

Reasoning About Justice in Global Society

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Most theorists agree that a theory of justice ought to be practical. According to one author: ‘any moral universalism that does not tell us how our obligations can be expressed in political practices and institutions risks empty and hypocritical posturing.’ Whether a theory counts as practical depends on contingencies. Global society in one hundred years time is likely to be very different from what it is now, and theories that are now completely impractical, may provide realistic moral guidance to political action in the future. But our judgments about adequacy and practicality must be made about our world. My thesis is that for our present time there is no theory of global justice that is both morally adequate and realistic. Those that are adequate as far as their moral content is concerned are unrealistic, and those that are realistic do not satisfy our moral intuitions. Most fail both requirements. This doesn’t mean that we should give up on the very idea of global justice, but it will affect how we approach the subject – both theoretically and practically.

A theory of justice should be normatively adequate. That is, it should account for widespread, well-motivated intuitive judgements about the fairness or unfairness of situations, actions, and policies that are in the scope of the theory. A theory accounts for

¹ Paper given at a CAPPE seminar in Canberra on 15 May, 2002

intuitive judgements if and only if it endorses or embodies them, or if it gives us good reasons to reject them. The adequacy requirement is not very controversial. Most accounts of ethical reasoning accept it. Criteria of practicality more likely to be contested. The justification for the following list will, I hope, become evident in the discussion.

If a theory of justice is to be practical then it must satisfy the following conditions.

- a) Its principles, requirements, or rights are generally compatible with each other and with other important moral values. The qualification allows that in some unusual situations application of our theory might produce an ethical dilemma – a case where we cannot uphold one right or principle without violating another. *The existence of occasional ethical dilemmas is not sufficient to brand a theory as impractical. But it would be another matter if in standard, normal and common situations, application of the theory would result in dilemmas.*
- b) It must be possible to give an account of how the theory can be reliably fulfilled in the light of facts and well substantiated empirical theories about the agents whose activities it is supposed to govern, their relationships, and possibilities for social change. *Suppose, for example, our theory contains a list of rights. This condition requires that there be a plausible account of how subjects of that theory can enjoy their rights and have them reliably protected. The latter requirement, as Shue argues, is particularly important.*
- c) Most people would also insist that it must be possible to bring about conditions in which the theory can be fulfilled in a way compatible with its principles. That is, not through a war of conquest or by other exercises of force.

A theory of justice is satisfactory iff it is both adequate and practical. My thesis, more precisely stated, is that there is no theory of justice that is both adequate and practical.

It is not hard to think of reasons for thinking that the very project of promulgating a theory of global justice is absurd or pointless. However, I want to argue that three common objections to theories of global justice do not by themselves give us sufficient reason for abandoning the project. The first objection to theorising about global justice is that views about justice in world society are extremely diverse. So it seems unlikely that any theory is going to adequately take into account the intuitions about justice of the world's people in a way that accords with their views about morality and justification. The second is that talk of justice is unrealistic in a world in which there are large power imbalances and agents are inclined to act in their own interests. The third objection has to do with limitations recognised by theorists themselves. Most people who put forward a position on global justice admit that their theories are incomplete. Charles Jones and Henry Shue, for example, concentrate on defending basic human rights. They admit that human rights are likely to include rights that are not so basic, but do not attempt to incorporate them into their theories. Other theorists are concerned with bringing about conditions in which people of the world can determine for themselves what principles they support. These theories are admittedly incomplete; they do not account for all the judgments about justice that people want to make, and thus strictly speaking, they are inadequate.

The first objection deserves to be taken seriously, but not so seriously that it paralyses any attempt to theorise about global justice. There may turn out to be considerable agreement about basic moral matters among the world's people (as Onora O'Neill has argued). It may be possible, as Rawls believes, for people to arrive at an overlapping consensus about matter of justice, each party reasoning from their own tradition and values. And there is nothing wrong with formulating a theory of justice that

people from our tradition are able to accept, and to put it forward in a more widespread discussion of what global justice means.

The fact that agents often do act in their self interest and that some are likely to violate rights when it suits them is not an argument against insisting on standards of justice. A theory of global justice would be unrealistic if it required nations to sacrifice something of considerable value in order to do the right thing – if it, for example, required them to put their very existence into danger. Realists concerning international politics argue that the pursuit of ideals can imperil the security of nations. But whether this is so in respect to a particular standard of justice requires more detailed argument.

The fact that many theories of global justice are admittedly incomplete requires me to state my thesis more precisely. Let us distinguish between a theory and an approach. An approach to global justice consists of a partial theory with claims about how it might be further developed or a procedure for determining principles of justice or a proposal for constructing institutions in which justice can be realised. An approach counts as adequate and practical if we have reason to believe that if it were to be followed we would eventually be in the position to apply requirements of justice which are both adequate and practical. For example, the adequacy of approaches concentrating on basic human rights might be defended by an argument to the effect that having these rights is the first, essential step towards ensuring that people will eventually be able to enjoy a more exhaustive collection of rights. The thesis I am defending, even more precisely stated, is that all approaches to theorising about global justice are either inadequate or impractical or both.

