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# THE GLOBAL SCOPE OF JUSTICE

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**ABSTRACT:** In this paper, I examine the question of the scope of justice, in a not unusual distributive, egalitarian, and universalistic framework. Part I outlines some central features of the egalitarian theory of justice I am proposing. According to such a conception, justice is – at least prima facie – immediately universal, and therefore global. It does not morally recognize any judicial boundaries or limits. Part II examines whether, even from a universalistic perspective, there are moral or pragmatic grounds for rejecting or limiting the global scope of justice. In particular, I scrutinize five universalistic objections: (1) the principle of "moral division of labor"; (2) the connection between cooperation and distributive justice; (3) the primacy of democracy; (4) the dangers of a world state; and (5) political-pragmatic reasons. I intend to show that these objections cannot undermine the strong normative claims of global justice. At the most, political-pragmatic reasons speak in favor of initially striving for somewhat less, in order to receive more general backing.

Keywords: international justice, distributive justice, equality, egalitarianism, universalism, democracy, subsidiarity, federalism.

What is the scope of justice? Is justice global, universal, boundless? Or are there reasons of any sort, conceptual, normative, or pragmatic, to conceive of justice locally – to rather start at home, in a community or state-society and therefore require less from foreigners than from our fellow citizens? In order to find an answer to such questions, I will start in Part I by outlining what I see as a relatively plausible, and not uncommon, egalitarian conception of justice. According to this conception, justice is – at least prima facie – immediately universal, and therefore global. It does not morally recognize any judicial boundaries or limits. For many individuals, such a conclusion appears to be counterintuitive. In Part II, I will thus need to examine the question of whether there are moral and/or pragmatic grounds for rejecting or limiting the universal egalitarian conception of justice. This paper is part of an ideal normative theory, since it is concerned with the abstract, philosophical, normative question of whether and why there might be a global dimension to justice. My conclusion that there is such a dimension will consequently lead to many normative-pragmatic questions belonging to nonideal theory, especially how best to construct and establish global (or

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international) institutions securing global justice. Regrettably, these questions cannot be further pursued in these pages.

## I. An Egalitarian Conception of Justice

1. Given that we conceive of ourselves as moral persons, we owe justice to each other. We can best define the meaning of the unified, ahistorical concept of justice through recourse to Simonides' explanation of the concept as discussed in the first book of Plato's *Republic* and captured by Ulpian in the formula *suum cuique:* an action is just when it offers each individual his or her due. All justice thus appears related to that which is suitable or due.[1] This definition is entirely formal, since the decisive question of what is due to whom remains open.[2] The formula, that is, the general concept of justice, contains a number of variables that need to be specified in order to arrive at specific notions of justice. In this way the concept of justice determines the problem for which the different conceptions of justice offer answers (Korsgaard 1996, 114). This first general definition of justice as suitability can be further specified through additional classical definitions, above all through a set of criteria that can be briefly summed up as follows: impartiality; the form of claim-rights laid by others; the specification of changeability and responsibility.

a. For justice, the criterion of impartiality is essential. On a first level, impartiality means the nonpartial application of a given norm. In contrast, on a second level, impartiality is demanded for the rules or norms themselves, in the sense of a ban on those based purely on subjective, egoistic factors. What is demanded, then, is an impartial justification or justifiability of the norms in question. The idea of impartiality is presented with its best model through the test of the "veil of ignorance."

b. At present, that which is adequately suitable to another person is understood to be that to which the other person has an individual moral claim or moral right: an idea sparked at the latest through the modern advent of natural law theory. What is primarily at stake in questions of justice is the adequate fulfillment of individual claims by different persons (Hinsch forthcoming, a). This additional defining trait of justice means the consideration

[1] One of the oldest definitions of justice is found in Plato (1998, 331e, 332b-c), paraphrasing the poet Simonides. The original reads as follows: the just is *to proshekon hekasto apodidonai*; Ulpian (1822, 10) renders this into the formula *iustitia est constans et perpetua voluntas ius suum cuique tribuendi*. Its brief form is: *suum cuique tribuere*. In recent years, this general definition has been taken up above all by Vlastos (1984, 60) and Tugendhat (1993, 367; 1997, 58–68).

[2] Notoriously, the formula "Jedem das Seine" ("to each his due") hangs cynically on the interior side of the entry gate to the Buchenwald concentration camp. But this fact merely underscores the formula being so general and vacuous that all and sundry political movements can make it their own.

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of the rightful claims of others. Being just means satisfying claims that have the form of a subjective right in the sense of Hohfeld (1923): A has a right (or claim) against B that B do X precisely when B has a corresponding duty to A to do X.

c. The predicates "just" or "unjust" are only applicable when voluntary actions implying responsibility are in question. To be sure, prima facie, we could gain the impression that the basic conceptual opposition, fundamental for the adequate application of the concept of justice, is the opposition between fate on the one side and injustice with a human source on the other. But the basic distinction is not causal – whether human beings are or are not responsible for an event. The most general demarcating line does not run between man-made and non-man-made misfortune, but between an injustice for which human correction and intervention is possible and sheer misfortune, or fate, in which case it is not (Shklar 1990; Rössler 1999; Temkin 1986, n. 2). One condition for the adequate application of the concept of justice is, thus, the presence of agents who are effectively in a position to alter institutional structures, practices, and actions corresponding to the principles of justice. Justice requires changeability and responsibility.

d. Justice is, hence, primarily related to individual actions. Individual persons are the primary bearer of responsibilities (ethical individualism). We are, first, all addressees of claims of justice, both individually and collectively, throughout the world. We are all primarily required to respect such claim-rights and to act accordingly. But establishing justice by oneself (ubiquitously and simultaneously) is beyond the individual's capacities. Personal moral responsibility is correspondingly small. Nonetheless, all individuals together have collective moral responsibility. In order to meet this responsibility, a basic order must be justly created. This is an essential argument of moral theory, or of justice, for the establishment of state institutions and fundamental state structures for political communities; with the help of such institutions and structures, the individuals can collectively fulfill this responsibility in the best possible manner.

