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GLOBAL DISTRIBUTIVE JUSTICE

WILFRIED HINSCH

ABSTRACT: The paper discusses the problem of global distributive justice. It proposes to distinguish between principles for the domestic and for the global or intersocietal distribution of wealth. It is argued that there may be a plurality of partly diverging domestic conceptions of distributive justice, not all of which need to be liberal egalitarian conceptions. It is maintained, however, that principles regulating the intersocietal distribution of wealth have to be egalitarian principles. This claim is defended against Rawls's argument in *The Law of Peoples* that egalitarian principles of distributive justice should not be applied globally. Moreover, it is explained in detail, why Rawls's "duty of assistance to burdened societies" cannot be an appropriate substitute for a global principle of distributive justice.

Keywords: distributive justice, Difference Principle, natural duty, duty of assistance, principle of mutual aid, collective responsibility, moral desert, moral federalism, distributive statism, distributive cosmopolitanism.

Global justice is an intricate subject. At this point, it is by no means clear to me that it allows for straightforward solutions. In any case, I shall not make definite proposals regarding the specific content of principles of global justice. Rather, I will confine myself to some general considerations about the construction of a liberal conception of global distributive justice. More specifically, I will focus on the intersocietal distribution of income and wealth. The Difference Principle will be used to illustrate what a reasonable egalitarian conception of justice in this realm might look like.

I. Moral Federalism

There are two opposed views as to the appropriate domain of principles of distributive justice. On the first view, distributive justice is an exclusively domestic idea, regulating social and economic inequalities within states or societies.¹ Global justice is realized as a conjunction of internally just

¹ I shall use "state," "state-like organized people," and "society" interchangeably to refer to a politically independent state with a government of its own. "Society" with a capital letter refers to the global community of state-like organized peoples and its common institutions and principles.

states that cooperate on the basis of a conception of international justice which includes principles of nonaggression or fidelity to contract and perhaps also a duty of mutual aid, but no principles of distributive justice. John Rawls develops a view of this kind in his *The Law of Peoples* (1999a, henceforth LP).

On the second view, principles of distributive justice apply irrespective of national borders directly and primarily to the global community of world citizens at large, the aim being that each citizen receives his or her due share of global wealth as determined by a global conception of justice. It is admitted, though, that as a matter of practical politics regional or national governments may be instrumental in bringing about a distributively just international order. I take Charles Beitz (1979), Thomas Pogge (1989), and Brian Barry (1999), among others, to hold cosmopolitan views of this kind.

Distributive statism and distributive cosmopolitanism implicitly share one basic assumption. It is the idea that at the elementary level of identifying first principles of distributive justice, there can be only one basic domain of application, which, then, is taken to be either the state or the world community. Thus, there seems to be an alternative to both views: a model with a two-tier structure that comprises principles of both domestic and global – or rather intersocietal – distributive justice. In such a model the principles regulating the domestic and the global distribution of wealth, respectively, need not be the same. Moreover, a two-tier structure might allow for a plurality of partly diverging domestic conceptions of justice (not all of which need to be liberal conceptions), provided only that there is a single and unified set of principles regulating intersocietal cooperation. We may dub this idea of global justice *moral federalism*: a plurality of widely independent states internally organized by at least partly diverging conceptions of justice (some of which may be liberal, some of which may not) cooperating on the basis of a common conception of global justice.

I do not want to elaborate on moral federalism in this paper. My aim is to defend a version of intersocietal egalitarianism against objections Rawls has put forth in LP. Nevertheless, I should like to say a little more about the idea because it provides the background of my argument.

Perhaps the three most important reasons for *political federalism* – for having a plurality of more or less independent states rather than a global world state – are (1) the need to protect against the threat of a tyrannical world government, (2) the exigencies of an efficient provision of local public goods, and (3) the commonsense insight that a piece of land or, indeed, any good or resource, is better taken care of if it is assigned as property (with exclusive or almost exclusive control of its use) to a person or a group of persons rather than to the entirety of mankind. These are, indeed, strong if not overriding reasons for a federal structure of the international order in which state-like organized peoples have sufficient resources and sufficient political independence to be a safeguard of the

liberty, security, and well-being of their citizens. Note, however, that these reasons are fully compatible with distributive cosmopolitanism. At least in principle, one can easily imagine an international order of more or less independent states united by contracts and mutual agreements, regulated by principles of global distributive justice that apply directly to the global community of world citizens rather than to states or state-like organized peoples. Political federalism and moral federalism are not the same, and compelling reasons for the first are not by themselves also compelling reasons for the second (cf. Barry 1999).

From a liberal point of view, the main reason for moral federalism is the idea of individual autonomy taken together with the fact of reasonable pluralism. Liberal conceptions of justice assert a fundamental interest of persons to live in accordance with principles that are acceptable in the light of their most deeply held normative commitments. We may call this *positive autonomy*: being able to live as one wants to live (leaving aside for the moment the necessary qualifications as to the rationality and reasonableness of one's ambitions and commitments). Corresponding to the fundamental interest in positive autonomy, liberal theories also assert a *prima facie* claim of persons not to have norms imposed on them which, upon due reflection, turn out to be unacceptable in the light of their normative conceptions of what is right and what is good. We may call this *negative autonomy*: not to be forced to live in ways contrary to one's more important ambitions and moral or religious commitments (leaving qualifications aside again). Positive autonomy and negative autonomy are not two different things but rather two sides of the same idea of autonomy, which yields the contractualist requirement of (at least hypothetical) reasoned consent for principles of justice (and, indeed, all morally binding norms).

