



Non-Cosmopolitan Universalism: On Armitage's Foundations of International Political Thought

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Non-Cosmopolitan Universalism: On Armitage’s Foundations of International Political Thought

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Summary

In *Foundations of Modern International Thought*, David Armitage provides a genealogy of the multiple foundations of international political thought. But he also enables political theorists to reflect on the nature of the pluralisation of our concepts: that is, the way various components come together (or apart) in particular circumstances to form a concept that either becomes dominant or is rendered to the margins. Armitage claims that concepts can ‘never entirely escape their origins’. In this paper I explore this claim from the perspective of contemporary debates about the nature of cosmopolitan political thought.

Keywords: Global justice; rights; universalism; cosmopolitanism; indigenous peoples; citizenship; human rights.

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1. Introduction

In *Foundations of Modern International Thought*, David Armitage manages to balance at least two distinct projects and bring them into fruitful conversation with each other.¹ The first is a kind of conceptual history of the emergence of the ‘international’ and the ‘global’ in political thought. The second involves tracing the transmigration of these conceptualisations—the actual movement of peoples, books and ideas across borders and continents. But there is another important element of Armitage’s genealogies of international thought. This is the extent to which, as an historian of ideas, he is able to challenge political theorists to consider the nature of the pluralisation of our concepts: that is, the way various components come together (or apart) in particular circumstances to form a concept that either becomes dominant or is rendered to the margins. Armitage claims that concepts can ‘never entirely escape their origins’.² Philosophers tend to think they must.

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¹ David Armitage, *Foundations of International Political Thought* (Cambridge, 2012).

² Armitage, *Foundations*, 42.

Political theorists should be more circumspect on both fronts. It is a particularly interesting claim as applied to our conceptions of the *universal* and to the many concepts closely aligned to it which Armitage explores, such as international law and human rights.

Armitage argues, for example, that the transformation of rights discourse and international law in the eighteenth century is not a case of the gradual revealing of enlightenment that the ‘just so’ stories of philosophers tend to assume. Instead, their histories are ‘discontinuous, reversible and irregular’.³ The universality of the ‘law of nations’ was constrained by an emerging consensus that it applied differently to different parts of the globe, having begun very much as a matter for the Christian world only.⁴ Similarly, rights discourse was used to justify both anti-colonial struggles in the sixteenth and seventeenth centuries, as well as imperialism in the eighteenth, tied as it increasingly became to various versions of the ‘standard of civilisation’. But this does not mean our conceptions of international law or human rights are somehow fundamentally tainted as a result. What it means, at least for Armitage, is that we should not expect them to retain the same meaning and force in every context in which they are deployed. It could be said that every universalism has its limits. It is this idea I want to explore below, especially as it applies to our current understanding of cosmopolitan political thought.

2. Cosmopolitan justice

One of the questions underlying this paper is whether or not our dominant ways of grasping what we call cosmopolitan justice can really give injustice its due. In what remains one of the most compelling discussions of injustice in recent political theory, Judith Shklar identified a number of crucial features of what she called the ‘faces of injustice’.⁵ Her ultimate claim is that injustice should not be understood as merely the absence of justice—at least, if by justice we mean what is essentially both a procedural and distributive concept. Her point is not that the absence of normal justice does not count as injustice, but that the ‘normal model’s’ approach is too ‘complacent’ and overestimates the extent to which the institutions it underwrites can really cope with the kind of harm we do to each other, as well as care most about.

In asking whether or not cosmopolitan justice can really give injustice its due, we are asking more generally about the nature of universal claims in political theory. In previous work, I have examined the claims of indigenous peoples from the perspective of contemporary liberal democracies and the international legal order.⁶ I want to return to this challenge here, albeit abstracting somewhat from the particular claims at issue. How does reflection on the indigenous case contribute to debates about cosmopolitanism more generally? It does so in two ways. First, the claims of indigenous peoples in liberal democracies (and an ostensibly liberal international order) present a genuine challenge to what we might call (following Nancy Fraser) the ‘normal’ discourse of justice.⁷ They combine and challenge both distributional and procedural claims. And second, they challenge the self-understanding of a certain branch of universalist liberalism from which contemporary cosmopolitanisms grow. Instead of a steady expansion of democratic

³ Armitage, *Foundations*, 39.

