

THE MORAL IMPLICATIONS OF THE GLOBAL BASIC STRUCTURE AS A SUBJECT OF JUSTICE

FAUSTO CORVINO
Scuola Superiore Sant'Anna (Italy)
f.corvino@santannapisa.it

Abstract: In this article, I discuss whether the theory of justice as fairness famously proposed by John Rawls can justify the implementation of global principles of socio-economic justice, contrary to what Rawls himself maintains. In particular, I dwell on the concept of the basic structure of society, which Rawls defines as “the primary subject of justice” and considers as a prerogative of domestic societies. In the first part, I briefly present Rawls’s theory of socio-economic justice and his account of justice between peoples. I then proceed with the analysis of the cosmopolitan counterarguments that have been levelled against Rawls’s dualism between domestic and international justice, which mainly revolve around the outlining of a global basic structure as a consequence of globalisation. Between these two opposing poles, I also discuss the intermediate stance taken by those authors who maintain that the empirical dispute between a domestic and a global basic structure is misleading, because the pressing question is whether the unfair practices and norms that characterise the global economy demand the existence of a global basic structure, regardless of the fact that it already exists or not. Lastly, I collect some points, both theoretical and empirical, that have emerged from the analysis and I argue that the theoretical requirement of a global basic structure can have practical implications even if its existence is contradicted in empirical terms.

Keywords: basic structure, egalitarianism, global justice, globalisation, Rawls.

In 1971 the American philosopher John Rawls published *A Theory of Justice*, a book that gave new impulse to the tradition of the social contract and rapidly became central in political philosophy. Among criticisms, comments and appreciations, a considerable number of scholars have discussed the following issue: given Rawls’s definition of justice as fairness, is it fair to limit his principles of justice only to fellow-nationals? Almost than thirty years after *A Theory of Justice*, Rawls responded to the vast debate aroused around the scope

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of his principles of justice by publishing *The Law of Peoples*, a book in which he delineates a second-level contract theory, which is supposed to justify principles of international cooperation while at the same time rejecting global socio-economic justice¹. This long-awaited publication unleashed a second round of comments and criticisms, in particular by those philosophers who in the meantime had developed cosmopolitan theories from Rawls's first book. My aim in this article is to analyse this rich branch of literature that flourished over the last fifty years and to discuss whether it is reasonable to consider a global basic structure as the proper subject of justice. Accordingly, I shall firstly introduce Rawls's theory of distributive justice and explain why he assumes that the parties at the international session of the social contract would exclude any egalitarian consideration. Secondly, I will analyse the cosmopolitan counter-arguments that have been raised against Rawls's statist view of justice and that mainly revolve around the existence of a global basic structure, which is assumed to have the same implications of justice that Rawls theorises for the domestic basic structure. Thirdly, I shall face those thinkers who believe that the right question to ask is not whether a global basic structure exists or not, but rather if the creation of a global basic structure can be grounded as a requirement of justice – hence imposing a political duty to foster an institutional reform at the global level. Although the main contribution of this article is supposed to consist in a systematisation of some of the most relevant philosophical theories that have been elaborated starting from the statist conception of justice of Rawls, in the last section I shall draw some conclusions from the theoretical and the empirical points that I will recollect in the preceding analysis. In particular, I shall wonder whether the existing asymmetries between the domestic and the global order represent the winning argument for statist thinkers, or rather the normative support for the creation of a global basic structure can have practical implications also before the “longed-for” global basic structure becomes a proper subject of justice.



RAWLS'S THEORY OF JUSTICE

Rawls (1999a: 4) defines society as “a cooperative venture for mutual advantage” that is characterized by both a convergence of interests and a pervasive conflict. All the members of this cooperative scheme have an interest in keeping it in place, because every person is better off in society rather than in a hypothetical scenario in which everyone is to live by herself. The society produces extra benefits for all in comparison with this hypothetical scenario, but how should extra benefits be distributed among its members? The broad range of possible responses to this simple question generates conflict, because every member of the society, acting as a rational agent, has an interest in getting the most out the cooperative surplus.

Therefore, principles of social justice are required for allocating rights, benefits and burdens of social cooperation. In other words, to regulate what Rawls (2005: 258) defines as the “the basic structure of society”, that is to say, “the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arise through social cooperation”. The basic structure includes constitutional norms, the rules on the division of property (e.g. private property vs. public property) and on the economic system (e.g. free market vs. socialism), the organisation of the family (e.g. patriarchal vs. liberal family laws. See also Rawls 2001: 52-57; Abizadeh 2007: 322-325). It is important to note that in the contractualist formulation of justice proposed by Rawls the principles of justice apply exclusively to the basic structure and not to the individual interactions that take place within it. Accordingly, a principle that might be just for the basic structure may be inappropriate for a specific institution (e.g., a school, a private association, a museum) or for relations among individuals (e.g., a group of friends, a couple), and vice versa. In this sense, Rawlsian justice can be defined as “dualist” in so far as it draws a line between institutional design and individual ethics, and the opposite, as utilitarianism for example, can be defined as “monist”, meaning that it assigns the same principles



to institutions and individuals (Murphy 2006; see also Julius 2003).

So far, the discourse proposed by Rawls might seem quite linear, but the two pressing questions are: what are the principles of social justice that apply to the basic structure? And how do we select them? The significant contribution of John Rawls to political philosophy lies in the response to these two questions. His declared aim is to bring to “a higher level of abstraction” (Rawls 1999a: 10) the classic theory of the social contract, as previously developed by Locke, Rousseau and Kant. For Rawls the correct principles of justice, those intended to regulate the basic structure of society, are the two principles that rational and mutually disinterested agents would choose in an initial fair situation. The latter is a mental device, a thought experiment required to free conveying parties of the temptation to select principles of justice that would best suit their social and natural specificities. In fact, Rawls asks the reader to imagine the parties in the original position as covered by a veil of ignorance. Namely, they do not know the economic and political circumstances of their society, their generation², their conception of the good, their natural talents and their position in society, but they are aware of their task – choosing regulative principles for the basic structure of society – and they know basic facts about politics, economics, anthropology, psychology and sociology (Rawls 1999a: 118-119). Under these restrictions, the parties are in a position of moral equality that is not influenced by arbitrary contingencies of a natural or social kind. Therefore, every decision reached in the hypothetical original position is fair. The parties are provided with a list from which they must pick up the principles of justice³. That is to say, they have to decide in which way the basic structure of society should distribute “social primary goods”, those goods of which every individual would like to obtain the highest possible amount, independently of her own conception of the good (i.e. “rights”, “liberties”, “opportunities”, “wealth”, “income” and “self-respect”, see Rawls 1999a: 54-55)⁴. Rawls’s argument (1999a: 52-53; see also 2001: 42-43) is that given the features of the original position, the parties, conceived as rational and mutually disinterested⁵, will auto-



matically choose two principles of justice: *a*) each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others; *b*) social and economic inequalities are to be arranged so that they are both (1) reasonably expected to be to everyone's advantage, and (2) attached to positions and offices open to all.

The reasoning leading to the adoption of these principles of justice is straightforward. Since I do not know which place I will occupy in society – in virtue of social and natural circumstances – it is in my interest to strive for, among all available social arrangements, the one in which those people in the lowest positions are better off. This is called the “maximin” rule of choice and consists of ranking different options according to the severity of losses. The less severe the possible loss in choosing one given option, the more preferable is that option. Rawls (1999a: 132-133) puts it well when he writes that “the two principles are those a person would choose for the design of a society in which his enemy is to assign him his place”. The logic behind the two principles is the same as asking a person to cut the cake into equal slices and telling him that he will eat the last slice left on the table. The only way for this person to get a big slice is to cut the cake the most equally as possible, since his slice will be the one every other dining companion has declined.

The two principles are to be read in a serial order. The priority of the first principle over the second one means that economic advantages – even in terms of equality – cannot be traded for a less than optimal basic scheme of liberties⁶. Not every liberty is included in the basic list. Among the most important ones Rawls (1999a: 52-54) mentions: “political liberty”, “liberty of conscience and freedom of thought”, “freedom of the person”, “the right to hold personal property and freedom from arbitrary arrest”⁷.