Now, to acknowledge the fact of reasonable pluralism means to recognize that a plurality of diverging conceptions of the good and the right – religious and nonreligious, liberal and nonliberal – may all meet elementary minimum requirements of rationality, practicability, and impartiality. In the contractualist process of identifying first principles of justice for a pluralistic society (be it a domestic society or the global Society of Peoples), these conceptions have to be taken seriously: first, as a source of ideas and principles that eventually may find general approval and, second, as a possible basis for reasonable objections against proposed principles of justice. If a proposed principle proves to be unacceptable in the light of one or more of these sufficiently reasonable conceptions, the principle has to be rejected as a morally binding norm of universal application – or at any rate, this is what we say in ideal theory. This is a consequence of the liberal idea of negative autonomy.

The liberal idea of autonomy and the contractualist requirement of reasoned consent introduce an asymmetry in the process of identifying principles of justice, which comes out starkly in the face of reasonable pluralism. In order to be adopted as a valid principle in a social context

(global or domestic) characterized by a profound cultural, religious, and moral pluralism, a principle needs the support of all reasonable conceptions of the good and the right that are involved. In order for a principle to be rejected, on the other hand, one reasonable objection of sufficient weight on the basis of a single moral or religious conception may suffice. Again, this is a consequence of the idea of negative autonomy.

As a rule of thumb, we may say that the more diverse and heterogeneous are the moral and religious doctrines with their own conceptions of the good and the right that a society encompasses, the more difficult will it be to identify principles that are at the same time collectively acceptable and sufficiently specific to have practical meaning. This is not to deny that even in the case of a group as diverse and heterogeneous as the global community of peoples, there are principles of individual liberty, well-being, and tolerance that cannot be reasonably rejected. We assume that moral or religious doctrines have to meet elementary requirements of rationality and impartiality, and, moreover, that they have to acknowledge the fact of reasonable pluralism, in order to provide an appropriate basis for the assessment of principles of justice. Hence, there seems to be at least some common ground given by the constraints of what can be regarded as reasonable criticism and rejection of a proposed principle. Autonomy and reasonable pluralism taken together are by no means incompatible with the assertion of universal basic human rights. They may, however, be incompatible with the idea, cherished by many liberals, that all reasonable conceptions of *domestic* justice have to be comprehensively liberal in the sense of securing the same set of basic rights and liberties that are protected by the constitutions of Western constitutional democracies.

Leaving this aside for the moment, it seems clear that given the globally prevailing cultural, religious, and moral pluralism, principles of international justice have to be fairly sparse and minimalist to be globally consistent with negative autonomy. There is a trade-off, then, between securing the values of negative autonomy and realizing the values of positive autonomy at the same time. The more people with reasonable but incompatible conceptions of the good and the right that are involved, the less able each group of like-minded persons will be to have political and social institutions regulated by principles that fully express their peculiar normative commitments. Vice versa, the more any particular group will be able to express itself in the institutions of a society, the less other groups with contrary commitments will find their negative autonomy adequately protected.

Liberal theorists tend to focus on the value of negative autonomy in solving political conflicts arising from this trade-off, and they do so for good reasons. Most of the time, not being able to constrain others in ways congenial to one's own moral outlook is a lesser evil than being constrained by others in unwanted ways. Still, the value of negative autonomy derives from the value of positive autonomy – why else should we

care about not imposing norms on individuals that are contrary to their well-considered normative commitments? – and liberals should care about it. And one way of doing this is to embrace the idea of moral federalism.

In a situation of profound moral and religious pluralism, the universal realization of the values of positive and of negative autonomy becomes a problem of local public good provision. We do not need to entertain communitarian fantasies of culturally and normatively perfectly homogeneous political societies in order to realize that in political units smaller than the global community it will be easier to find a reasoned consensus on more specific principles of justice² (and also on other principles) than on a global scale. This will be even more likely if we take these units to be historically evolved state-like organized peoples with a political history and common local traditions shared by all, or almost all, of their members. As a consequence, a system of state-like organized peoples internally regulated by domestic conceptions of justice of their own would be able to realize locally a degree of positive autonomy (without infringing on the negative autonomy of other peoples) that no system with only global principles of justice could possibly achieve. From a liberal point of view, this seems to be a strong reason for embracing moral federalism as a model of global justice.³ Now, let us turn to the more specific problems of distributive justice concerning the appropriate distribution of global wealth.

II. The Pull toward Global Distributive Equality

In the broad Rawlsian sense, income and wealth are all-purpose means that have instrumental value for individuals irrespective of their more comprehensive conceptions of life in all sorts of social environments. Wherever we look, the distribution of income within societies and the distribution of wealth among societies seem to be sources of public controversy and political conflict. This suggests that the reasoning in favor of moral federalism and tolerance toward views that are not comprehensively liberal – a reasoning outlined in the last section – may not apply with equal force and generality in the field of distributive justice. To be sure, we can hardly expect nonliberal societies to endorse egalitarian liberal principles (e.g., the Difference Principle) as guidelines of domestic social justice. The justifications given for egalitarian principles typically hinge upon the

² The phrase “more specific principles” in this context is taken comparatively to refer to principles that impose more constraints on individual freedom of choice than others.

³ Keep in mind that the pluralism of domestic conceptions of justice is to be conceived of as a constrained pluralism. It is assumed that all conceptions involved satisfy certain general criteria of domestic justice (e.g., a guarantee of basic human rights) and that they are not incompatible with principles of global justice that regulate intersocietal cooperation. Of course, the general requirements of justice applying to all domestic societies can be worked out along different lines. Rawls’s conception of decency (LP 64ff.) may be interpreted in this way even though Rawls himself clearly distinguishes between decency and justice. He also would not admit that a decent but nonliberal society could be fully just (LP 83f.).

assumption that all members of society have as equal citizens *prima facie* equal claims to share the fruits of social cooperation. Needless to say, this assumption seems unacceptable from many nonliberal points of view. Given reasonable pluralism and the principle of autonomy, a liberal conception of global justice has to allow for a plurality of mutually incompatible principles of domestic social justice.