My defence consists of a critical discussion of three approaches commonly taken by philosophers to theorising about global justice: the contractual approach, the institutional approach, and the discourse approach. These approaches are not

independent, but nevertheless, they are different enough so as to deserve separate consideration. Showing that these approaches are inadequate or impractical cannot by itself prove the proposition I am defending, but the reasons I give will also be reasons for thinking that other approaches to theory, if any such exist, are also likely to fail to satisfy the requirements.

The Contractual Approach.

A contractual theory involves an imaginative exercise in which we suppose that agents who are idealised versions of existing agents - rational, knowledgeable about empirical matters and political possibilities, self interested but willing to satisfy requirements of justice - are set the task of reaching an agreement about the principles of justice for their society. The result is supposed to be principles that existing agents can and should take as the standard for their conduct to each other. In recent times Rawls's theory of justice is the most influential example of this approach, and since he has recently used it to formulate a 'law of peoples', a critical examination of this theory will help to reveal the strengths and weaknesses of the contractual approach to international justice.

The agreement he imagines in this case is not between individuals but between 'peoples'. The utopian or idealistic aspect of his theory is the assumption that relations that all parties can recognise as just can be established and maintained, not only among peoples who are liberal and democratic, but also between democratic peoples and those he describes as 'decent hierarchical peoples' - that is, societies that are not liberal democracies and may not accept the idea that all individuals have equal status, but nevertheless are prepared to endorse basic human rights and allow their members to be

represented through organisations of various kinds.² This utopian element is embodied in the ‘original position’ from which representatives of peoples reach conclusions about principles of justice. The representatives of liberal democratic peoples and then in a separate exercise, representatives of decent hierarchical peoples, are required to make decisions about principles from behind a veil of ignorance which conceals from them knowledge about which society they represent. Representatives of liberal democracies and representatives of hierarchical peoples may have different reasons for accepting principles of justice but Rawls thinks that they will be able to reach an overlapping consensus about global relationships. The moral equality of these ‘well-ordered’ peoples, on which the agreement depends, is written into the conditions under which it is made.

Rawls’s theory is realistic in that ‘it takes people as they are’ (11). He takes it as a fact about people that they are organised into societies that have had different histories, and, as a result, different political institutions and traditions; and that they have an interest in preserving their own institutions and governing themselves according to the conception of justice that they embody. They are not likely to have the same ideas about justice or about political institutions. To suppose that even liberal democratic peoples could reach agreement about such matters is unrealistically utopian and for this reason Rawls rejects as totally out of question the possibility that they might form themselves into one state governed by common principles of justice. He does however think that representatives of peoples would agree to accept a law of peoples, each reasoning from their own political tradition and taking as basic their desire to maintain the political institutions which they regard as just.

² John Rawls, *Law of Peoples* (Cambridge University Press, 1999). Rawls does not tell us which existing non-democratic societies, if any, count as decent, or what form non-democratic representation might take.

Given these assumptions, the principles of justice arrived at by representatives of peoples are unsurprising. Each will agree to respect each other's equal right to freedom and independence, to fulfil commitments, to respect basic human rights (freedom from slavery and serfdom, liberty of conscience, and freedom of ethnic groups from mass murder or genocide), and to refrain from aggression. He thinks that decent hierarchical societies will agree to the same principles, and he thinks all will agree to provide assistance to 'burdened' peoples suffering from poverty and underdevelopment, but only to the point where members of these societies are supplied with basic means of life. The law of peoples does not require that resources be shared among the people of the world on a continuing basis as they are in some national societies.

Rawls is criticised by some of his critics for being too conservative – that is, for putting forward a theory that does not adequately take into account changes in world society and our moral intuitions about what is unjust in this world. Others criticise him for being too utopian – for making assumptions that are unrealistic. I will concentrate here on the attack made on his law of peoples by Allen Buchanan, who, in effect, criticises him for being both. Buchanan thinks that Rawls is too much of a realist in that he presupposes the existence of a Westphalian world order of more or less self-sufficient states able to distribute their resources according to their views about justice.³ On the other hand, Rawls is also too utopian because he assumes that peoples are unified societies in which members all adhere to common principles of justice and support their political institutions.

³ Allen Buchanan, 'Rawls's Law of Peoples: Rules for a Vanished Westphalian World', *Ethics* 110 (2000), 697-721. Though Rawls speaks of a law of *peoples*, Buchanan believes that he is really talking about states. Rawls prefers the terms 'peoples' because he wants to deny to these political societies the right to war which has been traditionally accorded to states. I suggest below that there might be another reason for preferring the term 'peoples'.

The realist assumptions Rawls makes, according to Buchanan, are simply false. The Westphalian world order has vanished. States are no longer self-sufficient; nor are most of them able to make autonomous decisions about how resources should be distributed among their members. Global society, Buchanan claims, has a basic structure – an economic and political order which affects people’s life chances and gives some far more favourable circumstances than others. It cries out for a arrangement that would make it distributionally more just, and Buchanan thinks that representatives of peoples in the original position would, at the very least, want to ensure global equality of opportunity and would also insist on more democratic trans-national political structures – perhaps involving a re-structuring of the United Nations. Buchanan, according to my terminology is arguing that Rawls’s theory is inadequate. It doesn’t address some of the main of problems of justice of a global society. It doesn’t address issues having to do with self-determination of peoples or the distribution of resources and opportunities. It doesn’t take into account changes in international society.

