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*Notes*

<sup>1</sup>This paper continues a theme first adumbrated in my *Berkeley: an Introduction* (Blackwell: Oxford 1987); it contains some changes of mind.

<sup>2</sup>The best evidence that this stronger view is the one Berkeley really wants to push is in *Principles* 22.

<sup>3</sup>See my *Berkeley* pp 152-153.

<sup>4</sup>I mention some further advantages on pp. 118-19 of my *Berkeley*.

<sup>5</sup>For early signs of this picture see *Psalms* 19, which starts: 'The heavens declare the glory of God, and the sky above proclaims his handiwork. Day to day pours out speech, and night to night reveals knowledge'. For very recent signs of the idea that the world consists basically of elements of speech, thought or utterances see the views of T. Sider (2011) and K. Fine (2001); one might say that for Fine, the basic elements are propositions, and for Sider they are parts of propositions (or perhaps of sentences).

<sup>6</sup>See Taylor, (1985).

<sup>7</sup>See Berkeley's discussion of moral responsibility in the Second Dialogue; I discuss the relation between this and the problem of agency in *Berkeley*, pp. 136-140.

<sup>8</sup>See *Principles* §§ 29 and 33.

<sup>9</sup>See the *Third Dialogue* p. 252.

<sup>10</sup>See my *Berkeley* ch. 5, esp. pp. 72-73.

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# The Idea of Global Justice: A Progress Report

By Samuel Scheffler

## Prologue

I ENTERED THE PH.D. PROGRAM IN PHILOSOPHY AT PRINCETON IN THE MID-1970S, during the great revival of moral and political philosophy that had begun a few years earlier. It was a thrilling time for students interested in those areas of the subject. A cohort of young philosophers who have long since become household names – admittedly in some rather peculiar households – had begun to produce a remarkable body of brilliant work which has shaped the field ever since. I have in mind such people as G.A. Cohen, Ronald Dworkin, Thomas Nagel, Robert Nozick, Onora O'Neill, Derek Parfit, Thomas Scanlon, Peter Singer, Judith Thomson, Michael Walzer, and Bernard Williams, among others. The journal *Philosophy & Public Affairs*, which both exemplified and contributed to the rebirth of moral and political philosophy, had been established in 1972, and was providing a forum for the presentation of new work on a wide range of previously neglected topics. But the towering achievement of the period was, of course, the publication in 1971 of John Rawls's masterpiece, *A Theory of Justice*<sup>1</sup>. Since Rawls has long since come to be seen as embodying a kind of liberal orthodoxy, it can be difficult for students now to appreciate the revolutionary impact his book had when it was published. At a stroke it transformed the previously moribund fields of moral and political philosophy into centers of intense philosophical activity. After a period in which the prevailing view among philosophers was that philosophy as such had little to contribute to substantive moral and political reflection, the book's unapologetic focus on basic normative questions and its manifest intellectual distinction were almost shockingly revelatory. The excitement generated by its publication, both within and outside of philosophy, was extraordinary.

As at many other universities, graduate students at Princeton read and

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debated Rawls's theory and the latest works of Rawls criticism with great intensity and with a clear sense that we were operating at the frontiers of philosophical inquiry: that we were doing what would today be called cutting-edge work. Graduate students always feel this way, I suppose, but the extraordinary reception of Rawls's work, not only among professional philosophers and not only in the academy but also in the wider intellectual world, served only to confirm our youthful hubris.

There was one graduate student, who will remain nameless for another paragraph or so, who regularly attended all the seminars at Princeton where Rawls was discussed. He was not a student in the Philosophy Department itself but rather in the administratively distinct Political Philosophy program. He was thoughtful and serious but, as I recall, he was also somewhat reserved and usually did not take a leading role in the seminar discussions. When people asked him what he was working on, he explained that he was writing a dissertation about the implications of Rawls's theory for questions of international justice. This explanation was sometimes met with what I fear may have seemed like a kind of polite condescension, for the nameless student's topic struck most of us as a bit peripheral to the main issues raised by Rawls's theory. Not a bad topic, exactly, but certainly not at the center of the cutting-edge debates about Rawls that we were having.

More than forty years have now passed since the publication of Rawls's book. Rawls himself died in 2002 and, although he is still a towering figure in political philosophy, he tends, as I have said, to be seen as a canonical thinker rather than a revolutionary one. The debates about his work that go on today have little in common with the debates that dominated graduate seminars in the Princeton Philosophy Department in the mid-1970s. Most of the aspects of Rawls's views that people argue about now weren't on our radar screens then, and many of the criticisms and controversies that seemed to us absolutely central then have disappeared into the mists of time, leaving little or no trace. There is at least one exception, though, and that brings me back to the nameless graduate student's dissertation. As you may have guessed, the nameless student was Charles Beitz, and his dissertation, when published a few years later as a book, helped to invent a new subject, the subject of global justice, which is today one of the most hotly debated areas within all of political philosophy.

