, remains associative in a problematic way in its view that justice applies to persons in special relationships, and indeed that our ethical relationships justify claims of justice against others. While allowing that normative principles can follow changes to the scope of governance, the argument problematically 'presupposes solidarity', thus theorizing justice as fundamentally a virtue of the relationship between persons, rather between persons and political structures. As with Horton's associativism, institutionalized cooperation is not enough to trigger requirements of justice because of the deep contradictions between the motivation of mutual advantage and the rather distinct motivation behind justice, which is a virtue of ethical relationships. Justice as mutual advantage, moreover, is itself flawed because of its inability to account for the interests of non-contributors and those lacking a sufficient threat capacity to the stability of the system of cooperation (299).

Justice, Miller argues, must flow from common, and not purely political identities, for two main reasons. The first is the requirement of shared understandings of the social meaning of that which is to be distributed according to justice principles. The second is that in going beyond the self-interested motivation of mutual advantage to more 'subject-centered' considerations, 'justice presupposes solidarity', the nature of which is associative. While improving on the shortcomings of more fixed associative views, both reasons for, even flexible, boundaries in a theory of justice are vulnerable to more general criticisms of associativism.

Without institutions of governance in place creating roughly shared experiences and expectations amongst those exposed to its distributive implications, it is unclear as to how shared identities and solidarities of the right

sort can be expected to emerge. Thus while moving in the direction of reconciling associativism with evolving forms and scales of governance, this approach too is too reliant on prior attachments for triggering norms of justice. In bringing justice closer in line with political practice, institutionalized cooperation should be theorized as a pre-condition of justice and justice itself as the source of fair and principled social unity.

In this respect, institutionalized cooperation can be theorized as triggering requirements of justice without the further implication of justice as mutual advantage, which is flawed for its extensive exclusion. Against this implication is the view of a two-step understanding of social cooperation; interaction can usefully be seen as reflecting largely self-interested motivations, whereas justice is a condition of its legitimacy, rather than 'mere' stability, and is thus 'free-standing' in this respect. This characterizes Rawls's distinction between interaction (or coordination) and cooperation as a normative ideal of interaction regulated by egalitarian principles.

Miller argues against theorizing the social function of justice as bringing legitimacy (distinguished from stability) to governance, suggesting that the 'proposed tight link between distributive justice and political legitimacy is…open to question' (301). While there is perhaps some link, 'in overlooking the predominantly procedural character of political legitimacy, it exaggerates the significance of that connection' (Ibid.). The strong distinction between legitimacy as a procedural concept and justice as substantive sits at odds with both the significant procedural dimensions of justice and the substantive features of legitimacy. Justice sets up fair procedures against background equality, which will entail ongoing regulation and correction regardless of the extent of procedural fairness. Similarly, an account of procedural legitimacy will not be open-ended in the type of legitimate outcomes that can result, but will impose upfront substantive limits on outcomes.

Further problems exist in reconciling the associative view of justice and the requirement of 'shared social meaning' with fair accommodation of diversity in the construction of solidaristic political communities. For associativism, pluralism and disagreement at the global level prevent the establishment of comprehensive principles of justice. Justice requires a degree of consensus on the norms and values of that which is to be distributed and on the types of conditions and reasons for redistributing different resources (Walzer). The well-known liberal view is that justice cannot flow from the shared understandings and comprehensive doctrines of a moral community. Justice is free standing, and requires uniquely political forms of support. This requirement motivates Rawls's rejection of 'shared social meaning' of the objects of justice in favour of an 'overlapping consensus' on the primary goods, understood not as holding specific value but as all purpose means, valuable regardless of the social meaning attached to their ultimate use. Justice must develop in a mutually formative process with political community, in which emergent regulative principles of legitimate institutional functioning inform the experiences and expectations of persons and their sense of membership, which in turn feeds back into institutional support. It is not automatic, however, that this mutually formative process will occur, or that the development of principled and solidaristic political communities will follow changing institutional scope. Governance does not

necessarily create egalitarian standards of legitimacy, but creates potential space for them and is open to political agency, and to acts of contestation and iteration (Benhabib).