Buchanan and many of Rawls’s critics assume that the problem can be solved by making his theory more complete – by requiring the representatives to take into account the basic structure of global society and proposals for making it more just. Buchanan thinks that if they did this they would agree, at the very least, to a global equality of opportunity principle and would demand more democratic global institutions. Thomas Pogge argues that since representatives of peoples can be presumed to care about the well being of their people and since it is reasonable for them to assume that their people would, other things equal, prefer to have a higher rather than a lower average standard of living, then they will insist on a more equitable distribution of resources.⁴ Pogge even has a practical suggestion about how this could be achieved. Peoples could be taxed

⁴ Thomas W. Pogge, ‘An Egalitarian Law of Peoples’, *Philosophy and Public Affairs* 23 (1994), 195-224.

according to amount of resources they use, and the proceeds could be distributed through the UN to poor countries.

However, this attempt to improve the adequacy of the contractual approach runs into some serious problems. One of them is raised by Buchanan. Rawls, he says, wrongly assumes that ‘peoples’ are well organised, coherent societies in which people respect and support their political institutions. But national unity, so far as it exists, is often the result of a history of suppression. Making peoples the subjects of a theory of justice sweeps this history under the carpet and ignores the persistence of communities inside national societies which have a political identity of their own and may be in conflict with the dominant institutions of their state. These communities may be nations of indigenous people or ethnic, linguistic or religious groups fighting for their liberation from what they regard as captivity within an alien state. Rawls assumes that the question of who is a people has been settled when it has not.

Buchanan’s two criticisms are cogent but they operate at cross purposes. If we don’t know what counts as a people, then surely we can’t use the contractual approach to determine principles of justice for global society. We don’t know who the contractors are supposed to be. This is as much of a problem for Buchanan’s and Pogge’s attempts to ground more radical requirements of distribution as it is for Rawls’s law of peoples. Some of Rawls’s critics have therefore suggested that individuals should be the ones who make a decision from the original position about principles of justice and political arrangements in global society – not representatives of peoples.⁵ The idea is that individuals, as the ultimate bearers of moral value, would determine what political associations they want to form, along with the principles of justice that govern them. But

⁵ Andrew Kuper, ‘Rawlsian Global Justice: Beyond *The Law of Peoples* to a Cosmopolitan Law of Persons’, *Political Theory* 28 (2000), 640-674.

now it is obvious that in trying to make the contractual approach more adequate, these critics have undermined the purpose of adopting the contractual approach in the first place. The social contract exercise is supposed to help us come to a conclusion about what principles of justice we should endorse. We could imagine that all of the people of the world with their different political identities and experiences, and their conflicting ideas about justice and community hold a kind of global parliament, engage in discourse and finally manage to make a decision about justice and global order. But we can only speculate about what this decision might be, and thus the fantasy is of little use to us. The social contract approach, so understood, does not provide us with a realistic conception of justice.

It might be insisted that a law of peoples doesn't have to specify who the peoples are. So long as world government remains an impossible or morally undesirable prospect, our reasoning about justice can take for granted that the world will consist of peoples, whatever form these political societies take. The law of peoples is a law for these peoples, whatever they turn out to be. By using the word 'peoples' rather than 'states' Rawls is possibly endorsing this position. So understood he is presenting an abstract theory that rises above nationalist struggles and identity politics – a view of justice that is not affected by the fact that what groups count as peoples has not been settled and perhaps never will be. But such a theory suffers from lack of realism simply because it has nothing to say about how we should decide the issue of who counts as a peoples, and thus how we should apply our principles.

There is a further problem with the contractual approach. Let us simply assume, as both Rawls and Buchanan do, that we have a good enough grasp on what counts as a people so that we can set their representatives the task of determining principles of justice for global society. Would they opt for Rawls's principles or the more demanding ones of

Buchanan or Pogge? There is, I suggest, no obvious answer. Let us assume that they do not hold the Westphalian world view that Buchanan accuses Rawls of adhering to. They know that global society has a basic structure that favours some peoples over others. They have been made familiar with proposals for re-distribution of resources such as Pogge's. How will the representatives reason? Here are two possibilities (not necessarily the only ones).

Representative A: I know that the members of my society (whatever this is) will prefer to have more resources than they now have. But I am also bound as representative of a people to ensure that we remain as autonomous as possible, able to make our own decisions in our own way and to protect our political institutions, and by doing so, the ways of life that we value. If we are poor, then it would be a good thing to obtain resources from those who are wealthy, but it is not likely that the wealthy will provide them to us unconditionally. They will insist (reasonably from their point of view) that they be used as efficiently as possible and they may insist that they be distributed among us according to their ideas of justice. They are likely to demand that our institutions be reformed according to their standards of efficiency and justice, and that we change our traditions and ways of life accordingly whether we want to or not. We will have even less autonomy than we have now, less ability to protect the institutions we value. I do not have any confidence that making global institutions more democratic will protect us. Such a democracy could act as a tyrant to small, weak peoples. Therefore, I do not think it is wise to accept a global principle of resource distribution, and reluctantly I have decided to reject it.