From this vantage, institutions are only just in a derivative sense. The mainstream of current political philosophy regards institutions, especially the basic structure of societies, as the primary subject of justice. In the first sentence of the first section of *A Theory of Justice* Rawls (1971, 3) writes that "justice is the first virtue of social institutions."[3] But if the argument is

[3] For Rawls it is crucial that "The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately" (1971, 54–55). A contrary monistic view to this dualistic view, but with the same universalistic and egalitarian spirit as Rawls (although utilitarian), is defended by Murphy (1998).

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correct that only individuals have claim-rights in their status as moral persons, justice can only derivatively apply to institutions, insofar as institutions help persons to realize their duty of justice. Any limitations of principles of justice to institutions or even states would contradict our ethical individualism.[4]

The introduction of law on the basis of justice is connected with this. Institutions (which must be justly created) are governed in modern complex societies by means of positive law. Through the implementation of moral rights as legal rights within a state, an additional important component emerges that is conceptually tied to the concept of a legal right: Having a legal right always means having an effectively enforceable entitlement to the protection of this right.[5] It is only on the state level that claim-rights become enforceable (Shue 1980, 13). This does not mean that they can never be factually violated, but mechanisms are in place ensuring to a reasonable degree that persons enjoy their rights.[6] Political communities structured by the rule of law[7] are hence the *political* addressees of justice (Pogge 1995). Claim-rights derived out of justice are directed at such states under the rule of law not merely for historically contingent reasons, but rather because moral persons are obligated to create and preserve central guarantees that can transform human rights from abstract moral claims into concrete, guaranteed legal entitlements. According to the best of our knowledge thus far, state-based rule of law is best suited to this task. The requirement of justice to collectively create and support just institutions that can, as effectively as possible, protect basic rights through the rule of law creates our natural duty to support and further the laws and institutions of a just state order.[8]

e. Last, but not least, justice requires various principles of equality. Besides the Aristotelian principles of formal equality – "treat like cases as like" – and proportional equality, justice today requires what is often called fundamental or basic equality. We all accept and recognize a universalistic and egalitarian morality of equal respect. According to this conception of

[4] I do not intend to imply that Rawls has this limitation in mind. He rather seems to see justice regarding personal actions, the basic structure of a society, and global justice as three distinct subjects of justice (Rawls 1999).

[5] One generally speaks of "basic rights" only when human rights have been concretely localized in constitutional law or in the law of peoples. Civil liberties are then basic rights to which solely citizens of the particular state, and not foreigners, have a claim.

[6] What constitutes a reasonable degree of security is, in any particular case, primarily an empirical question. If guarantees are conceptually tied to the structure of a right, these can only be guarantees against standard threats, and not against all possible threats (Shue 1980, 29–34).

[7] This argument is neutral with respect to the scope, the sort of internal structure, and the historical, ethnic, religious, and communal situatedness of political communities structured according to the rule of law. This allows, as a borderline case, a single world state.

[8] This corresponds to what Rawls calls the "natural duty of justice" (1971, 114–17, 333–37). Cf. Waldron 1993 and Klosko 1994.

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morality, each person is to be treated as an equal and autonomous person from an impartial standpoint. People have a moral right to be treated with equal concern and respect (Dworkin 1977, 179–83).[9] The object of equal mutual respect is the autonomy of each and every person.[10]

This fundamental idea of equal respect for all persons and of the equal worth of all human beings is accepted as a minimal standard by all leading schools of modern Western political and moral culture. Any political theory making a claim to plausibility must begin with this notion of equality and cannot abandon it. In the postmetaphysical age, after metaphysical, religious, and traditional views have lost their general plausibility, it appears impossible to reach a general agreement on common political aims peacefully without recognizing the demand that persons be treated as equals.

The fundamental egalitarian principle supports and expands the material condition of impartiality,[11] according to which equal weight and equal consideration must be granted to each person. A Kantian argument for a principle of reciprocal justification results from this. Since it is immoral to force someone to do something of which he or she does not approve, only reasons acceptable to the other person can give one the moral right to treat the person in accord with these reasons. The impartial justification of norms rests on the reciprocity and universality of the reasons. Universal norms and rights enforced through inner or external sanctions are morally justified only if they, on the one hand, can be reciprocally justified – that is, one person asks no more of the other than he or she is willing to give (reciprocity) – and, on the other, if they are justified with respect to the interests of all concerned parties – that is, everyone has good reasons for accepting them and no one has a good reason for rejecting them (universality) (Forst 1994, 68).[12] In the end, only the concerned parties can themselves formulate and advocate their (true) interests. Equal respect, which we owe to one another, thus requires respect for the autonomous decisions of each noninterchangeable individual (Wingert 1993, 90–96). This procedural approach to moral legitimation sees the autonomy of the individual as the standard of justification for universal rules, norms, rights, and so

[9] Another even more vague formulation often found in legal constitutions is that of the equal moral worth of all persons (Vlastos 1984).

[10] Dworkin neglects the importance of autonomy (Gosepath 1995). Autonomy is meant here not as a narrow (moral) concept, in the way it continues to be used in the Kantian tradition (e.g., by Habermas), but rather as a broad concept of personal autonomy in the sense of general personal self-determination concerning the way in which one wants to lead one's life.

[11] That is more than the purely formal impartiality already contained in the concept of justice, that is, the impartial application of a given rule and the requirement of a purely objective justification of a rule, since the condition to whom an objective justification is owed is now specified.

[12] Other current versions of "contractualism" are Rawls 1971, §4; Habermas 1983; and Scanlon 1998, esp. chap. 5.

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forth. Only those rules can be considered legitimate to which all concerned parties can freely agree on the basis of universal, discursively applicable, commonly shared reasons. Equal consideration is, thus, accorded to all persons and their interests.