The notion of principled solidarity, rather than relational solidarity, casts further concern on the idea of deriving political principles from associative relationships. It is indubitable that felt membership has powerful solidaristic and motivational qualities; however, there is no further reason to assume they will be egalitarian in nature. Whereas Horton argues that if the link between ethical relationships and political obligations is denied, then 'the kind of demand that political obligations make on us is worryingly opaque', in fact the opposite appears more likely. Unprincipled relational identities are virtually limitless in their definition, and many odious political regimes at least display impressive levels of common identity and attachment, which can enable objectionable practices. Linking obligation to principles, rather than ethical relationships, bounded or otherwise, serves to delimit the range of legitimate obligations.

This raises the further and quite serious 'moral standing of groups' objection to associativist theory. Membership in a political community, on its own, cannot generate involuntary obligations when the community is oppressive to some degree. This is particularly relevant given the moral nature of the associative argument, which suggests stronger, more demanding obligations between members, compared to those owed to outsiders, and, that is, not greater license for violating even basic moral requirements. This problem points to the idea that universal norms of fairness, not undefined membership and felt solidarity, is the basic condition of legitimate obligations. The further implication is, then, that universal principles must condition a political morality in which the notion of obligation holds a central place. Moreover, where governance extends fairness in its treatment of affected interests we are provided with strong reason to do our bit in upholding that system.

In general the associativist view of obligation is too open ended with respect to the principles it potentially supports (or it risks giving up too much room to justice). At the same time it seems excessively rigid with respect to the possibility of ongoing evolution of political community, and of emergent regulative principles. How do we know when the relevant level of 'boundedness' is met, permitting the shift from baseline non-comparative human rights principles to egalitarian principles of justice?

Moving in the direction of more general principles of equality as the foundation of political justification and legitimacy, however, does not have the immediate implication of requiring global institutions of justice. In certain types of both bounded and cosmopolitan views, institutions themselves are theorized as conditions determining the nature and application of principles.

## Institutions

In addition to rights and obligations as grounds for discontinuous principles and bounded systems of justice, a further type of argument concerns the nature of cooperation itself, and how it gives rise to distinct regulatory principles (Rawls 1999a; Heath 2007). For Rawls, justice rests on universal moral principles, but is

limited in application to certain types of social conditions. This argument weighs against global principles of justice because there does not currently, or foreseeably, exist institutions of the right sort at the global level.

In a conventional sense, social cooperation produces benefits that we cannot achieve acting on our own. Institutionalization secures these gains, and has primarily instrumental value in this regard. For Rawls, however, social cooperation is a highly specified type of relation, and is to be distinguished from other types of efficiently coordinated behaviour (relevantly, nascent forms of transnational governance). Social cooperation has the richer attribute of advancing our 'good' as moral persons. Thus, cooperation is distinguished from other types of efficient interaction by 'incorporating a distinctly moral component', namely, the requirement of justice (Freeman: 36-7).

What is relevant here is the idea that international society currently lacks the required level of cooperation, a basic structure as it were, to trigger demands of justice. In this view, global institutions are 'qualitatively different' than domestic basic structures. Global politics lack the characteristics of a 'political society', particularly the sort of power and jurisdiction that trigger the requirement of justice as reciprocity as the condition of obligation (Freeman: 39-40, 59). The further, and 'primary practical problem' is the absence of a global 'political agent with authority to apply (principles of justice) on a global level' (61).

The argument here is against a global distributive justice principle, requiring a unified institutionalized scheme of redistribution across populations. However, the more sensible move is not from the observation of different institutions and sites of global governance to a singular distributive principle for world society, but the suggestion that the fact of global governance entails that principles of justice can come to function in the legitimacy of these institutions, addressing what they produce and distribute. That the form and function of domestic and global governance are different does not require fundamentally distinct regulative principles.