The second principle is supposed mainly to regulate socio-economic relations. Apparently, it looks rather uncontroversial. It suggests that injustice refers to inequalities that are not to the benefit of all. But there are two expressions in the formulation of the second principle that are suitable for mul-

tiple interpretations: “everyone’s advantage” and “open to all”. Careers might be “open to all” in two senses, one consisting in formal equality of opportunity and the other one in fair equality of opportunity. Whereas, the idea of inequalities being to “everyone’s advantage” might be captured by both the principle of Pareto optimality and the difference principle. Therefore, four possible combinations give rise to four different conceptions of economic justice: the system of natural liberty, natural aristocracy, liberal equality, democratic equality (Rawls 1999a: 57). The interpretations that Rawls prefers are the ones that lead to democratic equality, in which fair equality of opportunity is combined with the difference principle⁸. The former implies that the institutions that make up the basic structure should not merely ensure that offices and positions are not assigned on the basis of gender, ethnicity, social class, and so on (fair equality of opportunity), but they should also guarantee that individuals with equal talents and motivations have equal opportunities. This can be achieved, for example, by financing public organisations that work aside private ones in developing individual skills and talents. Accordingly, a society in which all the most deserving tennis players are allowed to compete for the top places in national rankings (with the economic and social advantages that this implicates) but only wealthy children can afford to rent a tennis court to practice would fall short of fair equality of opportunity.

On the other hand, the difference principle maintains that the only inequalities that are allowed in the distribution of social primary goods are those that favour the worst off (Rawls 1999a: 52-65). Therefore, if we imagine a society with only three individuals, A, B, and C, we should first take as our reference point a hypothetical situation in which the three individuals have the same amount of social primary goods and then we could accept that A accumulates more social primary goods than both B and C only if A’s increase in wealth makes B and C better off than they were (or would hypothetically be) in a situation of perfect equality. Thus, even those subsequent distributions that would be acceptable from the perspective of Pareto efficiency, in which A gets wealthier without subtracting anything from either B or C, would not pass the test of the



difference principle unless the worse off between B and C gets (even slightly) better off (see also Maffettone 2011: 44-57). And it is important to note that fair equality of opportunity is lexically superordinate with respect to the difference principle (Rawls 1999a: 77), meaning that an increase in aggregate wealth that benefits every member of the society cannot justify an aristocratic shift to a society in which the least advantaged (although being wealthier) are excluded from the competition for offices.

In *A Theory of Justice* Rawls specifies that the two principles of justice only apply to the basic structure of society, whose scope, he postulates, is domestic. Accordingly, justice among foreigners only consists of the fair conduct of their states (e.g. *jus ad bellum*, *jus in bello*), without any duty of socio-economic justice involved (Rawls 1999a: 331-335)⁹. There are therefore structural differences between the domestic and the global order (see also Wenar 2006), and three main arguments can be drawn in support of this thesis (see also Abizadeh 2007). The first one is based on the coerciveness of domestic society, which Rawls (1999a: 4) describes as “a more or less self-sufficient association of persons who in their relation to one another recognise certain rules on conduct as binding and who for the most part act in accordance with them”. The second one pertains to the need to split the cooperative surplus fairly, given that “social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts” (Rawls 1999a:4). The third one is that the “effects” of the domestic basic structure “are so profound and pervasive, and present from birth” (Rawls 1999a: 82).

Another possible way to conceptualise the scope of Rawls’s theory of justice is to say that it extends along the boundaries of existing social practices, which in turn consist of a set of norms that assign benefits, burdens and opportunities among their participants (James 2005b: 283-286). Where these practices are in place, there emerges the need to devise normative principles for the basic institutions that govern the assignment of those goods that any individual interested in maximising her payoff wants to collect in the biggest possible amount (i.e. social primary goods). Conversely, if social prac-

tices do not exist, the appeal to normative principles of justice becomes unsubstantiated. In this sense, the practices to which the principles of justice apply represent their justification and model their content – meaning that different practices may require different principles of justice. Therefore, the disanalogy between the domestic and the global context explains why the principles of justice get thinner as we move from the former to the latter (see also Sangiovanni 2008; Nagel 2005).

Almost thirty years after *A Theory of Justice*, Rawls sought to deepen the issue of justice beyond domestic borders by publishing *The Law of Peoples*. In this book, that is supposed to be an essay on international justice, Rawls (1999b: 30) restates that the parties in the first original position are representatives of “free and equal, reasonable and rational citizens” and the scope of the principles of justice they are called to adopt is clearly domestic. Whereas, in order to explain how states should regulate their interactions, Rawls resorts to a second-level original position, where the parties are no longer representatives of citizens but of “peoples” (see also Buchanan 2000: 698)¹⁰. As in the first original position, the participants are modelled as rational, free, equal, covered by a veil of ignorance and unaware of their own comprehensive conception of the good¹¹. They do not have geographical or economic information about their states. This time their task is to reach an agreement on the content of the Law of Peoples, that is to say, the law that governs “the basic structure of the relations between peoples” (Rawls 1999b: 33).

Before illustrating what the parties will agree on, it is essential to note that Rawls distinguishes between different kinds of peoples. Reasonable liberal peoples, decent peoples, outlaw states, societies burdened by unfavourable conditions and benevolent absolutisms. The first step of Rawls’s ideal theory consists in extending the idea of social contract to liberal peoples, that he briefly describes as guided by a democratic government, united by “common sympathies” and committed to a moral and political understanding of rights and justice” (Rawls 1999b: 23-25). Representatives of liberal peoples under the veil of ignorance would agree on the following principles of international justice (Rawls 1999b: 37): a)

peoples are free and independent, and their freedom and independence are to be respected by other peoples; *b*) peoples are to observe treaties and undertakings; *c*) peoples are equal and are parties to the agreements that bind them; *d*) peoples are to observe a duty of non-intervention; *e*) peoples have the right of self-defense but no right to instigate war for reasons other than self-defence; *f*) peoples are to honor human rights; *g*) peoples are to observe certain specified restrictions in the conduct of war; *h*) peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.

Differently from the first original position – the domestic one – the parties are not given a menu of principles; rather they see no reason to depart from the list given by Rawls, since their main interest at this second level is to guarantee equality and independence among states. Moreover, Rawls says, they would also take the chance to set some standards of fairness for international organizations. In particular, they would focus on fair trade. Since the parties do not know the economic potential of the country they represent, they will uphold, as has already happened in the domestic case, “fair background conditions” of justice (Rawls 1999b: 42-43).

The second step of Rawls’s ideal theory consists in extending the Law of Peoples to decent hierarchical peoples, and to demonstrate that they would accept the same principles that liberal people have adopted. Decency, in Rawls’s own words, is “a normative idea of the same kind of reasonableness, though weaker” (Rawls 1999b: 67). For a non-liberal society to be classified as a decent hierarchical one, some conditions must be met. The society should not have aggressive aims; it should respect human rights; although not respecting the liberal idea that citizens have equal rights, this society should at least consider citizens as cooperating members; its legal system should be guided by “a common good idea of justice” (Rawls 1999b: 64-67).

Given the veil of ignorance and this description of decent hierarchical peoples, their representatives have an interest in accepting the principles set by liberal people, for the sake of their independence, integrity, the good of fellow-citizens and

the benefits of trade. Nonetheless, the peculiarity of their situation is that they cannot use the original position at the first level, because justice as fairness is a liberal idea, and they are not liberal peoples. Hence, while liberal peoples use the original position twice, hierarchical peoples do it only once, at the second level.

As we can see, the principles of justice of the second original position are entirely different from those of the first one. In particular, Rawls imagines that when the parties are representatives of citizens, and are required to act as rational and mutually disinterested agents to set the principles of justice for the basic structure of society, they adopt a strong principle of socio-economic justice as the difference principle. But when they are representatives of peoples, they just reach an agreement on classic norms of international law, like mutual respect, *pacta sunt servanda*, *jus ad bellum* and *jus in bello*. For Rawls there is no global distributive justice, except for one principle, the last on the list.