Things look different, however, when we turn to distributive justice not within societies, but among societies conceived of as participants in a system with an international division of labor. Intersocietal cooperation on the basis of mutually acceptable rules is cooperation among state-like organized peoples that invariably claim to be recognized as equals. In the light of each people's vital interests in its independence, security, and territorial integrity, and given the importance to a people and its citizens of being respected by other peoples on a basis of fair equality, it would simply be unreasonable to expect the representatives of any people to accept voluntarily a less-than-equal status in a league of nations. On the basis of their shared comprehensive doctrines, perhaps, the members of nonliberal societies may hold different views as regards the nature of domestic social cooperation. In particular, they may see it for religious or other reasons as, at least in some respect, a form of cooperation among unequals. Thus, they may accord a less-than-equal status to women in the sphere of political decision making, as is the case in many Islamic countries. Yet in the absence of any globally shared nonegalitarian comprehensive doctrine like Islam, no people can reasonably expect other peoples who are willing to cooperate fairly to accept anything but an equal status in the envisaged scheme of intersocietal cooperation. Therefore, when the terms of global cooperation are specified, the interests and claims of the peoples involved have to be given equal weight and consideration whenever their capacity for self-determined political decision making, their security and territorial integrity, and, more generally, the fundamental well-being of their citizens are affected.⁴

Given this much, it may, indeed, seem hard not to end up with a conception of global distributive justice that is, at least in spirit, egalitarian. A little imagination suffices to see how a familiar set of liberal arguments supporting egalitarian principles would come to do its work once the basic assumption has been established that the actors in a global community of political societies – that is, state-like organized peoples – stand in a relation of basic equality and have equal claims and rights. Given economic cooperation among societies sufficiently dense to raise questions of distributive justice, all peoples involved, in virtue of their equal standing as participants in a system of international production and exchange, *prima facie* have equal

⁴ In *The Law of Peoples* Rawls stresses the importance to a people of being recognized by other peoples as an equal partner in international cooperation (34f., 37, 40f., 60ff., 69f., 122).

claims to share the fruits of their joint cooperative efforts. This establishes a presumption in favor of equality: in the absence of special reasons to accept an unequal distribution, global wealth has to be distributed equally among all peoples involved in the scheme of international cooperation.⁵ Inequalities of social wealth, then, turn out to be in need of justification – globally not less than domestically – which must be given in terms of reasons that all parties can be reasonably expected to accept. Paradigmatically, they are either desert-type reasons of superior productivity or prudential reasons of mutual advantage, but we also have, as we shall see later, to take into account differential claims of need. In any case, we must avoid allowing factors that are arbitrary from a moral point of view to influence the distribution of wealth among societies. Since a good many of the existing inequalities of wealth among societies are neither mutually advantageous nor the result of meritorious superior productivity, the presumption in favor of equality will lead us to an egalitarian redistribution of much existing global wealth. We could even strengthen this line of argument by taking up Rawls's radical critique of desert-based claims for more than an equal share of income or wealth, found in his *A Theory of Justice* (Rawls 1999b [henceforth TJ], 88f., 273–277). If there are no valid claims of desert to be taken into account (leaving differential claims of need aside for the moment), only mutual advantage seems capable of justifying economic inequalities. And this, in turn, will lead us straightaway to the Difference Principle (cf. Hinsch forthcoming, Chap. 9).

Of course, the preceding paragraph does not show that an adequate conception of intersocietal distributive justice has to be an egalitarian conception. Indeed, it is not meant to provide a sustained argument. Rather, it sketches a line of reasoning that could be worked out in various ways, for instance (if you still believe in decision-theoretical models), in setting up a global “original position” with representatives of peoples as symmetrically situated parties to a global social contract. Still, I hope that the preceding paragraph helped to explain why liberals should find it difficult to get around an egalitarian conception of global distributive justice.

I take it, then, that a just global order will be a Society of Peoples organized in different state-like political societies. Internally these societies will be regulated by different principles of domestic political and social justice, some of which are egalitarian and some of which are nonegalitarian. Externally, however, there would be a place for a global application of

⁵ This is not to say that all liberal theories proceed on the basis of this presumption or that all liberal theorists, implicitly or explicitly, endorse it. Thomas Scanlon (1996), for one, is clearly skeptical about a merely formal notion of equal consideration: “taken by itself it is too abstract to exercise much force in the direction of substantive equality” (1). Moreover, in his view the claim that participants in a cooperative scheme have equal claims to the fruits of cooperation is too controversial to take it “as the starting point of a particular conception of justice” (9). Still, he acknowledges that the presumption plays a major role in egalitarian theories and analyzes with some care its place in Rawls's conception of justice as fairness (cf. 7–9).

the Difference Principle. As a condition of international background justice, it could regulate the global distribution of wealth among societies. In this case a just global distribution of wealth would maximize the wealth of the economically least privileged society in the global Society.⁶ Constructed in this way, a global difference principle would operate analogously to a domestic principle of background justice. In the case of domestic justice, the Difference Principle regulates the distribution of social wealth by political institutions, but it does not extend to all distributive decisions of particular groups, communities, and organizations (churches, universities, families) within the political society (cf. Rawls 1978, sect. 2, 48–50).