With respect to the concern that global politics lacks an authoritative agent to apply justice to these institutions, it appears that this fact similarly characterizes domestic politics despite possessing the means of coercion. In some sense the state 'applies' justice, however in a more basic way the state, historically, has had justice applied to it, as its principles take root in the conditions of legitimacy. The state in this respect is a subject of justice, and not principally a mechanism for justice promotion. Indeed, there is no functioning authority above the state that is charged to impose justice onto it, and to prevent institutional drift away from it. Over time, through the application of political agency and ideational change, the state has become a site of justice as further types of inequality, and sources of inequality, lose their standing as legitimate. But this is in significant part an informal, democratic and normative politics, an ongoing 'jurisgenerative' process, that is in no sense complete, progressive, nor irreversible. There appears to be, then, good reason to reject an institutional argument for discontinuous principles that appeals to an authoritative capacity of some sort uniquely held by domestic states for 'applying' justice.

Institutional pre-conditions are also used to justify expanding the reach of

principles of justice beyond domestic governance, and for re-configuring the authoritative institutions of justice. Institutional cosmopolitans argue that global governance is sufficiently in place to trigger demands of global justice. Pogge's theorizing on global justice distinguishes between interactional cosmopolitanism – 'fundamental principles of ethics…(that) apply directly to the conduct of persons' (51) – and institutional cosmopolitanism – a contingent application on 'shared practices' and a 'global scheme of social institutions' – and endorses the latter (52). In this view, the individualistic and universal facts of moral cosmopolitanism, without institutionalized interaction, do not trigger institutional or individual responsibilities of social justice towards those not part of a shared system of cooperation. Another way of putting this is to say that moral cosmopolitanism alone does not require 'legal cosmopolitanism', which is a 'concrete political ideal of global order under which all persons have equivalent legal rights and duties, that is they are fellow citizens of a universal republic' (49). In some sense the presence of a global order, in which the wills of persons are complicit in perpetuating systemic harm and disadvantage, is a pre-condition of global justice.

This type of institutional cosmopolitanism appears to in large part accord with a political view of justice, that takes institutionalized governance as the subject of its principles. It does however differ in two relevant ways. The first is in the nature of its institutional implications, and its understanding of the relationship between principles and institutions. The second difference concerns the treatment of obligation and individual responsibility for justice.

With respect to institutional implications, Pogge's theory of global justice takes the fact of transnational governance (a global basic structure) to require making significant structural change to world politics. Specifically, the existence of a global basic structure triggers the requirement of legal cosmopolitanism. This goes well beyond the political claim that institutionalized governance is a proper site of justice, without subsequent prescriptions for the scope of institutions. Pogge's institutional cosmopolitanism, in contrast, takes the fact of a global basic structure to require more than its existing structures be made just, namely, to reconfigure existing political structures themselves. Most important here is a dispersion of sovereignty – 'from the standpoint of a cosmopolitan morality…(the) concentration of sovereignty at one level is no longer defensible' (58). Global social cooperation creates the need that 'governmental authority…be widely dispersed' and moreover, that 'persons should be citizens of…a number of political units of various sizes, without any unit being dominant' (58). In this view, the state, or statism, is an obstacle to justice, and should be replaced with legal cosmopolitanism.

Here a political approach to understanding the politics of justice would suggest caution and methodological modesty. While the fact of governance functions expanding significantly beyond the state is important and rules out limiting justice to the state, the state remains the primary site of justice and of solidaristic identities, such that its elimination would constitute a justice loss. It is not inevitable that solidarity and justice and democratic norms will catch up to expanding authority and governance. Institutional expansion is an open-ended politics. In this respect, the claim that global justice requires the dispersion of sovereignty and post-national communities and identities is perhaps too quick to

reject the potential value of 'inclusive' states as 'societies united by principles of social justice' (Sypnowich: 159). Membership in states – the logic of citizenship – holds this possibility, and 'generates a certain pressure in the direction of moral equality, for it unites people horizontally and defines them as having a common identity' (Moon: 67). However, this is of course not automatic, nor is fair treatment of the interests of outsiders by bounded political communities, but both considerations fit into assessments and justifications of their legitimacy.