The eighth principle of the Law of Peoples says that well-ordered peoples¹² have a duty to assist burdened societies (not aggressive societies that “lack the political and cultural traditions, the human capital and know-how, and, often, the material and technological resources needed to be well-ordered”—Rawls 1999b: 106) in moving into the club of well-ordered peoples. This proviso is the only one in Rawls’ Law of Peoples that seems to open the door to an international transfer of resources. However, it would be a mistake to interpret it in socio-economic terms, as the difference principle. For the purpose of this assistance is not to meet a duty of justice in distribution, but only to help burdened societies to set up just basic institutions. Once this goal has been achieved, the assistance can stop¹³.

Moreover, we should not even take as a given the economic nature of this assistance, because for Rawls what burdened societies need in order to lift from their condition are not mainly economic resources. A well-ordered society does not need to be wealthy, in Rawls’s own words: “the crucial elements that make the difference are the political culture, the political virtues and civic society of the country, it’s members’

probity and industriousness, their capacity for innovation, and much else” (Rawls 1999b: 108). Rawls is only interested in justice. Just societies have to help unjust societies – when it is possible, meaning when they are not aggressive – to become just. He is not primarily interested in the well-being of the individuals, only in the institutional arrangements in which they live, and he clearly states it when he blames cosmopolitan thinkers for having as their “ultimate concern [...] the well-being of individuals and not the justice of societies” (Rawls 1999b: 119; see also Maffettone 2017).

THE COSMOPOLITAN CRITIQUES OF RAWLS

The structure that comes out of Rawls’s theory of domestic and international justice is deeply influenced by his empirical perception of the world. In Rawls’s view, the world is made up of almost entirely self-sufficient countries which entertain limited forms of interactions (see Beitz 1999a: 133). Accordingly, in this paragraph I shall analyse the first two counterarguments that might be raised against the international implications of Rawls’s theory of justice. The first one consists of buying the theoretical setup of the two original positions – thus accepting Rawls’s idea that the basic structure of society corresponds to the state – and in challenging the conclusions that Rawls assumes the parties would reach in the second original position (Beitz 1999a: 136-143; Buchanan 2000). The second one accounts for a rejection of the empirical assumptions about national self-sufficiency and to an attempt to broaden the scope of the principles of justice agreed upon in the first-level original position (Beitz 1999a: 143-153; Pogge 1989: 240-280; Scanlon 1973: 1066-1067; Barry 1973: 128-133; Moellendorf 2002; Brock 2009; Caney 2001).

Charles Beitz (1999a: 125-176) engages in both attacks. Firstly, he argues that even if we accept Rawls’s description of the world, when asked to choose the principles of international justice under the veil of ignorance, representatives of well-ordered peoples would be unsatisfied with the list given by him. Since they do not know if they will end up in oil-rich

Norway or a desert place, they have all the interest in redistributing these natural resources, for the same reasons that induce them to neutralize the moral arbitrariness of natural talents through the difference principle. Applying an international principle of resource distribution at the second-level original position is even less troubling, Beitz argues, than combining the principle of fair equality of opportunity with the difference principle at the first level. For while natural talents are surely morally arbitrary, they also constitute part of the self and require individual efforts to be developed (Beitz 1999a: 136-140). So, for example, Luciano Pavarotti was gifted by nature with a voice that was worth millions of dollars. But it is also true that Pavarotti had to do a lot of study and work for developing his talent and control it. In the end, someone might also object that Pavarotti has shown to deserve the gift nature has decided to concede to him¹⁴.

This kind of objection would not work against an international distribution of resources because there is no particular merit in being born on a vast oil field and making big money out of it. Accordingly, Beitz wonders why agents adopting a maximin rule of choice under the veil of ignorance would agree on a drastic redistributive measure – like the difference principle – at the first level but reject a less questionable principle – the international redistribution of natural resources – at the second level. Beitz (1999a: 140) simply concludes that they have no reason to leave this principle out of the Law of Peoples because it is “a purer case of something being ‘arbitrary from a moral point of view’ than the distribution of talents”. The distributive principle of resources should be conceived as the difference principle in the first original position. Every person has a claim to an equal share of all the available resources in the world. Departures from this equal distribution are allowed only if they are to the greatest benefit of the least advantaged (Beitz 1999a: 141-143).

Nonetheless, Beitz (1999a: 143-153) goes further and argues that Rawls is wrong in interpreting the world as made up of independent societies that entertain marginal forms of interactions among them. He thinks that a global scheme of social cooperation does already exist, so as a set of norms and

institutions that regulate interactions between people living in different countries¹⁵. The argument is very linear. International trade and investment produce “substantial aggregate economic benefits”, both in terms of growth and productivity, that would not exist in a hypothetical scenario in which states did not entertain mutual interactions (Beitz 1999a: 145). Accordingly, we should treat these aggregate benefits stemming from international cooperation precisely in the same way as we treat aggregate benefits created by social cooperation at the domestic level, that is to say we should find a criterion of justice for fairly redistributing the global cooperative surplus.

Beitz provides many facts in support of his empirical claim. States entertain economic, political and cultural relations. The volume of transactions across states has been continuously growing after the end of WWII and is destined to grow even more. Capital does not respect any political boundary. It gets continuously reinvested in societies that are different from those in which it has been produced. These moves generate both profits and risks that are unevenly distributed. Investors seek cheap labour and low tariffs, and developing countries are usually confronted with take-it-or-leave-it choices. International interdependence brings about absolute gains but at the same time contributes to widening the gap between the poor and the rich (Beitz 1999a: 143-148)¹⁶. This fact would not pass the test of the difference principle at the national level, so why should it be acceptable at the international one? Moreover, global cooperation has brought to the creation of “a global regulative structure”, which consists of financial institutions (IMF and the World Bank), trade rules and negotiations (WTO), and international fora (e.g. G8, G20) which constraint individual choices, model international cooperation and have a visible impact on the lives of people living in the most disparate parts of the world (Beitz 1999a: 148). Beitz (1999a: 148-149) even goes so far as to maintain that “taken together, these institutions and practices can be considered as the constitutional structure of the world economy”.

If both a global scheme of social cooperation and a global institutional framework already exist, Beitz argues, we should not attribute moral importance to national boundaries.

Rawls's theory of justice should be corrected in the sense that the parties in the original position must be unaware of their national affiliation. We should imagine the representatives of all human beings meeting in a global original position and deciding which principles of justice should regulate their global interactions. There is no reason to think, Beitz concludes, that the same reasons that induced the parties in the domestic original position to apply the maximin rule of choice, and hence to propose the two famous principles of justice, would not hold in the global original position. We can believe that representatives in this global meeting would agree on a global difference principle, that differently from the principles of Rawls's second-level original position, applies to persons, not states (Beitz 1999a: 149-153).

Another famous proponent of a cosmopolitan interpretation of Rawls's original position was Brian Barry. He maintains that the parties of the first original position, under the conditions set by Rawls, would be unsatisfied with Rawls's two principles of justice. Not with the principles in themselves but with their domestic scope. Even though the parties do not know if they belong to a rich or poor society, they have general knowledge about politics and economics, so they would surely know that in the twentieth century the majority of societies were poor and anguished by malnutrition (Barry 1973: 129). Accordingly, Barry (1973: 133) poses the following question:

suppose that you were an embryo with a random chance of being any child conceived in the world in a certain period of twenty-four hours, what kind of world would you prefer? One, like the present one, which gives you about a fifty-fifty chance of being born in a country with widespread malnutrition and a high infant mortality rate and about one-in-four chance of being born in a rich country, or a world in which the gap between the best and the worst prospects had been reduced? Surely, it would be rational to opt for the second kind of world.