III. Distributive Justice or Mutual Aid

Rawls famously denies that the Difference Principle, which he endorses as a principle of domestic liberal justice, should be applied on a global scale. In *The Law of Peoples* he replaces it by a nonegalitarian principle of mutual aid. In his view, well-ordered societies have a duty to assist burdened societies in their attempt to become well ordered, but he denies that they are also required to transfer wealth to less advantaged societies in order to satisfy egalitarian principles of distributive justice, the demands of which go beyond what is necessary to a global society of internally well ordered societies (LP 106).

A burdened society is a society that is not effectively regulated by a public conception of justice (be it liberal or nonliberal), because of a lack of resources (traditions, institutions, human capital, technology) that could in some way or other be compensated by the efforts of more resourceful and already well ordered societies. That there is such a duty of assistance, though certainly not obvious, is not a claim that should cause much controversy. A sufficient degree of well-orderedness is a prerequisite of justice. And since we owe justice to each other regardless of national affiliations and existing institutional ties, we must be under some kind of duty to contribute to the well-orderedness not only of our own society, but also of other societies. Moreover, in the light of what I have said in Section 1 about the implications of reasonable pluralism, we may expect the duty of assistance to hold good not only for burdened societies drawn to liberal well-orderedness, but to all

⁶ There is the question of how to identify the least-privileged people, which I shall not pursue. It could be done in various ways, for example, by means of an index of aggregate or average social wealth or by comparing the various indices of the wealth of the least-privileged groups in all domestic societies involved. The latter seems to be more in line with the Rawlsian spirit of the Difference Principle – that is, to judge collective economic achievements always from the point of view of the least privileged. We have to keep in mind, however, that not all societies will accept the Difference Principle as a standard of domestic justice, and that they may also reject a focus on the economic prospects of least-privileged groups in making international comparisons of wealth.

decent societies with an allegiance to nonliberal but reasonable conceptions of the good and the right.

The principle of mutual aid would then seem to be something analogous to a “natural duty” in the sense in which Rawls uses this term in *A Theory of Justice* (97–99). More specifically, the principle may be seen as an extension and further specification of the natural duty of individuals “to support and to further just institutions” (TJ 293).⁷ Unlike obligations, natural duties apply regardless of the voluntary actions of individuals and irrespective of institutional ties between them. Unlike institutional principles (such as the Difference Principle), they regulate the actions of individuals rather than the workings of collective agents and institutions. To be sure, literally speaking, the duty of assistance to burdened societies cannot be a “natural duty” in the Rawlsian sense. The term “natural” in connection with rights or duties suggests among other things that the norms in question apply directly to natural individuals in virtue of their being *moral persons*, that is, human beings that have some natural properties in common (e.g., certain cognitive and motivational capacities and dispositions). And sure enough, institutionally structured collective agents like societies, states, or peoples are not the kind of entities that share natural properties with human beings. Still, there are two features of the intersocietal principle of mutual aid that suggest that it may be analyzed along the lines of the concept of natural duty. First, though peoples are institutionally organized collective agents, from the viewpoint of international cooperation within the global community they may be seen – and as a matter of international law they are seen – as individual agents with specific rights and duties. At any rate, that is the Rawlsian view (LP 23). The duty of assistance may then be said to apply to the individual agents of international cooperation. Second, following Rawls’s account, the duty of assistance to burdened societies obtains without regard to the existence of cooperative relationships between the peoples involved that is, it obtains even in the absence of an international institutional basic structure.⁸

Besides the conceptual difference between natural duties and distributive principles of background justice, there are other structural dissimilarities between the principle of mutual aid and the Difference Principle which are relevant for the assessment of Rawls’s argument as to why the one, unlike the other, is not a valid principle of global justice – is not part of the Law of Peoples. “Give to those who are in need of help!” and “Give to the least privileged!” in practice often amount to pretty much the same. As a matter of ethical theory, however, it is essential that the two precepts

⁷ Cf. TJ 97–99, 293f., 297f. Alyssa Bernstein interprets Rawls’s principle of mutual aid in this way (cf. Bernstein 2000, 178–82). I find Bernstein’s interpretation suggestive, though it is not without complications. One should also wonder why Rawls himself did not even mention the concept of natural duty when drawing the line between the duty of assistance and the Difference Principle in LP.

⁸ This point will be taken up in section IV below.

are worlds apart. The differences I have in mind are partly reflected in the three guidelines for the fulfillment of the duty of assistance stated in LP (106–12), and Rawls is certainly right in maintaining that to endorse this duty does not yet commit oneself to an egalitarian principle of distributive justice.

First, the duty of assistance is a value-based norm in a way that the Difference Principle is not. The duty of assistance involves a notion of *publicly recognized want* that gives rise to specific claims of need, which are alien to the Difference Principle and its justification. Indeed, the application of this principle presupposes either the absence or the adequate satisfaction of all valid claims of need. A person is in a situation of publicly recognized want if she needs certain goods (food, clothes, shelter, a well-ordered society) to realize a specific value (health, protection, self-respect) that, from a moral point of view, is of high importance and if she is not able to provide these goods for herself. Not to meet the legitimate claims of need of a person is a moral wrong – and a breach of duty – exactly because of the high importance the values in question have for the life of this person. And to acknowledge such a duty in a particular situation means to acknowledge that what is at stake is a value that, from a moral point of view, has high priority and urgency.