There are several lessons to be learned from this little story. The one with the most general relevance, and my personal favorite, might be put this way: beware the cutting edge. But I tell the story here for two other reasons. The first is to emphasize how new a subject global justice is. Nowadays, as I have said, it is a central topic in political philosophy. New books and articles about global justice appear almost daily. It has been the topic of numerous academic conferences and symposia, and outside of academia the idea has become a focal point for political activism across a broad front. There are global justice centers, global justice programs, global justice projects, and a global justice movement. An Encyclopedia of Global Justice was published in 2011. Yet the phrase hardly appeared in the philosophical literature at all prior to 1980, nor did it figure much in non-academic discourse. Even Chuck Beitz, when he wrote his famous first book, spoke of "international justice" rather than "global justice," and the

phrases are significantly different, as I hope will become clear in the course of my discussion.

My second reason for telling the story is this. Because the literature on global justice is a young one, its content continues to be heavily influenced by its initiating formulations. This means that it still bears the stamp of its origins in the literature responding to the work of Rawls. This, I believe, is responsible for some limitations in the discussion which have not been sufficiently noticed and to which I want to call attention. More generally, my aim here is to take stock of the current state of debates about global justice, and to consider some of the challenges that must be addressed if the idea of global justice is to take its place as a mature member of our repertoire of normative concepts.

### I. Two Preliminary Points

TALK ABOUT GLOBAL JUSTICE IS SOMETIMES GREETED WITH IMMEDIATE SKEPTICISM OR incredulity. To the philosophically uninitiated, the very phrase "global justice" may seem to suggest a kind of bizarre naïveté about the actual conditions of the world, as if those who deploy the concept think that we already live in a just world or at least that we can reasonably hope to do so. Yet the world is so obviously rife with misery and injustice that talk of global justice seems to many people to involve what is at best an absurd utopianism and at worst a willful blindness to the realities of suffering and injustice. But this reaction, understandable though it is, is misguided. Philosophers who seek to develop a conception of global justice may be as pessimistic as anyone else about the actual conditions of the world. The view they wish to defend is not that we live in a just world or that we are likely to achieve one in our lifetimes, but only that it makes sense to apply norms of justice to the world as a whole. In defending the idea of global justice, they are equally defending the idea of global injustice. For the thought that we live an unjust world presupposes that global arrangements can be held to a standard of justice. If there are no norms of global justice, then we have no basis on which to convict existing global arrangements of injustice, and our pessimism about the condition of the world will have to be expressed in other terms.

But this raises another preliminary point that needs to be addressed. There are at least two different things that might be meant in talking about global justice or about a just world. On the first conception, a just world would be a world made up of individually just societies. The norms of justice apply directly to individual societies, on this view, and not to the world as a whole. But if all of the world's societies satisfy those norms, then we can say that the world as a whole is just, or that global justice has been achieved. We can call this *the additive conception* of global justice. On the second conception, there are norms of justice that apply not to individual societies taken one-by-one, but rather to the world as a whole, considered as a single unit. We can call this *the unitary conception* of global justice. The debates about global justice that I want to consider are, as a first approximation, debates about the unitary conception. Many people who are seen in the contemporary dialectical context as opponents of the idea of global justice are really opponents only of the unitary conception. They would be happy to endorse the additive conception. Or, at any rate, that's how things look at a first approximation. I will later suggest that the distinction between the additive

and unitary conceptions is less clear than it appears.

## II. Rawls and Global Justice

I HAVE SAID THAT PHILOSOPHICAL DEFENSES OF GLOBAL JUSTICE HAVE TENDED TO PRESENT themselves as responding to Rawls's theory of justice, and there are at least two reasons for this. The first, which should be evident from the anecdote with which I began, has to do simply with the intellectual pre-eminence of Rawls's theory and with the formative role that it has exerted on subsequent generations of political philosophers, especially those who came of age in the immediate aftermath of the book's publication. But there is more to it than that. Rawls's theory has features that have seemed to many political theorists, from Beitz onward, to invite its extension to the global level.