Therefore, Barry concludes that if we assume that the parties are meeting without knowing how much developed their society is, hence they perceive the risk of ending up in either a

poor or a rich country, then there is no reason to exclude that they would find it rational to adopt something like an “international maximin” (Barry 1973: 133). This is so because the parties would not simply be interested in maximising the worst off positions within their own community, but they would also raise the issue that the disparity between the worst off positions within different communities is as much arbitrary as the disparity between different positions within the same community (Barry 1973: 129). Accordingly, the only possible solution to reconcile the assumption of rationality of the parties with global economic contingencies would seem to envision a single global position in which the so-called “location premium” (Milanovic 2015: 456) is levelled down¹⁷.

A similar argument was proposed by Thomas Scanlon, although he insists more on international cooperation rather than on the moral arbitrariness of disparities in national levels of development. He holds that the difference principle should be extended to the whole world because we cannot maintain that considerations of justice only apply to the domestic basic structure, and that the relations between people living in different countries only begets issues of benevolence and altruism. Wherever there is systematic economic interaction, Scanlon says, principles of justice are required. “Regularised commerce” can be considered as “an institution in Rawls’ sense” because it presupposes the existence of rights and duties (Scanlon 1973: 1066-1067), or in other words, it constitutes an established pattern of cooperation in which all the parties involved can reasonably create expectations and demand that they be respected.

In his first book, *Realizing Rawls*, also Thomas Pogge (1989: 240-280) raised substantial doubts about Rawls resorting to a second contract for settling the issue of international justice¹⁸. First of all, the fact that the national session is held before the international one presupposes that national principles of justice can be agreed upon without knowing the conception of global justice that will be adopted later. This is unreasonable, in Pogge’s view, because we cannot choose the principles that should govern the domestic basic structure without considering the international scenario in which they



will later operate. In some way, Pogge blames Rawls because at the beginning he makes the parties at the first session work under the unreal assumption that states are isolated atoms, and then he raises the question of choosing principles of international justice. So doing, Rawls does also create another problem, namely that when the parties at the second session are called to select international rules, they can no longer intervene on the functioning of the domestic basic structure.

Within this framework, parties at the second original position are unable to correct for the international negative externalities of their national social contract, that is to say, the negative consequences that their domestic institutional arrangements might have on the lives of foreigners. This seems unreasonable, because even if we were willing to embrace Rawls's statist conclusions, there is no reason why we should not give the parties at the first session the chances of listening to what foreigners affected by their domestic strategies might have to tell them. Moreover, as noted by Pogge, this contractualist structure does also go against the same principle of impartiality, which is paramount to Rawls's philosophy, and that should compel us to adopt the double perspective of insiders and outsiders. Lastly, Pogge does rightly wonder whether we can really confine those decisions regarding the organization of such institutions as competitive markets and the private property of the means of production either to the domestic or to the international original position. The answer seems to be that we cannot do it, because we are enmeshed in the complex dynamics of the global market that continually cross the national and the international dimensions.

Pogge's solution for rescuing Rawls from the incoherence between the domestic and the international account of justice is to resort to a single global original position. In this way the contracting parties can adopt a global perspective from the start, thus giving the right weight to the aspiration for a just global order when they ponder about the domestic organisation of their societies (Pogge 1989: 240-259). Such a modification of the Rawlsian procedure for discovering the right principles of justice would better fit the same moral premises that Rawls makes in *A Theory of Justice*. As Pogge (1989: 258)

writes, “by not taking the present state system for granted, by letting the parties decide (as it were) among criteria that accommodate ethnic and cultural diversity in different ways, we can then considerably deepen Rawls’s conception, make it more unified and elegant”. And this is a conclusion that is shared by the other philosophers who, as we said above, propose to resolve Rawls’s two sessions of the social contract into a single and unified original position¹⁹.

A more recent proposal in favour of a cosmopolitan interpretation of Rawls’s original position has been elaborated by Darrel Moellendorf (2002). He argues that a global “economic association” exists and it has a pervasive impact on the welfare of single individuals. On the one hand, capital flows directly impact the job opportunities and living conditions of millions of people living in different countries. On the other, the mere fact of belonging to this global association puts pressures on developing countries both to create a business-friendly environment which can attract foreign investors (mainly through lowering social and environmental constraints to production) and to cut on social expenditure in order to gain trust from financial markets (Moellendorf 2002: 36-39). These empirical contingencies make the global social system a subject of justice, and hence it follows that the correct way to realise Rawls’s ideal of justice as fairness is to imagine a single and global original position. The parties would be cleared of any information concerning their citizenship, the economic situation of their countries and also demographic evidences (if they knew that more than 1,3 billion people live in China while less than half a million people live in Malta, they would make calculations about the probability of finding out to live in a country rather than in another one once the veil of ignorance is lifted); consequently, they would agree on a combination of a global principle of fair equality of opportunity with a global difference principle (Moellendorf 2002: 78-86). The former would entail that “a child born in rural Mozambique would be statistically as likely to become an investment banker as the child of a Swiss banker” (Moellendorf 2002: 79) and it would take consistent investments in developing countries, mainly in school, hospitals, infrastructures and so forth. Con-



versely, the implementation of a global difference principle would take the creation of an institutional system that continuously redistributes resources internationally so as to guarantee that only those inequalities that benefit the most disadvantaged people in the world were allowed.

The two principles advocated by Moellendorf for the global basic structure are extremely demanding, both in terms of redistribution and of the institutional reforms that would require for the global realm. Therefore, some other thinkers have sought to propose more moderate solutions. Gillian Brock (2009: 45-83), for example, has accepted the hypothetical setting outlined by Moellendorf but she has maintained that the parties in a global original position would be more interested in ensuring that no one falls below a minimum threshold of basic needs rather than in re-proposing in a global version Rawls's ideal of democratic equality (fair equality of opportunity plus the difference principle). Accordingly, relying on a series of empirical studies in behavioural economics, Brock argues in favour of a "needs-based minimum floor". Whereas, Simon Caney (2001) has sought to amend the radical global principle of fair equality of opportunity with an alternative interpretation according to which every individual in the world should be given "equal opportunities to attain an equal number of positions of a commensurate standard of living" (Caney 2001: 120). This amendment allows bypassing the objection that cultural diversity makes it impossible to create a sort of ranking of life and career opportunities that might be valid in every society (e.g. an art consultant in Amsterdam *vis-à-vis* a religious figure in a rural village in a developing country).

However, some thinkers engaged only in the first line of objections to Rawls, exemplified in Beitz's treatment of natural resources – challenging Rawls's conclusions while accepting his procedural setting – without recurring to the second line of objections – proposing a global original position. Allen Buchanan (2000), for example, accepts Rawls's structure of the two-level original position and the idea that at the second level the parties represent peoples and not single individuals. But he argues that even within this stringent scheme, the parties would adopt a more extensive list of principles than the



one given in *The Law of Peoples*. Rawls fails to give the right list because he is victim of a severe empirical mistake²⁰. Accordingly, Buchanan blames Rawls for adopting a “Westphalian” conception of the world. Rawls says that, if governed in a rational way, every society in the world, can guarantee a “decent and worthwhile life” to its members. The real wealth of a country does not lie in its assets, rather in its political and economic organization. Yet, this assumption would only be defensible in a world of self-sufficient and distributional autonomous countries.

Self-sufficiency means that the country is able to produce by itself all it needs. Distributional autonomy holds when the country has full control over the distribution of the goods that happen to be present on its territory. Both self-sufficiency and distributional autonomy, Buchanan (2000: 701-703) argues, belong to a “vanished Westphalian world”. In the contemporary era, being well-governed is not sufficient for a country to guarantee “a decent and worthwhile” life to its citizens. Even a well-governed country might either be prevented from producing what it needs or be unable to determine the distribution of what it produces. This is so because states are now embedded in a global basic structure, that Buchanan (2000: 705) describes as “a set of economic and political institutions that has profound and enduring effects on the distribution of burdens and benefits among peoples and individuals around the world”.