Transfers meant to maximize the income or wealth of the least-privileged members of a society (be it of individuals or of peoples), on the other hand, are not morally required to satisfy specific claims of need related to particular substantive values. In an affluent society, the Difference Principle would have us maximize the economic prospects of the least privileged, even though the members of this group may not be in a state of publicly recognized want. Individuals (or groups of individuals) cannot claim these transfers as necessary to realize specific important goods or values. The Difference Principle requires transfers on purely egalitarian grounds. Indeed, as long as there are differential claims of need (some need expensive medical treatment that others can do without), these have to be met before we may properly distribute goods in accordance with the Difference Principle. This principle presupposes equal claims on all sides, and sure enough, those who are in a situation of publicly recognized want have stronger claims than those who are not. What justifies the application of the Difference Principle is the very absence of differential moral claims (like differential claims of need or desert) for more than an equal share of goods, and the underlying idea is that among parties with equal claims, only mutual advantage can publicly justify economic inequalities. Transfers required by the Difference Principle are, then, simply necessary to eliminate inequalities of income or wealth that, if we take equality as a baseline, do not meet the reciprocity criterion of mutual advantage and thus would not be capable of being publicly justified. There is no question of whether or not people need these transfers to realize something that has high importance independently from the reasoning behind the Difference Principle, as in the case of transfers required by the duty of assistance.

Second, the duty of mutual assistance is a threshold norm, whereas the Difference Principle is a maximizing norm, notwithstanding the fact that the conception of publicly recognized want is a partly relational conception. Some goods we need because other members of our group have them, and some of these goods are, from a moral point of view, so important that a person who is not capable of providing herself with them has a valid claim of need on others who could help her. Dress codes illustrate the point in question. You may need a black suit to go to the burial of your great-uncle in order not to offend the other family members and to be regarded by them as a respectable relative.⁹ Now, dress codes are conventional, and part of the reason why a person needs a black suit for a burial is simply that others wear them on such occasions. Being able to keep up with others is important for us as social beings, and for that reason, some inequalities give rise to valid claims of need and impose duties of assistance.

There is, however, still an important difference between eliminating existing inequalities in order to satisfy claims of need, and eliminating them in order to conform with an egalitarian principle of justice like the Difference Principle. In the first case the aim is not to eliminate the existing inequality as such, but only insofar as and to the extent to which its persistence would impose morally unacceptable burdens on somebody. The good to be realized through the help of others is not equality, but something else – in this case, the self-respect of the person who has to attend the burial and does not have the means to buy suitable clothes. Since the value of equality in these cases of need is only instrumental, there is no question of maximizing equality as such. Instead, the degree of equality aimed at is determined by what is necessary to realize the morally relevant background value (in our case, self-respect), and normally, less-than-full equality is necessary to realize this value up to the point beyond which there is no longer any moral claim of need that is to be publicly recognized. Thus, in our example there is a sound claim of need to be decently dressed for the burial, but there is no claim to be dressed exactly as nicely and as expensively as perhaps the other family members are. Hence, even in those cases in which claims of need require the provision of relational goods – like the good of being adequately dressed – in order to realize certain moral values, there is a threshold above which no further equalization is required in order to fulfill our duties of mutual aid.

Even though the Difference Principle likewise does not presuppose that we ascribe intrinsic value to equality as such, it does not operate in such a threshold fashion. As I have already said, the reason why transfers of

⁹ In the commentaries to the German *Sozialhilfegesetz* and in the practice of German courts, black suits are explicitly mentioned as goods that a male person needs to attend a burial of a family member or close friend. A person without the money to buy such a suit on his own is in a publicly recognized situation of want and has a valid claim of need which in Germany gives him a right to social assistance that courts do enforce (cf. Birk et al. 1994, commentary to §21, 266–304).

income and wealth to the least privileged are required is not to enable them to realize specific values like health or self-respect, the realization of which empirically presupposes these transfers. What we are supposed to do is to minimize unjustified inequalities as such, or, more precisely, to minimize those inequalities that cannot be justified either in terms of differential moral claims (of need or desert) or in terms of mutual advantage for all parties involved. In a situation of equal claims on all sides, this turns out to be equivalent to maximizing the economic advantages of the least-privileged (cf. Hinsch forthcoming, Chap. 9).

Third, the claims of need underlying our duty of mutual assistance vary in kind and strength depending on the specific circumstances of those who must rely on our help. Some need clothes, others medical help; some need help very badly or urgently, others not. Given that people in publicly recognized situations of want typically have different needs of varying strength depending on their personal preferences, capacities, and circumstances, claims of need are typically differential claims. Hence, they are potential reasons to justify unequal distributions of goods or resources. The claims presupposed by the argument for the Difference Principle, on the other hand, are equal claims, and they are of a much more abstract character. At the most basic level we start out with equal claims of persons to live in accordance with principles and rules they can reasonably accept in the light of their fundamental interests and well-considered beliefs. As we proceed to the justification of principles of distributive justice, we make the assumption that *prima facie* nobody can reasonably claim more than an equal share of the goods to be distributed. The argument for the Difference Principle, given, for instance, by Rawls, relies on “equality as a baseline” and can do so only on the assumption that there are no longer any differential moral claims of need or desert to be taken into account.¹⁰ As long as there are claims of that kind to be taken into account, they have to be satisfied before we can proceed to distribute goods in accordance with the Difference Principle.

Now, given these structural differences between the duty of assistance and the Difference Principle, and given their clearly distinct ranges of application in terms of the moral claims they are responsive to, the real question is not whether we replace the duty of assistance by the Difference Principle, or, as Rawls does, the Difference Principle by the duty of mutual aid.¹¹ Rather, it is whether our duties of mutual aid cover the whole ground of global distributive justice (claims of desert left aside for the moment), or whether they have to be complemented by a maximizing egalitarian principle like the Difference Principle, the application of which is not confined to publicly recognized situations of want.

¹⁰ A point that has not always been sufficiently appreciated. See, however, Strasnick (1976, 88) and Nozick (1973, 94).