⁴ Armitage, *Foundations*, 38–39.

⁵ Judith Shklar, *The Faces of Injustice* (New Haven, CT, 1992).

⁶ Duncan Ivison, ‘Emergent Cosmopolitanism: Indigenous Peoples and International Law’, in *Between Cosmopolitan Ideals and State Sovereignty: Studies in Global Justice*, edited by Ronald Tinnevelt and Gert Verschraegen (New York, NY, 2007), 120–31.

⁷ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Cambridge, 2008).

citizenship and universal human rights, on this reading, the history and practice of liberalism is more complex—and more provincial. This pre-history of liberalism includes not merely indifference to but the justification of and complicity with, practices of colonialism and empire.

As mentioned above, Armitage's work is important for thinking through the various challenges this history raises for contemporary political theory. His careful historical treatment of the globalisation of the 'pre-history' of various strands of liberal political thought has provided a rich framework within which to explore how concepts are deployed and extended in a wide range of historical and cultural contexts. This has been particularly true with regard to what we might call the justificatory histories of empire—the various ways in which thinkers and their publics have argued about, justified and indeed criticised empire and colonialism. Armitage has called this the 'mutually constitutive' relation between pre- and early liberalism and European imperialism.⁸ But it is also invariably a complex relation, not a straightforwardly causal one. A fundamental question raised by this work is the extent to which liberal languages and frameworks mask the exercise of arbitrary power and remain blind to its own partialities.⁹ And more specifically, especially in relation to the emergence of cosmopolitan political theory, the extent to which contemporary global inequalities can be said to share not only historical but also conceptual continuities with older colonial empires.¹⁰ But how, exactly, are we to understand these conceptual continuities?

3. Justice and domination

The relations between justice and domination are multiple and overlapping. The social and economic 'disadvantages' suffered by indigenous peoples, for example, especially in remote Australia, are severe and shocking. They cry out for distributional redress. And yet they are also connected to deep and pervasive historical, cultural and political features of the polity—to colonialism, to embedded racism, to failed policy experiments over many years and to the challenges indigenous peoples themselves have faced in dealing with deep social and cultural change. These failings are systemic—they did not just happen, like a flood or a snowstorm. So the relation between injustice and domination might be understood as essentially the flipside of the relation between justice and power. It is not only the distribution of goods that matter, but *how* it came about and the legitimacy of the institutions through which it occurs.

On one reading, conceptions of social justice help us to identify and evaluate those forms of power that are 'dominating' or oppressive. John Rawls refers to justice as the 'first virtue of social institutions' and perhaps by extension it becomes a kind of primary virtue of politics in general.¹¹ On the other hand, it might also be the case that our conceptions of justice are insufficiently robust or fine-grained to capture the harms of significant forms of domination. Or indeed—in a Marxian vein—leave them untouched, and worse, reify them in various ways. Looking to oppression or domination first—rather

⁸ Armitage, *Foundations*, 90.

⁹ See the discussion in Jennifer Pitts, 'Political Theory of Empire and Imperialism', *American Review of Political Science*, 20 (2010), 211–35 (219). I try to address this general challenge in Duncan Ivison, *Postcolonial Liberalism* (Cambridge, 2002); Duncan Ivison, *Rights* (Stocksfield, 2008).

¹⁰ Pitts, 'Political Theory of Empire and Imperialism', 222.

¹¹ John Rawls, *A Theory of Justice* (Cambridge MA, 1971) 3.

than to justice—might therefore not only help us to identify the blind spots in our theories and approaches to justice, but also their inherent limits.

Return for a moment to Rawls's conception of 'justice as fairness'. Justice, he argues, is 'a standard whereby the distributive aspects of the basic structure of society [i.e., rights and duties, benefits and burdens] are to be assessed'.¹² The focus is on procedural and distributive unfairness or disadvantage: the problem is often one of individuals lacking the 'fair value' of the equal basic liberties, due to them through the first principle, as well as equal access to those 'primary goods' required to live a decent life. To suffer injustice is therefore to lack a certain standing and to lack equal access to valuable goods. A theory of social justice is meant to provide a vision of how both sets of these disadvantages can be addressed. Justice is thus primarily a matter of the allocation of goods (tangible and intangible) on grounds that could not reasonably be rejected by those conceived as 'free and equal'.