But if the global basic structure does exist, Rawls is wrong in arguing that the parties in the second original position would adopt a list of principles of justice that is clearly Westphalian. Buchanan (2000: 711-715) thinks that the representatives of people would adopt at least three more principles. Firstly, a principle of global equality of opportunity for the assignment of jobs in international organizations. Secondly, a principle of democratic participation in the same institutions. Thirdly, they would probably adopt something like a global difference principle. This last point is the most complex one. We can say “probably” because Buchanan does not maintain that the parties would undoubtedly adopt a global difference principle; instead, he holds that once we ascertain the exist-

ence of a global basic structure, a commitment to global egalitarian justice cannot be dismissed as easily as Rawls does. Moreover, Buchanan (2000: 712) adds, not even the issue of tolerance would prevent the parties from agreeing on some forms of global distributive justice, for there is no inconsistency in imagining autocratic governments, which implement inequalitarian policies at home, having an interest in an equal distribution of wealth at the global level.

BETWEEN STATISM AND GLOBAL EGALITARIANISM

These were some of the objections that were moved against Rawls's approach to international justice. The vast majority of Rawls's cosmopolitan critics have focused on the definition of the basic structure. In brief, Rawlsian statist thinkers have tried to keep the notion of the basic structure narrow, notwithstanding the rapid globalisation process that has been going on during the last years. Whereas, global egalitarians have sought to broaden it, up to the point of talking of a "global" basic structure. The problem with this contractualist debate is that both sides are tied to claims that are too radical to be wholly endorsed.

On the one hand, Rawls closes the door to global justice, saying that all we owe to other societies is merely helping them to set up just institutions. He clearly says that we should not really care about the welfare of foreigners but only about the sound functioning of their institutions and the correct relations between states. In some way, Rawls is exaggerating on the idea that when a society has entered into the club of well-ordered states, then local people will be the only authors of their destiny.

On the other hand, global egalitarians *a lá* Beitz have defended the claim that globalisation has brought to the emergence of a basic structure that encompasses the whole world and that hence should be regulated through the same principles of justice upon which individuals would agree in Rawls's domestic original position. In so doing, these thinkers have reduced the issue to an everything-or-nothing choice. Either

we embrace the Rawlsian account of justice, or we shift to the radical conclusion that the difference principle (and/or fair equality of opportunity) applies to the whole world. Since it is not so tricky for statist thinkers to argue that what global egalitarians call the “global basic structure” is at least in some respects different from the domestic one, the choice has often propended for “nothing”. Yet, between Rawls and global egalitarians there are a lot of intermediate positions that might grant something to the objective of global justice.

In respect to this, I think that Miriam Ronzoni made a convincing point when she argued that instead of discussing whether countries have reached the level of interconnection at which we can start talking of a global basic structure, we would pay a better service to the world poor by asking whether the global order poses a problem of background injustice. She rightly notes that one of the relatively unexplored concepts about Rawls’s contractualism is the one of “background justice”. In *Political Liberalism*, Rawls explains that before setting up any institutional scheme, we need an account of fair and free agreements. Accordingly, the role of the institutions of the basic structure will consist in preserving “just background conditions against which the actions of individuals and associations take place” (Rawls 2005: 266).

Individual actions can lead to the erosion of the background conditions of justice, even if every single action does not violate any norm of justice. Assume for example, as Ronzoni does, that we propose a definition of a fair agreement. And we say that an agreement is fair when the parties are neither deceived nor coerced, and they have an adequate range of options available, meaning that accepting the counterparty’s offer is not the only way to keep on living “under socially acceptable circumstances” (Ronzoni 2009: 239). Now assume also that we have a group of individuals in which, though starting from equal positions, some members have lost almost all their wealth while some others have accumulated vast fortunes. Even if this has happened through fair transactions, meaning that nobody has been coerced, deceived and so forth, the result of unregulated fair actions cannot be considered as just if it erodes the conditions that we have taken as constitu-



tive of background justice. In our example, if some people have been driven to the verge of starvation, they are no longer able to reach fair agreements, because they lack a reasonable alternative to receiving an income from those who control capital. These latter are thus free to exploit vulnerable counterparties, imposing on them the conditions they like.

What we need in this case is a regulatory authority that restores the background conditions of justice. At the domestic level, this task is assigned to national institutions. At the global level, there are no international institutions that play this role. Does this mean, as statisticians say, that we do not have a global basic structure? Yes, exactly. But does it also mean that we can do without it? No, because it is precisely this vacuum that poses a problem of (background) justice and hence calls for regulation at the global level (Ronzoni 2009: 243). However, the call for global regulations does not automatically entail that the same principles that we consider as just at the national level would also fit hypothetical global institutions. It might be the case, instead, that correcting for the problem of global background justice, which has been highlighted by Ronzoni, would require the implementation of a narrower set of principles than we can defend at the domestic level (see also Ronzoni 2007, 2008). More precisely, many of the causal factors that Ronzoni (2009: 246-255) puts in relation to global background injustice revolve around asymmetries of power between global actors (be they states or non-state actors) that allow them to obtain unfair gains from international economic cooperation (e.g. “tax competition”, “escalating tariffs”, “job insecurity”). Accordingly, these dynamics can be tackled through regulation rather than a distribution of economic resources of the same type which is demanded domestically.

In this sense, a global justice argument which is based on restoring background conditions of justice is different from both the one of global egalitarians, who consider the basic structure as an existence condition of global justice and try to persuade us that current forms of international cooperation suffice to demonstrate that this structure is real, and from the one of those thinkers as Arash Abizadeh, who in turn distinguish between the scope and the site of justice, thus maintain-



ing that while the site is limited to the basic structure – which is domestic so far –, the scope is global because such is social interaction.

With regards to the position upheld by Abizadeh (2007), it is worth to say something more precise, in order to make the due distinctions. Abizadeh moves from the consideration that from a Rawlsian prospective the site and the scope of justice are not necessarily overlapping. Accordingly, the site of justice indicates “the kinds of objects” to which the principles of justice apply (Abizadeh 2007: 323). The site coincides with the basic structure, which in turn can be defined according to three different criteria: either as those institutions that enable social cooperation (which is the criterion that interests us most in this article), or as those institutions the pervasively impact on the life opportunities of individuals, or as those institutions that coerce individuals. Whereas, the scope of justice refers to the “range of persons” who can raise claims of justice related to any of the three criteria that define the site (Abizadeh 2007: 323). In the case of the second and the third criteria (respectively, “pervasive impact theory” and “coercion theory”) the site and the scope of justice coincide – meaning that the individuals who can advance claims of justice are those who are either pervasively impacted or coerced by existing institutions. Whereas, according to the first criterion (“cooperation theory”) the site of justice is not the same as the scope. The latter corresponds, indeed, not only to those persons who participate in a system of social cooperation but also to those persons who participate in interactions which can potentially evolve into a system of social cooperation (Abizadeh 2007: 325-329). In this sense, Abizadeh (2007: 330) underlines that in Rawls’ theory the idea of cooperation has moral traits, because it refers to interactions that are fair. Therefore, while for “pervasive impact theory” and “coercion theory” the basic structure is the “existence” condition of justice, because duties of justice hold only in so far as there exists a set of institutions that pervasively impact or coerce a given group of individuals, in “cooperation theory” the basic structure is the “instrumental” condition of justice, because it is aimed at rendering interactions fair (that is to say, at creating a system of cooperation).



From these premises, Abizadeh (2007: 330-334) infers that even though, from the perspective of cooperation theory, the basic structure is delimited by national borders because only at the national level there exist those institutions that can render interactions fair, the scope of justice is rather global, because global is the intricate web of socio-economic interactions which can potentially become fair and evolve into a system of global cooperation. Therefore, even admitting that a global basic structure does not exist, the fact that it is instrumental to the realisation of justice compels us, from a political point of view, to create a global basic structure, which encompasses national basic structures, so as to realign the site and the scope of justice. And this conclusion, inferred from the cooperation theory, is in line with the cosmopolitan arguments that Abizadeh draws from the pervasive impact theory and the coercion theory, where instead the site and the scope of justice coincide. For national basic structures pervasively impact on the lives of foreigners, so as national economies and systems of border protection coerce them, hence global duties of justice are well grounded (Abizadeh 2007: 344-345, 355-357).