A certain kind of equal treatment can be derived from equal respect together with the principle of universal and reciprocal justification. Regardless of differences, everyone should be treated equally unless certain types of differences are relevant and justify, through universally acceptable reasons, unequal treatment or unequal distribution. Applied to the domain of political justice, this result represents a principle of prima facie equal distribution for all distributable goods. A strict principle of equal distribution is not required, but it is morally necessary to justify impartially any unequal distribution. The burden of proof lies on the side of the unequal distributor. This presumption in favor of equality is the only principle that can be used to arrive at concrete, substantial results.[13] It follows from the justification requirement belonging to the morality of equal respect. This conception of morality is egalitarian, for it contains the claim of each individual to equal consideration in every justification and distribution. Every sort of public, political distribution is, in this view, in the first order to be justified to all relevantly concerned persons, such that they could in principle agree. If all individuals have an interest in the goods to be distributed, then the satisfaction of the preferences of each individual carries prima facie equal weight, since each person is of equal worth. Anyone who claims more owes all others an appropriate universal and reciprocal justification. If this cannot be provided, that is, if there is no reason for unequal distribution that can be recognized by all, then equal distribution is the only legitimate distribution. How could it be otherwise? Any unequal distribution would mean that someone receives less, and another more. Whoever receives less can justifiably demand a reason for his or her being disadvantaged. Yet there is, *ex hypothesi*, no such justification. Hence, any unequal distribution is illegitimate in this case. If no convincing reasons for unequal distribution can be brought forward, there remains only the option of equal distribution. Equal distribution is, therefore, not merely one among many alternatives, but rather the inevitable starting point that must be assumed insofar as one takes the justificatory claims of all to be of equal weight.

We must determine the political-moral rights we have by means of the justification principle and the prima facie equal distribution principle. The starting point for the determination of the content of political morality is the idea of (distributive) justice in its entire scope. *Moral* claim = rights

[13] With different terms and arguments, the principle of justice is most strongly conceived as a conception of symmetry by Tugendhat (1993, 374; 1997, chap. 3); as a relevant-reasons approach by Williams (1973); as a presumption by Bedau (1967, 19); as a default option by Hinsch (forthcoming, b, chap. 5). For criticism of the presumption of equality, cf. Westen (1990, chap. 10).

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arise out of the demands of justice, for humans are mutually obligated to establish just conditions and to distribute goods and burdens justly.

2. The presumption of equality provides an elegant procedure for the construction of a theory of distributive justice. The following questions would really have to be answered in order to arrive at a substantially full principle of justice.

- What goods and burdens are to be distributed (or should be distributed)? Which social goods comprise the object of distributive justice?
- What are the spheres (of justice) into which these resources have to be grouped?
- Who are the recipients of distribution? Who has a prima facie claim to a fair share?
- What are the commonly cited, yet in reality unjustified, exceptions to equal distribution?
- Which inequalities are justified?
- Which approach, conception, or theory of egalitarian distributive justice is, therefore, the best?

I cannot here deal thoroughly with these questions, but I would like to make at least a few short remarks regarding the relevant considerations for answering them. In any event, for the question that is in the focus of interest here, namely, "What is the scope of justice?" only the first two questions are of relevance.

Which goods and burdens should be distributed (Sen 1980 and 1992, chap. 1)? The goods to be distributed are often determined through a kind of contractualism that appeals to reciprocity and mutual use.[14] In this view, distributive justice applies only to those goods commonly produced, that is, produced through social and economic fair cooperation. The objects of distribution are the fruits of cooperation, to which everyone has a prima facie equal claim because everyone has participated in the production of these goods. This says nothing about other goods, for example, natural resources, which are not the result of common cooperation. This restriction to common cooperation is not particularly convincing.[15] It seems more plausible to consider, as goods to be distributed, all the desired goods and undesired burdens and all the advantages and disadvantages of human society that we control or are able to distribute. If particular goods are to be excluded, this must be universally justified by those who demand the exclusion. The question here regards the original (just) distribution of goods that are in some manner communal and have not yet been distrib-

[14] At present, this is most apparent in Rawls (1971), and many of his adherents and critics follow Rawls in this respect. Cf., for example, Koller (1994).

[15] Cf. Nelson (1974, esp. 425ff.) on the question of whether rights to appropriate consideration in distribution are not in fact special rights which arise out of social cooperation.

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uted, hence belong to no one, so that everyone has a basically equal claim to them (and correspondingly for burdens). (This brackets out previous claims to possession, as well as questions of just exchange and trade.) One could make the same point in a slightly different way, one that might be more realistic and realizable: All present ownership has to be justified. That requirement follows from the justification principle. If the owner of a good cannot give a universal and reciprocal justification for his or her claim of ownership that no concerned party can reasonably reject, then the good has to be redistributed. This allows for previous rights to possession as well as rights developed out of just exchange and trade. But these and other possible justifications have to be made against a background of a justified initial "appropriation" of the goods and resources in question. Thus, the chain of justifications might become quite long, reaching far back into the past.

Can the group of the entitled be restricted prior to the examination of concrete claims? Many theories seem to imply this when they connect distributive justice or the goods to be distributed with social cooperation or production. For those who contribute nothing to cooperation, such as the disabled, children, or future generations, would have to be denied a claim to a fair share. The circle of persons who are to be the recipients of distribution would thus be restricted from the outset. Other theories are less restrictive, insofar as they do not link distribution to actual coproduction, yet, nonetheless, do restrict it, insofar as they bind it to the status of citizenship. In this view, distributive justice is limited to the individuals within a society. Those outside the community have no entitlements. Unequal distribution among states and the social situations of people outside the particular society could not, in this view, be a problem of social distributive justice. Yet here too, the universal morality of equal respect and the principle of equal distribution demand that we consider each person as prima facie equally entitled to the goods, unless reasons for an unequal distribution can be put forth. It may be that in the process of justification, reasons will emerge for privileging those who were particularly involved in the production of a good (see below). But, prima facie, there is no reason to exclude from the outset other persons, for example, those from other countries, from the process of distribution and justification. That may seem most intuitively plausible in the case of natural resources, such as mineral resources, that someone discovers by chance on or beneath the surface of his property. Why should they belong to the person who discovers them, or on whose property they are located?

