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The Problem of Global Justice

I

We do not live in a just world. This may be the least controversial claim one could make in political theory. But it is much less clear what, if anything, justice on a world scale might mean, or what the hope for justice should lead us to want in the domain of international or global institutions, and in the policies of states that are in a position to affect the world order.

By comparison with the perplexing and undeveloped state of this subject, domestic political theory is very well understood, with multiple highly developed theories offering alternative solutions to well-defined problems. By contrast, concepts and theories of global justice are in the early stages of formation, and it is not clear what the main questions are, let alone the main possible answers. I believe that the need for workable ideas about the global or international case presents political theory with its most important current task, and even perhaps with the opportunity to make a practical contribution in the long run, though perhaps only the very long run.

The theoretical and normative questions I want to discuss are closely related to pressing practical questions that we now face about the legitimate path forward in the governance of the world. These are, inevitably, questions about institutions, many of which do not yet exist. However imperfectly, the nation-state is the primary locus of political legitimacy and the pursuit of justice, and it is one of the advantages of domestic political theory that nation-states actually exist. But when we are

This article is based on the Storrs Lectures, delivered at Yale Law School in October, 2004. I am grateful for comments from Barbara Fried, Michael Graetz, Thomas Grey, Janos Kis, John Roemer, and Jed Rubenfeld.

presented with the need for collective action on a global scale, it is very unclear what, if anything, could play a comparable role.

The concept of justice can be used in evaluating many different things, from the criminal law to the market economy. In a broad sense of the term, the international requirements of justice include standards governing the justification and conduct of war and standards that define the most basic human rights. Some standards of these two kinds have achieved a measure of international recognition over the past half-century. They define certain types of criminal conduct, usually by states, against other states or against individuals or ethnic groups. But this is not the aspect of global justice that I will concentrate on. My concern here is not with war crimes or crimes against humanity but with socio-economic justice, and whether anything can be made of it on a world scale.

I will approach the question by focusing on the application to the world as a whole of two central issues of traditional political theory: the relation between justice and sovereignty, and the scope and limits of equality as a demand of justice. The two issues are related, and both are of crucial importance in determining whether we can even form an intelligible ideal of global justice.

The issue of justice and sovereignty was memorably formulated by Hobbes. He argued that although we can discover true principles of justice by moral reasoning alone, actual justice cannot be achieved except within a sovereign state. Justice as a property of the relations among human beings (and also injustice, for the most part) requires government as an enabling condition. Hobbes drew the obvious consequence for the international arena, where he saw separate sovereigns inevitably facing each other in a state of war, from which both justice and injustice are absent.

The issue of justice and equality is posed with particular clarity by one of the controversies between Rawls and his critics. Rawls argued that the liberal requirements of justice include a strong component of equality among citizens, but that this is a specifically political demand, which applies to the basic structure of a unified nation-state. It does not apply to the personal (nonpolitical) choices of individuals living in such a society, nor does it apply to the relations between one society and another, or between the members of different societies. Egalitarian justice is a requirement on the internal political, economic, and social

structure of nation-states and cannot be extrapolated to different contexts, which require different standards. This issue is independent of the specific standards of egalitarian justice found in Rawls's theory. Whatever standards of equal rights or equal opportunity apply domestically, the question is whether consistency requires that they also apply globally.

If Hobbes is right, the idea of global justice without a world government is a chimera. If Rawls is right, perhaps there can be something that might be called justice or injustice in the relations between states, but it bears only a distant relation to the evaluation of societies themselves as just or unjust: for the most part, the ideal of a just world for Rawls would have to be the ideal of a world of internally just states.

II

It seems to me very difficult to resist Hobbes's claim about the relation between justice and sovereignty. There is much more to his political theory than this, of course. Among other things, he based political legitimacy and the principles of justice on collective self-interest, rather than on any irreducibly moral premises. And he defended absolute monarchy as the best form of sovereignty. But the relation between justice and sovereignty is a separable question, and Hobbes's position can be defended in connection with theories of justice and moral evaluation very different from his.

What creates the link between justice and sovereignty is something common to a wide range of conceptions of justice: they all depend on the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by a monopoly of force. Hobbes construed the principles of justice, and more broadly the moral law, as a set of rules and practices that would serve everyone's interest if everyone conformed to them. This collective self-interest cannot be realized by the independent motivation of self-interested individuals unless each of them has the assurance that others will conform if he does. That assurance requires the external incentive provided by the sovereign, who sees to it that individual and collective self-interest coincide. At least among sizable populations, it cannot be provided by voluntary conventions supported solely by the mutual recognition of a common interest.

But the same need for assurance is present if one construes the principles of justice differently, and attributes to individuals a non-self-interested motive that leads them to want to live on fair terms of some kind with other people. Even if justice is taken to include not only collective self-interest but also the elimination of morally arbitrary inequalities, or the protection of rights to liberty, the existence of a just order still depends on consistent patterns of conduct and persisting institutions that have a pervasive effect on the shape of people's lives. Separate individuals, however attached to such an ideal, have no motive, or even opportunity, to conform to such patterns or institutions on their own, without the assurance that their conduct will in fact be part of a reliable and effective system.

The only way to provide that assurance is through some form of law, with centralized authority to determine the rules and a centralized monopoly of the power of enforcement. This is needed even in a community most of whose members are attached to a common ideal of justice, both in order to provide terms of coordination and because it doesn't take many defectors to make such a system unravel. The kind of all-encompassing collective practice or institution that is capable of being just in the primary sense can exist only under sovereign government. It is only the operation of such a system that one can judge to be just or unjust.

According to Hobbes, in the absence of the enabling condition of sovereign power, individuals are famously thrown back on their own resources and led by the legitimate motive of self-preservation to a defensive, distrustful posture of war. They hope for the conditions of peace and justice and support their creation whenever it seems safe to do so, but they cannot pursue justice by themselves.

I believe that the situation is structurally not very different for conceptions of justice that are based on much more other-regarding motives. Without the enabling condition of sovereignty to confer stability on just institutions, individuals however morally motivated can only fall back on a pure aspiration for justice that has no practical expression, apart from the willingness to support just institutions should they become possible.

The other-regarding motives that support adherence to just institutions when they exist do not provide clear guidance where the enabling conditions for such institutions do not exist, as seems to be true for the

world as a whole. Those motives, even if they make us dissatisfied with our relations to other human beings, are baffled and left without an avenue of expression, except for the expression of moral frustration.

III

Hobbes himself was not disturbed by the appearance of this problem in the international case, since he believed that the essential aim of justice, collective security and self-interest, could be effectively provided for individuals through the sovereignty of separate states. In a famous passage, he says:

[I]n all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neighbours; which is a posture of war. But because they uphold thereby, the industry of their subjects; there does not follow from it, that misery, which accompanies the liberty of particular men.¹

The absence of sovereignty over the globe, in other words, is not a serious obstacle to justice in the relations among the citizens of each sovereign state, and that is what matters.

This position is more problematic for those who do not share Hobbes's belief that the foundation of justice is collective self-interest and that the attachment of any individual to just institutions is based solely on his own good. If Hobbes were right, a person's interest in justice would be served provided he himself lived in a stable society governed in accordance with the rules of peace, security, and economic order. But for most of us, the ideal of justice stems from moral motives that cannot be entirely reduced to self-interest.