The second relevant distinction between institutional cosmopolitanism and political justice is the nature and role of obligation. While Pogge argues that moral cosmopolitanism alone does not create individual obligations for promoting justice, once the global basic structure is in place, justice does flow from 'fundamental principles' of individual moral obligations. Thus, institutionalized cooperation, in which the wills of affluent participants are complicit in the perpetuation of systemic harms faced by disadvantaged members, creates moral obligations for individuals to 'work for institutional reform' (52). The political approach takes a somewhat different understanding of obligation as it relates to justice. It holds that the agent responsible for social justice is the institutional structure, and indirectly those who claim and hold authority through it. Justice does not stem from moral obligations between persons, but from the conditions of legitimate governance. In this regard, justice is the condition of individuals' obligations to uphold the institutions and rules of social cooperation. In practice, justice has more often than not resulted from the agency of disadvantaged interests and resulting normative shifts in the nature of justified inequality. Justice is more likely to be acquired, than granted, and the political view of sites of governance as the subject of justice seems to more fully capture this politics.

Institutional cosmopolitanism's attempt to combine the institutional pre-condition of justice, with a view of justice stemming from the moral obligations of persons faces a further concern in accounting for the role of cooperation in triggering obligations of justice. Take the case of a political community with decent knowledge of the happenings of a nearby political community, but nevertheless does not have the required levels of 'shared practices' for justice-obligations with the second community. In the occurrence of knowledge of significant suffering and injustice of some sort, it is not clear why cooperation is needed here to instigate moral obligations of justice. The basic view of justice as flowing from moral obligations and entitlements seems to suggest cooperation is not decisive in compelling action in this case; obligations of moral cosmopolitanism would have to override the cooperative condition.

As such, many theorists sympathetic to cosmopolitan justice are critical of the view that institutions are a pre-condition of justice. The political view sees the project of justice as ensuring that our current institutions are just; according to Waldron, in contrast, 'the importance of justice goes beyond this. It is morally imperative that the demands of justice be pursued *period'* (28). Further, '(o)ur cooperation in establishing and sustaining political institutions that promote justice is morally required' (29).

Buchanan similarly argues against the basic structure argument, contrasting it with what he takes to be the more valuable natural duty of justice argument. The

natural duty of justice argument suggests a 'limited obligation to help create structures that provide all persons with access to just institutions' such that there 'are principles of justice that apply directly to individuals' (86). The basic principle of justice that applies at this level is 'that each person ought to be treated with respect' (86), which entails that individuals have access to justice promoting institutions. Just institutions, in this case, are those that protect 'basic human rights' (98). Given the universalism of the basic principle of justice, it calls for justice promoting institutions with global scope, and 'even if there were no global basic structure, nor any form of global cooperation…we ought to develop an international legal system to ensure that all persons have access to just institutions (94).

With this more direct line from moral obligation to the demand for specific institutions of justice with global scope, it is unclear what is doing the former type of 'treating' that is relevant to justice concerns in the absence of cooperation. The idea of 'natural inequality' as directly relevant to justice is problematic. There are certainly natural differences and distributive issues therein, however *social* justice properly concerns the mediation of factors of this sort into social inequality. If justice concerns regulating social inequality of some relevant sort, than inequality generating social structures or processes are prior to obligations of justice. Moreover the political view of justice seems better able to account for the significance of social cooperation in triggering demands of justice, than the institutional cosmopolitan view, as discussed.

The political, or 'institutions we have', approach is a more plausible conception of the 'demands of justice' than the links made between moral and political obligations by both moral and institutional cosmopolitanism. We should not merge the principle and motivation of efficiency with those of justice. Leaving a non-institutional baseline is not motivated by justice but by considerations of securing cooperative benefits. Institutionalization creates distributive conflicts that, to achieve legitimacy, will be regulated by just principles. We should have a two-step view, which fairly firmly distinguishes between a general motivation for social cooperation, and the further end of it being legitimated by egalitarian regulatory principles, which in many cases will demand inefficient changes to various social distributions.