The goods and burdens to be distributed must be divided into various categories. Such a division is essential because reasons that speak for unequal treatment in one area do not justify unequal treatment in another. In order to reconstruct our understanding of contemporary liberal democratic welfare states, four categories seem essential: (1) civil liberties, (2) opportunities for political participation, (3) social positions and opportuni-

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ties, and (4) economic rewards. For all four categories, distributive justice is the guiding aspect, the results of which can then be codified as rights.

After dividing social goods into categories, we must next ask what can justify unequal treatment or unequal distribution in each category. This approach results from the principle of equal treatment. The philosophical point of departure is a counterfactual, original distribution of common goods that have not yet been distributed and hence belong to no one, so that everyone has in principle an equal claim upon them. The following kinds of reasons must be taken seriously as candidates for justified unequal treatment in certain categories: (1) differing natural disadvantages (e.g., disabilities); (2) existing rights or claims (e.g., private property); (3) differences in the performance of special services (e.g., efforts or sacrifices for the sake of the community); (4) incentives (as in Rawls's difference principle); and (5) compensation for indirect or structural discrimination (e.g., affirmative action).

I cannot here discuss in detail the justification of these kinds of claims. I am not attempting here to provide a complete treatment of a theory of distributive justice based on the principle of prima facie equal treatment. The basic idea of the argument for social justice can be briefly described as follows: unequal shares of goods are fair when they are the result of labor and when they accrue to a person deservedly, that is, when they result from the decisions and deliberate actions of the respective agents. Such privileging or disadvantaging is, however, unfair when based on arbitrary and unmerited differences in social circumstances and natural gifts. Rawls's chief intuition rests on the distinction between choice and circumstances (Rawls 1971, § 12). Dworkin formulates this distributive criterion as follows: a just distribution must be both endowment-insensitive and ambition-sensitive (Dworkin 1981, 311). The natural and social endowment must not count, but the personal ambitions, intentions, and voluntary decisions of individual persons should. The individuals must, therefore, bear the costs of their decisions. This conception also tries to keep in mind the consideration that goods cannot simply be distributed, but that the production of the goods must first of all be supported and must secondly be justly ordered. The problem is not merely the prima facie right to the same share of goods, but also the right and, if necessary, the duty to make the elementary desired goods available.

The moral claim to a just portion of social goods and burdens worldwide – I claim – forms the principle for generating subjective moral or human rights that must be morally respected. The principle of prima facie equal distribution is thus, as a rule for the just distribution of social goods, a *generating principle of rights*.[16] One should conceive this principle of rights as the substantive guideline and source of justification for rights in

[16] This is intended in the way Kant understands his account of the sole human right as a principle of human rights.

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general. Human rights are moral claims or demands of justice to something which must not be withheld from any human being. For the various categories of social goods, this principle should be able to give rise to more specific and precise rights. Moral claim-rights contain, in addition, the moral demand that these claim-rights be institutionalized and thereby protected legally. The human rights generated qua principle of justice must, therefore, be positivized in a further step as basic rights.

3. The particular conception of justice I have outlined so far is certainly a disputed theory. But for the question at hand, not so much depends on whether one agrees with this very conception of justice. Rather, what is important is that it belongs to a family of conceptions of justice seeming very plausible to the current mainstream in social, political, and moral philosophy. This family shares three central features: It is distributive, egalitarian, and universalistic. According to the first feature, it is assumed that justice has (among other things) to do with the justifiable reallocation or redistribution of goods and resources necessary for each individual to have his or her due (the distributional premise). According to the second feature, it is assumed that (at least) all human beings have an equal moral entitlement to equal respect and concern (the fundamental egalitarian premise). And the third feature is the premise that to be considered part of our modern morality at all, any norm of justice has to be justified with respect to the interests of all concerned parties – that is, all justifiable claims of (at least) all human beings have to be considered (the universalistic premise).

All theories that share these features have to conceive justice as global – or so I claim. I have argued in my 1998 against alternative, more limited conceptions of justice, such as the view that only freedom and the satisfaction of basic needs are to be protected as basic moral or human rights. I attempted to show that these views (must) always make use of the idea of distributive justice defined by the three mentioned features. If it is thus granted that these theories have to be considered members of the family of distributive, egalitarian, and universalistic conceptions of justice, their proponents – so I argue further – do not succeed in solidly grounding their respective restrictions on the scope of justice.

Distributive justice is applied in the context of social relations, in which various persons (for whatever reasons) have a common claim to certain goods or must together bear certain burdens. Insofar as these social relations are those of all human beings by virtue of their "membership" in the community of men, the appropriate burdens and goods must be distributed justly within the international community. On this view, these are demands of justice, which prima facie apply to all humans. The moral duties and claims emerging from distributive justice are, therefore, prima facie valid globally. According to the justification principle, all rules, actions, and relations or conditions for which responsibility can be imputed must be justified to *all* relevantly affected parties.

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## II. Possible Reasons for the Theoretical Limitation of Justice

Such a view has its definite advantages. By developing universalistic conceptions of justice, philosophy came up with a theory of global justice that was, and still is, running ahead of its time, since it corresponds to a process of globalization and diminishment of national-state power of which people are only now becoming aware. Philosophy is here not even too late. Minerva's owl must this time wait for daybreak, here not needing to start its flight only at night. Justice can no longer be conceived in terms of the nation-state when nation-states are increasingly losing their original power to supranational actors – when supranational political alliances such as the European Union and the North Atlantic Treaty Organization, and internationally operating corporations with enormous amounts of private money, are much bigger, stronger, and more flexible than many states could be. We seem to be moving towards a new, postnational constellation (Habermas 1998). For this challenge of globalization, a conception of global instead of national justice seems the most, if not the only, appropriate contemporary answer.