It includes much more than a condition of legally enforced peace and security among interacting individuals, together with stable property rights and the reliability of contracts. Most modern conceptions of justice impose some limits on the powers of sovereignty—in the name

1. Thomas Hobbes, *Leviathan*, ch. 13.

of non-Hobbesian individual rights to liberty—and some condition of fairness or equality in the way the institutions of a just society treat its citizens, not only politically but economically and socially. It is this last element that creates unease over the complete absence of any comparable standards of fairness or equality of opportunity from the practices that govern our relations with individuals in other societies.

The gruesome facts of inequality in the world economy are familiar. Roughly 20 percent of the world's population live on less than a dollar a day, and more than 45 percent live on less than two dollars a day, whereas the 15 percent who live in the high-income economies have an average per capita income of seventy-five dollars a day.² How are we to respond to such facts?

There is a peculiar problem here for our discussion: The facts are so grim that justice may be a side issue. Whatever view one takes of the applicability or inapplicability of standards of justice to such a situation, it is clearly a disaster from a more broadly humanitarian point of view. I assume there is some minimal concern we owe to fellow human beings threatened with starvation or severe malnutrition and early death from easily preventable diseases, as all these people in dire poverty are. Although there is plenty of room for disagreement about the most effective methods, some form of humane assistance from the well-off to those in extremis is clearly called for quite apart from any demand of justice, if we are not simply ethical egoists. The urgent current issue is what can be done in the world economy to reduce extreme global poverty.

These more basic duties of humanity also present serious problems of what we should do individually and collectively to fulfill them in the absence of global sovereignty, and in spite of the obstacles often presented by malfunctioning state sovereignty. But now I am posing a different question, one that is morally less urgent but philosophically harder. Justice as ordinarily understood requires more than mere humanitarian assistance to those in desperate need, and injustice can exist without anyone being on the verge of starvation.

2. These figures, from a few years ago, come from Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), pp. 97–99. See also Joseph Stiglitz, *Globalization and Its Discontents* (London: Penguin, 2002), p. 25. The situation seems to be improving, as population growth slows down and productivity growth speeds up in some of the biggest poor countries, China, India, and Bangladesh. See Martin Wolf, *Why Globalization Works* (New Haven, Conn.: Yale University Press, 2004), pp. 157–63.

Humanitarian duties hold in virtue of the absolute rather than the relative level of need of the people we are in a position to help. Justice, by contrast, is concerned with the relations between the conditions of different classes of people, and the causes of inequality between them. My question is about how to respond to world inequality in general from the point of view of justice and injustice rather than humanity alone. The answer to that question will depend crucially on one's moral conception of the relation between the value of justice and the existence of the institutions that sovereign authority makes possible. There are two principal conceptions that I want to consider.

According to the first conception, which is usually called *cosmopolitanism*, the demands of justice derive from an equal concern or a duty of fairness that we owe in principle to all our fellow human beings, and the institutions to which standards of justice can be applied are instruments for the fulfillment of that duty. Such instruments are in fact only selectively available: We may be able to live on just terms only with those others who are fellow members of sufficiently robust and well-ordered sovereign states. But the moral basis for the requirements of justice that should govern those states is universal in scope: it is a concern for the fairness of the terms on which we share the world with anyone.³

If one takes the cosmopolitan view, the existence of separate sovereign states is an unfortunate obstacle, though perhaps for the foreseeable future an insurmountable one, to the establishment or even the pursuit of global justice. But it would be morally inconsistent not to wish, for the world as a whole, a common system of institutions that could attempt to realize the same standards of fairness or equal opportunity that one wants for one's own society. The accident of being born in a poor rather than a rich country is as arbitrary a determinant of one's fate as the accident of being born into a poor rather than a rich family in the same country. In the absence of global sovereignty we may not be able

3. See Peter Singer, *One World* (New Haven, Conn.: Yale University Press, 2002); Thomas Pogge, *Realizing Rawls* (Ithaca, N.Y.: Cornell University Press, 1989), pp. 240–80; Pogge, *World Poverty and Human Rights*; Charles Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979). I am leaving aside here the very important differences over what the universal foundation of cosmopolitan justice is. Cosmopolitans can be utilitarians, or liberal egalitarians, or even libertarian defenders of laissez faire, provided they think these moral standards of equal treatment apply in principle to our relations to all other persons, not just to our fellow citizens.

to describe the world order as *unjust*, but the absence of justice is a defect all the same.

Cosmopolitan justice could be realized in a federal system, in which the members of individual nation-states had special responsibilities toward one another that they did not have for everyone in the world. But that would be legitimate only against the background of a global system that prevented such special responsibilities from generating injustice on a larger scale. This would be analogous to the requirement that within a state, the institutions of private property, which allow people to pursue their private ends without constantly taking into account the aims of justice, should nevertheless be arranged so that societal injustice is not their indirect consequence.⁴

Unlike cosmopolitanism, the second conception of justice does not have a standard name, but let me call it the *political* conception, since it is exemplified by Rawls's view that justice should be understood as a specifically political value, rather than being derived from a comprehensive moral system, so that it is essentially a virtue—the first virtue—of social institutions.

On the political conception, sovereign states are not merely instruments for realizing the preinstitutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application, by putting the fellow citizens of a sovereign state into a relation that they do not have with the rest of humanity, an institutional relation which must then be evaluated by the special standards of fairness and equality that fill out the content of justice.

Another representative of the political conception is Ronald Dworkin, who expresses it this way:

A political community that exercises dominion over its own citizens, and demands from them allegiance and obedience to its laws, must take up an impartial, objective attitude toward them all, and each of

4. A subtle version of such a system has been outlined by Janos Kis in "The Unity of Mankind and the Plurality of States" (unpublished manuscript). He calls it a *supranation-state regime*: separate states would retain primary responsibility for just governance, but share sovereign power with international institutions with special authority defined functionally and not territorially, with respect to trade, the environment, human rights, and so forth. See Section VIII below for some questions about applying cosmopolitan norms at this level.

its citizens must vote, and its officials must enact laws and form governmental policies, with that responsibility in mind. Equal concern . . . is the special and indispensable virtue of sovereigns.⁵

Every state has the boundaries and population it has for all sorts of accidental and historical reasons; but given that it exercises sovereign power over its citizens and in their name, those citizens have a duty of justice toward one another through the legal, social, and economic institutions that sovereign power makes possible. This duty is *sui generis*, and is not owed to everyone in the world, nor is it an indirect consequence of any other duty that may be owed to everyone in the world, such as a duty of humanity. Justice is something we owe through our shared institutions only to those with whom we stand in a strong political relation. It is, in the standard terminology, an *associative* obligation.

Furthermore, though the obligations of justice arise as a result of a special relation, there is no obligation to enter into that relation with those to whom we do not yet have it, thereby acquiring those obligations toward them. If we find ourselves in such a relation, then we must accept the obligations, but we do not have to seek them out, and may even try to avoid incurring them, as with other contingent obligations of a more personal kind: one does not have to marry and have children, for example.

If one takes this political view, one will not find the absence of global justice a cause for distress. There is a lot else to be distressed about: world misery, for example, and also the egregious internal injustice of so many of the world's sovereign states. Someone who accepts the political conception of justice may even hold that there is a secondary duty to promote just institutions for societies that do not have them. But the requirements of justice themselves do not, on this view, apply to the world as a whole, unless and until, as a result of historical developments not required by justice, the world comes to be governed by a unified sovereign power.

