

# Samuel Scheffler

## *Cosmopolitanism, justice & institutions*

‘Cosmopolitanism’ is not – or not yet – the name of a determinate political philosophy. Although many contemporary theorists have put forward views that they describe as cosmopolitan, there is little agreement among them about the central elements of a cosmopolitan position. Almost nobody advocates the development of the kind of global state that would give the idea of ‘world citizenship’ literal application. Instead, disparate views have been advanced under the heading of cosmopolitanism, and these views share little more than an organizing conviction that any adequate political outlook for our time must in some way comprehend the world as a whole.

To some people cosmopolitanism is primarily a view about sovereignty. To others it is primarily a view about cul-

ture and identity. To many philosophers, however, it is primarily a view about justice, and in recent years there has been an increasing flow of books and articles devoted to the subject of ‘global justice.’

In part, the focus on justice reflects the continuing influence of John Rawls, who insisted that “[j]ustice is the first virtue of social institutions, as truth is of systems of thought.”<sup>1</sup> In so doing, Rawls elevated the concept of justice above other important political ideas such as liberty, law, equality, power, rights, obligation, security, democracy, and the state, and gave it a privileged place on the agenda of contemporary political philosophy. It is testimony to Rawls’s influence that justice – especially ‘distributive,’ or economic, justice – has remained a central preoccupation of political philosophers ever since.

Yet there is disagreement about the bearing of Rawls’s own work on cosmopolitanism considered as a view about justice.

In the cosmopolitan literature, Rawls figures both as hero and as villain. As hero – for saying that a just society cannot permit the distribution of income

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<sup>1</sup> John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 3.

and wealth to be influenced by morally arbitrary factors such as people's native abilities or the social circumstances into which they are born. Cosmopolitans see this as paving the way for a recognition that national boundaries are equally arbitrary from the standpoint of justice. As a matter of justice, the accident of where one is born should have no effect on one's economic prospects.

As villain – because Rawls himself refused to draw this conclusion. In *A Theory of Justice*, he argued that the “primary subject of justice” is the “basic structure” of an individual society. The basic structure comprises a society's major social, political, and economic institutions. Rawls's principles of distributive justice are universal in the sense that they apply to the basic structure of each society taken one at a time, but not in the sense that they apply to the global distribution of income and wealth as a whole. So, according to Rawls's ‘difference principle,’ the laws and institutions of the United States should be designed in such a way as to maximize the position of the worst-off Americans, and the laws and institutions of Bangladesh should be designed in such a way as to maximize the position of the worst-off Bangladeshis. But justice does not require that the worst-off Bangladeshis should be as well-off as the worst-off Americans. Indeed, it does not require that the best-off Bangladeshis should be as well-off as the worst-off Americans. According to Rawls, the principles of distributive justice impose no constraints at all on the distribution of income and wealth between the United States and Bangladesh or among citizens of the two countries.

*A Theory of Justice* was published at a time when *globalization* was not yet a word in our everyday lexicon and few people described themselves as cosmo-

politans. Virtually all political philosophers at the time assumed that the individual society was the default unit of analysis. So if he had written nothing further on the subject, Rawls's failure to question this assumption might have been taken to reveal nothing more damning than a lack of prescience or a failure of imagination. Yet when, late in his career, Rawls explicitly addressed issues of global justice in light of the extensive literature that had by then emerged on the subject, he refused the invitation of sympathetic cosmopolitan critics to apply his theory of distributive justice globally. Instead, he argued that relations among societies are governed by the “law of peoples.”<sup>2</sup> The law of peoples sets out principles of justice to govern international relations, but they are not principles of *distributive* justice. In other words, they do not concern themselves with the distribution of income and wealth per se, but instead presuppose the existence of separate societies within which distributive principles do apply. In taking this position, Rawls cemented his ambiguous status – part hero, part villain – within the cosmopolitan literature.