But, of course, it cannot be denied that such a universalistic theory has its disadvantages and problems. In the eyes of many, if not most people, global justice demands too much from individuals and their states.[17] The charge is one of excessive demands being made. If all human beings worldwide indeed had prima facie equal claim-rights to justice, this would require enormous redistribution from wealthy societies and their members to those living in poverty anywhere in the world. This may not correspond to the considered judgements of citizens throughout the world. Hence, on account of its radical consequences, global theory does not appear acceptable – this in relation to both its spatial and substantive dimensions. Apparently, too much is here being distributed to too many. These are the intuitive sources of strong objections to equating social justice with a prima facie requirement to secure justice globally. The requirement of global justice is exposed, in particular, to the objection that it cannot account for our intuition or our understanding of global (human) rights, according to which these rights comprise only particularly fundamental, especially important rights, but not the whole of justice. What are the reasons put forth for the more restrictive conception of universal justice held by many, according to which human rights can contain only a concept of minimal justice?

The charge of excessive demand remains, however, abstract and somewhat empty, as long as the opponents of global justice cannot specify other moral principles more compatible with our considered judgements.

[17] For a nuanced critique cf., for example, Miller (1998), who criticizes the doctrine of moral cosmopolitanism as too demanding because of the content of the moral principles adopted and the scope of the doctrine. Miller opposes his views to those of Barry (1998), who holds a theory similar to, yet distinct from, mine.

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What are the possible principles or theoretical constructs, with the help of which these opponents of global justice can argue that the scope of justice has to be limited? A lot of the familiar objections and rival theories emerge from outside the distributive, egalitarian, and universalistic field, for example, libertarian, communitarian, and other views. They surely all require special consideration and refutations. Here, however, I will only be concerned with the question of whether there are plausible objections to the requirement of global justice solely on the basis of a distributive, egalitarian, and universalistic view of justice. For in the "universalist camp" as well, a general tendency can also be observed to give more weight to the claims of a state's members than to outsiders.

In the present discussion, we can discern five universalistic objections, above all, to a generalization of redistribution claims so unrestricted as to transcend state boundaries. These objections invoke (1) the principle of "moral division of labor"; (2) the connection between cooperation and distributive justice; (3) the primacy of democracy; (4) the dangers of a world state; and (5) political-pragmatic factors. I would now like to briefly sketch and scrutinize each of the objections.

1. There are universalistic theorists who maintain the position that a state's special consideration of its residents can be justified in the framework of a "moral division of labor." Moral division of labor is possible in many different forms. As far as the principles of its shaping are concerned, however, one can generally differentiate between two fundamental models: the model of efficient duty assignment, and the model of relation-dependent responsibilities.

The *model of efficient duty assignment* is based upon the assumption that all people have the same mutual rights and obligations independent of their special relations; but that some of these rights, especially the more demanding ones, can be effectively fulfilled only through cooperation based on the division of labor – rather than through independent individual activities (Goodin 1988, 678ff.; Koller 1998, 104–9). In order to make these rights effective, an appropriate distribution of duties is required, in which certain persons or institutions are appointed to be in charge of fulfilling the respective rights of specific persons. The way in which this distribution of duties is to be arranged is simply a question of pure expedience. It should always be arranged in such a way that the moral claims of all persons can be fulfilled as well as possible. This can be clarified through the example by Schlothfeldt (1999) of how parents accept certain obligations vis-à-vis their children and, if occasion arises, may – and ought – to treat them preferentially vis-à-vis other persons. It does not have to be maintained that one's own children are to be given special consideration as a matter of principle. For a moral division of labor, it suffices that the duty to provide emotional and material sustenance is carried out especially well by parents.

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The model of the moral division of labor as an efficient assignment of duty has its merits. The model, however, is inadequate as a basis for arguing against the global scope of justice, for it simply takes the sum of moral rights and obligations between people for granted and only deals with how the duties may be assigned to the individuals on the level of efficiency. It presupposes an independent criterion of global or local justice; and this presupposed criterion would need to carry the argument's burden, not the moral division of labor.

In contrast, the *model of relation-dependent responsibilities* only refers to the special social relationships between persons in order to differentiate their respective mutual rights and obligations, according to the degree of those relationships. Correspondingly, the closer persons are bound together by a relationship of mutual cooperation and dependence, the stronger their mutual responsibilities. Such a relationship exists if at least one of the following, ideally coinciding, conditions is met: first, a subjective awareness by the participants that they form a common enterprise of mutually advantageous cooperation or reciprocity, and second, the objective fact that the activities of the respective persons have actual effects on the lives of one another. The closer the interconnectedness of people, the stronger the moral responsibilities between them.

This model may explain better than the first model why the responsibilities between members of a family are stronger than those between the citizens of a state, and why these citizens may have more obligations to one another than do members of different societies. It thus offers the right basis for mounting an argument against the global scope of justice. Taken on its own, however, the model of relation-dependent responsibilities is not convincing. The model can easily be interpreted as reifying social relationships and adhering to normative communitarianism instead of maintaining normative individualism. It postulates the existing features of relationships between people as a given, without taking into consideration their appropriateness. But these features are contingent, and therefore it could be the case that other features would better accord with the demands of justice by and for various individuals. If moral obligations between persons depended only on their actual relationships, there would never be a reason to question these relationships from a moral point of view and, if necessary, reform them. That point of view and the circumstances of justice are not bound to existing personal relations; and they are normally not grasped that way in the considered judgement of most people.

Both models, however, have a common weakness. If the example of family duties is a good one for a moral division of labor, it only shows that the moral division of labor holds only as long as the party to which the duties are assigned can effectively guarantee their fulfillment. Otherwise other institutions have to step in. A federalistic system is required to secure the necessary help if the duty assignment turns out to be inefficient. An unqualified moral division of labor would be too risky and would place

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certain parties under possible unfair disadvantages they have not themselves chosen freely. The idea of a moral division of labor speaks instead in favor of a federalistic system of global justice (see more below).

