GLOBAL ETHICS OR GLOBAL JUSTICE?
¿ÉTICA GLOBAL O JUSTICIA GLOBAL?

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Abstract: Contractualism collapses two questions that should be kept distinct: Who are the basic principles of society designed by? Whom are they designed for? The contracting parties are understood as forming a single group with the citizens who will be living together and whose lives will be governed by agreed principles. No commitment other than moral, however, is conceivable as with non-contracting parties, who are therefore excluded from institutional or “political” justice. Then, as this paper seeks to show, it would not make sense to speak of global or cosmopolitan justice unless we set aside contractualism and the condition of mutual advantage it imposes.

Keywords: Contractualism, political justice, global justice, cosmopolitanism

Resumen: El contractualismo colapsa dos preguntas que deben mantenerse separadas: ¿quiénes diseñan los principios básicos de la sociedad? y, ¿para quién están diseñados? Se entiende que las partes contratantes constituyen un único grupo con los ciudadanos con los que viven y cuyas vidas son regidas por principios acordados. Sin embargo, no es comprensible otro compromiso diferente del moral, tal como ocurre con las partes no contratantes, que por tanto, están excluidas de justicia institucional o ‘política’. Entonces, no sería coherente hablar de justicias global o cosmopolita a menos que dejemos de lado el contractualismo y la condición de ventaja mutua que éste impone, así como este artículo busca mostrar.

Palabras clave: Contractualismo, justicia política, justicia global, cosmopolitismo

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Introduction. Justice By Whom and For Whom?

In the political culture of many democracies, Western and non-Western alike, we find the idea that among the tasks entrusted to officials is that of guaranteeing some form of equality (often more than one) among all those who are subject to their political authority or for whose benefit this authority is exercised. Behind this distinction –between being subject to political authority and being its beneficiary– are two distinct paradigms, one for the internal justice of a self-contained community (such as a state), the other for the justice of a community that transcends such boundaries.

In the social contract tradition –the contract tradition of justice, with the Humean “circumstances of justice,” which John Rawls revisits in *A Theory of Justice* (1971) and then in *The Law of Peoples* (1999)– two questions are collapsed that should instead, in principle, be kept separate: Who are the basic principles of society designed by? And who are they designed for? The contracting parties are understood as a forming a single group with the citizens who will be living together and whose lives will be governed by principles chosen in view of their mutual advantage. Other interests or persons can be included derivatively, if the parties care to make a commitment to them, but this means that any such commitment lives outside the context of institutional or “political” justice, as Thomas Nagel calls it: as such, it is reduced to a moral commitment or, at best, to a vaguely defined “global humanitarianism”. The moral attitude conveyed by this expression alludes to the Western philosophical tradition, where justice is understood as a *special* moral virtue that finds its embodiment in politics, next to other virtues which are equally important, if not more so, but which are necessarily distinguished from it, such as solidarity and benevolence. In contract theory, in other words, political justice is necessarily equated with distributive justice, implying that supererogatory virtues like altruism, benevolence, and solidarity are not as fundamental to political life, precisely because they are understood not as political virtues but merely as ethical ones.

If justice and politics are concerned with the relation between a sovereign institution and individual behaviour –and if these institutions have no place outside the boundaries of self-enclosed communities (states) and their
mutual relations (the international order)—it doesn’t make sense to speak of “nonpolitical justice,” that is, of global or cosmopolitan justice. In this sphere, what works to the advantage of those with whom we are not bound by relations of justice does not make it into the realm of justice, much less into that of equality: it belongs with neither justice nor equality, but only with ethics.