I believe that this mixed assessment gets things backwards. On the one hand, Rawls is not the hero that cosmopolitans take him to be, because he never did say that morally arbitrary factors should not be allowed to influence the distribution of income and wealth. Any distribution, including distributions that conform to Rawls's own difference principle, will inevitably be influenced by such factors. What Rawls said was that a just distribution must not be *improperly* influenced by morally arbitrary factors. But to decide what counts as an improper influence we

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2 See John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).



need a substantive theory that we have compelling independent reasons to accept. Rawls took himself to have provided such a theory for the special but crucial case of the basic structure of an individual society. Cosmopolitans would have to do something comparable for the global case. The mere observation that national boundaries are morally arbitrary – hardly controversial if what it means is just that nobody deserves to be born in one country rather than another – does not take us very far.

On the other hand, Rawls's emphasis on the basic structure as the primary subject of justice does not qualify him as the villain of the piece either, for its real effect is to clarify the form that a compelling argument for cosmopolitanism would have to take. If anything, it is this feature of Rawls's view, rather than his claim about the moral arbitrariness of natural talents and social class, that paves the way for the development of a credible cosmopolitan position.

There is one well-known argument for cosmopolitanism that does take its inspiration from Rawls's claims about the primacy of the basic structure. Rawls is correct, according to this argument, to stress the importance of regulating the basic structure by norms of justice, but what he fails to recognize is that there is now a global basic structure – a worldwide network of economic and political institutions. It is to this structure, rather than to the institutions of a single society, that the principles of justice properly apply.

Samuel Freeman, a prominent defender of Rawls, has responded forcefully to this line of argument.<sup>3</sup> He emphasizes that, for Rawls, distributive justice is not

concerned with the allocation of goods in the abstract. Nor, contrary to what some philosophers appear to believe, are we to decide on the principles of distributive justice by comparing the intrinsic attractiveness of different allocative patterns. Instead, distributive justice is a response to social and political cooperation and the possibilities and problems that cooperation brings with it. As such, it is an essentially social and political value, and it governs the basic social institutions that make possible the production, exchange, distribution, and consumption of goods. The institutions in question include the legal systems of property and contract, and they are political products, the results of political decisions and political action. The principles of distributive justice provide standards for designing and assessing such institutions. The role of these principles is to specify fair terms of cooperation for people who are conceived of as engaged in a complex cooperative project governed by a strong notion of reciprocity.

Since, in Rawls's view, a world government is neither feasible nor desirable, and since the basic institutions to which distributive justice applies must be constructed politically, there is no global basic structure and no reasonable expectation that one will emerge in the future. There are, to be sure, global institutions and arrangements of various kinds, but they do not add up to a global basic structure that is remotely analogous to the domestic case. Instead, these institutions are largely the product of international agreements among independent states, and they presuppose the existing legal and institutional structures of those states. In the absence of a global state with a world government, there is nothing that would count as a global basic structure in Rawls's sense.

<sup>3</sup> In Samuel Freeman, *Justice and the Social Contract* (New York: Oxford University Press, 2007), part III.

This response is effective against the simple cosmopolitan strategy of generalizing Rawls's claims about the basic structure to the case of the so-called 'global basic structure.' Yet even if this simple generalizing strategy fails, Rawls's focus on the basic structure holds a more encouraging lesson for cosmopolitans.

To see why, it will help to review some of the motivation for that focus. One place to start is with utilitarianism – the theory that Rawls treats as the primary rival to his own – and in particular with utilitarian revisionism. Utilitarians hold that the correct normative standard to apply both to individual actions and to institutional policies and arrangements is the standard of maximizing average or aggregate utility or welfare. Utilitarianism is famous – or notorious – for its willingness to deviate from traditional or 'commonsense' moral principles whenever a deviation will promote maximum utility overall. The simplest form of utilitarianism holds, for example, that killing innocent people is normally wrong because it normally fails to maximize the general welfare. But if, in extraordinary circumstances, killing some innocent person *would* maximize the general welfare, perhaps because it would prevent the deaths of more innocents overall, then it is the right thing to do.