2. Some philosophers argue that problems of distributive justice only emerge in the framework of *cooperation relationships:* as long as persons and groups do not function within conditions of institutionalized, mutually beneficial social cooperation, there can be no justified claims of one party upon the earned assets of another. But as already partially argued above, this limitation is implausible on a number of grounds. It represents only a special case of distributive justice. The idea of such justice is not tied to an institutional framework of mutually supportive cooperation.[18]

First, the just distribution of nonproduced resources needs to be discussed. Second, there are claims on collectively produced goods that appear legitimated, not on the basis of cooperative accomplishment, but on that of needs; that is, even in a cooperative community, cooperative justice is not equal to the totality of justice. Alongside justice within a cooperative community, we find what might be termed the justice of solidarity (Kersting 2000, 22–26). Both possibilities are especially important precisely in the case of global distributive justice.

Third, according to the view under discussion, material entitlements can only be grounded as claims to the results of mutually supportive cooperation. Yet it is a matter of controversy whether current global relations represent such mutually supportive cooperation. One could maintain that the current global scheme is one of social cooperation analogous to that present in domestic states (Pogge 1988; Beitz 1999, 143ff.). Thus the conditions for the application of principles of justice, so conceived, would be at work on the international level. This view is, however, disputed. Its opponents claim that neither on the political, cultural, social, nor legal level is there enough cooperation on a worldwide scale for conditions of cooperative justice to be understood as present. The existing forms of cooperation are too weak and dispersed to justify the global application of principles of cooperative justice (Nelson 1974, 425ff.; Kersting 1996, 197ff.; Chwaszcza 1996, 173). This claim overlooks the common effects new realities now have on us: We internationally share the effects of war and peace, especially the threat of nuclear disaster. We also experience the globalizing effects of instantaneous worldwide communication. With its help, a process of worldwide financial and economic cooperation and

[18] Nevertheless, a possible weakening of the claims to global redistribution emerges from considering the fact that in general, human beings do not work alone but in cooperation with others. For only the cooperative partners are entitled to the gains from mutual cooperation when two conditions are fulfilled: first, that all worldwide claims based on objective, physical – and possibly social – need are satisfied through the securing of minimum economic claims, and second, that the not implausible but still debatable premise is accepted that better situations are at least partially earned and thus justified.

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information exchange is in the course of being established. We should also not underestimate the tendency towards a global moral consciousness, or at least a sense of injustice, as seen for instance in the social pressures and worldwide protests of an informed global citizenry regarding issues of human rights. The establishment of international law and international governmental and nongovernmental organizations has enormous effects on the realization of global justice. The dispute about the adequate factual description of current international relations does not, however, matter so much from a philosophical vantage. What really does matter, when it comes to the conditions in which justice is called for, are the so-called "circumstances of justice" (Hume 1978, Book III, pt. 2, sec. 2; Hubin 1979; Rawls 1971, §22): it is called for whenever scarcity of resources is manifest. These conditions are universally given, since most of the desired goods are scarce, human beings having a general tendency to possess and develop ungratified and conflicting interests – a situation they cannot alleviate on their own. The conditions are thus, in any case, present universally at a global level. For this reason, and the other reasons mentioned above, the restriction of the scope of justice to functioning, institutionalized, mutually beneficial forms of social cooperation should be rejected.

3. As I take it, in our reflective judgements, "we" modern democrats all accept two political ideals (among others): on the one hand, universal moral claims of all human beings, worldwide, that must be respected by all other human beings and by social institutions; on the other hand, the conviction that democracy, as government by the people for the people, is the best form of government. There seems, however, to be a conflict between these two ideas. In politics today, we basically find two ways of dealing with this conflict: the "liberal" view defends the priority of justice and human rights against the "democratic-republican" view, which emphasizes the priority of popular sovereignty. For the liberal view (classically Locke [1980], today Rawls [1971]) liberal basic rights have priority over democratic participation. The "democratic-republican" view (classically Rousseau [1987], today Habermas [1992], most radically Rorty [1991]) claims the priority of public self-government of the citizens. Human rights should receive their legitimation as a result of the sovereign self-determination of the political community. According to this view, basic rights will be justified only as a function or a constitutive part of the democratic right to participation and discourse.

People often see global justice in deep conflict with other moral values, in particular democracy or self-government as the leading normative idea of collective organizations. They argue that the main or even sole natural human right is freedom. The basic legitimation for moral and/or legal norms comes, therefore, from the idea of and primary right to self-government. The historically most important argument for democracy is usually derived from the principle of self-government: It seems clear that, in the end, only

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the directly affected parties can formulate and advocate their (true or reasonable) interests. Equal respect, which we owe one another reciprocally, thus requires regard for the autonomous decisions of each unique and noninterchangeable individual. This procedural approach to moral legitimization regards the *autonomy* of the individual as the standard of justification for universal norms. Since we are morally obliged to respect one another's autonomy, such a conception of morality necessarily entails a personal right to reflective self-determination or self-government for each autonomous individual. This is the principle of equal individual freedom. Thus, people must not be coerced or forced under any regulation or government unless they can freely agree to it. *Consensus* is the criterion of legitimacy for collective decisions. If there is a consensus about an issue, for example, on institutional constraints or regarding a framework of rules, then each party will affirm this agreement freely for himself or herself, thus following the rule of "one will." In this way, each party will govern himself or herself. From these premises of autonomy and consensus, we can conclude that to be self-governing in the political realm entails participation in democratic discussions and enables decision making under certain conditions. As Joshua Cohen has put it: "Outcomes are democratically legitimate if they could be the outcome of a free and reasoned agreement among equals" (Cohen 1989, 22). If that argument is valid,[19] democracy has a moral grounding at least on par with, if not higher than, requirements of justice. We could thus confront a potential conflict between global justice requiring that certain actions be taken in certain areas and the outcomes of democratic decision-making procedures of a society governing the area in question.[20] The democratic decisions of a society or state might not, and often do not, conform to what we think the requirements of global justice are. Which side, then, has priority in case of conflict?