Representative B: I want to protect the institutions and autonomy of my people, but on the other hand, I have to take seriously the possibility that the people I represent are very poor. I realise that accepting a global re-distribution principle is likely to

have a profound effect on global politics and may be detrimental to our autonomy as a peoples. But autonomy does not mean all that much to people who are very poor. So with some trepidation I accept the proposed principle.

The result of the exercise, I suggest, is not going to be a clearcut endorsement of a principle of justice, but uncertainty. Even if every representative happened to argue in the same way as Representative B, the result would hardly be decisive. Such a decision would not be a recipe for stability – something that Rawls regards as essential to any viable law of peoples. And this means that this way of approaching global justice lacks realism. It is not going to provide principles that people can wholeheartedly endorse and apply.

Should the failure of our imagined representatives to endorse wholeheartedly a more radical principle of justice reconcile us to a conservative outcome like that of Rawls? The answer seems to me to be ‘no’. For Buchanan, Pogge, and Jones are right. Global society does have a basic structure that operates to the disadvantage of many of the world’s people. Most of the world’s people are in a powerless position in relation to international institutions which have often acted in ways contrary to the interests of the poor. This situation is unfair and not one that anyone who believes in justice and democracy ought to accept. An approach that does not take into account these facts about global society and the moral judgments that we want to make about them is inadequate.

The possibility remains that there is another social contract theory which might better satisfy requirements of adequacy and realism. I do not think that this is likely for the following reason.

The contractual approach appears to be a way that we can reason about justice without political presuppositions. But in fact it presuppose a constituency: a reasonably well defined and bounded collection of people or peoples to whom the principles are

supposed to apply and who can be expected to accept them – so long as they are assumed to be rational and to have a sense of justice. And it assumes an institutional framework in which the theory can take effect and be enforced without having detrimental or unanticipated effects on other things people are justified in valuing. This is so even in the case of classical social contract theory which pretends to be starting from scratch in the state of nature. Locke, for example, assumes the existence of a people who are willing to form a political society with each other. He assumes that there is or can be a central authority that reliably enforces a law and that there are or could be mechanisms enabling citizens to control their rulers well enough to protect their basic rights without having a crippling effect on the ability of a government to perform other functions. He makes assumptions about how political societies work. Rawls has always been aware of the limitations of contract theories, and this is why his law of peoples is so conservative. He does not think that more radical principles would be realistic in global society because there is no institutional structure that can support them in a reliable way, and no immediate prospect of bringing such a structure into existence.

Global society is in flux. New nations are being made out of old, confederations are being formed, but it is not clear what powers they will acquire or how they will relate to the individuals and peoples that make them up. It is not clear whether these confederations, let alone world society as a whole, will become democratic, or what form democracy could take outside of a national setting. People are divided about the desirability of transnational institutions and have different ideas about how global society should develop. Some want to return to a world society in which states are relatively autonomous. Some regard this as impossible or undesirable and welcome globalisation. Some think that powerful regulatory institutions are needed in order to ensure that global society becomes more just. Others think that such institutions would themselves be a

source of injustice. In other words, the institutional framework on which reasoning about principles of justice depends doesn't exist or is itself in contention. Given that this is so, it is unlikely that much can be accomplished by those who try to make a more radical use of Rawls's original position. Reasoning like this cannot produce a determinant result without making simplifying and false assumptions about the world and/or ignoring some of our moral intuitions about it.

[In the discussion of this paper at the Canberra seminar (15 May) Karen Jones objected that Rawlsian contractors do not make decisions about policies of distribution – but only about abstract principles of justice. But if they are required to discuss particular policies, then why couldn't they also discuss the institutional framework that justice requires? My reply is as follows: if Rawlsian contractors are content with stating abstract principles of justice for global society (as Beitz imagines that they do in *Political Theory and International Relations*) then they are eschewing any attempt to make their theory practical. Even a non-practical view of justice has its uses – see my working paper on 'Global Justice and Ideals'. But it does not satisfy the conditions for being practical and is thus not completely satisfactory. If the contractors do discuss institutions, then they are taking the institutional approach, which I discuss below.]

The Institutional Approach

Pogge makes a distinction between an approach to international justice that concentrates on interactions between agents, whether individuals or governments, and approaches which assign duties of justice to social and political institutions. Human rights, he argues, should be understood as demands on institutions. Since existing institutions do not adequately promote human rights and in many cases violate them,

realising human rights in international society means reforming institutions and/or constructing new ones. This is the duty not just of governments but of everyone who benefits from present unjust arrangements. One way of taking up this suggestion is to consider what institutional structure world society would have to have in order for everyone to enjoy all of human rights listed in various UN documents or at least those rights that can be regarded as basic, and to have them reliably protected. Our duty of justice would then be to bring such a world society into being.

To design such institutions would be a complex, daunting task, leaving aside the matter of how these institutions are to be brought into being. There are bound to be disagreements, empirical and philosophical, about what is needed and whether a particular proposal would be effective and desirable. Nevertheless, the institutional approach can be regarded as a way of being realistic about global justice. We are required to do something more than to moralise or complain about the ways in which present arrangements fall short of a moral ideal. Furthermore particular proposals could themselves become the centre of a productive international debate or a focus for those who are attempting to make international society more just.