¹¹ In any case, a defense of the Difference Principle presupposes a fairly articulated conception of the adequate satisfaction of differential claims of need, a point Arrow (1973) has stressed early on in his criticism of Rawls’s theory.

IV. Rawls's Objections to a Global Difference Principle

In *The Law of Peoples* Rawls produces various reasons why he believes that the Difference Principle should not be applied on a global level and that it should be replaced by a more restricted and nonegalitarian duty of assistance to burdened societies. There seem to be two main arguments that carry the burden of proof. I call them the realistic-utopia argument and the collective-responsibility argument.

The realistic-utopia argument is nowhere in the book stated explicitly, but it is implicit in what Rawls says about the duty of assistance and affinity (LP §15.5). Global redistribution in conformity with the Difference Principle, the argument says, cannot be part of a realistic utopia, because the moral psychology of normal human beings, as we know it, would not allow development of a sense of international justice strong enough to support a scheme of global redistribution that maximizes the collective wealth of the least-advantaged people. One reason to be skeptical in this regard is the low visibility of international institutions and the diffusion of their impact on the daily life of ordinary citizens. As a consequence, a worldwide sense of fellowship is widely lacking, and emotional ties between distant peoples on the globe are weak. Given this background, it may indeed seem dubious whether an effective and stable sense of international justice could possibly develop. Moreover, from a historical point of view, only the nation-state has yet proven to be capable of effecting large-scale redistribution to mitigate the various burdens of social and economic inequalities for its less privileged citizens on a regular basis – not to speak about far reaching egalitarian programs.

In my view the realistic-utopia argument is sound, and I agree that psychological principles set “limits to what can sensibly be proposed as the content of the Law of Peoples” (LP 112, n. 44). Still, the argument is of limited strength. Our identification with global institutions will become stronger as international cooperation and communication increase, which in turn will gradually strengthen our emotional ties with peoples in other parts of the world – a point Rawls himself stresses in support of his duty of mutual aid: “The relatively narrow circle of mutually caring peoples in the world may expand over time and must never be viewed as fixed” (LP 113). Aiming too short, then, may be as much a mistake as aiming too far. Moreover, to claim that the Difference Principle is an adequate principle of global distributive justice in a philosophical discourse is not the same as to claim, as a matter of practical politics, that we should try to establish it here and now. The latter would be foolish, while the former may be right. I shall not further discuss the realistic-utopia argument, taking it as a serious reminder not to fall victim to romanticism in political practice.¹²

¹² For an early discussion and more elaborated statement of what I have called the realistic-utopia argument, see Charles Beitz (1979, 155–58).

The collective-responsibility argument against global application of the Difference Principle, though not without intuitive plausibility when taken by itself, is in various ways puzzling. It is subject to strong and more or less obvious objections, and it seems plainly inconsistent with many things Rawls said in *A Theory of Justice* and elsewhere about the narrow limits of desert-based arguments in identifying principles of distributive justice.

Rawls develops the argument in order to explain why he does not follow Charles Beitz's approach to international justice (LP §16.2). In a first step, he rejects Beitz's "resource redistribution principle." Relying on David Landes's study *The Wealth and Poverty of Nations* (1998), Rawls argues that since "the crucial element in how a country fares is its political culture – its members' political and civic virtues – and not the level of its resources, the arbitrariness of the distribution of natural resources causes no difficulty" (LP 117). Rawls claims that every people is (independently from the natural riches of its country) in principle capable of realizing a well-ordered society, with the exception, perhaps, of the Arctic Eskimos and other peoples in similar situations (cf. LP 108f. together with n. 34). In the second step of the argument, Rawls rejects Beitz's global principle of distributive justice. Following his argument, in a hypothetical world in which all duties of assistance among societies have been fully satisfied, Beitz's principle would lead to unacceptable results.

To substantiate this claim Rawls produces two examples, both of which involve the notion of a people's collective responsibility for its economic wealth. In both examples we have two well-ordered societies with the same population size that are initially at the same level of wealth. Then, in the two societies, different collective decisions are taken that lead to different levels of wealth in each of them. In the first example, one people decides to industrialize and to increase its rate of real saving, while the other does not ("preferring a more pastoral and leisurely society" [LP 117]). Some decades later, the first people is twice as wealthy as the second. Since we assume that both societies are already well ordered, the duty of mutual assistance does not apply, – that is, no transfer of funds is required to satisfy valid claims of need. Employing the Difference Principle, however, would, in the absence of incentive effects, lead to an egalitarian redistribution of funds until both societies are at equal levels of wealth. And this seems unacceptable.

In the second example, one society stresses fair equality of opportunity for women, who then begin to flourish in the political and economic world. As a consequence, the society gradually reaches, zero population growth, which in turn gradually increases the level of wealth in that society. The other, though also granting elements of equal justice to women (as is necessary to its being well ordered), does not pursue a policy of fair equality for women because of its prevailing religious and social values, which, we suppose, are freely accepted not only by men, but also by women. As a consequence, the rate of population growth in this society remains rather

high, and gross national product per capita remains low. Again the duty of assistance *ex hypothesi* does not apply, and an egalitarian redistribution of wealth in accordance with the Difference Principle seems unacceptable, once we assume that population growth in the second country is voluntary, as suggested by the given description of the example.

There is no point in denying that both examples are intuitively suggestive. Still, they do not provide a reliable basis for a sound argument against a global application of the Difference Principle or similar egalitarian precepts. Typically, intuitive responses to hypothetical or real-life examples can be explained in various ways, and Rawls's interpretation of our reactions to the case at hand – namely, a global difference principle would yield unacceptable results – may not be the best one.