I would like to argue for the thesis that only a morally motivated priority of justice over democracy is plausible. If we search for a common moral basis for political ideals, the distinction between the two conceptions can be reformulated thus: The "democratic-republican" conception attempts to derive the primacy of processes of political self-legislation, and of the democratic legitimation of laws meant to guarantee justice, from the moral criterion of a general principle of justification and consensus. In

[19] The main difficulty with this schematic argument should, however, be clear: its strong dependence on the possibility of consensus. Constructed this way, the argument neglects the crucial phenomenon of disagreement or dissent. This is no accident. There is, in fact, considerable tension in this theory between the idea that an individual must be free to autonomously govern the world he shares in common with others and the claim that he must also afford this same freedom to every other citizen. Democracy, thus, would seem to be incompatible with *individual* self-government.

[20] The fact that international institutions are very often coercively imposed, especially by the rich on the poor, constitutes a distinct problem of international justice (Pogge 1998, 504–9; Pogge 2001).

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contrast, the "liberal" conception interprets morality "constructively" as a canon of basic principles of justice and human rights that need to be the substantive basis for any legitimate legislation. In my view, only the "liberal" of these alternatives is plausible. Self-government, public autonomy that is, is itself a requirement of justice. Basic or human rights derived from global justice are morally justified, and as such they limit the realm of democratic decision making. They impose morally justified constraints on the sovereignty of the people. Positive law must be morally legitimate, that is, the justified claims of individuals to equal respect must not be violated. All legal compulsion must therefore be reciprocally and universally justifiable and capable of being adhered to through reasonable insight alone. A state-structured community has a just basic order only when it is principally concerned with the establishment of just conditions. In this sense, the establishment of human rights as the moral core of legal rights must be an essential aim of the state. Yet this does not imply that all legal validity becomes purely moral validity. Moral arguments are necessary only for the justification of basic human rights, that is, for the abstract moral core, which must then be legally concretized and institutionalized (Forst 1994, 79). These fundamental human rights especially make their way into modern constitutions in the form of basic rights. Human rights comprise the framework that marks off the playing field for possible legitimate democratic decisions. Within this normative framework, it may be up to democratic processes both to carry out the necessary legal interpretation and concretization of human rights and to institutionalize and govern a political order in accordance with pragmatic, ethical, and moral reasons (above and beyond human rights). Moral rights remain "unsaturated" until they are codified and interpreted.[21] Human rights deliberately leave significant leeway open in the choice of a constitution or of economic or social rules.[22] Laws and programs are just in the sense of human rights if they remain within the acceptable framework and if they take on legal force through legislation in accordance with a just constitution. Political rule is thus normatively limited by the basic rights anchored in the constitution, and these are in turn limited by the moral human rights.

Both for pragmatic reasons and with a view to the theory of democracy, it makes sense to stipulate as basic constitutional rights securing global justice only particular, especially fundamental human rights. In this manner, the rights we do not wish simply to leave to the democratic decision-making procedures of particular states are singled out as especially worthy of protection. They include, first, those rights without whose guarantee the utilization of other rights is impossible. They include, second,

[21] Cf. Wellmer (1998) on the problem of determining the boundary between basic rights, which are morally fixed and more or less unalterable, and the interpretations we may stipulate through democratic processes.

[22] Hence, the moral and the political levels of justification overlap one another, yet only partially; they are not fully congruent (Forst 1998, 151).

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and above all, those rights crucial to securing the core content of the morality of equal respect, that is, fundamental to the status of a person with equal rights. Thus, negative liberties, political participatory rights, and social rights to positive actions can be derived from this principle as legal claims to a particular distribution of specific goods; they can be thus derived through a demonstration that these very goods are especially central for the utilization of other rights. Yet the human rights derived from the universal principle of rights are, in essence, abstract. The necessary positivization and detailed concretization as basic rights in state constitutions must be reserved for the democratic procedures at work in specific historical and social situations, which are in turn safeguarded by means of human rights. The human rights making their way into constitutions as basic rights deliberately leave open a significant spectrum for the determination of specific rights. Thus, the affected parties can themselves, as morally autonomous individuals, determine how the moral claim = rights claims are to be understood in their specific historical circumstances.

4. In its basic tendency, global justice seems to lead – as Kant (1968) was afraid it would – towards a world state or – if that possibility can somehow be excluded – at least towards a kind of cosmopolitanism. This implication is seen, even by many universalists, as politically and morally dangerous. Prima facie, a great deal seems to speak for the danger of a super-state – a world-governing leviathan that cannot be stopped or constrained by other potentially equally powerful states. In addition, we value more local governments for good reason – and therefore a federalistic structure of larger nation-states and supranational, state-like organizations.

To answer this challenge, defenders of global justice distinguish between our *moral* requirement to treat every fellow human being worldwide with equal concern and respect and the *legal* requirement following from the moral requirement (Pogge 1992, 49; Beitz 1994; Beitz 1999, 199). The latter does not necessarily imply any legal cosmopolitanism, that is, a single overarching global political authority. Thus, it does not imply the demand for a world state. On the contrary, the demands of justice and moral rights can perhaps be realized in different states. Global justice is compatible with a system of dispersed political sovereignty. Moral claims and rights do not stop at borders, but are globally valid for all humans. But institutions people have to establish and support through fulfilling duties of justice might be organized locally, pluralistically; and for that purpose they might have borders that have no moral, but merely derivative significance. But it is necessary that such institutions themselves are just, that is, adhere to basic global principles of justly institutionalized organizations (Pogge 1992). By allowing for a federalistic community of institutionalized societies (it is not always necessary that these be ordinary states as we know them), global justice tries to account for what Rawls calls the "fact of pluralism." Global justice in a federalistic world structure can allow for a plurality and diver-

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sity of cultures, traditions, and comprehensive doctrines compatible with the universalistic egalitarian principles of justice. Thus, this objection, although not valid as stated, gives rise to a proposal of a supplementation and modification of the idea of global justice.