A familiar but important set of criticisms of this way of thinking about justice (and thus injustice) is not that it is wrong, but radically incomplete. The crucial claim here is what we might call the *critique from power*. Goods do not simply spring forth from the world. People do not simply find themselves disadvantaged. To become unemployed is not simply bad luck, akin to finding one's house flooded by heavy rains or being confined inside due to a snowstorm. It is to be caught up within a certain social, political and economic order that allocates valuable goods in particular ways.

The worry expressed in these critiques is that a focus on the allocation of goods misses the structure and context within which goods are produced and the contexts within which they circulate—social, economic, political and cultural. This critique points to a more political conception of justice (and thus injustice); namely, the extent to which justice addresses the demands of those who seek not only (or mainly) to have more or equal amounts of *x*, but to be treated fairly, equally, with dignity, with respect. The difference, therefore, is that injustice here is tied much more closely to questions of not only the standing of those making claims, but also to the context of the uptake of those claims. Justice thus has both distributional and relational dimensions. Our conceptions of justice and injustice need to address not only the distributional duties and responsibilities we have towards others, but also those problematic power relationships between individuals and groups.

There are at least two paths one could take to reconcile the differing emphases on justice and domination. According to the first, you might think that we should limit justice to matters of essentially a distributive kind, avoiding conceptual inflation and delivering greater analytical perspicuity. Although it is tempting to extend the concept to apply to a whole range of political phenomena, so this argument goes, the more we try to shoehorn into the concept the less real work it is able to do. There are other resources available to analyse and evaluate the badness of things in the world. Justice should not be expected to capture everything that is wrong with our world. There are limits to what our (at least liberal) theories of justice can do to address the kind of oppression and/or domination these critics press upon it.

A second approach would be to take domination (and thus non-domination) as the paradigmatic cases of injustice, just insofar as they represent the denial of a person's basic standing—their 'right to have rights'—in the process of establishing the conditions for social and political cooperation in the first place. In other words, that the first question of

¹² Rawls, *A Theory of Justice*, 9–10.

justice is not about the ‘distributive aspects of the basic structure’, but the capacity (or ‘justificatory power’, in Rainer Forst’s phrase) of persons to demand justifications for and participation in the processes that identify the various goods and modes of distribution to be considered in the first place.¹³ Of course, there are institutional and material preconditions for *these* capacities too, and so even here we need a kind of distributive principle. However, this approach arguably steers our thinking about justice in a more democratic direction. If we are concerned with fairness and non-arbitrariness, but now also with systematic and institutionalised forms of oppression and domination, then we will be oriented to taking our lead from those closest to the action, so to speak, and thus to the particular contexts within which goods emerge, gain meaning and circulate. This means paying attention to the background contexts and institutions—the power relationships—against which any set of distributive principles would have to operate.¹⁴

4. Another cosmopolitanism?

If we are concerned to take background justice (and injustice) seriously, then what consequences does this have for our understanding of contemporary cosmopolitan political theory?

There are at least three ways in which one can be a cosmopolitan—moral, political and cultural. First, a moral cosmopolitan is committed to a set of distinctive moral claims that are meant to apply to everyone, everywhere, and that frame our evaluation of the behaviour of states and other actors in global politics. This view typically has three elements, as now classically defined by Thomas Pogge: (i) *individualism*—that the ultimate units of moral concern in one’s moral and political theory are individual persons and only indirectly families, tribes, ethnic, religious or national groups; (ii) *universality*—that the status of the unit of concern attaches to every living human being equally; and (iii) *generality*—that this status has global force.¹⁵ In short, the well-being of individuals, everywhere, is the main point of any theory of global justice, in all contexts. Second, a political cosmopolitan is someone who thinks there should be global legal and political institutions that transcend those of nation states—a world state, for example, or transnational or global institutions of various kinds. Many moral cosmopolitans are also political cosmopolitans, but the two can come apart (as they do, famously, in Kant). That is, one can be a moral cosmopolitan and yet believe that states are not only compatible with, but are required by, one’s moral cosmopolitanism. Finally, one can be a cultural cosmopolitan about the good. That is, you might believe that a good life is one that draws on the great variety and melange of cultural sources available in modern life, and promote the hybridity and intermingling of cultures, peoples, practices and histories that are common to it.