Buchanan holds against a two-step view in arguing against theorizing political communities as 'discretionary associations' for mutual advantage (98-100). Rather, the primary purpose of creating political communities is to secure human rights, themselves, basic principles of justice. In this approach, institutions are theorized as mechanisms for ensuring justice for all persons (87). Persons are obligated to pursue and support such institutions by the natural duty of justice. As an approach to the question of institutional scope, the mechanism view provides an instrumental answer – the appropriate consideration is, which best realize natural entitlements of justice.

Caney (2006) develops a similar instrumental argument for institutions with global scope (and against statism). In his view, appropriate institutions are those that best ensure the realization of basic cosmopolitan moral principles (human rights, distributive justice). The further claim is that the type of institutions that best do this will have global scope – egalitarian principles motivate 'a cosmopolitan

political framework with supra-state political authorities' (266).

Caney argues for institutions with global scope by appealing to the idea of 'compliance' (which, in an interesting way mirrors the Rawlsian argument against global justice because of compliance problems discussed above) (159). According to Caney, distributive justice requires redistribution from affluent to poor states. With the statist system this is entirely voluntary, and therefore unlikely to occur without a 'global political authority'. Again, one might ask whether this is distinct from the domestic case, since there is no overarching authority that enforces the promotion of justice within states by states. Further, state policy realizes justice in what are largely indirect ways –viz., not through explicit redistribution mechanisms, but often in the form of institutions and policies (e.g., progressive taxation, universal versus targeted and conditional entitlement). The practice of justice speaks to the importance of normative politics, and the insertion of increasingly robust egalitarian norms into political justification. There are numerous dimensions of this, including the development of identities of political community, effective democratic channels of accountability and responsiveness, and built up entitlement structures. The practical aim is to extend this politics to global governance, rather than the creation of a global justice enforcing institution, which in large part simply moves the problem further along; why expect the new authoritative enforcing institution to do its work in the anticipated egalitarian sense (why, like the state, despite being authoritative, might it not 'go neo-liberal')?

Caney further suggests that collective action problems mandate creating global political institutions (160). Under statism, 'states do not cooperate to produce public goods', including justice, and thus we need institutions with global scope to overcome these problems. This argument, however, is insufficiently political, and faces similar explanatory problems as the analogous 'bootstrapping' case of explaining or justifying the state in the same way (Hardin). It is implausible to suggest that the solution to overcoming collective action problems in the provision of public goods is the creation of the ultimate public good. A view closer to practice is an evolutionary one, in which governance institutions develop over repeated interactions, agreements and practices and the creation of informal governance networks, which over time become more deeply consolidated, and supported for their functioning to provide socially valuable goods (Slaughter). By creating space for attendant processes of normative development and identity formation, emerging structures of governance create opportunities for justice.

The instrumental cosmopolitan defense of institutions with global scope limits prospects for the endogenous development of normative standards of governance, and so faces problems of reconciling the mechanistic view of institutions with democratic self-determination regarding which types and mix of benefits to produce. Pre-institutional theories of the demands of justice limit flexibility in social choice in approaching problems of social conflict and scarcity (Sen). Oftentimes benefits will conflict and society must choose which institutional mechanisms to select (Heath 2006). Political communities constantly face the fact of scarcity limiting the provision of socially valuable goods, and will need to make allocative decisions. Justice will certainly inform these matters, but rarely will mandate in one direction. It is largely once these choices have been made, and

remade given ongoing democratic contestation of social choice, that justice comes in, regulating distributive patterns. Institutions develop for securing a host of benefits. Principles of justice are regulative of these processes, conditioning modes of their production and distribution, ruling out specified inequalities and weighing in favour of certain reforms.

In this regard, theories of justice should not be taken to directly require production of the values they endorse egalitarian principles to regulate. By way of example, a prominent critique of Rawls's theory of justice concerns his principle of priority, which is taken to suggest an inflexibility that is not conducive to more optimal social outcomes (e.g., Sen; Van Parijs). The concern here is that Rawls's principles 'fetishize' liberty, leaving insufficient resources for other 'social realizations'. But Rawls's theory of justice is political, in the sense that it does not require the maximization of any particular liberty, but regulates the distribution of the different types of liberties a society chooses to create.