As they are stated, the two examples clearly do not illustrate cases of social cooperation among societies. They look very much like the two-island sort of examples that some critics have produced in order to discredit egalitarian conceptions of domestic justice. There is no joint production of commodities involved and not even an exchange of goods or resources across borders. Moreover, there is no unified scheme of international cooperation embracing the two peoples, with public rules effectively regulating their mutual affairs. At least, nothing of this kind is mentioned. It looks as if there were two separate peoples living on islands thousands of miles apart with no externalities whatsoever between them to be taken into account. *In this case*, it may indeed be wrong to apply the Difference Principle or any other egalitarian principle effecting redistributions with unilateral net benefits. Given the circumstances of the two examples, the principle simply does not seem to apply. The justification of the Difference Principle, as well as its practical employment, implicitly presupposes (1) that there are positive and negative externalities between individuals and groups of individuals, (2) that we have a unified scheme of cooperation, and (3) that the parties involved (be they individuals or societies) conceive of each other as partners with *prima facie* equal claims to share the fruits of cooperation. Since none of these conditions seems to be met in Rawls's examples, our intuitive responses are not very telling as regards the acceptability of a global difference principle in a world like ours, with an abundance of positive and negative intersocietal externalities and ever increasing international economic cooperation.

One might argue that the setup of the two examples chosen by Rawls deliberately reflects the idea that the principles of the Law of Peoples specify requirements of “natural duty” rather than demands of global economic distributive justice.¹³ Indeed, the very fact that Rawls modeled the two examples in the way he did strongly supports the view that he presents the principles of the Law of Peoples as principles analogous to principles of

¹³ I am grateful to Alyssa Bernstein for making me aware of this interpretation. See note 7 above.

natural duty. However, following this line of thought, there seems to be a problem of relevance regarding the two examples. It is uncontroversial that a global difference principle cannot be a principle of “natural duty” and certainly does not need to be established by two more or less fictitious examples. If we take it for granted, on the other hand, that the Difference Principle is a principle of distributive background justice, it seems obvious that the two examples, as they stand, do not provide us with adequate material to scrutinize the intuitive plausibility of this principle.

Of course, this problem can be taken care of. Rawls’s counterexamples can be easily elaborated along the lines indicated so as to provide appropriate conditions for the application of the Difference Principle. Let us, then, assume that there is political and economic cooperation between the two societies on the basis of mutually agreed upon rules, and that the flow of resources, goods, and services between them is sufficiently dense to give at least *prima facie* plausibility to the idea of adopting an intersocietal principle of distributive background justice. Still, we assume that both countries are politically sufficiently autonomous to make different collective decisions regarding economic and social policies that affect their respective future social productivities in the ways described by Rawls. May we, under these circumstances, reasonably expect the representatives of the two societies involved to adopt a global difference principle?

It may still be difficult to give a definite answer to this question because we may still know too little about the normative beliefs of the members of both societies. However, let us, for the sake of argument, assume that in both societies the Difference Principle is adopted to regulate the domestic distribution of income and wealth. And let us further assume that, more generally, the members of both societies endorse the following principle of reciprocity: unless there are special claims of need or desert, inequalities of wealth can be justified only if they are to the mutual advantage of all parties involved. This being said, our question is whether people who accept the Difference Principle and its underlying rationale in matters of domestic justice can reasonably reject it as a principle of international justice, once there is a sufficiently dense system of international economic cooperation.

A global difference principle strikes Rawls as unacceptable, because in the two cases at hand the inequality of social wealth exists only because of conscientious and reasonable collective decisions and efforts in one country that could have been effected in the other country as well. There seems to be a justified moral claim of desert on the side of those who acted in more productive ways to get more than an equal share of the joint social product¹⁴ (keep in mind that, unlike Rawls in his setup of the two examples, we assume intersocietal economic cooperation).

¹⁴ Note that the claims of desert involved here are not *entitlements* but noninstitutional *moral claims* based on a notion of individual or collective merit. They do not presuppose the existence of established social rules or practices. The notion of moral and noninstitutional desert is explained in Feinberg (1970, 56, 85–87); Kleinig (1971, 71); and Miller (1976, 91f.).

Now, obviously, we have to take into account the incentive effects that in a public system of domestic or international justice go with the Difference Principle, and we also have to consider the possibility of Pareto improvements. Given realistic background assumptions about productivity and motivation, applying the Difference Principle would still reward superior social productivity with superior social wealth, provided only that the less productive partner also receives an additional share. Hence, differential collective wealth would not be reduced to zero, and a global difference principle would be consistent with different levels of wealth among societies. In this regard, there is no difference between applying the principle on the domestic level and applying it on the international level. Once this is accepted, it is easy to see why Rawls's two counterexamples derive their intuitive plausibility from a misconception of the nature of productivity-based claims of desert.

Productivity-based claims of desert are intrinsically relational. In a situation of strictly equal capacities and opportunities, an agent (be it an individual or a group) who, in a joint scheme of production, is more productive than another may be said to deserve a higher reward than his or her less productive partner. In order to honor justified claims of desert, we have to set up a ranking of the productive contributions of all agents who are involved in a given scheme of cooperation and then reward them, in accordance with this ranking, with smaller or larger shares of the total product of their joint activities. This, however, does not mean that any participant has a desert-based claim to receive a particular share, or rather, to receive a share with a specific absolute value. Indeed, given a fixed total product, an indefinite number of classes of individual shares will normally be ordinarily consistent with the relative strengths of the agent's productivity-based claims of desert. As a consequence, applying the Difference Principle under realistic conditions is not incompatible with honoring productivity-based claims of desert, as long as those who are more productive end up with a higher share of goods than those who are less productive. And given the economy of incentives, this will normally be the case in international cooperation no less than in domestic cooperation.