As I have already suggested, these different cosmopolitanisms can come apart. One can be a moral cosmopolitan without embracing political cosmopolitanism; and one could be a political cosmopolitan without embracing cultural cosmopolitanism (I might think, for example, that the good life for me is to live a fairly monocultural life, but still believe

¹³ Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice* (New York, NY, 2011)

¹⁴ For a very interesting discussion of the importance of ‘background injustice’, see Miriam Ronzoni, ‘The Global Order: A Case of Background Injustice? A Practice-Dependent Account’, *Philosophy and Public Affairs*, 37 (2009), 229–56.

¹⁵ Thomas W. Pogge, ‘Cosmopolitanism and Sovereignty’, in *Political Restructuring in Europe: Ethical Perspectives*, edited by Chris Brown (London, 1994), 85–118 (117).

that global political institutions are required to protect the universal human rights of everyone). However, there is clearly at least one central challenge at the heart of all cosmopolitan political theory, which might be expressed this way: if cosmopolitanism embodies, in a very general sense, a fundamental commitment to the equal moral worth and dignity of all human beings, and this needs to be connected to standards of justice that are applicable to all, then just because of this commitment, one must *also* be open to the ‘different local human ways of being’.¹⁶ And that means accommodating the particular attachments people have and which are manifest in their commitment to states, nations, cultures, neighbourhoods, professions, regions and families, etc. Although this is sometimes posed as a *dilemma*—either we value particular attachments or embrace cosmopolitan principles—this is surely too simplistic. To have any interpersonal relationships at all, for example, requires our valuing aspects of these relations in non-instrumental ways and thus having reasons for being partial towards some people rather than others. Of course, we might also have reasons for recognising that the urgent needs of others might well take priority in some cases.

So although not always a dilemma per se, there is undoubtedly a deep tension between partiality and impartiality in many contexts. A prominent variation on this tension is that between cosmopolitan norms of justice and democratic self-determination. Our ethics may be universal and grounded in the transcendental equality and dignity of all human beings, but our laws and democratic practices are generally taken to be authoritative only if linked to a self-determining democratic will. This democratic will is usually expressed in the name of a *people*—a bounded community constituted through various specific modes of collective agency, circumscribed in space and time and with reference to particular cultures, histories and institutions. So how are we to reconcile the universality of cosmopolitan norms of justice with the particularity of democratic will-formation and law-making?

In her recent Tanner Lectures, Seyla Benhabib used the example of the presence of legal and illegal aliens in a liberal democracy to explore the lineaments of what she calls ‘another cosmopolitanism’—one in which the project is about ‘mediation’ and ‘democratic reiteration’, as opposed to reduction or totalisation.¹⁷ Her answer, in short, involves drawing on the idea of the ‘co-originality’ of popular sovereignty and human rights norms, and the way in which over time, through ‘democratic reiteration’—through the ‘repetition-in-transformation’ that occurs when democratic publics appeal to and ‘domesticate’ cosmopolitan norms—the tension comes to be mediated, if never reconciled.¹⁸ The idea is that cosmopolitan norms are ‘reiterated’ via democratic will-formation such that they come to be seen as valid from the perspective of the demos and, in the process, transformed.

I cannot explore Benhabib’s argument in any detail here, but, like her, I have attempted to use the claims of indigenous peoples within and beyond the borders of liberal democracies to tease out the possibilities of perhaps ‘another cosmopolitanism’—which, however, I have called non-cosmopolitan universalism. The basic idea is that if rights claims always point beyond themselves to some extent—given the underlying tension between what Hannah Arendt called the unconditional ‘right to have rights’ and their actual instantiation in concrete legal and political orders—then what do the claims of

¹⁶ The phrase is from Kwame Anthony Appiah, ‘Cosmopolitan Patriots’, *Critical Inquiry*, 23 (1997), 617–39 (623).

¹⁷ Seyla Benhabib, *Another Cosmopolitanism* (Cambridge, 2006) 20, 34–35.