However, there is a serious problem with the institutional approach. The only institutions that we know of that are able to reliably protect human rights are those of liberal democratic states. It seems likely therefore that the only institutions that can perform this function for everyone in world society will be liberal, democratic and centralised as are the institutions of state. In other words, only a world state of a certain kind will do the job. Some theorists agree. 'It seems that the defence of basic human rights requires institutions of global rather than national scope and, in addition, that such institutions must be granted the power to enforce decisions made within them designed to

defend those rights,' says Charles Jones. Kai Nielson argues that only a world state can provide individuals with the security that is fundamental for justice.

The belief that only institutions of a liberal democratic world state would be able to ensure that everyone can enjoy their human rights seems to be bolstered by attempts to work out in practical way how proposals for realising and protecting human rights could be effective. Take any suggestion for reforming world society so that its institutions are capable of protecting human rights and satisfying other requirements of justice. Take for example Pogge's resources dividend proposal: that those who use energy resources should pay a tax which will be distributed to those people of world society who are in desperate need. If this or similar proposals are to guarantee everyone in the world a decent standard of living then we need to have reliable means of ensuring that the benefits go to those who are needy (and not into the coffers of the rich or the military budgets of colonels) and that users of resources pay their fair share of taxes. If the system is to be reliable, there will have to be an institution capable of enforcing the requirements (and other human rights), and intervening if necessary in the affairs of states and other transnational agents. If it is to enforce a requirement in a reliable way then it cannot tolerate the existence of military forces that can be used effectively against it. It will seek to achieve a monopoly in the use of force – as do armies and police forces in states. If there is an international police force, then there will have to be international institutions for trying those suspected of breaking laws and punishing those who are law breakers. Since protection of human rights is not compatible with a police force or judiciary that makes its own rules and enforces them according to its own lights, there will have to be a legislature of some kind that determines the level of tax and how benefits derived from it should be distributed, what uses of it are allowable, and what is not. If human rights are to be protected then body cannot be in the control of the rich and powerful or of some

group over which people have no means of control. It must be democratic and everyone must have the right to participate in electing officials to it. We have now the main institutions of a centralised political system: legislature, judiciary, and police and this of course is just the beginning of the story.

The logic of rights protection seems to draw us inexorably toward the advocacy of centralised political and legal institutions. The problem is that the idea of world government is distinctly unfashionable. And for good reason. Since (as Rawls points out) there is no consensus among the world's people about values and political goals, how can we expect everyone to live together in a single polity? A democratic government is only possible if people are prepared to acquiesce in decisions that go against their interests. But it seems unlikely that everyone in the world will be prepared to do this. If policies of a world state interfere with people's religious or cultural interests, many will resist if they can. A world state would have to be prepared to use force to counter such opposition, and the chances that it will break up or turn into a tyranny are very great. So it seems that we have to conclude that a world state is not likely to be a reliable protector of human rights. Even those who are prepared to advocate a world state give it only lukewarm support. Nielson admits that it is mere utopian possibility. Jones claims that even if a world state doesn't work all that well, it will be better than the present situation – an argument based on a highly speculative premise. The very impracticality of the suggestion – the fact that we have no idea how it could be realised in a morally satisfactory way (that is, not through war or conquest) seems enough reason to reject it.

But if, for one reason or another, we reject the objective of forming a world state then it seems that our institutional reforms will always be inadequate. Pogge does his best to convince us that re-distribute of wealth through a resource tax could be accomplished through moral pressure, that those states unable or unwilling to distribute wealth to their

populations could be persuaded to do so by economic incentives and disincentives, that an independent panel of experts could make reasonably impartial decisions about how the proceeds of the tax would be distributed. However, moral pressure often doesn't work. The powerful may resist the payment of the tax or may hold out for an arrangement that allows them to pay less, and if this is widely perceived as unfair, others won't pay and the system is likely to break down. Economic sanctions can have the most detrimental effects on the poor and needy, and leaders who want to retain their own power may not be persuaded by economic inducements or they will find ways of frustrating the purposes of the tax. The committee of experts may not be independent or they may be out of touch with the real problems or the perspective of the poor. Pogge's proposal, if implemented, would probably have the effect of alleviating the poverty of many people. But it does not satisfy the requirements of the exercise that we are supposed to be engaged in. It does not seem to provide a reliable means of ensuring even basic rights for everyone.

One possible way out of this dilemma is to envision a development in global affairs which has as its consequence the willingness of most of the world's people to favour and comply with institutions that ensure a more fair distribution of the world's resources and in other ways realise and protect the human rights of everyone. To use Rawls's terminology, this new world order would be favourable to the development of an overlapping consensus which insists on a vigorous protection of human rights, including economic and civic rights. If such an overlapping consensus is possible then people will generally comply with the institutions or agreements that are needed to fulfil and protect these rights. They will not resist the implementation of rights protecting policies; not much force will have to be used to ensure compliance. Indeed, there may be very little need for centralised institutions. Agents can for the most part be relied on to do the right

thing. The question is how this more favourable state of affairs might be brought into being.