A Few Sore Points Relating to an Exclusively “Political” Justice

Rawls’s contract theory, and contractualism at large, clearly distinguishes the parties in the original position from citizens in the society that will take shape through their decisions. But once the negotiating is done and the contract is formed, these two classes of persons wind up coinciding. The parties to the contract choose the principles of justice that will advance their interests: these principles therefore cannot in any way be understood to concern anyone outside the contract situation. Under the contract, there is no duty of justice prescribing that help be afforded to needy people outside the contract, nor can these persons claim any correlative right. If the scope of the contract delimits the boundaries of justice, the coherence of contractualism immediately reveals its weak point, which is that justice is confined to nationality and sovereignty, and hence, in principle, to one’s place of birth. In an increasingly interdependent world, we ought to instead take account of the issues of justice that stem from the inequality between rich and poor nations, and from the way this inequality shapes and conditions their citizens’ life chances.

Amartya Sen frames this as a problem of “closed impartiality”: the decisions made by the contracting parties may be impartial (by definition) but they concern interests that are negotiated within a single community, and so they do not affect anyone who was not a party to the contract. But unless we live in a world made of completely insulated communities, the internal/external logic that underpins the contract can only apply to an extraordinary,

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if not fantastic, set of circumstances\textsuperscript{3}. The problem with such an approach lies precisely in its neglecting to consider the interests and concerns of those who have not been asked to subscribe to the social contract that governs a community but are nonetheless made to feel the consequences of its decisions. In this regard an important distinction comes into play between global justice and international justice\textsuperscript{4}.

In grappling with this interdependence, even Rawls envisioned a law of peoples based on a higher-level contract among the representatives of liberal or decent peoples, or “well-ordered societies”\textsuperscript{5}. The problem has also been tackled by others, like Charles Beitz, Brian Barry, and Thomas Pogge, who have proposed other ways of solving the conundrum that Rawls envisaged before them\textsuperscript{6}: while Rawls thinks in terms of international justice, as is evidenced by the paradigm of the two contract levels, the other authors take a global approach, one that is not predicated on any contract entered into at the first, or domestic, level. It is not peoples who are the subjects of global justice but individuals, and their interdependence is not based on relations of formal equality as reciprocity but is rather defined by their inequality—not a moral inequality, but an inequality of resources\textsuperscript{7}.


We can now be more specific about the meaning of Nagel’s scepticism of a justice beyond domestic borders, that is, of a nonpolitical global justice: justice consists in building just institutions having sovereign powers, which is a different proposition from that of imagining what a just society would look like. Any scheme of justice designed without the institutional backing of a sovereign power, as in the case of global justice, is consigned to irrelevance. For Nagel, the alternative consists in a “minimal humanitarian morality” by which to govern our relationships with other persons: these relationships will neither be institutional not political but ethical.

But does the absence of global political institutions really justify the claim that we ought to dismiss the idea of global justice?

The current impossibility of setting up a world state suggests to Nagel that an exclusively political justice must rest on a principle of equality, and it leads Rawls to start from *intra*-national justice (among individuals within a nation) in working toward *inter*-national justice (among peoples), without correcting for the disparity of resources and opportunities that condition justice at this second level. It would be another outcome that we would have if we opted for a single, all-encompassing contract conceived on a cosmopolitical basis in the manner of Pogge, among others. In other words, to envision a global contract—a social contract applying to the entire global population—is to envision a form of justice that is not set up on two hierarchical institutional levels and so does not entail two different standards of justice. There is only one justice, namely, global justice, whose aim is to remedy the material inequalities that come with interdependence.

But this globalist vision only highlights the institutional void that makes it unrealistic. Which is to say that the dichotomy between global ethics and (political or institutional) justice resolves itself into an alternative that takes on the contours of a cosmopolitical utopia.


Global Justice and Cosmopolitanism

And yet our common perception is that we live in a single world, but an unjust world. “We do not live in a just world” is the opening line of Nagel’s famous article. It should also be noted that justice is, for Nagel, essentially social, or distributive: it is through this lens that the credibility of global justice is to be judged. But, given the relation between justice and sovereignty, and the empirical fact of global inequality, the only possible answer lies in the humanitarian spirit, an ethical attitude of solidarity that bears no relation to the question of a fair redistribution of resources and an equal opportunity to access them.