The political conception of justice therefore arrives, by a different route, at the same conclusion as Hobbes: The full standards of justice, though they can be known by moral reasoning, apply only within the

5. Ronald Dworkin, *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000), p. 6.

boundaries of a sovereign state, however arbitrary those boundaries may be. Internationally, there may well be standards, but they do not merit the full name of justice.

IV

On either the cosmopolitan or the political view, global justice would require global sovereignty. But there is still a huge difference between the two views in the attitude they take toward this conclusion. On the political view, the absence of global justice need not be a matter of regret; on the cosmopolitan view, it is, and the obstacles to global sovereignty pose a serious moral problem. Let me consider the issue of principle between the two conceptions. While we should keep in mind that different views about the content of justice can be combined with either of these two conceptions of its scope, I will continue to use Rawls to exemplify the political view. But most of what I will say is independent of the main disagreements over the content of domestic justice—political, economic, or social.

Rawls's political conception of justice is an example of a more general feature of his approach to moral theory, his rejection of what Liam Murphy calls *monism*. Murphy has introduced this term to designate the idea that "any plausible overall political/moral view must, at the fundamental level, evaluate the justice of institutions with normative principles that apply also to people's choices." The opposite view, which Murphy calls dualism, is that "the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle."⁶ (The term "dualism" is not ideal for the contrast, since, as we shall see, there are more than two levels at which independent moral principles may apply.)

Rawls is famous for insisting that different principles apply to different types of entities: that "the correct regulative principle for a thing depends on the nature of that thing."⁷ The most noted instance of this is his argument against utilitarianism, which he criticizes for applying to a society of individuals the principles of aggregating and maximizing net

6. Liam Murphy, "Institutions and the Demands of Justice," *Philosophy & Public Affairs* 27 (1998): 251–91, at pp. 253–54.

7. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), p. 25.

benefits minus costs that are appropriate within the life of a single individual, but inappropriate for groups of individuals. "Utilitarianism," he says, "does not take seriously the distinction between persons."⁸

But the point applies more widely. Rawls's anti-monism is essential to understanding both his domestic theory of a just society and his view of the relation between domestic and international principles, as expressed in *The Law of Peoples*. His two principles of justice are designed to regulate neither the personal conduct of individuals living in a just society, nor the governance of private associations, nor the international relations of societies to one another, but only the basic structure of separate nation-states. It is the nature of sovereign states, he believes, and in particular their comprehensive control over the framework of their citizens' lives, that creates the special demands for justification and the special constraints on ends and means that constitute the requirements of justice.

In Rawls's domestic theory this expresses itself in two ways: first, in the priority of individual liberty, which leaves people free to pursue their own personal ends rather than requiring them to pursue just outcomes privately; and, second, in the application of the difference principle not to the distribution of advantages and disadvantages to individuals, but rather to the probabilistic distribution of ex ante life prospects (which always include a range) to those born into different socioeconomic classes. Even if the basic structure supported by law satisfies the difference principle by arranging inequalities to maximize the expectations of the lowest class in this sense, individual choices are not expected to be governed by that principle. Those choices will result in substantial inequalities in actual outcomes among individuals within each socioeconomic class, in addition to the inequalities in ex ante life prospects between classes permitted by the difference principle itself.

So Rawls's egalitarianism does not apply either to individual morality or to individual outcomes within the bounds of an egalitarian state. But neither does it apply to the relations between states, nor between the individual members of different states. These are all different cases or types of relation, and the principles that govern them have to be arrived at separately. They cannot be reached by extending to the international case the principles of domestic justice.

8. Ibid., p. 24.

Internationally, Rawls finds the main expression of moral constraints not in a relation among individuals but in a limited requirement of mutual respect and equality of status among peoples. This is more constraining than the traditional Hobbesian privileges of sovereignty on the world stage; it is a substantial moral order, far from the state of nature. But the moral units of the order are peoples, not individuals, and the values have to do with the relations among these collective units rather than the relations of individuals across the world.

Just as, within a state, what we owe one another as fellow citizens through our common institutions is very different from what we owe one another as private individuals, so internationally, what we owe to other inhabitants of the globe through our society's respect for the societies of which they are citizens is different both from what we owe to our fellow citizens and from what we as individuals owe to all our fellow human beings. The duties governing the relations among peoples include, according to Rawls, not only nonaggression and fidelity to treaties, but also some developmental assistance to "peoples living under unfavorable conditions that prevent their having a just or decent political and social regime."⁹ But they do not include any analogue of liberal socio-economic justice.

This limitation is rejected by cosmopolitan critics of Rawls. The issue is the choice of moral units. The monist idea is that the basic constituency for all morality must be individuals, not societies or peoples, and that whatever moral requirements apply either to social institutions or to international relations must ultimately be justified by their effects on individuals—and by a morality that governs the treatment of all individuals by all other individuals.

From this point of view it seems natural to conclude that any such morality must count all individual lives as equally valuable or important, and that in particular it must not allow international boundaries to count at the most basic level in determining how one individual should take into consideration the interests of another. The consequence seems to be that if one wants to avoid moral inconsistency, and is sympathetic to Rawls's theory of justice, one should favor a global difference princi-

9. John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 37.

ple, perhaps backed up by a global original position in which all individuals are represented behind the veil of ignorance.¹⁰

But whatever we think about the original position, Rawls must resist the charge that moral consistency requires him to take individuals as the moral units in a conception of global justice. To do so would make a huge difference, for it would mean that applying the principles of justice within the bounds of the nation-state was at best a practical stop-gap.

Rawls's anti-monism is in essence a theoretical rejection of such standards for moral consistency. Just as there is no inconsistency in governing interpersonal relations by principles very different from those that govern legal institutions, so there need be no inconsistency in governing the world differently from its political subdivisions. But if what we are looking for is moral, and not just logical, consistency, the differences between the cases must in some way explain why different principles are appropriate.

The way to resist cosmopolitanism fundamentally would be to deny that there is a universal pressure toward equal concern, equal status, and equal opportunity. One could admit a universal humanitarian requirement of minimal concern (which, even in the world as it is, would not be terribly onerous, provided all the prosperous countries did their share). But the defense of the political conception of justice would have to hold that beyond the basic humanitarian duties, further requirements of equal treatment depend on a strong condition of associative responsibility, that such responsibility is created by specific and contingent relations such as fellow citizenship, and that there is no general moral

10. Rawls himself proposes a "second original position," with representatives of peoples as the parties behind the veil of ignorance, but he does not really try to arrive at principles on this basis (*The Law of Peoples*, pp. 32–42). I should mention that Rawls's *original* original position, the attempt to model a moral choice for handling conflicts of interest among distinct parties by the device of an individual choice under radical uncertainty about which of the parties one is, seems to me to violate Rawls's own insistence that different principles are appropriate for answering different kinds of questions. The original position might even be charged with failing to take seriously the distinction between persons, since no individual choice, even a choice under uncertainty, is equivalent to a choice for a group. This is confirmed by the difficulty Rawls has in showing that his principles of justice would be chosen by individuals in the original position. For example, he has to exclude any assignment of probabilities to their belonging to one social class rather than another, an exclusion that seems arbitrary when we think of the original position purely as a self-regarding choice under uncertainty.

requirement to take responsibility for others by getting into those sorts of relations with as many of them as possible.

This would still count as a universal principle, but it would imply a strongly differentiated system of moral obligations. If the conditions of even the poorest societies should come to meet a livable minimum, the political conception might not even see a general humanitarian claim for redistribution. This makes it a very convenient view for those living in rich societies to hold. But that alone doesn't make it false.