One development that is moving us in this direction, according to Andrew Linklater and many other theorists, is the growing interdependence of the peoples of the world and the resulting multiplication of transnational associations and other non-state agents, and the increasing importance of multi-lateral treaties and transnational bodies in the managing of world affairs. There are now more institutional means for monitoring and protecting human rights, even though these fall far short of what is needed. But the development that Linklater thinks is most important is a moral one. Forced to recognise the entitlements of minorities and groups that have been traditionally excluded from full citizenship, citizens of states have developed over time a universal morality. Their moral sensibility is inclusive rather than exclusive. The popularity of the idea of human rights is a natural consequence of this development. But such a morality by its nature cannot be confined to the borders of a nation state. Those who accept this morality find it difficult to justify policies which ignore the interests and needs of outsiders. People of the early 21st Century are much more aware of issues of international human rights than people of past generations and therefore have the potential to construct and become citizens of more inclusive trans-national associations, or at least to accept policies and programs aimed at the universal protection of human rights.

These institutional and moral changes might encourage a movement beyond the sovereign state. Linklater has in mind Hedley Bull's idea that the state's monopoly over political allegiances may be giving way, at least in some areas of the world, to a 'neo-medievalist international order' in which political allegiances are multiple and political authority is multi-tiered. Pogge similarly thinks that sovereignty might come to be dispersed among a number of political entities.

Thus, persons should be citizens of, and govern themselves through, a number of political units of various sizes, without any one political unit being dominant and thus occupying the traditional role of state. And their political allegiance and loyalties should be widely dispersed over these units: neighborhood, town country, province, state, region and world at large. People should be politically at home in all of them, without converging upon any one of them as the lodestar of their political identity (58).

What he seems to be envisioning is a confederation something like the European Union, but with less bureaucracy, less state power, more democracy, perhaps more layers, and a less exclusive and wealthy membership. This idea of a new world order brought about by the dispersal of sovereignty has become fairly common. Kuper supports it, but sees no reasons why polities which exercise some degree of sovereignty have to be geographically based. Why couldn't they be based on interest, culture or religion? In a book on Justice and World Order I once put forward a similar vision of a world of interlocking communities spanning the whole globe and presented a story about how this state of world affairs might come about. The idea behind all these proposals is that state sovereignty has a distorting and limiting effect not only on world politics but on society and consciousness. It forces people to be exclusively loyal to their state and to centre their political life on the state and its institutions. They are discouraged from forming allegiances with members of sub-national groups or from forming associations with people outside of state borders. Developments which weaken state sovereignty are a good thing because they open up possibilities for new political associations and the changes in consciousness and behaviour which are likely to accompany this political shift. If people are able to broaden and diversify their political attachments they will become much more

willing and able to initiate and accept regimes which protect human rights. They will resist self-interested policies of states and other political bodies.

These ideas for a new world order are extremely schematic and they raise some immediate difficulties. Pogge and others put forward their proposals for the dispersal of world sovereignty as an alternative to world government, but it is not clear how much of an alternative it is. Nielson and other advocates of a world state generally insist upon a considerable amount of decentralisation and local independence. The crux of the matter is presumably whether centralised institutions in this new world order control the use of violence and have powers of taxation. On human rights grounds there are strong arguments for such central control. The medieval world was extremely violent (as Linklater points out); nor were its decentralised political authorities capable of dealing in a humane way with the armies of the poor that roamed from place to place. We would want a neo-medievalist world order to be different in these respects, and it is difficult to see how it could be without some authoritative central institutions capable of enforcing a law.

The second question is whether dispersal of sovereignty really would tend to encourage trans-national or supra national allegiances. The evidence from the European Union is that weakening of state sovereignty encourages the resurgence of regional loyalties, but there is no good evidence that it encourages people to identify with and give their allegiance to higher level political organisations. Most people have not so far developed a loyalty to the European Union itself. Truly democratic institutions might make a difference, but democracy does not always produce public enthusiasm or solidarity.

The use of the European Union as an imperfect model for future world developments gives rise to other worries about the proposal. The Union is the result of a

particular history, and though free trading zones are becoming more common, there is no sign that similar political developments are about to occur in other parts of the world. The free trade agreement of the US with Mexico does not seem to be leading to a greater political union, let alone a willingness to transfer wealth from the rich to the poor. Moreover, the European Union is an exclusive association of wealthy countries and a condition of membership is having an economy of a certain kind. It is not an example of an association that links the wealthy of the world with the poor. If the dispersal of sovereignty leads to the wealthy banding together in a confederation and making policies that benefit its members, then the lot of those excluded may become even worse.

Those who unite across borders for cultural or religious reasons or because of special interests or common goals may not be so economically exclusive. But these kinds of organisations pose other problems. Not all transnational associations are good things. Criminal and terrorist organisations have proved very effective at trans-national organisation, and it might be argued that the weakening of the sovereign state has not proved conducive to countering these associations. Moreover, groups united around culture, religion, or interests may not have the universal ethical outlook that Linklater and others regard as the foundation for a world order that takes justice and human rights seriously.