On an alternative conception of justice, that is, a cosmopolitan one, which neither Rawls nor Nagel can embrace, the criteria of justice derive from the equal consideration and respect or duty of equity that we each owe to every other human being. Given that we all share the same world, the persistence of separate sovereign states holds back the effort to achieve global justice. Likewise, in light of the same premise, it would be morally incoherent not to strive toward a common system of political institutions on a global level. This is no doubt a stylized account of the cosmopolitan view, but it clearly conveys its main thrust. Which is that boundaries should not figure into the picture when at issue is what everyone is owed by reason of justice. Even so, whether we account ourselves to be Rawlsian or globalist, the crux of the problem that should form the premise of our reasoning is the same: as Rawls correctly points out, it lies in the moral arbitrariness of the natural endowments and social conditions from which we all start out. None of us chooses the inherent abilities we can develop or the circumstances into which we are born, and it is precisely out of this initial allotment that the demand for justice arises. But on the political, or state-centric, conception of justice, our approach to this question of the arbitrary starting point can only make sense within a social context in which the norms we are subject to are the ones we ourselves create. Unlike the cosmopolitan conception, the political one assumes an institutional framework that governs our mutual relationships within a given political community. This relationist view posits two sorts of relationships: on the one hand are the political ones we have as subjects of justice within an institutional arrangement, on the other are the ethico-moral ones we have outside any institutional arrange-
ment, in the more inclusive, universal frame that connects every one of us as moral agents (beyond the scope of political justice). Unless this moral relationship is buttressed by an institutional framework, the universalistic humanitarian morality that may inform our noninstitutional relationships thins out to a nonbinding generic morality, one that, for this reason, cannot be reconciled with the universalistic spirit of Kantian liberalism.

It is clear, in other words, that the political, or state-centric, vision does not in principle reject the idea that there should be one or more authoritative and effective international institutions entrusted with making the world less unjust. However, in order to so extend the institutional reach of political justice, it is necessary to overcome an obstacle that, as things stand institutionally, makes any significant forms of global justice unfeasible.

Reflected in these considerations is a rejection that is implicit in a political conception of justice such as Rawls’s: a rejection of what Liam Murphy calls monism, or the idea that a comprehensive politico-moral conception needs to assess the justice of institutions on the basis of normative principles that also apply to individual action. Contrast that with the dualist view, on which we are looking at two separate problems – that of the best institutional design and that of personal conduct – which accordingly need to be treated on the basis of two separate kinds of practical principles. Rawls’s and Nagel’s antimonism is essential to understanding the theory of equity at the domestic level, as well as the relation between domestic and international principles which Rawls sets out in 1999, and which Pogge criticises as an incoherent “double standard of justice”. The two kinds of principles of justice are not conceived to govern the conduct of individuals within a society, much less to apply to international relations: they are only designed for the basic structure of separate nation-states. Consider Rawls’s

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9 Murphy, L. Institutions and the Demands of Justice, Philosophy and Public Affairs 27, 1998. In The Theory of Justice. Cambridge, MA: Harvard University Press, 1971, 54–5, Rawls writes: “The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately”. Cfr. Nagel, T. Equality and Partiality. New York: Oxford University Press, 1991, chaps. 6, 9, where dualism is defended. In his article Murphy defends the contrary view: all fundamental normative principles that apply to the design of institutions apply also to the conduct of people.
distributive difference principle: the distribution it governs is not that of advantages and disadvantages among individuals in society but the probabilistic distribution of their ex ante life prospects *before* they are even born into different socioeconomic classes. We therefore should not expect this principle to govern individual life choices; nor does this principle apply to relations among states or among individuals in different states. The principle cannot be extended from the national sphere to the international. According to Rawls, the duties that regulate relations among peoples include a minimum of development aid to be set aside for the benefit of the poorer peoples, but there is no analogue to this duty in liberal distributive justice, so much so that Rawls calls this not the “difference principle” but the “just savings principle”.