V

I find the choice between these two incompatible moral conceptions difficult. The cosmopolitan conception has considerable moral appeal, because it seems highly arbitrary that the average individual born into a poor society should have radically lower life prospects than the average individual born into a rich one, just as arbitrary as the corresponding difference between rich and poor in a rich but unjust society. The cosmopolitan conception points us toward the utopian goal of trying to extend legitimate democratic governance to ever-larger domains in pursuit of more global justice.

But I will not explore that possibility further. Without trying to refute cosmopolitanism I will instead pursue a fuller account of the grounds and content of the political conception. I am going to follow this fork in the path partly because I believe the political conception is accepted by most people in the privileged nations of the world, so that, true or false, it will have a significant role in determining what happens. I also think it is probably correct.

Let me try to spell out the kind of political conception that seems to me plausible. Even though I am skeptical about grounding it in a hypothetical contract of the type Rawls proposes, its debt to the social contract tradition will be obvious.¹¹

We can begin by noting that even on the political conception, some conditions of justice do not depend on associative obligations. The pro-

11. In "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30 (2001): 257–96, Michael Blake defends very similar moral conclusions—specifically that although absolute deprivation is an international concern, relative deprivation is not. But he bases his argument on the rather different ground of autonomy and what is needed to justify coercion.

tection, under sovereign power, of negative rights like bodily inviolability, freedom of expression, and freedom of religion is morally unmysterious. Those rights, if they exist, set universal and prepolitical limits to the legitimate use of power, independent of special forms of association. It is wrong for any individual or group to deny such rights to any other individual or group, and we do not give them up as a condition of membership in a political society, even though their precise boundaries and methods of protection through law will have to be determined politically in light of each society's particular circumstances.

Socioeconomic justice is different. On the political conception it is fully associative. It depends on positive rights that we do not have against all other persons or groups, rights that arise only because we are joined together with certain others in a political society under strong centralized control. It is only from such a system, and from our fellow members through its institutions, that we can claim a right to democracy, equal citizenship, nondiscrimination, equality of opportunity, and the amelioration through public policy of unfairness in the distribution of social and economic goods.

In presenting the intuitive moral case for the particular principles of justice he favors as the embodiment of these ideals, Rawls appeals repeatedly to the importance of eliminating or reducing morally arbitrary sources of inequality in people's life prospects.¹² He means inequalities flowing from characteristics of people that they have done nothing to deserve, like their race, their sex, the wealth or poverty of their parents, and their inborn natural endowments. To the extent that such factors, through the operation of a particular social system, generate differences in people's expectations, at birth, of better or worse lives, they present a problem for the justification of that system. In some respects these arbitrary sources of inequality can be eliminated, but Rawls holds that where they remain, some other justification needs to be found for permitting them.

The important point for our purposes is that Rawls believes that this moral presumption against arbitrary inequalities is not a principle of universal application. It might have considerable appeal if recast as a universal principle, to the effect that there is something *prima facie*

12. See *A Theory of Justice*, chapter II, and John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), part II.

objectionable to anyone's having lower life prospects at birth than anyone else just because of a difference between the two of them, such as the wealth of their parents or their nationality, over which neither of them had any control. But this is not the principle Rawls is appealing to. Rather, in his theory the objection to arbitrary inequalities gets a foothold only because of the societal context. What is objectionable is that we should be fellow participants in a collective enterprise of coercively imposed legal and political institutions that generates such arbitrary inequalities.

What is interesting and somewhat surprising about this condition is that such co-membership is itself arbitrary, so an arbitrary distinction is responsible for the scope of the presumption against arbitrariness. We do not deserve to have been born into a particular society any more than we deserve to have been born into a particular family. Those who are not immigrants have done nothing to become members of their society. The egalitarian requirement is based not on actual choice, consent, or contract, but on involuntary membership. It is only the internal character of the system in which we arbitrarily find ourselves that gives rise to the special presumption against further arbitrary distinctions within it.

Since there are equally arbitrary extrasocietal distinctions that do not carry the same moral weight, the ground for the presumption cannot be merely that these intrasocietal inequalities have a profound effect on people's lives. The fact that they shape people's life prospects from birth is necessary but not sufficient to explain the presumption against them. So what is the additional necessary condition?

I believe it comes from a special involvement of agency or the will that is inseparable from membership in a political society. Not the will to become or remain a member, for most people have no choice in that regard, but the engagement of the will that is essential to life inside a society, in the dual role each member plays both as one of the society's subjects and as one of those in whose name its authority is exercised. One might even say that we are all participants in the general will.

A sovereign state is not just a cooperative enterprise for mutual advantage. The societal rules determining its basic structure are coercively imposed: it is not a voluntary association. I submit that it is this complex fact—that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal

preferences—that creates the special presumption against arbitrary inequalities in our treatment by the system.

Without being given a choice, we are assigned a role in the collective life of a particular society. The society makes us responsible for its acts, which are taken in our name and on which, in a democracy, we may even have some influence; and it holds us responsible for obeying its laws and conforming to its norms, thereby supporting the institutions through which advantages and disadvantages are created and distributed.¹³ Insofar as those institutions admit arbitrary inequalities, we are, even though the responsibility has been simply handed to us, responsible for them, and we therefore have standing to ask why we should accept them. This request for justification has moral weight even if we have in practice no choice but to live under the existing regime. The reason is that its requirements claim our active cooperation, and this cannot be legitimately done without justification—otherwise it is pure coercion.¹⁴

The required active engagement of the will of each member of the society in its operation is crucial. It is not enough to appeal to the large material effects that the system imposes on its members. The immigration policies of one country may impose large effects on the lives of those living in other countries, but under the political conception that by itself does not imply that such policies should be determined in a way that gives the interests and opportunities of those others equal consideration. Immigration policies are simply enforced against the nationals of

13. Janos Kis has pointed out to me that there is also a significant negative aspect to our collective responsibility for one another. If our society has inflicted wrongs that demand compensation, we are obliged to contribute to those reparations whether we individually played a part in the wrongs or not. So there is more than one way in which, to use a phrase of Rawls, the members of a society “share one another’s fate.”

14. I have stated these conditions of justice in a way that applies to self-governing societies. Robert Post has put to me the excellent question whether on the political conception justice is owed to the subjects of regimes that are imposed from outside, such as colonial regimes or regimes of military occupation (such as those imposed on Germany and Japan after World War II). Even if we set aside the issue of whether colonial rule is *ipso facto* unjust, I believe the answer to Post’s question is yes. Does this require a modification of my conditions? I believe it requires a broad interpretation of what it is for a society to be governed in the name of its members. But I think it can be said that if a colonial or occupying power claims political authority over a population, it purports not to rule by force alone. It is providing and enforcing a system of law that those subject to it are expected to uphold as participants, and which is intended to serve their interests even if they are not its legislators. Since their normative engagement is required, there is a sense in which it is being imposed in their name.

other states; the laws are not imposed in their name, nor are they asked to accept and uphold those laws. Since no acceptance is demanded of them, no justification is required that explains why they should accept such discriminatory policies, or why their interests have been given equal consideration. It is sufficient justification to claim that the policies do not violate their prepolitical human rights.