The most serious difficulty is that a multi-layered world political order seems to be a Western-centric idea. It is an idea of world order that is more likely to be favoured by those who live in states that have strong, effective, and democratic government, those peoples who have gone through the process that Linklater describes, who voluntarily chose to enter new political structures and can negotiate from a position of strength. In many parts of the world the problems associated with state building are still on the agenda. Governments struggle to the control or overcome the forces that challenge their

ability to govern effectively, and people continue to aspire to political self determination or democratic rule. Their governments are more likely to be in a position of weakness when they deal with other international agents. Dispersal of sovereignty is likely to be thrust on these people rather than being something they choose. From their perspective it is likely to mean that they will have even less chance of achieving their political aspirations.

This does not mean that the proposals of Pogge, Linklater and others ought to be dismissed. Such proposals have value if only to remind us that alternative political institutions are possible, and that the loyalties, perspective and ethical outlook encouraged by our present world order are not an inevitable or eternal feature of world society. However, as practical proposals for ensuring the protection of everyone's human rights these speculations do not get us very far. The fact is we do not know much at all about how global society is likely to develop, what forces and obstacles are likely to get in the way of the kinds of schemes that Pogge and Kupner put forward, and whether the developments they favour would in fact be all that conducive to the protection of human rights.

One way to appreciate the problems faced by any speculations about future developments in world society is to compare our position with that of Karl Marx who was similarly engaged in the exercise of trying to determine what positive future course world society might take. Karl Marx had available to him a far sounder empirical basis for his projections than we have for ours. Nevertheless, he turned out to be wrong in fundamental respects. What this means is not that such speculations serve no useful purpose, but that it would be a mistake to rely on them or to put all of our energies into trying to achieve the institutional changes we favour. In particular, it would be a bad idea

from a moral point of view to engage in future directed activities that do not also improve the situation of people living now.

The Discursive Approach

An attempt to envision an alternative world order, however interesting and useful it may be for certain purposes, is not a practical way of answering the question of how human rights can be reliably protected in world society. But this may be because all of these schemes, if a serious attempt were made to carry them out, would be an attempt to impose on everyone in the world institutions they may not favour for purposes that they may not agree with. What people need to do first is to reach a consensus about what ought to be done. Some of those who reason about justice and world order take a discursive approach. They argue that what needs to be done in a practical way is to promote opportunities and institutions that encourage discourse among the world's people about the moral ends that a world order should serve and the institutions that would best achieve these ends. Since people in poor countries or from minority groups would have equal rights of participation and equal power to agree to or veto proposals, they would be able to ensure that their concerns and point of view would have to be taken into account. Ideas about world order that come out of such discourse would not only be more truly representative of the world's people than suggestions of armchair reformists. In the process of discourse people would come to appreciate each other's point of view, would alter their own opinions in the course of discussion, and as a result be more prepared to accept institutions and obligations which ensure that everyone's rights are protected according to an universal agreement about what this means.

Rainer Forest thinks that fundamental to any system of human rights is the idea that every person has a right to be 'the author and addressee of reasonable demands' (169).

The idea is that justice requires that all social relations must be justifiable to all those subject to them and everyone has an equal right to demand justification, to be able to assent or dissent to institutional arrangements and proposals – both in their own societies and in the world as a whole. Forest distinguishes between institutions and rights necessary to ensure that individuals enjoy basic rights and are thus able to participate effectively in the process of justification (minimal justice) and the institutions and ideas about right that would come out of such discourse. He thinks that the first step toward justice in world society is reformation of states so that they all satisfy the requirements of minimal justice, and this would make possible the establishment of minimally just structures in global society as a whole in which each state, truly representing its people, can participate in determining institutions of maximal justice. Held, Habermas.

However, those who think that global principles and institutions should for the most part be the product of democratic or discursive processes also face a dilemma. If what Forest regards as the minimal requirements of justice are to be satisfied everywhere in the world, then we will require a fairly substantial institutional structure. There will have to be an international forces which intervene in cases where people do not enjoy basic rights, there will have to be a system that transfers wealth, etc. In other words, the kinds of decisions about institutional structure which Forest thinks should be made by representatives of states will already have been made before the conditions of minimal justice have been satisfied. On the other hand, it seems doubtful that any democratic global institutions that we can establish without these institutional changes will have either the moral or political authority to make prescriptions about global social relations. They will lack the moral authority which Forest, Habermas and others regard as necessary, because they will not represent everyone. Minority groups, especially in authoritarian states, women in many countries will not have a real opportunity to

participate. And they will lack political authority because their decisions will not always accord with what many people regard as justifiable. The ideal of consensus through discourse is a long way from political reality. In actual democracies people have to be prepared to go along with decisions that they don't agree with, even decisions which seem to them morally wrong. To be prepared to do this people have to have some commitment to their political processes or at least they have to be in the habit of obeying. In other words, democracy has an institutional basis that depends on the existence of a system of cooperation and control and perhaps solidarity and a certain amount of agreement about values. Whatever it takes for a democracy to function as an authoritative body for making law, is likely to be lacking in world society as a whole. This does not mean that it would not be a good thing to make or try to establish democratic trans-national institutions. But the discursive approach is no solution to the problem of finding an adequate and realistic theory of justice for global society.