Utilitarian revisionism is motivated by two mutually reinforcing convictions. The first is that there is a strong connection between morality, properly understood, and well-being. If adherence to a given set of values and norms does not serve to enhance human well-being, then it is irrational and inhumane to insist on those norms, however firmly entrenched in tradition and common sense they may be. The dead hand of tradition should not blind us to the fact that

the only possible point of morality is to make our lives better, nor should it lead us to acquiesce in values and norms that fail to contribute to that aim.

The second conviction is that it is essential to think about moral questions in a systematic and holistic way, focusing not merely on individual actions in isolation but also on the way in which our actions are structured by social institutions and are related to wider patterns of human conduct. The fates of people in the modern world are tied together in complex ways through their shared participation in vast social, political, and economic structures. In these circumstances, we cannot continue to rely uncritically on the heterogeneous assortment of commonsense values and principles that people are used to applying in their daily lives. Instead, individual actions must be assessed, and the norms governing them must be rationalized, from a broader perspective. In formulating social policy, we must consider how and when the competing interests of different people should be balanced and aggregated, and we must decide what principles should guide the design of the massive social and political institutions that structure individuals' lives.

Among philosophers, utilitarianism has long been criticized for its many counterintuitive implications and its willingness to reject or revise values and principles in which most people have great confidence. Yet economists and social policymakers have continued to be attracted by its broad institutional perspective, its simple maximizing structure, and its foundational reliance on an inclusive notion of well-being. Despite its revisionism, utilitarianism has seemed to them to provide a rational, humane, and systematic basis on which to address the large-scale questions of institutional policy and design

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that are so important in the modern world. Rawls himself regarded it as extremely significant that the great classical utilitarians were also leading economists and social reformers with a primary interest in institutions. Indeed, an institutional emphasis of some kind seems to be required if we are to develop norms and principles capable of regulating the structural and aggregative phenomena to which the utilitarian is rightly sensitive. If the influence of utilitarianism is to be challenged, an alternative must be found that shares some of its virtues.

Now, Rawls cannot accept utilitarian revisionism, which he sees as a threat to the basic values of freedom and equality that are the foundation of a democratic society. And he believes that utilitarianism's reliance on well-being as a fundamental notion is deeply misguided. Yet he shares the institutional focus and systematic aims of utilitarianism. In the Preface to *A Theory of Justice* he says that his aim is to give a systematic account of justice that will be superior to the utilitarian account. This account is meant to apply specifically to the basic institutional structure of society. The claim that the basic structure is the primary subject of justice gives social institutions priority over individual actions, from the standpoint of justice, and it reveals important affinities with the utilitarian view. In so doing, it confirms Rawls's intention to offer a serious alternative to utilitarianism at the level of institutional design for a democratic society.

Although Rawls's position is in general much less revisionist than utilitarianism, there is one respect in which it is actually more revisionist, for Rawls believes that social institutions require special normative principles that do not apply directly to individual agents. This represents a departure from the domi-

nant historical tradition within moral and political philosophy. Not even utilitarianism, with its avowedly institutional emphasis, maintains that the norms governing institutions differ fundamentally from those governing individual conduct. On the contrary, a striking feature of the utilitarian view is its insistence that, ultimately, there is but a single fundamental principle that regulates both individuals and institutions.

Rawls's claim about the primacy of the basic structure, expressed in his characteristically colorless prose and initially presented as part of an informal introductory exposition of the main outline of his theory, did not become a major focus of attention during the outpouring of critical discussion that greeted the publication of *A Theory of Justice*. Although it attracted the interest of a few commentators, it was generally overshadowed by other more striking and more obviously consequential features of his theory. Nor did Rawls do much at first to highlight the significance of his emphasis on the basic structure. In fact, he tends in *Theory* to understate the novelty of this emphasis, insisting, for example, that his view of justice is entirely compatible with Aristotle's.

However, critics have maintained, rightly in my view, that Rawls's focus on the basic structure marks a sharp departure from traditional philosophies of justice. Indeed, as Samuel Fleischacker has argued,<sup>4</sup> although the term *distributive justice* is an ancient one, the actual idea of distributive justice that Rawls employs, and which receives its fullest and best developed account in his work, appears to be a relatively modern one.

4 Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge, Mass.: Harvard University Press, 2004).