¹⁸ Benhabib, *Another Cosmopolitanism*, 48, 158–60.

indigenous people point towards and prefigure, both for our domestic and global politics?¹⁹

There are two sorts of answers here—one constructive, the other more critical. I will focus on the latter, but let me at least sketch the implication of the former.²⁰ The basic idea is the extent to which indigenous peoples' claims prefigure an alternative account of the emergence of universal or global norms of justice, given an approach to their claims that starts from outside the dominant Kantian edifice of recent work on this issue. Could there be a form of 'emergent' universalism that was not teleological in the Kantian sense, but nevertheless genuinely transnational? And what do we mean by 'emergent'?²¹

For philosophers, a property is emergent insofar as it arises out of some lower-level properties in place, but is not merely those lower-level ones differently described. It arises out of them and yet is novel or irreducible with respect to them. The interaction amongst the parts produces a whole, but also changes the parts in the process. The language of emergence has its dangers: it can obfuscate rather than explain, and so it must be used with caution. So the analogy here is a rough one: could there be a form of universalism that emerged from the complex interactions of individuals, states, and non-state actors, but was not simply reducible to them, nor the expression of some apparently externally justified rule or telos? Could there be a form of universalism that pointed beyond the nation-state, but not necessarily to a set of norms derived from a transcendental ground disclosed by the critique of reason? The potential is to provide an account of political universalism, in other words, that is aware of its limits and attuned to its inevitable partialities.

The second set of responses to indigenous claims, as I suggested above, are more critical and return us to some of the challenges raised in the work of historians such as Armitage and Pitts. Can cosmopolitan justice really respond to the kind of injustices the claims of indigenous peoples are referring to? The specific challenge here is the extent to which contemporary global institutions, and the political theories used to justify (and criticise) them, are continuous with older forms of domination.

In the modern era, imperialism refers to a territorially defined, hierarchically organised polity which reproduces differentiation and inequality among the people it incorporates—one in which some are able to impose upon, constrain and dominate others in ways that affect their most important interests.²² This can occur either directly or indirectly, formally or informally. Of course, it is never complete and there is always room to move on the part of those subject to these relations of power. However, whatever freedom exists is usually determined and constrained by the hegemonic power.

How does empire become transposed onto justice? There are two kinds of questions here, one historical the other conceptual, though they are often entwined, as Armitage's book makes clear. In the first case, we may ask whether there are particular arguments about justice that were subsequently used in the justification of empire or colonialism. Or, we may seek to trace the conceptual contours of arguments justifying imperialism to their roots in particular philosophical views, debunking their supposed universalism. In the

¹⁹ Hannah Arendt, *The Origins of Totalitarianism* (Cleveland OH, 1958) 296–7.

²⁰ For a more extended discussion, see Duncan Ivison, 'Justice and Imperialism: On the Very Idea of a Universal Standard', in *Law and Politics in British Colonial Thought: Transpositions of Empire*, edited by Shannaugh Dorsett and Ian Hunter (New York, NY, 2010), 31–48.

²¹ This paragraph draws on Ivison, 'Emergent Cosmopolitanism', in *Between Cosmopolitan Ideals and State Sovereignty*, edited by Tinnevelt and Verschraegen.

²² See for example Armitage, *Foundations*, 114–32, 192–93.

second case, we may ask about the very nature of the concept of global justice itself and the values it expresses in relation to other important values. Is the very notion of global justice imperialistic, just because it claims there are universal values applicable to everyone everywhere, whatever their particular ways of life or world-views?

If the task of realising justice is daunting within liberal democratic states it is even more demanding when turning to the global sphere. Here we have to contend with diversity not only between individuals, but also between ‘peoples’, to use Rawls’s phrase. Do peoples have a collective right to determine their own political arrangements free from interference, including the distribution and allocation of various rights and resources within that collective? How should liberals respond to this kind of diversity? How much difference should be tolerated? The clash is potentially not only between different values at stake—say, between the value of collective self-determination versus a global conception of justice—but also different ways of conceiving of the scope of justice. Justice is either linked closely to obligations of reciprocity that hold in light of shared practices between citizens, or is conceived as applying independently of any shared practices whatsoever.

The point is not simply a philosophical one. If you believe that there are universal standards that apply to all individuals (and groups) whether or not they are linked through shared membership or practices, then you must be committed to seeing those principles or standards realised in some way. If a society is unable to provide for the most urgent needs of its members, for example, then there may be various redistributive consequences both within and between states. A universal standard may also provide a threshold or warrant for judgements about the permissibility of intervention or interference in one society as opposed to another. This is frequently the way we are asked to think about human rights norms, for example.