I have not examined all the examples of the approaches I have criticised; nor are the approaches I have discussed necessarily all of the approaches to global justice that could exist. However, the problems that I have encountered in my examination suggest that the attempt to develop a theory of global justice that is both adequate and realistic will not succeed. The problem does not exist because theorists are not clever enough, or because our ideals of justice are confused or mistaken. Nor do I think that it exists simply because people of the world are likely to disagree on many important questions. The problem has to do with the nature of reality itself. The world is in flux, political, as well as economic, development is uneven, the future uncertain. We do not yet have an institutional basis for realising and protecting human rights and other requirements of justice in a reliable way,

and it is not clear whether and how such an institutional basis can arise, and what other changes are likely to occur.

Practical Justice in World Affairs

Rights, according to many philosophers and legal theorists, are claims that individuals or groups are justified in making on specified others. They are entitlements that presuppose the existence of institutions in which claims can be made and justified before others within a framework for discourse that most people accept, institutions in which justified demands can be fulfilled and entitlements protected. One of the implications of my thesis is that international human rights cannot in general satisfy this characterisation of what a right should be. Human rights are better thought of as moral ideals whose relation to practice is unclear.

There are two ways of responding to this situation. We could modify the requirement of justice to fit our circumstances and regard our more demanding moral ideals as unrealistically utopian. We would have to accept the fact that the best practical theory of justice does not adequately encapsulate all of our moral intuitions about how people and associations of world society ought to relate to each other. These moral intuitions, regarded as unattainable ideals, would cease to play a major role in our judgements about justice. This is perhaps the best way of understanding Rawls's attempt to be realistically utopian. The other response is to retain these ideals as central to our reasoning about justice, but to take them as aspirations toward which some progress can be made. We will have made progress if our political actions bring it about that people in some part of the world are in a better position to enjoy their rights, and if others are not, as a result of our actions, in a worse position. This response to the problem requires that we operate without a theory of justice or even a clear idea of what institutions would

enable our ideals to be fully instantiated. In making this response we are not confined to what Pogge describes as an interactional approach to justice. The reforms and changes we work for can be institutional. However, we cannot suppose that we are building a just world order. We are merely putting in place some changes that might eventually put people in a better position to achieve such a world order. If not, at least people will be better off for our efforts.

Each approach has its dangers. Those who take the first road may, as Buchanan argues, tie themselves too tightly to a status quo that is already being altered by the forces of globalization. Those who take the second road risk constant disappointment, for the results of political action are uncertain and progress is not guaranteed. What seems like a positive development in the fight for human rights can have extremely negative effects for some people. A struggle which overthrows a dictatorial regime may lead to the ethnic cleansing of people who do not fit the conception of the nation held by the victors. An institutional reform can itself become the source of injustice.

What response people take is, I think, at least partly a matter of temperament. However, there do seem to be rational reasons for adopting the second response. First of all, in a world undergoing such rapid change the conservative option may simply not be viable. Buchanan argues that this is so for Rawls's law of peoples. Second, the idea that everyone should be able to enjoy basic human rights, like security, freedom, participation and welfare seems like such a reasonable ideal. There do seem to be enough resources in the world to provide for everyone's basic welfare. People have in the course of history developed institutions that are able to protect security of individuals and at the same time allow them considerable amount of freedom. They have developed various forms of democratic government. These institutions are far from perfect, but they do provide a foundation for the theory and practice of justice. It seems reasonable to hope that people

of the future will eventually find the institutional means to ensure that everyone can enjoy basic rights. Meanwhile it seems reasonable to suppose that we know enough about our circumstances and the operation of institutions to make progress in that direction. Third, and most important, there do seem to be practical actions that agents can take and reforms to institutions that they can make that would improve the prospect of people who do not now enjoy basic rights.

Henry Shue argues that it would improve the prospect of many people if wealthy nation simply ceased to pursue policies that are especially harmful to the poor of the world. The poor are likely to be better off if, for example, governments of wealthy nations were consistent in their advocacy of free trade and did not impose restrictions on the products that poor countries produce, if they did not prop up unpopular political regimes, if they did not insist on the repayment of debts – often incurred in the first place by unrepresentative regimes. Campaigns to make governments act more responsibly are a good thing – but are not by themselves an adequate response to world developments. In an increasingly globalised world agents acting in their own interest have a greater potential to harm others. Dams built in one country can affect the prospects of people living in other. A protection policy which helps a nation's farmers can mean ruin for peasants in another part of the world. More effective institutions seem to be needed which would allow those affected to bring such harms to the attention of the world, to demand openness about projects that can affect others, to monitor harms, provide a normative framework for agreements and payment of compensation, to put pressure on nations and companies that ignore the concerns of the people's whose lives or livelihood they threaten. It seems reasonable to suppose that we can make or improve institutions that make these activities possible, and doing so could be the first step to more effective

setting of standards, regulation of interactions and enforcement of standards – and thus a better protection of basic rights.

This is one example of how elementary moral demands relating people's rights can lead to a demand for more adequate institutions – and thus in the direction of changes which may eventually change the political parameters of global society. How to design and bring into being the institutions that seem to be necessary for systematic progress toward universal enjoyment of human rights remarks is not something that ethical theorists can decide (as Shue remarks (161)). It requires expertise, cooperation, struggle, pragmatism, and a lot of trial and error. The subject matter of international justice, as Onora O'Neill says, is messy.



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