But whereas his critics believe that this is a serious failing of his view, it seems to me to be one of its most important features.

Rawls's insistence on the primacy of the basic structure amounts to an attempt to redirect liberal theory away from a focus on individual acts, agents, and transactions, and toward a focus on the fairness of basic social institutions. More precisely, his aim is to reorient liberal theory in two ways: first, by making justice its primary virtue, and then by interpreting justice to apply in the first instance to social institutions rather than to individual actions. A concern with the justice of fundamental social arrangements, Rawls insists, must take priority over, and is a precondition for, any legitimate concern with the justice of individual actions and transactions. This focus on the basic structure represents, among other things, an attempt to incorporate into liberal theory what Rawls sees as the legitimate insights not only of utilitarianism but also of the socialist tradition. In their different ways, each of these traditions has emphasized the extraordinary and transformative significance of modern social and economic institutions. Rawls's focus on the basic structure represents an attempt to incorporate these insights securely within liberal, democratic thought.

Now we live in a time when, in the United States of America, there has been a massive retreat from the kinds of social welfare policies that Rawls's theory recommends, and the idea that our economic institutions must satisfy a test of fundamental fairness has fallen into disfavor. This means that the reorientation of liberal thought that Rawls sought to achieve in theory has, for the time being at least, been stymied in practice. But its

theoretical importance remains undiminished.

Rawls provides a number of explicit reasons for his focus on the basic structure. First, he says in *A Theory of Justice* that the basic structure is the primary subject of justice because its effects in shaping people's life prospects are so profound. Individuals born into different social positions have different expectations in life, some of them more favorable than others. These inequalities of expectation are obviously not grounded in considerations of merit or desert, and because they affect people at birth they are especially "deep" and "pervasive." We cannot simply eliminate them all, for "any modern society . . . must rely on some inequalities to be well designed and effectively organized."<sup>5</sup> But their depth and pervasiveness make it essential that such inequalities should be regulated by principles of justice.

A second reason Rawls mentions has to do with the way the basic structure shapes people's desires and their characters. Citing "economists as different as Marshall and Marx,"<sup>6</sup> he says that a social system inevitably shapes people's desires and aspirations, and helps to determine the kinds of persons they are and want to be. The choice among different systems therefore implicates different views of the human good and different moral assumptions. Yet these issues are not always confronted openly. Rawls's emphasis on the basic structure is meant to counteract our tendency "to acquiesce without thinking in the moral and political conception implicit in the status quo, or [to] leave things to be set-

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5 John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), 55.

6 Rawls, *A Theory of Justice*, 259.



bled by how contending social and economic forces happen to work themselves out.”<sup>7</sup>

Taken together, these two considerations highlight the formative role of social institutions in shaping people’s desires, characters, and differing expectations in life. In view of the massively consequential social role of the basic structure, bringing it under the control of a regulative conception of justice is a matter of the first importance. Any failure to do so will mean that matters of great moral urgency are left to be settled by default or by the play of “contending social and economic forces.”<sup>8</sup>

In “The Basic Structure as Subject,” first published in 1977, Rawls provides an additional reason.<sup>9</sup> He argues that agreements among individuals should be treated as morally authoritative only if they are made freely and under fair conditions, and that only the basic structure can secure the background conditions necessary to ensure that agreements are free and fair. Even if such conditions happen to obtain at a given moment, the cumulative effect of many separate and seemingly fair individual transactions may be to alter the distribution of resources and opportunities in ways that erode background justice. With the best of intentions, individuals cannot sustain background justice over time, for the task is too complex and requires too much information. There are no feasible rules of individual con-

duct full compliance with which would suffice to prevent the erosion of background justice. Instead, it is the role of the basic structure to secure and preserve just background conditions. As Rawls puts the point,