That does not mean that on the political conception one state may do anything whatever to the citizens of another. States are entitled to be left to their own devices, but only on the condition that they not harm others. Even a nation's immunity from the need to justify to outsiders the limits on access to its territory is not absolute. In extreme circumstances, denial of the right of immigration may constitute a failure to respect human rights or the universal duty of rescue. This is recognized in special provisions for political asylum, for example. The most basic rights and duties are universal, and not contingent on specific institutional relations between people. Only the heightened requirements of equal treatment embodied in principles of justice, including political equality, equality of opportunity, and distributive justice, are contingent in this way.

To be sure, even within a state, through economic competition for example, some members or associations of members may impose serious consequences on others without any implication that the others are asked to accept or authorize the actions that have those consequences. Citizens are not expected to treat each other equally in private transactions. But the broader legal framework that makes those actions possible and that legally sustains their results is subject to collective authority and justification and therefore to principles of social justice: not act by act, but for the system as a whole.

In short, the state makes unique demands on the will of its members—or the members make unique demands on one another through the institutions of the state—and those exceptional demands bring with them exceptional obligations, the positive obligations of justice. Those obligations reach no farther than the demands do and that explains the special character of the political conception.

VI

What is the overall moral outlook that best fits the political conception of justice? Although it is based on a rejection of monism and does not

derive its content from a universal moral relation in which we stand to all persons, the political conception does not deny that there is such a relation. Political institutions create contingent, selective moral relations, but there are also noncontingent, universal relations in which we stand to everyone, and political justice is surrounded by this larger moral context.

The normative force of the most basic human rights against violence, enslavement, and coercion, and of the most basic humanitarian duties of rescue from immediate danger, depends only on our capacity to put ourselves in other people's shoes. The interests protected by such moral requirements are so fundamental, and the burdens they impose, considered statistically, so much slighter, that a criterion of universalizability of the Kantian type clearly supports them. I say "statistically" because the restrictions implied by individual rights can in particular cases be very demanding: you may not kill an innocent person to save your life, for example. But the importance to all of us of blanket immunity from such violation dominates the slight danger that we will be called on to lose our lives rather than violate the constraint. This is based not on a utilitarian calculation but on the great importance to each person of the kind of inviolability conferred by rights. Rights are a guarantee to each of us of a certain protected status, rather than a net benefit to the aggregate.

This minimal humanitarian morality governs our relation to all other persons. It does not require us to make their ends our own, but it does require us to pursue our ends within boundaries that leave them free to pursue theirs, and to relieve them from extreme threats and obstacles to such freedom if we can do so without serious sacrifice of our own ends. I take this to be the consequence of the type of contractualist standard expressed by Kant's categorical imperative and developed in one version by Scanlon. To specify it any less vaguely would require a full moral theory, which I will not attempt even to sketch here.

This moral minimum does not depend on the existence of any institutional connection between ourselves and other persons: It governs our relations with everyone in the world. However, it may be impossible to fulfill even our minimal moral duties to others without the help of institutions of some kind short of sovereignty. We do not need institutions to enable us to refrain from violating other people's rights, but institutions

are indispensable to enable us to fulfill the duty of rescue toward people in dire straits all over the world. Further, it seems clear that human rights generate a secondary obligation to do something, if we can, to protect people outside of our society against their most egregious violation, and this is practically impossible, on a world scale, without some institutionalized methods of verification and enforcement.

The first of these roles, that of rescue, can be filled to some extent by NGOs that operate internationally but privately, providing individuals with the opportunity to contribute to relief of famine and disease. Even the second role, protection of rights, has its private institutional actors in the form of organizations like Amnesty International and Human Rights Watch. But successful action on a much larger scale would be possible through international institutions supported by governments, both with funds and with enforcement. The World Bank is in some respects such an institution, and the International Criminal Court aspires to be. The question is whether international developments will countenance the bending of national sovereignty needed to extend the authority of such institutions, both to command funds and to curb domestic rights violations with force, if necessary.

But even if this is the direction of global governance for the future, there remains a clear line, according to the political conception of justice, between the call for such institutions and a call for the institution of global socioeconomic justice. Everyone may have the right to live in a just society, but we do not have an obligation to live in a just society with everyone. The right to justice is the right that the society one lives in be justly governed. Any claims this creates against other societies and their members are distinctly secondary to those it creates against one's fellow citizens.

Is this stark division of levels of responsibility morally acceptable, or is it too radical an exclusion of humanity at large from full moral concern? The answer from the point of view of the political conception must be that there is no single level of full moral concern, because morality is essentially multilayered.

Even within the framework of a just society special obligations arise from contingent personal relations and voluntary associations or undertakings by individuals. The whole point of the political conception is that social justice itself is a rise in exclusive obligation, but with a broader associative range and from a lower moral baseline than the personal

obligations. And it depends on the contingency of involuntary rather than voluntary association.

Perhaps this move to a new moral level can be best understood as a consequence of the more basic obligation, emphasized by both Hobbes and Kant, that all humans have to create and support a state of some kind—to leave and stay out of the state of nature. It is not an obligation to all other persons, in fact it has no clear boundaries; it is merely an obligation to create the conditions of peace and a legal order, with whatever community offers itself.

This requirement is based not on a comprehensive value of equality, but on the imperative of securing basic rights, which can be done more or less locally. But once the state exists, we are in a new moral situation, where the value of equality has purchase. The difference between the political and the cosmopolitan conceptions is that the latter sees the formation of the state as answering also a universal demand for equality, even if as a practical matter it can be realized only locally. On the political conception, by contrast, the only universal requirement of equality is conditional in form: We are required to accord equal status to anyone with whom we are joined in a strong and coercively imposed political community.

Some standard of universalizability underlies even this conditional requirement. It is part of a multilayered conception of morality, shaped by the Kantian ideal of a kingdom of ends whose members do not share a common set of ends. The heightened obligations that arise from contingent particular associations do not subtract from a prior condition of universal concern, but rather move our moral relations selectively to a new level, at which more ends and responsibilities are shared. The universality of this morality consists in its applying to anyone who happens to be or to become a member of our society: no one is excluded in advance, and in that sense all persons are regarded as morally equal.

Such a morality also leaves space for voluntary combinations in the pursuit of common ends, which are not in general governed by standards of equality. But political institutions are different, because adherence to them is not voluntary: Emigration aside, one is not permitted to declare oneself not a member of one's society and hence not subject to its rules, and other members may coerce one's compliance if one tries to refuse. An institution that one has no choice about joining must offer terms of membership that meet a higher standard.

VII

My thoughts about this subject were kindled by Rawls's treatment of the ethics of international relations in *The Law of Peoples*, but his approach is different, so let me say something about it. First of all, he poses the question not as a general one about international obligations or global justice, but as a question about what principles should govern the foreign policy of a liberal society. So it is an elaboration of his account of a just society, rather than an independent account of a just world. And he sees the answer to this question as having to do primarily with how such a society should deal with the other societies with which it shares the world, whether these be liberal, or nonliberal but still "decent," in his term, or whether they be outlaw societies that fail to respect human rights and the restraints of international law.

As already noted, the moral units of this international morality are not individual human beings but separate societies, or "peoples," and it is equality among these collective units that is the basis of Rawls's conception. For that reason Charles Beitz has given it the name *social liberalism*, to contrast it with his own view, which he calls *cosmopolitan liberalism*.¹⁵ Our obligations as members of a liberal society toward the members of other societies are not direct, but are filtered through the relations between our societies. That is because, as Rawls puts it, societies have a "moral nature," which deserves equal respect, provided they meet the basic conditions of decency. But individuals per se are not entitled to equal treatment internationally.