Thus one imperial dimension to considerations of justice might enter here: it comes with the very idea of a universal or cosmopolitan standard, whether that standard is understood in terms of basic human rights or as a global egalitarian redistribution of resources. Is it possible to hold all societies to a common standard that is thick enough to protect important human interests, and yet not grounded in a particular set of cultural values that would mean essentially imposing one way of life on another? Or put another way, do suitably ‘thin’ conceptions of cosmopolitanism motivated by compassion for the vulnerable actually end up leaving thick asymmetries of power, inequality and wealth intact, given either their abstraction from power, or their inability to penetrate it?

A crucial question here returns us to where we began: Does the debunking of supposedly universal political forms—such as Kant’s republican constitutional state system, or the idea of a philosophical history having ‘cosmopolitan intent’—invalidate the very idea of global justice itself? It is one thing to say that a *particular* constitutional form is or is not universal; it is another to deny there are any universals whatsoever. Every argument has its origins in some particular cultural form, but does that mean there are no claims or values that can be vindicated across cultures? What would the structure of a conception of global justice be that took history and plurality seriously?

5. Historical injustice and cosmopolitanism

As I mentioned above, if we are concerned to give injustice its due then we should be concerned to understand the relation between power and justice as best we can. Therefore, in the case of non-state actors (such as indigenous peoples) it is important to pay attention to the

extent to which both domestic and global structures of justification are often deeply shaped by assumptions about the relation between claims of justice and the role of the state.

Thomas Nagel, for example, has distinguished between a ‘political’ and ‘cosmopolitan’ approach to global justice. The ‘political’ approach suggests that states give

the value of justice its application, by putting the fellow citizens of a sovereign state into a relation 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.²³

What I want to draw attention to here is the suggestion of justice being an institution- or practice-dependent concept. Perhaps a better way of making sense of this idea is to say that principles of justice hold only among individuals who stand in certain ‘practice-mediated’ relations with each other.²⁴

A practice-independent approach to thinking about the nature of justice would be one in which the contingent, practice-mediated relations in which we find ourselves do not affect or change the justifying reasons and premises underpinning the content and scope of justice. The intuition that justice should be grounded on the premise that we should seek to mitigate the effects of brute bad luck—or people’s ‘circumstances’ (as opposed to their choices)—on their life prospects is practice-independent in this sense. The appeal is to moral value alone. The institutions and practices to which they are meant to apply play no role in the content, scope and justification of the principles.

Practice-dependent theorists, on the other hand, think that our living under certain institutions (whatever their origins), or our sharing specific kinds of practice-mediated relations, does have bearing on our thinking about justice. It creates the context in which questions around the standing of the participants and the distributions of power and opportunity between them come to matter. A practice-dependent theorist is committed, therefore, to saying that a conception of justice rests at least as much on an interpretation of actually existing practices and institutional systems as it does on common values: the content, scope and justification of the conception will be determined, in part, by the role it is meant to play given those institutions and practices, including the history and impact of those institutions in particular circumstances.²⁵ While this approach might entail principles of justice with less than global scope, it would not be limited to *only* such principles: justice must surely track those practices and relations that implicate individuals and groups in structures of cooperation and domination (or what Forst has called positive and negative rule), which will entail taking into consideration both local and transnational relations of cooperation and domination.²⁶

²³ Thomas Nagel, ‘The Problem of Global Justice’, *Philosophy and Public Affairs*, 33 (2005), 113–47 (120).

²⁴ This idea is present, albeit in different ways, in: Amartya Sen, *The Idea of Justice* (Cambridge, MA, 2009); Bernard Williams, *In the Beginning was the Deed* (Princeton, NJ, 2005). I try to apply a similar framework to the concept of rights in Ivison, *Rights*. For an excellent recent discussion to which I am indebted, see Ronzoni, ‘The Global Order’.

²⁵ See Sen, *The Idea of Justice*; Andrea Sangiovanni, ‘Justice and the Priority of Politics to Morality’, *The Journal of Political Philosophy*, 16 (2008), 137–64; Ivison, *Rights*, chapter 1.

²⁶ This claim deserves more elaboration than I can provide here. A familiar critique of the practice-dependent approach is that it seems to entail that where there are no shared practices or institutions, the obligations of justice do not apply. This would seem to rule out the possibility of any kind of substantive conception of global justice, or render its validity dependent on highly contestable empirical claims. My view is that there are global practices that raise problems of both distributional and relational justice.