When our social world is pervaded by duplicity and deceit we are tempted to think that law and government are necessary only because of the propensity of individuals to act unfairly. But, to the contrary, the tendency is rather for background justice to be eroded even when individuals act fairly: the overall result of separate and independent transactions is away from and not toward background justice. We might say: in this case the invisible hand guides things in the wrong direction and favors an oligopolistic configuration of accumulations that succeeds in maintaining unjustified inequalities and restrictions on fair opportunity. Therefore, we require special institutions to preserve background justice, and a special conception of justice to define how these institutions are to be set up.<sup>10</sup>

This reason differs from the two previously mentioned. In appealing to the profound effects of the basic structure and its role in shaping individuals’ wants and aspirations, Rawls had emphasized some of the potentially problematic ways in which the basic structure can affect individuals’ lives and the attendant need to bring it under normative control. But in calling attention to its role in achieving background justice, he makes a complementary point. There are profound moral problems that only the basic structure can solve. In view of the tendency of individual transactions to erode background justice, and the unavailability of feasible rules of personal conduct to counteract this tendency, in-

7 Ibid., 260.

8 Ibid.

9 John Rawls, “The Basic Structure as Subject,” *American Philosophical Quarterly* 14 (April 1977). A revised and expanded version was published the following year, and is included as Lecture VII of *Political Liberalism* (New York: Columbia University Press, 1993).

10 Ibid., 267.

dividuals by themselves cannot achieve a just society. Only a properly designed basic structure can secure the background conditions that are a precondition of such a society.

In this same essay, Rawls retracts his earlier claim that his focus on the basic structure is in accord with traditional thinking about justice. Conceding that this claim was misleading, he instead highlights the distinctiveness of his approach by contrasting it with utilitarianism on the one hand and libertarianism on the other. Neither of these two otherwise opposed positions sees a need for special principles to regulate the basic structure. Utilitarians recognize the moral importance of social institutions, but they believe that the same principles that regulate institutions can also be applied to individual conduct, even if this means departing from the traditional norms of personal morality. This is in keeping with the revisionism noted earlier.

Libertarians, meanwhile, see no difference between a political society and any other form of association, and regard basic social and political institutions as having no special moral status or importance at all. Instead, the same principles that govern the justice of individual transactions can be used to assess the justice of social arrangements. By contrast, Rawls insists that the institutional framework of a complex, modern society constitutes a distinctive kind of moral subject, with a social role and a set of capacities that differ from those of individual agents. As such, it requires regulation by a distinctive set of principles.

One striking implication of Rawls's position is that, as the social world develops, new social and political forms may emerge, and some of these forms may come to play such a distinctive and

consequential role in human life – creating new problems, compounding old ones, and being indispensable to the solution of new and old alike – that they constitute, in effect, new types of moral subject, requiring regulation by *sui generis* normative principles. If this is correct, then morality depends on politics in the sense that, in order to know what normative principles should be applied to institutions, we need to attend to the actual institutions that have emerged in our world, to the problems they have created and the problems they can solve, and to the social roles that they play. In short: new social forms may require new moral norms.

Of course, this slogan is too simple, for these new moral norms may in turn require the modification of the new social forms or even their replacement by still newer forms. But the direction of influence runs two ways: moral norms may require changes in existing institutions and practices, but changes in existing institutions and practices may also create new forms of agency and give rise to a need for new moral norms. We should understand complaints about the novelty of Rawls's emphasis on the basic structure in this light. Critics may well be right to say that the very idea that there are special principles of 'social justice' that do not apply directly to individual agents is a distinctively modern one, which finds no echo in the thought of the ancients or their successors up to the modern age. But as a modern idea it presumably emerged in response to a modern predicament and, as far as I can see, it is none the worse for that.

The bearing of these considerations on the case for cosmopolitanism should be clear. Even if there is no 'global basic structure' to which principles of distributive justice should be applied, there is another way of generalizing Rawls's ar-



gument, and one that is potentially more encouraging to cosmopolitan ideas. This alternative strategy involves arguing that the processes of globalization have given rise to new human practices and institutional arrangements, which, whether or not they add up to a global basic structure, nevertheless require regulation by distinctive principles of justice.