Rawls holds that the requirement of equal respect for other peoples is strong enough to impose on liberal societies a tolerance for nonliberal states that meet a minimal condition of decency, so that the foreign policy of a liberal state should not have the aim of moving all other societies toward liberalism, if possible. This is analogous to the restraint liberalism imposes internally against the use of state power to promote a particular comprehensive moral or religious view. It is surprising that internationally, equal respect should result precisely in toleration for the absence of such restraint in nonliberal societies. But Rawls believes that

15. See the Afterword to the second edition of Charles Beitz, *Political Theory and International Relations* (Princeton, N. J.: Princeton University Press, 1999), pp. 214–16; and "Rawls's Law of Peoples," Beitz's discussion in *Ethics* 110 (2000): 669–96.

this consequence follows if we accord a moral nature and a moral right of equality to peoples, which are not themselves derived from the equality of individuals, and which take precedence over domestic liberal values in the international case.

The claims of individuals take over only at a much lower threshold, that of basic human rights. A society that does not respect the human rights of its subjects forfeits, in Rawls's view, the moral status that demands respect, equality, and noninterference. But that is not necessarily true of a theocratic society with no elections, for example, provided it does not persecute minorities and observes due process of law.¹⁶

This seems to me a mistake. The political conception of justice need not be based on the strong personification of peoples and need not imply the principled toleration of nonliberal societies. I would take a more individualistic position than Rawls does. The question of international toleration is difficult, but I believe that although there are obvious practical reasons for liberal societies not to try to impose liberal domestic justice universally, there are no moral reasons for restraint of the kind Rawls offers. It is more plausible to say that liberal states are not obliged either to tolerate nonliberal states or to try to transform them, because the duties of justice are essentially duties to our fellow citizens. But there seems nothing wrong with being particularly supportive of transformations in a liberal direction.

Whether other basic international obligations, such as those embodied in just war theory, can be accounted for without the moral personification of peoples is another question, but I would give a similar answer. People engaged in a legitimate collective enterprise deserve respect and noninterference, especially if it is an obligatory enterprise like the provision of security, law, and social peace. We owe it to other people—considered as individuals—to allow them, and to some degree enable them, to collectively help themselves. So respect for the autonomy of other societies can be thought of as respect for the human rights of their members, rather than as respect for the equality of peoples, taken as moral units in their own right.

Rawls's conception is that sovereignty is constrained internally by the moral equality of individuals who are subjects of the state, but that the same force does not operate externally: From outside, sovereignty is

16. See his discussion of a decent hierarchical society in *The Law of Peoples*, pp. 75–78.

constrained by the moral equality of other peoples, which imposes requirements even on a state that does not owe their members what it owes its own. I am prepared to accept the first part of this claim, about the source of internal constraints, but would offer universal human rights rather than the equality of peoples or societies as the source of the constraints on the external exercise of sovereign power.¹⁷

VIII

The implications of the political conception for world politics tend to be conservative, but that is not the end of the story; the conservatism comes under pressure from powerful forces in the other direction. The source of that pressure lies both in existing global or international institutions and in the increasingly felt need to strengthen such institutions and to create new ones, for three types of purpose: the protection of human rights; the provision of humanitarian aid; and the provision of global public goods that benefit everyone, such as free trade, collective security, and environmental protection. Institutions that serve these purposes are not designed to extend democratic legitimacy and socioeconomic justice, but they naturally give rise to claims for both, in respect to their design and functioning. And they put pressure on national sovereignty by their need for power to be effective. They thus present a clearly perceived threat to the limits on claims of justice imposed by the political conception.

This poses a familiar dilemma: Prosperous nations have reasons to want more governance on a world scale, but they do not want the increased obligations and demands for legitimacy that may follow in its wake. They do not want to increase the range of those to whom they are obliged as they are toward their own citizens; and this reflects the convictions of their citizens, not just of their governments.

Resistance to the erosion of sovereignty has resulted in the U.S. refusal to join the Kyoto Treaty on atmospheric emissions and the International Criminal Court, decisions that have been widely criticized. Similar

17. For a more broadly sympathetic discussion of Rawls's approach, see Stephen Macedo, "What Self-governing Peoples Owe to One Another: Universalism, Diversity, and *The Law of Peoples*," *Fordham Law Review* 72 (2004): 1721–38. Macedo defends Rawls both on the refusal to extend distributive justice internationally and on the toleration of nonliberal peoples.

questions arise over who is to determine the policies of the International Monetary Fund and the World Bank, and over the authority of the United Nations in matters of international peace and security. But by far the most important institutions from this point of view are those of the international economy itself.

The global economy, within which the familiar inequalities are now generated, requires a stable international system of property rights and contractual obligations that provide the conditions for international commerce. These include: the rights of sovereign states to sell or confer legal title to the exploitation of their natural resources internationally; their right to borrow internationally and to create obligations of repayment on successor governments; the rights of commercial enterprises in one country to establish or acquire subsidiaries in other countries, and to profit from such investments; international extensions of antitrust law; regulation of financial markets to permit the orderly international flow of capital; the laws of patent and copyright; the rules of international trade, including penalties for violations of agreed restrictions on protective tariffs, dumping, preferential subsidies, and so forth.¹⁸ Many of the goods that contemporary persons consume, or their components, are produced in other countries. We are clearly in some kind of institutional relation—legal and economic—with people the world over.

This brings us to an issue that is internal to the political conception, rather than being about the choice between the political and the cosmopolitan conceptions. Some would argue that the present level of world economic interdependence already brings into force a version of the political conception of justice, so that Rawls's principles, or some alternative principles of distributive justice, are applicable over the domain covered by the existing cooperative institutions.¹⁹ This would be a very strong result, but I believe that it is not the case, precisely because such institutions do not rise to the level of statehood.

The absence of sovereign authority over participant states and their members not only makes it practically infeasible for such institutions to pursue justice but also makes them, under the political conception, an

18. Thomas Pogge places particular emphasis on the first two of these factors as sources of global responsibility, since they are so important in propping up authoritarian states that treat their own citizens unjustly.

19. See Brian Barry, *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), pp. 128–33; Beitz, *Political Theory and International Relations*, pp. 150–53.

inappropriate site for claims of justice. For such claims to become applicable it is not enough that a number of individuals or groups be engaged in a collective activity that serves their mutual advantage. Mere economic interaction does not trigger the heightened standards of socioeconomic justice.

Current international rules and institutions may be the thin end of a wedge that will eventually expand to seriously dislodge the dominant sovereignty of separate nation-states, both morally and politically, but for the moment they lack something that according to the political conception is crucial for the application and implementation of standards of justice: They are not collectively enacted and coercively imposed in the name of all the individuals whose lives they affect; and they do not ask for the kind of authorization by individuals that carries with it a responsibility to treat all those individuals in some sense equally. Instead, they are set up by bargaining among mutually self-interested sovereign parties. International institutions act not in the name of individuals, but in the name of the states or state instruments and agencies that have created them. Hence the responsibility of those institutions toward individuals is filtered through the states that represent and bear primary responsibility for those individuals.

But while international governance falls far short of global sovereignty, and is ultimately dependent on the sovereignty of separate states, international institutions are not all alike. Some involve delegation of authority, by states, to a supranational institution, generally by treaty, where this amounts to a partial limitation of sovereignty. Under NAFTA, for example, the domestic courts of the United States, Canada, and Mexico are expected to enforce the judgments of its tribunals. And judgments of the European Court of Justice are enforced by the national courts of member states of the European Union.