Relying on cooperation theory, Abizadeh provides an articulate and refined normative justification for creating a global basic structure, but he does not dwell much on the principles of socio-economic justice that the new global institutions should uphold. Nonetheless, given that his argument is based on a realignment of the site and scope of justice, it is reasonable to deduce that once the basic structure becomes global, the same principles of justice that we deem as appropriate for national cooperation would also fit global cooperation. Therefore, the site-scope argument by Abizadeh differs from the one proposed by global egalitarians *à la* Beitz in the justification of global justice but not in its implications. For Abizadeh argues that a global basic structure does not exist, hence we should create it, while Beitz maintains that the basic structure is already global. But both conclude that the domestic principles of socio-economic justices should be applied at the global level. Conversely, both Abizadeh and Ronzoni share the intuition that the basic structure should not be seen as an “existence” condition of justice, rather as the instrument that is supposed

to realise justice. Yet, the background-injustice justification proposed by Ronzoni does not allow us to make an automatic equation between domestic principles of justice and global ones. Instead, as the same Ronzoni explained, different situations of background injustice may require different solutions.

CONCLUDING REMARKS

In this article I sought to illustrate how, starting from Rawls's primary assumption that the basic structure is the proper site of justice, we can infer different conclusions regarding the existence and the gradation of global duties of socio-economic justice. The first one is the statist position expressed by the same Rawls in response to his cosmopolitan critics, according to which any consideration of socio-economic justice only hold at the domestic level, while developed countries simply have an international duty of assistance towards "burdened societies", which is exhausted at the moment when the latter have secured functioning institutions. The second one is the position taken by Beitz on natural resources and more generally by Buchanan, according to whom even if we buy Rawls's setup of two original positions, one for the domestic session of the social contract and another one for the global session, we could deduce that rational and disinterested agents, once posed behind a veil of ignorance, would adopt some international principles of socio-economic justice, in addition to the list given by Rawls in *The Law of Peoples*. The third one is the objection that has been more extensively elaborated by Beitz and Pogge, and that is based on the idea that both global cooperation and regulation have reached such a level of development that we have normative reasons to assert the existence of a global basic structure and hence to defend a single global session of the social contract – with possibly only one global set of principles of socio-economic justice. The fourth one is the background-injustice argument put forward by Ronzoni, according to which the key justification in favour of global justice does not lie in the existence of a global basic structure, rather in the fact that its absence creates prob-

lems of background injustice, which in turn require the creation of global institutions – so we would have the same domestic principles of justice proposed by Rawls, supplemented by additional (and possibly narrower) principles of global justice. The fifth one is the site-scope argument by Abizadeh, which starts from the assumption that from the perspective of cooperation theory the site of justice does not coincide with the scope, hence we need global institutions for a realignment – which would possibly secure one single global set of principles of socio-economic justice.

My aim in this article was mainly reconstructive. I wanted to illustrate how the most influencing contemporary theory of justice leaves open the issue of how to regulate – if it were the case – socio-economic interactions between individuals living in different countries. And I sought to ponder on the different moral implications that the global basic structure may have, whether we consider it as a set of existing practices or as a mere normative requirement. Yet, in this last section, I would like to gather some empirical points from the arguments that I have explored so far and then propose some further reflections on the role that a global basic structure can play as a subject of justice under existing contingencies.

First, although international norms, rules, practices, treaties, and laws have a profound impact on the lives of individuals living in different countries, the impact of what we might be tempted to define as a global basic structure is still inferior than the impact that the respective domestic basic structures have on the same individuals. Second, there exists a cooperative surplus. Single individuals manage to yield more aggregate growth through international interactions – both at the state and individual levels – than if they were to cooperate only domestically. This is demonstrated by the fact that economic growth is not merely a modern phenomenon linked to the Industrial Revolution, which allowed to increase labour productivity, but it has also gone hand in hand with a progressive reduction of the structural constraints to a full integration of national markets into a global market (Baldwin 2016: 113-141). Third, the cooperative surplus has been unevenly distributed, at least from the beginning of globalisation in early nineteenth



century up until the end of the twentieth century. Global inequality has been a by-product of both industrialisation and globalisation. From the last decade of the twentieth century, the trend has reversed, in the sense that the globalisation has finally become convergent, with Asian countries catching up with Western ones, but this fact cannot cancel almost two centuries of divergent growth. Fourth, even if we were to buy the anti-cosmopolitan argument that in Rawls's theory the basic structure is the "existence" rather than "instrumental" condition of justice (pace Abizadeh), this would not exclude that future institutional development might require a theoretical upgrade of Rawlsian justice (e.g. if more pervasive global institutions will be created). Fifth, it is indisputable that the global economy has created so far a considerable problem of background injustice, in the sense that some have won and some others have lost from it (Milanovic 2003).

As we have seen, the only possible way to infer global duties of socio-economic justice from these five points, given our historical contingencies, is to maintain that the mere evidence of background injustice suffices to demand the creation of global institutions. However, from this theoretical argument it does not automatically follow that in the absence of global institutions, which would be just to create, we have a second-order duty of subsidiarity with regards to these institutions – hence starting to implement a global redistribution of wealth while waiting and pushing for these institutions to be created. For a Rawlsian anti-cosmopolitan might even bite the bullet and accept that the background problem of justice requires an institutional solution, or that the site and scope of justice should be realigned. But he could also stress that it is improbable that a sufficient majority of people would be willing to cooperate in the institutional solution, hence in the intermediate situation we are living (which is likely to last for a long time) nothing changes in practice with respect to Rawls's theory. After all, it might be added, if global institutions do not exist, it is not completely clear who should realise a global redistribution of wealth.

The latter argument is probably too much *trenchant*. The absence of global institutions inevitably renders a global redis-

tribution difficult but not impossible. Assume, for example, that people living in Country X knew that if there existed global institutions that were capable of managing a global system of taxation, they would have to renounce N units of wealth. Even in the absence of global institutions, nothing prevents Country X from redistributing N, either through foreign aid or foreign direct investment, or by renouncing the economic benefits caused by global asymmetries of power. One example of the latter being developed countries that manage to keep their national markets closed to those sectors in which developing countries might be more competitive or that subsidise these same sectors, mainly the agricultural one (Pogge 2008: 18-19). A second example is represented by the “sweatshops” in which poor persons living in developing countries offer cheap labour – in a more direct or indirect way – to multinational companies that take advantage of international asymmetries of socio-economic power to gain much higher profits than they would obtain if global background justice were secured (Young 2011: 123-151).

In sum, bringing home the theoretical argument that a global basic structure is a requirement of justice can have practical implications even if we buy all the empirical points made above, and in particular that a global basic structure of the same kind as the domestic one does not exist and it will probably not exist in the near future. For even under these circumstances, the theoretical argument in favour of a global basic structure can provide people living in developed countries with the moral incentive to alter those practices and norms that lead to an unfair distribution of the cooperative surplus.

Nonetheless, even though global economic cooperation can either be considered as a prerequisite or as a plea to be put on “longed-for” global institutions (given the indisputable existence of global economic interactions), there remains the pending issue of coercion. The latter constitutes a double problem. On the one hand, coercion can be raised as the defining element that makes the domestic basic structure different from the global one, instead of or in addition to cooperation. In this article, I have left this issue apart, and I have fo-

cused on the cooperative justification. Here we do not have the time to go through this burgeoning literature, but it may suffice to say that there are several possible counterarguments against the relevance of state coercion in delimiting the boundaries of socio-economic justice at the domestic level. It may be argued that states practice coercion on foreigners in so far as they prevent free movement across borders (Abizadeh 2007: 345-357), or it may be maintained that there exists a form of global coercion which is systemic and consists of a set of economic rules, more or less institutionalised, that limit individual freedom (Valentini 2011). Following the counterargument, both forms of coercion, intrastate and systemic, require justification and would demand the implementation of socio-economic justice to become acceptable to the worst off. Alternatively, it might also be argued that coercion is irrelevant for justice in general, hence there is no point, for the purpose of defending global justice, in wondering whether international norms or global economic rules are coercive or not (Sangiovanni 2012).