Rawls's arguments for the primacy of the basic structure suggest that, for this alternative generalization strategy to succeed, three things would have to be established. The first is that at least some of the new global practices and arrangements have come to exert a profound and morally consequential role in human affairs. The second is that it would be either unfeasible or undesirable simply to undo the relevant practices and arrangements. And the third is that there are urgent moral problems – akin to the problem of background justice – that could not be solved either by individual agents or by the basic structures of individual societies even if both complied fully with the respective norms that apply to them, but which could be solved if the relevant global practices and organizations were regulated by *sui generis* principles of justice. Call the first of these conditions the *consequential role condition*, the second the *irreversibility condition*, and the third the *moral indispensability condition*.

It is not as easy as it may seem to tell whether these three conditions have been satisfied. One implication of Rawls's argument in *The Law of Peoples*, for example, is that the shocking facts of global poverty and inequality do not by themselves establish that the moral indispensability condition has been met. The relevant question, from a Rawlsian perspective, concerns the extent to which these appalling problems would persist even if all of the world's states

were domestically just and complied fully with the law of peoples. The answer to this question is not obvious.

Nevertheless, the global economic, legal, and regulatory terrain is complex, rapidly changing, and difficult to survey. It is hard to take the measure of these developments, and easy to mistake transient features of current arrangements for permanent ones. But it seems clear that accelerating global integration is giving rise to new social forms and practices, to new patterns of interaction and interdependence, and to new modes of governance involving a heterogeneous assortment of rule-making bodies charged with fixing the terms of global economic activity. It would be rash to assume that the principles of justice with which we are already familiar, whether they apply to individuals or to the institutions of an individual society or to relations among "peoples" in Rawls's sense, will suffice to regulate all of these new social forms.

Nor should we assume that none of the new norms that may be required will be norms of distributive justice in particular. There is a tendency to frame discussions of global distributive justice as debates about how much people in affluent countries owe to those in poorer countries. This invites attention to questions about the moral significance of membership in a political society, the relative strength of our duties to conationals and to others, and the limits of required self-sacrifice. Important as these questions are, however, there is a more direct way in which economic globalization can raise issues of distributive justice – namely, by facilitating modes of interaction that have significant distributive effects that cut across national borders and elude political control by the institutions of individual societies. Consider, for example, the claim

that increased access by Western capital to labor markets in developing countries has depressed the wages of Western workers while improving the prospects of poor workers in the Third World. If true, this claim seems to implicate issues of distributive justice that may be difficult to address solely at the level of the individual society.

Furthermore, the absence of a global basic structure does not mean that problems of background justice cannot arise on the global level. After all, it is not the existence of the basic structure that gives rise to the need for background justice. Cosmopolitans may argue that, if injustice is to be avoided, it is as important to impose background constraints on the processes of economic globalization as it is to impose them on a domestic market economy. One effect of globalization, in other words, may be to shift the locus of the problem of background justice by making it difficult for any single society to ensure just background conditions for transactions involving its citizens. Under these conditions, cosmopolitans may argue, using Rawls's words in a different context, that we "require special institutions to preserve background justice, and a special conception of justice to define how these institutions are to be set up."

One lesson of Rawls's theory for philosophers is that we should be wary of trying to address problems of distributive justice by debating rival allocative formulae in a political and institutional vacuum. This is a lesson that some cosmopolitan theorists have at times perhaps neglected. But another lesson is that it is not the job of philosophers to announce *a priori* limits on the social and political forms that may emerge in our world, or to foreclose the possibility that at least some of those forms will require

new regulative norms. This is a lesson that some *anticosmopolitan* theorists have at times perhaps neglected.

It is worth remembering that Rawls devised his own theory of distributive justice, with its novel insistence on the primacy of the basic structure and on maximizing the position of the worst-off social group, only after the institutions of the welfare-state had already become familiar and well-established. If cosmopolitanism is the view that, similarly, the continued emergence and development of new global practices, bodies, and organizations may require the development of new and previously unanticipated kinds of regulative moral norms, then there is nothing in Rawls's theory to rule that out. Indeed, there is no better illustration of the view that changes in our social world may require changes in our repertoire of moral principles than Rawls's own arguments for the basic structure as the primary subject of justice.

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