This is a limitation the cosmopolitan view rejects in view of its monist stance. On this view, it is not peoples or societies that justice primarily applies to but individuals, and, accordingly, any moral requisite that should apply to social institutions or to international relations must ultimately be assessed in view of its effects on individuals and on the basis of a morality that is centrally concerned with the way individuals treat one other\(^\text{10}\). From this point of view, cosmopolitical morality cannot allow national boundaries to shape the way an individual is to take the interests of others into consideration: if we are to avoid moral incoherence, we will have to uphold a global difference principle, that is, a principle of global redistributive justice.

Antimonism thus entails a clear division of labour: within states, we will have distributive justice, equality, and human rights; beyond state boundaries, we will have sufficiency, basic goods, and basic rights, along with an appeal to a global cooperation sustained by moral attitudes promoting solidarity, altruism, help for the needy, and prompt responses to humanitarian emergencies, always looking to global social justice as an ideal that by definition cannot be attained. Should it not be self-evident that this dichotomy between state-centrism and globalism is what keeps so many persons and countries in a state of need and dependence on others that are stronger and dominant?

Rights or Duties?

The straightforward alternative between political and cosmopolitan justice is rejected by those who, like Debra Satz, imagine an economic system no longer centred on the role of states. That is to say that we need to think about the conditions that would make a system of cosmopolitan justice sustainable through an institutional framework that can prop it up, looking to the bodies of distributive justice that are already in existence at the national level, as Lea Ypi does, or at the international level, as Mathias Risse does, among others. Risse’s “pluralist internationalism” works as a kind of globalism in holding that the global order generates its own principles of justice, and it is nonrelationist in holding that the foundation of global relations of justice lies in our being part of a common humanity.

On closer inspection, we should see that behind these approaches is the question identified at the outset, namely, whose justice? Or justice by whom and for whom? Which is more specifically a question about our duties of justice: who bears these duties and toward whom? Indeed, as Onora O’Neill argues, the proper way to tackle the problem of transnational or global justice is to reason not from (human) rights but from the Kantian duties of perfect obligation. If we take duties as our starting point, we will be in a better position to work toward a scheme of global justice than if we started out from the question, what rights ought to be accorded to those in need? Here O’Neill is taking aim at the so-called sufficiency approach to the question of the duty to help others outside our national boundaries. The sufficiency paradigm contains the seed of its own upturning: if the duty to recognize others as having some basic rights, meaning the rights to essential goods

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and the right to sustenance, hold *erga omnes*, and not merely in the form of development aid but in the bolder form of action undertaken to ensure genuine universal enjoyment of these rights, we will discover that the correlative rights to basic goods do not suffice to that end. Primary goods are essential to human beings if they are to fully realize their capacities, for this puts them in a position to act as moral agents in the Kantian sense, no longer stuck in a state of minority. If these *erga omnes* duties are an essential condition for everyone to become a moral agent, and if it is a fundamental duty of every human being to become a moral agent in the Kantian sense, then we are each bound by a duty to help others in need so that they can themselves become such agents. From this vantage point, justice can be observed to consist not in what can be claimed but in our ability to exercise the agency required of a moral being. There are requirements of justice that do not respond to the logic of rights, and the duty to help others in the sense just explained is a requirement of justice that holds good even when we cannot speak of a right to any kind of aid.

Once duties are seen to outbalance rights, the idea of justice based on reciprocity sinks definitively into crisis. If the only equality recognized among persons is their formal equality as moral agents, but they are set in a context of widespread material inequality, the contractualist requisite of mutual advantage can no longer be understood to be relevant to the problem of global justice, which by definition can exist only against a background of material symmetry and through equally symmetrical duties not circumscribed to the moral sphere.

**References**


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