All we have to do in order to uphold a global difference principle in the presence of legitimate collective claims of desert is to deny that more-productive societies may legitimately claim not to be taxed for redistributive purposes at all, because they properly deserve the full marginal benefit of their superior social productivity. To hold that they can legitimately claim that, however, would imply a serious misunderstanding of the nature of productivity-based claims of desert. In a situation of sufficiently dense economic cooperation, no single agent can reasonably claim his full marginal product, and no society can claim its full domestic product, as the only appropriate reward for his or its meritorious productivity, simply because (among other reasons) the value of this product is largely determined by economic factors beyond the agent's control. Thus, in our

examples, it depends on aggregate demand and supply of resources and commodities in the two societies, on the terms of trade between them, and on domestic and international traditions, practices, institutions, and the like, which in one way or other may be undeservedly more favorable to one society than to the other.

To conclude: even though in both cases the more productive people may have a collective claim of desert to end up with greater wealth than the other, the more productive group cannot reasonably claim its full domestic product. And since a global difference principle will normally reward superior productivity of peoples with superior economic rewards, it cannot be rejected on the basis that it is incompatible with honoring just collective deserts.

V. Justice between Generations

There is one final comment that I want to make with regard to the second of Rawls's two counterexamples. It clearly involves a problem of inter-generational justice worthy of attention – a problem which is merely implicit in the first one. The society that – due to its high rate of population growth – ends up less wealthy than the other may be seen as deserving a lower level of social wealth. *Ex hypothesi*, it freely chooses (in the light of sincerely and not unreasonably held religious views of its members) not to pursue policies of fair equality of opportunity for women. It may, indeed, seem reasonable if those who voluntarily choose not to pursue policies of equal opportunity that would increase their collective wealth are held responsible for their decisions and if a claim on their side to receive egalitarian transfers is denied. There is, however, a serious problem with doing this, which Rawls does not discuss, even though in his earlier writings he is acutely aware of it (TJ 63ff.; cf. Scanlon 1996, 8f.): end-states of one period of economic activity (in our case the levels of wealth attained by the two peoples after “some decades”) are at the same time starting conditions of the next period. As a matter of distributive justice, therefore, a given distribution of wealth has not only to be acceptable as a set of possibly deserved results of what has happened in the past, but also as a starting condition for what will happen in the future. Otherwise, future transactions and their prospective results will not meet the requirement of procedural justice of fairly equalized starting conditions.

As long as we are talking about the same group of people acting continuously over time, there still may be no problem. If we can reasonably hold them responsible for their past decisions, they may deserve a lower level of wealth, not only as an end-state of one period of activity, but also as a starting condition for the next period. This simple model of an agent's responsibility, however, collapses once we have a change in the group of actors, as is the case in our example involving population growth. Once we

have more than one generation, the end-states of one period – possibly deserved by the generation responsible for decisions in that period – will be starting conditions for another generation of people, who have not been active in the first period and thus cannot necessarily be held responsible later on for decisions taken in that period.¹⁵ As a matter of intergenerational justice, a comparatively low level of wealth may appear (in the light of just deserts) fair to one generation, and still be clearly unfair to the next. Given the overlap of generations (children grow up with their parents or, at least, during the lifetime of their parents' generation, drawing on this generation's funds), there may be no way to treat children fairly other than by giving their parents more than they supposedly deserve. Whether fairness to children (in terms of fair starting conditions) in a global scenario actually requires an egalitarian distribution of resources conforming to a global difference principle is an open question, but it clearly requires more than giving them what their parents deserve, because the parents took political decisions with which the children themselves may not be willing to identify with later on.

VI. Conclusion

I take it – though I have not argued for it – that a scheme of global social justice appropriate from a liberal point of view will have a two-tier structure, distinguishing between domestic and global justice. There will be a plurality of reasonable principles of domestic justice, some of which are egalitarian and some of which are not. Still, there will be an overarching global principle – or a set of such principles – regulating the intersocietal distribution of global wealth. In my view, this most likely will be an egalitarian principle, and a global difference principle strikes me as a strong candidate. In any case, a “duty of assistance” to burdened societies, though not to be denied, by no means covers the ground of distributive global justice. Given the kind of arguments that, from a liberal point of view, support egalitarian principles of domestic social justice, any attempt to deny the appropriateness of an egalitarian conception of global justice is bound to backfire domestically, in some way or other. In particular, desert-

¹⁵ The disclaiming qualification in “cannot *necessarily* be held responsible” is meant to avoid too narrow an interpretation of individual responsibility for collective decisions in this context. In my view, under certain conditions a person may reasonably be held responsible for a collective decision – in the sense of having no claim to be compensated for unwelcome consequences of that decision – even though she was not personally involved in the decision-making process. If she accepts the normative authority of the decision-making body and if she also endorses the reasons for the decision upon due reflection, this would make it seem at least not unreasonable to deny her compensation for unwelcome consequences. If the children of the religiously inspired nonegalitarians in our example turned out to be true believers in their parents' creed, they certainly would not have a claim on other peoples to compensate them for the detrimental economic consequences of their nonegalitarian normative beliefs.

based arguments, like those employed by Rawls in *The Law of Peoples*, prove to be incapable of undermining principles of global egalitarianism as long as these principles allow for different levels of social wealth which – though not for desert-based moral reasons – respond to differences in the social productivity of peoples. These arguments seem to involve a misconception of the relational character of valid claims of desert. Moreover, they employ dubious notions of responsible agency, implying, for example, that children may be held responsible for decisions of their ancestors with which they may no longer want to be identified, merely because they belong to the same people.

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