Then there are the traditional international organizations, such as the UN, the WHO, the IMF, and the World Bank, which are controlled and financed by their member states and are empowered to act in various ways to pursue agreed-upon goals, but are not, with the exception of the Security Council, empowered to exercise coercive enforcement against states or individuals. Even the coercive authority of the Security Council is primarily a form of collective self-defense exercised by traditional sovereign powers, although there is some erosion of sovereignty in the move toward intervention to prevent domestic genocide.

Finally, there are a number of less formal structures that are responsible for a great deal of international governance—structures that have been enlighteningly described by Anne-Marie Slaughter in her recent book on government networks.²⁰ Such networks typically bring together officials of different countries with a common area of expertise and responsibility, who meet or communicate regularly, harmonize their practices and policies, and operate by consensus, without having been granted decision-making authority by any treaty. Examples are networks of environmental regulators, antitrust regulators, central bankers, finance ministers, securities commissioners, insurance supervisors, or police officials. The Basel Committee on Banking Supervision, for example, “is now composed of the representatives of thirteen central banks that regulate the world’s largest banking markets.”²¹ It has developed standards for the division of tasks between home-country and host-country regulators, and has set uniform capital adequacy standards. Agreements are reached by consensus and implemented by the central banks themselves, acting under the sovereign authority of their several states. Slaughter argues that networks of this kind, which link the disaggregated subparts of sovereign states sharing common competences and responsibilities rather than the (notionally) unitary states themselves, will become increasingly important in global governance, and should be recognized as the wave of the future.

It is a convincing case. It is important to recognize that the traditional model of international organizations based on treaties between sovereign states has been transcended. Nevertheless, I believe that the newer forms of international governance share with the old a markedly indirect relation to individual citizens and that this is morally significant. All these networks bring together representatives not of individuals, but of state functions and institutions. Those institutions are responsible to their own citizens and may have a significant role to play in the support of social justice for those citizens. But a global or regional network does not have a similar responsibility of social justice for the combined citizenry of all the states involved, a responsibility that if it existed would have to be exercised collectively by the representatives of the member

20. Anne-Marie Slaughter, *A New World Order* (Princeton, N.J.: Princeton University Press, 2004).

21. *Ibid.*, p. 43.

states. Rather, the aim of such institutions is to find ways in which the member states, or state-parts, can cooperate to better advance their separate aims, which will presumably include the pursuit of domestic social justice in some form. Very importantly, they rely for enforcement on the power of the separate sovereign states, not of a supranational force responsible to all.

Individuals are not the constituents of such institutions. Even if the more powerful states are motivated to some extent by humanitarian concerns to shape the rules in consideration of the weakest and poorest members of the international community, that does not change the situation fundamentally. Justice is not merely the pursuit of common aims by unequal parties whose self-interest is softened by charity. Justice, on the political conception, requires a collectively imposed social framework, enacted in the name of all those governed by it, and aspiring to command their acceptance of its authority even when they disagree with the substance of its decisions.

Justice applies, in other words, only to a form of organization that claims political legitimacy and the right to impose decisions by force, and not to a voluntary association or contract among independent parties concerned to advance their common interests. I believe this holds even if the natural incentives to join such an association, and the costs of exit, are substantial, as is true of some international organizations and agreements. There is a difference between voluntary association, however strongly motivated, and coercively imposed collective authority.

IX

A second, somewhat different objection to this limitation of justice to the nation-state is that it assumes an unrealistically sharp dichotomy between sovereign states and existing global institutions with respect to agency, authorization, and authority. So even if economic globalization does not trigger the full standards of social justice, it entails them in a modified form.

In fact, according to this objection, there is a sliding scale of degrees of co-membership in a nested or sometimes overlapping set of governing institutions, of which the state is only the most salient. If we accept the moral framework of the political conception, we should conclude

that there is a corresponding spectrum of degrees of egalitarian justice that we owe to our fellow participants in these collective structures in proportion to our degrees of joint responsibility for and subjection to their authority. My relation of co-membership in the system of international trade with the Brazilian who grows my coffee or the Philippine worker who assembles my computer is weaker than my relation of co-membership in U.S. society with the Californian who picks my lettuce or the New Yorker who irons my shirts. But doesn't the first pair of relations as well as the second justify concern about the moral arbitrariness of the inequalities that arise through our joint participation in this system? One may even see an appeal to such a value in the call for standards of minimum compensation, fair labor practices, and protection of worker health and safety as conditions on international trade agreements—even if the real motivation behind it is protectionism against cheap third world labor.

Perhaps such a theory of justice as a “continuous” function of degrees of collective responsibility could be worked out. It is in fact a natural suggestion, in light of the general theory that morality is multilayered. But I doubt that the rules of international trade rise to the level of collective action needed to trigger demands for justice, even in diluted form. The relation remains essentially one of bargaining, until a leap has been made to the creation of collectively authorized sovereign authority.

On the “discontinuous” political conception I am defending, international treaties or conventions, such as those that set up the rules of trade, have a quite different moral character from contracts between self-interested parties within a sovereign state. The latter may be part of a just socioeconomic system because of the background of collectively imposed property and tax law in which they are embedded. But contracts between sovereign states have no such background: They are “pure” contracts, and nothing guarantees the justice of their results. They are like the contracts favored by libertarians, but unless one accepts the libertarian conception of legitimacy, the obligations they create are not and need not be underwritten by any kind of socioeconomic justice. They are more primitive than that.

On the political conception, the same is true of the economic relation in which I stand to Brazilian or Philippine workers. Within our respective societies the contracts and laws on which this relation depends are subject to standards of social justice. Insofar as they transcend societal

boundaries, however, the requirements of background justice are filtered out and commercial relations become instead something much thinner: instruments for the common pursuit of self-interest. The representatives of distinct societies that establish the framework within which such transactions can be undertaken will be guided by the interests of their own members, including their interest in domestic social justice. But a more comprehensive criterion of global socioeconomic justice is not part of the picture.

By contrast a “continuous” or sliding scale of requirements of justice would have to depend on a scale of degrees of collective engagement. I am related to the person who assembled my computer in the Philippines through the combination of U.S. and Philippine property, commercial and labor law, the international currency markets, the international application of patent law, and the agreements on trade overseen by the World Trade Organization. The claim would have to be that since we are both participating members of this network of institutions, this puts us in the same boat for purposes of raising issues of justice, but somehow a different and perhaps leakier boat than that created by a common nation-state.

Leaving aside the practical problems of implementing even a weaker standard of economic justice through such institutions, does the idea make moral sense? Is there a plausible position covering this case that is intermediate between the political and the cosmopolitan conceptions? (The cosmopolitan conception would say that ideally, the full standards of justice should apply, but that practically, they cannot be implemented given the limited power of international institutions.) Although it is far from clear what the answer is, it seems to me that such a sliding standard of obligation is considerably less plausible than either the cosmopolitan (one-place) or political (two-place) standard. It is supposed to be a variation on the political conception, according to which one can be moved above the default position defined by human rights and collective self-interest through participation in the institutional structures that make complex economic interaction possible. But if those institutions do not act in the name of all the individuals concerned, and are sustained by those individuals only through the agency of their respective governments or branches of those governments, what is the characteristic in virtue of which they create obligations of justice and presumptions in favor of equal consideration for all those individuals? If the default really is a basic humanitarianism, permitting voluntary

interaction for the pursuit of common interests, then something more is needed to move us up toward the higher standard of equal consideration. It will not emerge merely from cooperation and the conventions that make cooperation possible.