Connected with this is another objection to a legal cosmopolitanism that I rather take to be another supplementation. According to this "objection," "global" justice should be interpreted as the continuation of justice in a multistep model. That is, the primary focus of justice should be local institutions, and only those issues that cannot be regulated successfully on the local level should be dealt with on the next higher level, and so on up to the highest and most global level, that is, the world at large. This multistep model will, accordingly, not only restrict global justice to those issues with which smaller communities cannot cope, but also restrict global justice to structural measures and structural cooperation. Subsidiarity only demands cooperation between the smaller communities, to secure international justice for the sake of regulating relations between states in a fair way, thus guaranteeing justice for issues with which states cannot adequately cope. As something useless and harmful, the transferal of the legal model suitable for the state to the world community is thereby clearly rejected. On the one hand, this argument is based on the other argument, already partially refuted, that global states are dangerous. But on the other hand, it is based on the moral idea of *subsidiarity* (Føllesdal 1998; Höffe 1999, 126–34). Corresponding to ethical individualism, with justification having its starting point with the individual, this view holds that the individual remains primarily responsible for effectuating his or her responsibility. The individual must accomplish whatever can be accomplished on his or her own, and must not leave this to the wider society. The individual thus has both the duty of and right to self-help and self-responsibility. Correspondingly, this principle can be transferred to the level of societal hierarchy. Whatever the smaller, lower unit can accomplish, it must accomplish on its own. It can only hand things that overwhelm its capacities to higher units.

This fits well with the above mentioned principles of democracy and federalism. No centralized world state should be erected from above; but rather, a federal world organization or similar entity needs to be built up democratically from below, starting with local units. Only tasks not taken care of on a lower level remain to that organization. It complements the local federal institutional organizations where they need complementing, without dissolving them. All tasks, also those concerning justice, should remain on the lowest possible level, for example, those of civil and penal law.[23] That, however, will leave enough to do for institutions on a global level. But to be just, the principle of subsidiarity requires – and this should not be overlooked – an initial fair, global distribution of resources. To

[23] If decisions are placed with subunits in a polity with subunit autonomy, some inequalities may arise for some individuals living in different subunits (Føllesdal 2001). The inequalities are justified only if they benefit those subunits in the worst condition. The trade-

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demand self-help from those who unfairly have less than others, but are still able to help themselves, seems itself unfair. For this reason, the developmental help offered by the "first world" to the "third world" for the sake of self-help tries to correspond to a proper moral criterion, without in any way realizing the fair background conditions necessary for it.

5. As indicated, there are additional, political-pragmatic factors, and these are certainly good ones that any advocate of the cosmopolitan perspective should take seriously. I will mention only a few such factors, although the list can readily be extended.

For a start, how, precisely, responsibilities are to be distributed remains a crucial question. The moral rules meant to guide human actions must also reach those meant to be guided by them. An exclusively individualistic conception – according to this argument – here copes inadequately with the problem of international justice, because it does not address the collective and institutional agents who, in the real, existing world, actually make the important, influential decisions about what should be done.[24] But although the point is well taken, it remains true that theorizing exclusively in terms of collective bodies does not manifest the ground-level concern for the autonomy of individuals comprising a basic normative requirement in most ethical theories today.

At the same time, the expansion of justice is in inverse proportion to the remaining chances of realizing it. The more one packs into global justice and the human rights derived from it, the less one will achieve. One cannot currently attain the same emotional support from all persons for the whole of justice that a more restrictive conception of justice or human rights might indeed promise. Yet from the purely pragmatic argument, it only follows that one should not demand everything at once, but rather proceed in steps. The application of global justice must, perhaps, in reality amount to political compromise for the sake of attaining the desirable global acceptance. Nonetheless, such a compromise requires orientation around an ideal. And such a normative ideal is provided by the principle of distributive justice applied universally – a principle not devalued by political-pragmatic compromises.

These and similar objections cannot, in my view, undermine the strong normative approach of global justice.[25] To the extent that a global society

off that matters here, from the normative perspective, is the one between what these subunit poor stand to gain in terms of political autonomy, and what they sacrifice economically, under subunit autonomy compared to under a unitary political order.

[24] The importance of this argument is one major theme in O'Neill (1986, esp. 32–35), and is seen by Wenar (2001) as one real advantage to Rawls's (1999) rejection of cosmopolitanism, in that in addressing people it is addressing agents who have crucial roles in the world as it is.

[25] However, this would surely have to be more thoroughly examined and discussed than it is here.

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currently exists, and to the extent that it has possibilities at its disposal, that is, to the extent it has control over and hence responsibility for social relations, all distributions of goods and burdens must be justified in the face of all interested parties. From the perspective of a distributive, egalitarian, and universalistic approach, it is not clear why the justified moral claim to a just portion of worldwide social goods should not be set down as global claim-rights.

Still we are left with the large problem of a lack of acceptance. Of what use can a conception of justice be if it is not accepted and supported by most of our fellow human beings? Here many questions would appear to require answers: Is, for instance, the nonacceptance of principles of global justice really based on considered judgements? If yes, is there any solution or future prospect for setting a theory of justice and the considered judgement of all human beings into equilibrium on a worldwide basis?[26] Which side has to be changed, the theory or the basic intuitions? If no, it should be possible to demonstrate that cosmopolitan theories can accommodate the most solid convictions regarding matters of justice on a worldwide basis. Thus, even in the realm of abstract, ideal theory, much still needs resolution, not to speak of the many yet unclarified questions in the realm of nonideal theory.

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[26] This might be the reason why Rawls (1999) balks at cosmopolitanism, as argued by Wenar (2001). Rawls's fundamental norm requires that the principles for coercive global institutions must emerge from ideas that are reasonably acceptable to all who are to be coerced by them. As Rawls (1993, 36–40) indicates in the case of one, particular society, the only conceptual source for grounding social institutions is the *public political culture*, understood as the political institutions of the regime and the public traditions of their interpretation, as well as the historic texts and documents that have become part of common knowledge. But are there such shared basic ideas in the global public political culture at all? If yes, do these ideas support cosmopolitanism? Rawls appears to decline cosmopolitanism because it does not correspond to the principles and implicit, basal ideas that can be framed by the public culture of international agreements.

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