With respect to universal pre-political moral obligations, little is added to their force in politicizing them. But politicization poses significant difficulties for coherently theorizing specific political obligations as stemming from a more basic moral source. Political institutions secure cooperative benefits, and the rules governing their production and distribution are difficult to trace back to pre-political moral sources. According to Rawls, political obligations 'presuppose a moral conception of institutions and therefore that the content of just institutions must be defined before the requirements for individuals can be set out' (1999a: 98). In political society, persons come to carry obligations of, say, supporting a health care system, but it is odd to suggest that the health care system itself represents the realization of specific moral obligations between persons that originate in the absence of such a system.

To make sense of obligations in political society, we require a more indirect type of application of universal moral norms to political practice. One approach to thinking about this is the idea of the requirement of 'equal respect', itself rooted in a universal morality but quite open-ended in its specific institutional requirements. Political structures do not 'create' equal respect, but treat individuals with equal respect through extending justice to the creation and distribution of social benefits and burdens. Institutions are not charged with creating 'equal respect', but with regulating their basic governing functions by that principle as a condition of their legitimacy.

According to Waldron, institutions have instrumental value for supporting the 'possibility' of '*any* stable system of resource use' within a 'territory' (15). The idea of 'territory' here captures the scope of systems of social cooperation, and accounts for 'bounded' justice, and the legitimate existence of insiders and outsiders. The scope of justice, however, can be changed with the expansion of cooperation, as such 'resolutions', and their attendant obligations, are 'provisional' and open to conditioning and development. Despite this openness, it need not diminish the value of current forms of conflict settlement, namely the state, as cosmopolitan criticisms of 'statism' as a barrier to justice tend to do.

This view of open-ended instrumentalism is often criticized on related instrumental- associative grounds, as opposed to intrinsic associative ones, for

lacking sufficient solidarity. The idea it is thought to fail to account for is the importance of an overlap of institutions with associative (national) communities, because they possess a unique sort of solidaristic 'glue' that can support institutions of justice.

Waldron argues for a fairly firm distinction here between the 'practical' ties of persons with a 'juridical connection' and the supposed 'intimacy' of the special ties constitutive of the relationships between compatriots (19). Ties of the latter sort 'must be explained by reference to the idea of *nation* rather than polity' (19). However, a political view posits more continuity between 'nation' and 'polity', and waters down the possibility of a purely civic sense of membership – there will necessarily be deeper identity and emotive dimensions to membership in communities of justice. But a just pluralist community must be, at its base, a unifying identity grounded in citizenship, and thus ultimately an institutional connection. Shared experiences and expectations give rise to the thicker and affective dimensions of membership. There are no principled grounds to at least allow the possibility that similar identity-formation processes could (continue to) occur globally as institutions and norms of legitimate governance take hold. Such a process is a 'jurisgenerative' form of political development, in which institutions and legitimacy norms are constitutive of political community (Benhabib; Clark; Michelmann). And, in an ongoing process of mutual formation, identities and ties of political community inevitably shape subsequent political dynamics and possibilities. A political approach to questions of global justice considers actual forms of governance and ties of membership as appropriate sites for the application of normative regulatory principles, without ruling out the legitimacy of ongoing expansion of scales of governance, and the expanded application of justice principles, nor necessarily requiring it.

## Conclusion

A significant contrast exists in theories of justice between theorizing it as a set of egalitarian regulative principles for certain types of institutions, or as the political dimension of deeper moral obligations entitlements. Many otherwise opposing associative and cosmopolitan theories treat justice in the latter sense, disagreeing on the moral issues. This shared basis leads to the well-debated concern of reconciling different types of obligations (compatriot and universal) in political structures. A political approach to justice avoids this conflict, by diminishing the directness of the link between moral obligation and political legitimacy. It suggests a more instrumental attachment to fair and efficient institutions, supported for their own sake. In practice, justice functions to bring principled and voluntary support to institutions with distributive implications. As the scale of political community changes, it is reasonable to theorize the process and form of the emergence of justice at new sites of governance.

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