On the other hand, even assuming that the “coercion-based” justification can be neutralised in one of the three ways mentioned above, it is important to wonder whether non-voluntariness has implications for the cosmopolitan conclusions that might be inferred from the “cooperation-based” justification. More precisely, at the domestic level, individuals have no alternative but to get together with others in producing the cooperative surplus because they are born in a society where civil and criminal laws have been institutionalised, hence if they were to opt for a completely atomistic life they would hardly be as well off as they would have been in the state of nature, given that the majority of natural resources have been privatised and are inevitably subject to the negative externalities caused by those who engage in cooperation (e.g. pollution, global warming, biodiversity losses). In this sense, it is surely true that the single individual is better off living with other individuals and cooperating with them than she would be in the state of nature, but it should also be noticed that once cooperation has been established and institutionalised, participation in the production of the cooperative surplus is



no longer a free choice, because the state-of-nature alternative is automatically removed.

Conversely, the structure of global cooperation is more complicated. Both industrialisation and the gradual removal of technical and economic constraints to the progressive intersection of national markets have allowed yielding increasing wealth and wellbeing in absolute terms. It is now a common way of saying that an ordinary citizen of a developed country has more life opportunities than a pre-industrial monarch (travels, technological devices, medical treatments, and so forth). Yet, the existence of domestic options of cooperation reduces the non-voluntariness of global cooperation, meaning that entertaining economic relations with foreigners is not necessarily indispensable to obtain the means for minimal subsistence.

If the latter argument were correct, it could be used as a further objection against globalising the scope of justice. Probably it could not defuse the cosmopolitan conclusions *tout court*, but it could at least weaken them. For it might be maintained that even though economic interactions exist at the global level so that they could (and should) evolve into some forms of cooperation, voluntariness makes these global interactions different from those occurring among fellow-nationals. This objection would be halfway between the classic objection based on simple cooperation and the one based on simple coercion. More specifically, it would neither be answered with the empirical evidence on global economic interactions as an existence/instrumental condition of justice (it would appeal, in addition, to their voluntary character) nor would it require that global practices be coercive. Instead, it would focus on the fact that those who gain from global cooperation could also decide not to do so, and this could reduce the strength of the duties of socio-economic justice emerging from this kind of economic interactions.

The robustness of the “non-voluntary cooperation” argument bears on whether it is true that an individual has the option to withdraw from global practices and conduct an atomistic existence. We could think of an entire society that decides to cut off bridges with the international community and

with economic and financial markets that extends beyond its borders. This would be, for example, an autarchic country with a more or less nationalised economy, in which production and consumption take place among fellow-nationals – admittedly, this hypothetical country would need to be lucky enough to have sufficient natural resources to keep imports to a minimum. Conversely, it is much more difficult to imagine how a single individual could withdraw from global interactions while being a member of a state that is integrated into global dynamics. Just think for example of the opening of bank accounts, the purchase of consumer goods, the use of medicines, and so forth. All these activities may entail (more or less voluntary) interactions with foreign agents, from which either benefits or costs could emerge. It would seem to be the case that from the individual point of view the non-voluntariness of domestic cooperation implicates the non-voluntariness of global cooperation as well, even though the latter is hidden behind the appearance of free choice when analysed from a broader social perspective. Therefore, the “cooperation-based” argument remains central in grounding global socio-economic justice, and hence everything depends on the degree of interconnection that exists between domestic social systems.

In conclusion, the mistake to avoid is to think that the disanalogy between the domestic and the global institutional settings represents a conclusive argument in favour of a statist interpretation of socio-economic justice. For if we grant that from the “cooperation-based” perspective, which we have taken as diriment for our debate, the basic structure of society is an instrumental condition of justice, the mere absence of global institutions (and their supposed unrealizability in the future) does not entail that we lack possible levers to reduce global inequalities so as to increase the wellbeing of the worst off and to level out life opportunities worldwide. Differently from the process that leads to the creation of the domestic basic structure, and whose alternative is a pre-institutional situation, the scenario preceding the creation of the global basic structure is characterised by the coexistence of a multitude of domestic institutions. On the other hand, global inequality,

instead of being a sort metaphysical entity descended from above, is a consequence of both local and global factors. The latter depend on the interaction of domestic institutions, which are responsible for due reforms. If these reforms cannot be comprehensive, hence giving rise to a global basic structure, they can still materialise in fairer interactions between agents located within domestic basic structures.

Theorists leveraging on the instrumentality of the global basic structure end up insisting on the institutional solution to the problem of justice and so doing they run the risk of ending up in a dead-end, because states may accept the relevance of their argument in theory but deny it in practice. A more promising argumentative strategy may consist in explaining what is the right course of action to be taken between theory and practice, that is to say after ascertaining the normative need of global institutions for correcting background injustice and before obtaining these institutions. It might be rebutted that even if we recognise the instrumentality of the global basic structure, the latter can become a proper subject of global justice upon creation, but not before. This is true, but then the question that is novel for political theory, because did not concern the passage from the state of nature to the domestic basic structure, is how should we behave with respect to a subject of justice that we accept as both valid and necessary in theory but does not exist in reality. One possible response is that as long as single agents cannot delegate the preservation of justice to a global basic structure, they must do everything in their power, in their unregulated interactions, to get as close as possible to the cooperative ideal that we would have had if there had been a subject of justice, in our case global institutions. This can explain why theories of global justice are relevant in practice.

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NOTES

¹ *The Law of Peoples* was firstly published by Harvard University Press in 1999. However, Rawls's first reflections on the topic are contained in the Amnesty International Lecture he gave in 1993, which was titled "The Law of Peoples" as well (see Rawls 1993). The text of the lecture was subsequently developed and revised, so as to become, according to the same Rawls (1999b: v), "fuller and more satisfactory".

² On the evolution of Rawls's thoughts concerning how to accommodate the rights of future generations within his theoretical construct and the so called "just saving principle" see Heyd (2009).

³ The parties are not allowed to choose among all available conception of justice, because they are given a list which only contains those principles of justice that respect one important parameter: unconditionality – they should hold whatever the contingencies and the level of development of the society. Moreover, Rawls, for practical reasons, provides a short list of the most credible alternatives.

⁴ Whereas, "natural goods" (individual skills and abilities, both physical and intellectual) are not distributed by the institutions of the basic structure of society but they may affect the distribution of social primary goods, which in turn are subject to the principles of justice.

⁵ Meaning that none is willing to be worse off in order to damage someone else; the parties simply strive to get the most in absolute terms.

⁶ The optimal basic scheme of liberty for any individual is, as stated in the first principle, the most extensive one compatible with a similar scheme of liberties for all.

⁷ Note that Rawls (1999a: 54) specifies that both the right to hold specific kind of property, as for example the means of production, and the freedom of contract, as "understood by the doctrine of laissez-faire", are not included in the basic list.

⁸ Saying that Rawls prefers two interpretations of "everyone's advantage" and "open to all" only means that these two interpretations can lead to the conception of socio-economic justice that rational and equally disinterested agents would choose in the original position.

⁹ Here Rawls starts delineating the second session of the social contract, with "the parties as representatives of different nations", that he would later develop in *The Law of Peoples*.

¹⁰ On the differences between peoples and states see Rawls 1999b: 27-30.

¹¹ For Rawls a liberal society does not have a comprehensive conception of the good (see Rawls 1999b: 34).

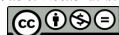
¹² Well-ordered peoples are both liberal peoples and decent hierarchical peoples.

¹³ Rawls (1999b: 118) defines it as a "principle of transition".