I would add two qualifications to this rather uncompromising claim. First, there are good reasons, not deriving from global socioeconomic justice, to be concerned about the consequences of economic relations with states that are *internally* egregiously unjust. Even if internal justice is the primary responsibility of each state, the complicity of other states in the active support or perpetuation of an unjust regime is a secondary offense against justice.

Secondly, even self-interested bargaining between states should be tempered by considerations of humanity, and the best way of doing this in the present world is to allow poor societies to benefit from their comparative advantage in labor costs to become competitors in world markets. WTO negotiations have finally begun to show some sense that it is indecent, for example, when subsidies by wealthy nations to their own farmers cripple the market for agricultural products from developing countries, both for export and domestically.

X

That is more or less where we are now. But I said there was a dilemma, stemming from the need for more effective global institutions to deal with our collective problems, from global warming to free trade. It is not only the fear of tyranny but also the resistance to expanded democracy, expanded demands for legitimacy, and expanded scope for the claims of justice that inhibits the development of powerful supranational institutions. Fortunate nations, at any rate, fear such developments. They therefore face the problem of how to create a global order that will have its own legitimacy, but not the kind of legitimacy that undermines the strict limits on their responsibilities.²²

The resistance to expanded democracy is sometimes explained on the ground that the right kind of *demos* does not exist internationally to permit democratic government beyond the nation-state. Even in the subglobal and much less unequal space of Europe this is a serious

22. The undemocratic rulers of many poor nations have strong reasons of a different kind to protect their sovereign authority against international encroachment, but that is another topic.

problem, which has given rise to significant debate. If there is not now a European civil society, is there nevertheless the hope of one? Is the possibility compatible with the linguistic diversity of Europe? Could it perhaps be brought into existence as the *result* of democratic European political institutions, rather than serving as a precondition of their creation?

But this, I believe, is not the main issue. Multilingual and multinational states have their problems, and they may have functioned most successfully before the era of democracy. But if there came into being a genuine European federation with some form of democratically elected representative government, politics would eventually develop on a European scale to compete for control of this centralized power. The real problem is that any such government would be subject to claims of legitimacy and justice that are more than the several European populations are willing to submit themselves to. That reflects in part a conviction that they are not morally obliged to expand their moral vulnerabilities in this way. (The recent expansion of the European Union, by increasing its economic inequality, will almost certainly inhibit the growth of its federal power for just this reason.)

Globally there are a number of ways in which greater international authority would be desirable. Resources for development aid and emergency relief could be more effectively obtained by a systematic assessment or tax than by the present system of voluntary contributions. Global public goods like atmospheric protection and free trade could obviously benefit from increased international authority. Both the protection of human rights and the provision of basic humanitarian aid would be easier if regimes found to be responsible for the oppression or destitution of their own subjects in these respects were regarded as having forfeited their sovereign rights against outside interference. Not only the prevention of genocide but the relief of famine may sometimes require a change of government, and the intervention of collective outside forces and agencies. This would mean establishing a link between internal and external legitimacy, as a qualification of the general right of noninterference.²³

23. For a forceful statement of this view, see Brian Barry, "Statism and Nationalism: A Cosmopolitan Critique" in *Global Justice*, Nomos 41, ed. Ian Shapiro and Lea Brilmayer (New York: New York University Press, 1999), pp. 12–65.

But all these types of increased international authority would bring with them increased responsibilities. An authority capable of carrying out these functions and imposing its decisions would naturally be subject to claims of legitimacy, pressures toward democracy, and pressures to apply standards of justice in the distribution of burdens and benefits through its policies. There is a big difference between agreements or consensus among separate states committed to the advancement of their own interests and a binding procedure, based on some kind of collective authority, charged with securing the common good. The potential costs are much more serious than the risks that led to the U.S. refusal to join the International Criminal Court.

This leaves us with the question whether some form of legitimacy is possible for the global or international case that does not depend on supranational sovereignty or democracy—let alone distributive justice—and yet can be embodied in institutions that are less cumbersome and feeble than those that depend for their creation and functioning on unanimous voluntary acceptance by sovereign states. For the moment, I do not see such a possibility, though perhaps it can be invented. The alternative to global sovereignty may not be global anarchy, but a clear and limited form of such governance remains elusive.

XI

Yet in thinking about the future, we should keep in mind that political power is rarely created as a result of demands for legitimacy, and that there is little reason to think that things will be different in this case.

If we look at the historical development of conceptions of justice and legitimacy for the nation-state, it appears that sovereignty usually precedes legitimacy. First there is the concentration of power; then, gradually, there grows a demand for consideration of the interests of the governed, and for giving them a greater voice in the exercise of power. The demand may be reformist, or it may be revolutionary, or it may be a demand for reform made credible by the threat of revolution, but it is the existence of concentrated sovereign power that prompts the demand, and makes legitimacy an issue. War may result in the destruction of a sovereign power, leading to reconfigurations of sovereignty in response to claims of legitimacy; but even in that case the conquerors who exercise power become the targets of those claims.

Even in the most famous case of the creation of a democratic federation, illegitimacy preceded legitimacy. The foundation of the United States depended on the protection of slavery, without which unanimity among the thirteen ex-colonies could not have been achieved. In fighting the civil war to preserve the Union, Lincoln knew that the preservation of sovereign power over the entire territory was the essential condition for progress in the pursuit of democratic legitimacy and justice. The battle for more political and social equality has continued ever since, but it has been possible only because centralized power was kept in existence, so that people could contest the legitimacy of the way it was being used.

So I close with a speculation. While it is conceivable in theory that political authority should be created in response to an antecedent demand for legitimacy, I believe this is unlikely to happen in practice. What is more likely is the increase and deployment of power in the interests of those who hold it, followed by a gradual growth of pressure to make its exercise more just, and to free its organization from the historical legacy of the balance of forces that went into its creation. Unjust and illegitimate regimes are the necessary precursors of the progress toward legitimacy and democracy, because they create the centralized power that can then be contested, and perhaps turned in other directions without being destroyed. For this reason, I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states. Only in that way will institutions come into being that are worth taking over in the service of more democratic purposes, and only in that way will there be something concrete for the demand for legitimacy to go to work on.

This point is independent of the dispute between the political and cosmopolitan conceptions. We are unlikely to see the spread of global justice in the long run unless we first create strong supranational institutions that do not aim at justice but that pursue common interests and reflect the inequalities of bargaining power among existing states. The question is whether these conditions can be realized by units established through voluntary agreement rather than by involuntary imposition. The path of conquest, responsible for so much of the scope of sovereign authority in the past, is no longer an option on a large scale. Other historical developments would have to create the illegitimate concentra-

tions of power that can nurture demands for legitimacy, and provide them with something that is both worth taking over and not too easy to break up.

My conclusion, though it presupposes a conception of justice that Hobbes did not accept, is Hobbesian in spirit: the path from anarchy to justice must go through injustice. It is often unclear whether, for a given problem, international anarchy is preferable to international injustice. But if we accept the political conception, the global scope of justice will expand only through developments that first increase the injustice of the world by introducing effective but illegitimate institutions to which the standards of justice apply, standards by which we may hope they will eventually be transformed. An example, perhaps, of the cunning of history.