This is an important point in relation to the way in which historical injustices continue to structure contemporary institutions (both domestic and international)—what, borrowing a phrase from Jeff Spinner-Halev, we might call ‘enduring injustice’.²⁷ Enduring injustices shape the structures of justification linked to democratic legitimation. In particular, enduring injustices can entail that citizens of a particular state continue to experience forms of domination and oppression even when the state is said to be generally legitimate. For some groups, as a result, it can only ever be partially legitimate. In this scenario, rights protection seems to come apart from the realisation of justice. To put it another way: Rawls argued that we do not have an obligation to submit to unjust institutions—to institutions that ‘exceed the limits of tolerable injustice’.²⁸ But how do we ascertain just where to draw the line beyond which injustice becomes intolerable?²⁹

The worry, to put it crudely, is the risk of the justificatory scheme itself becoming dominating in various ways. Of course, any particular institutional manifestation of a justificatory scheme can be said to be recursively subject to the very demand of justification itself, as Rainer Forst has insisted in his important work.³⁰ But this seems a slightly too easy separation between theory and practice, at least from the perspective of the agent for whom the institutional manifestation can come to suffuse everything to do with the principle being justified. The danger is that the claim that all those subject to a norm or rule must be offered justifications they can accept (or not reasonably reject) begins to sound hollow if you are part of a conversation to which you are constantly invited to participate, but in which you struggle to be heard.

6. Conclusion

Where does this leave the prospects for cosmopolitan political theory in light of the historical and conceptual issues raised above? The difference between cosmopolitan and non-cosmopolitan global justice is often taken to hinge on differing interpretations of the role, legitimacy and normative distinctiveness of the state. There is a risk, however, that if cosmopolitanism is taken to be the inverse of a focus on states and peoples, it can end up (perhaps unwittingly) reifying a standard against which any alternative way of conceptualising normative orders—including global ones—is always compared. The choice becomes to project forward to a world without states, or one in which they are ever-present; between utopianism or realism and ‘non-ideal’ theory. But this seems a false choice and risks leaving uncontested the very conceptual frame within which we grasp the problem of legitimacy and global justice in the first place. Considering the case of indigenous peoples in the context of the history of the emergence of our domestic and global political orders helps us see this.

One thing the case of indigenous peoples makes clear is that we need multiple modes of political membership in order to realise the goods of citizenship.³¹ Indigenous peoples have sought to negotiate the terms of their membership within the states in which they currently reside, and yet also secure international standing as ‘peoples’—and at the same time re-theorise what a ‘people’ refers to. They are territorially rooted and yet also non-

²⁷ Jeffrey Spinner-Halev, *Enduring Injustice* (Cambridge, 2012).

²⁸ Rawls, *A Theory of Justice*, 112.

²⁹ Tommie Shelby, ‘Justice, Deviance and the Dark Ghetto’, *Philosophy and Public Affairs*, 35 (2007), 126–60 (145).

³⁰ Forst, *The Right to Justification*.

³¹ See Melissa Williams, ‘Nonterritorial Boundaries of Citizenship’, in *Identities, Affiliations, and Allegiances*, edited by Seyla Benhabib and Ian Shapiro (Cambridge, forthcoming).

statist in orientation, just insofar as they see the protection and promotion of their fundamental interests in various forms of shared jurisdiction and overlapping political membership across and within borders. Of course, their experience of existing in between national and transnational citizenship has more often than not been one of frustration and disadvantage, as opposed to liberation. And their push for recognition of overlapping political membership is still viewed sceptically, and often resentfully, by many of their fellow citizens.³² But today, and in light of the history of their engagement with states, they are claiming conceptual space between nationalism and cosmopolitanism, at times transcending but still anchored in particular communities. We need a more complex theoretical field within which to understand conceptual relations between the local and global. The dichotomy between cosmopolitanism and anti-cosmopolitanism is increasingly unhelpful, both theoretically and politically. Understanding the history of our concepts helps us see why.

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³² I have explored this issue at greater length in Duncan Ivison, 'Multiculturalism and Resentment', in *Political Theory and Australian Multiculturalism*, edited by Geoffrey B. Levey (New York, NY, 2008), 129–48.