¹⁴ On self-ownership, natural resources and the Pavarotti example, see also Steiner 2009.

¹⁵ Beitz was writing in 1979, so if he was convinced of that claim at the end of the 1970s he should be even more so now. See also Beitz 1999b.

¹⁶ On the recent trend of convergent globalisation see also Branko Milanovic (2015). On the normative implications of international trade for social justice see also James (2005a).



¹⁷ However, Barry's early remarks on Rawls's construction should be confronted with his later works on social justice and on the structural elements that distinguish domestic from global cooperation (see Barry 1982, 1999).

¹⁸ However, Pogge's cosmopolitan egalitarianism, that he develops as a critique of Rawls, should be kept distinct from his later works on negative duties of justice (see Pogge 2008). With the latter he sought to demonstrate that even his libertarian colleagues, who rejected Rawls's theoretical premises, had reason to be concerned with global poverty because of the role that the concept of negative freedom play in their own theories of justice (see also Corvino 2019: 76-77).

¹⁹ Note, however, that Pogge disagrees with the way Beitz deals with international inequalities in the endowment of natural resources, and he argues that their respective views would result in two different interpretations of the global difference principle. For Beitz's global difference principle would demand a material redistribution of natural assets, while Pogge's global difference principle would leave states full control over their resources while requiring those most endowed to optimize the condition of the worst off (see Pogge 1989: 250-252). Moreover, we should also notice how these considerations on the property of natural resources will later inspire Pogge's Global Resources Dividend (GRD. See Pogge 2008: 202-203).

²⁰ There is an important difference between the argumentative line followed by Buchanan and the one employed by Beitz. While the acknowledgment of Rawls's empirical mistake – the fact the he overlooks the existence of a global basic structure – ultimately induces Beitz to reject the two-level original position in favour of a global one, Buchanan follows till the end Rawls's analysis, and he just modifies the empirical premise so as to broaden the list of the principles of international justice.

REFERENCES

- A. Abizadeh (2007), *Cooperation, pervasive impact, and coercion: On the scope of distributive justice*, in "Philosophy and Public Affairs", 35, 4, pp. 318-358.
- R. Baldwin (2016), *The Great Convergence: Information Technology and the New Globalization* (Cambridge MA: The Belknap Press of Harvard University Press).
- B. Barry (1973), *The Liberal Theory of Justice: A Critical Examination of the Principal Doctrines in A Theory of Justice by John Rawls* (Oxford: Clarendon Press).
- B. Barry (1982), *Humanity and Justice in Global Perspective*, in J. Pennock, J. Chapman (eds.), *NOMOS XXIV, Ethics, Economics and the Law* (New York: Harvester Wheatsheaf), pp. 219-252.
- B. Barry (1999), *Statism And Nationalism: A Cosmopolitan Critique*, in I. Shapiro, L. Brilmayer (eds.), *NOMOS XLI, Global Justice* (New York: New York University Press), pp. 12-66.
- C.R. Beitz [1979] (1999a), *Political Theory and International Relations – With a New Afterword by the Author* (Princeton: Princeton University Press).
- C.R. Beitz (1999b), *Social and Cosmopolitan Liberalism*, in "International Affairs", 75, 3, pp. 515-529.
- G. Brock (2009), *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press).
- A. Buchanan (2000), *Rawls's Law of Peoples: Rules for a Vanished Westphalian World*, in "Ethics", 110, 4, pp. 697-721.
- S. Caney (2001), *Cosmopolitan Justice and Equalizing Opportunities*, in "Metaphilosophy", 32, 1-2, pp. 113-134.

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- F. Corvino (2019), *Labour Commodification and Global Justice*, in “Kriterion – Journal of Philosophy”, 33, 1, pp. 53-88.
- D. Heyd (2009), *A Value or an Obligation? Rawls on Justice to Future Generations*, in A. Gosseries, L. M. Meyer (eds.), *Intergenerational Justice* (Oxford: Oxford University Press), pp. 167-189.
- A. James (2005a), *Distributive Justice without Sovereign Rule: The Case of Trade*, in “Social Theory and Practice”, 31, 4, pp. 533-559.
- A. James (2005b), *Constructing Justice for Existing Practice: Rawls and the Status Quo*, in “Philosophy and Public Affairs”, 33, 3, pp. 281-316.
- A.J. Julius (2003), *Basic Structure and the Value of Equality*, in “Philosophy and Public Affairs”, 31, 4, pp. 321-355.
- P. Maffettone (2017), *Rawls’ duty of assistance: a defence and re-elaboration*, in “Etica & Politica/Ethics & Politics”, XIX, 1, pp. 353-376.
- S. Maffettone (2011), *Introduzione a Rawls* (Bari-Roma: Editori Laterza).
- B. Milanovic (2003), *Two Faces of Globalization: Against Globalization as We Know It*, in “World Development”, 31, 4, pp. 667-683.
- B. Milanovic (2016), *Global Inequality: A New Approach for the Age of Globalization* (Cambridge MA: The Belknap Press of Harvard University Press).
- D. Moellendorf (2002), *Cosmopolitan Justice* (Cambridge, MA: Westview Press).
- L.B. Murphy (1998), *Institutions and the Demands of Justice*, in “Philosophy and Public Affairs”, 27, 4, pp. 251-291.
- T. Nagel (2005), *The Problem of Global Justice*, in “Philosophy and Public Affairs”, 33, 2, pp. 113-147.
- T.W. Pogge (1989), *Realizing Rawls* (Ithaca: Cornell University Press).
- T.W. Pogge [2002] (2008), *World Poverty and Human Rights – Second Edition* (Cambridge: Polity Press).
- J. Rawls (1993), *The Law of Peoples*, in S. Shute, S. Hurley, *On Human Rights: The Oxford Amnesty Lectures* (New York: Basic Books), pp. 42-82.
- J. Rawls [1971] (1999a), *A Theory of Justice – Revised Edition* (Cambridge MA: The Belknap Press of Harvard University Press).
- J. Rawls (1999b), *The Law of Peoples, with “The Idea of Public Reason Revisited”* (Cambridge MA: Harvard University Press).
- J. Rawls (2001), *Justice as Fairness: A Restatement* (Cambridge MA: Harvard University Press).
- J. Rawls [1993] (2005), *Political Liberalism – Expanded Edition* (New York: Columbia University Press).
- M. Ronzoni (2007), *Two Concepts of the Basic Structure, and their Relevance to Global Justice*, in “Global Justice: Theory Practice Rhetoric”, 1, pp. 68-85.
- M. Ronzoni (2008), *What makes a basic structure just?*, in “Res Publica”, 14, 3, pp. 203-218.
- M. Ronzoni (2009), *The Global Order: A Case of Background Injustice? A Practice-Dependent Account*, in “Philosophy & Public Affairs”, 37, 3, pp. 229-256.
- A. Sangiovanni (2007), *Global justice, Reciprocity, and the State*, in “Philosophy and Public Affairs”, 35, 1, pp. 3-39.
- A. Sangiovanni (2008), *Justice and the Priority of Politics to Morality*, in “Journal of Political Philosophy”, 16, 2, pp. 137-164.
- A. Sangiovanni (2012), *The Irrelevance of Coercion, Imposition, and Framing to Distributive Justice*, in “Philosophy and Public Affairs”, 40, 2, pp. 79-110.
- T. Scanlon (1973), *Rawls’ Theory of Justice*, in “University of Pennsylvania Law Review”, 121, 5, pp. 1020-1069.
- H. Steiner (2009), *Left Libertarianism and the Ownership of Natural Resources*, in “Public Reason”, 1, 1, pp. 1-8.
- L. Valentini (2011), *Coercion and Justice*, in “American Political Science Review”, 105, 1, pp. 205-220.



L. Wenar (2006), *Why Rawls is Not a Cosmopolitan Egalitarian*, in R. Martin, D.A. Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell), pp. 95-113.

I.M. Young (2011), *Responsibility for Justice* (Oxford: Oxford University Press).

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