A very brief summary of some of the main ideas of Rawls's theory will help to make this clear. Rawls argues that the primary subject of justice is "the basic structure of society," by which he means a society's major social, political, and economic institutions. The aim of his theory, accordingly, is to set out principles of justice that can serve to regulate the basic institutional structure of an individual society. The theory he develops comprises two principles, the first of which assigns equal basic rights and liberties to all citizens, and the second of which governs the distribution of economic goods within the society. The second principle holds, roughly, that economic inequalities are permissible only insofar as they serve to maximize the position of the worst-off social group. In effect, this "difference principle" assigns economic equality a normative default status, since no inequalities at all are allowed unless they serve to raise those who have least above the level they would enjoy if equality prevailed. Although there are some egalitarians who have argued that Rawls's theory is still not egalitarian enough, the difference principle gives his theory a far more egalitarian character than many other liberal theories possess. Classical liberal theories are prepared to tolerate extensive economic inequality provided it arises from the operations of a free market that is constrained only by people's basic rights and liberties and a requirement of formal equality of opportunity. In arguing against these theories, Rawls maintains that they allow the distribution of income and wealth to be unduly influenced by morally arbitrary factors such as people's native abilities and the social circumstances into which they are born. The influence of these factors is undue, in Rawls's view, when the consequence of assigning them so large a role is to frustrate the fundamental interests of society's worst-off citizens. A society must be conceived of as a fair system of cooperation among free and equal citizens, each of whom has a fundamental interest in pursuing his or her conception of the good life. An economic system allows too much scope for morally arbitrary factors to influence the distribution of income and wealth if, in consequence of that influence, the ability of the society's least advantaged citizens to pursue their conceptions of the good is severely and systematically compromised.

There are two primary features of Rawls's theory that have seemed to many to invite its extension to the global level. The first is his emphasis on the basic structure of society as the primary subject of justice. One of Rawls's reasons for this emphasis is that the institutions of the basic structure play a

profound role in shaping people's economic prospects and their fortunes in life. In view of that role, it is essential that these institutions should be regulated by principles of justice. Advocates of global justice have maintained, however, that the increasingly complex global economy also exerts a profound effect on the lives and prospects of people worldwide, and that it is equally essential that the institutions and bodies that define the ground rules of that economy should be regulated by principles of justice.

The second feature is Rawls's appeal to the idea of moral arbitrariness and his claim that it is unjust if morally arbitrary factors play an undue role in determining the distribution of income and wealth in society. Our world, advocates of global justice argue, is characterized by enormous disparities in the levels of wealth enjoyed by different societies. Yet many of these disparities stem from factors, such as differences in countries' natural resource endowments, which are at least as morally arbitrary as the factors that Rawls singles out. Moreover, it is certainly morally arbitrary whether an individual happens to have been born into a wealthy society or a poor one. The country of one's birth is not assigned on the basis of one's merit or desert. And if it is unjust to have the distribution of income and wealth within a society unduly influenced by morally arbitrary factors, then surely it is no less unjust to have the global economic distribution influenced by such factors.

The upshot of these considerations is supposed to be that, in order for Rawls's theory to be consistent, his principles of justice should be applied not to the basic structure of an individual society but rather to the global order as a whole. Or, to put it another way, the claim is that there is pressure internal to Rawls's theory to accept a unitary rather than an additive conception of global justice. On an additive conception, the world as a whole would be just if the basic structure of each society conformed to Rawls's two principles. In such a world, for example, the only economic inequalities that prevailed in Norway would be those that served to maximize the position of the worst-off Norwegians, and the only inequalities that prevailed in Liberia would be those that served to maximize the position of the worst-off Liberians. Yet it might still be the case that the worst-off Norwegians were far better-off than the worst-off Liberians. Indeed, the worst-off Norwegians might be far better off than the *best-off* Liberians. On a unitary conception, by contrast, the world as a whole would not be just unless the only economic inequalities that prevailed globally were those that served to maximize the position of the world's poorest people. It is only the unitary conception, globalists argue, that is compatible with Rawls's own arguments about the importance of regulating fundamental social and economic institutions and avoiding economic distributions that reflect the excessive influence of morally arbitrary factors.

These arguments have a good deal of force. Yet when Rawls addressed the topic of global justice in *The Law of Peoples*<sup>2</sup>, he rejected them and reiterated that his principles of justice apply solely to the basic structure of an individual society rather than to the world as a whole. The relations among different societies, he maintained, are properly governed by the law of peoples, and although the law of peoples assigns wealthier societies a duty to assist what Rawls called "burdened societies," it does not articulate principles of economic justice that are

supposed to apply to the global order as a whole. Instead, it largely follows the traditional doctrines of international law, especially as they have been developed and modified in the post-World War II period. So Rawls defends what is, in effect, a two-tier approach to global justice. The "primary subject of justice" remains the basic structure of the individual society, and the principles of distributive justice apply solely at that level, though of course they can be applied additively at the global level. International relations are governed by a different set of norms, which presuppose the existence of separate societies regulated by the primary norms, and which do not include the difference principle or any other norms of distributive justice.

### III. Two-Tier Theories

WITHOUT ENDORSING ALL OF THE SUBSTANCE OF RAWLS'S THEORY OF JUSTICE, A NUMBER of other writers have defended the essentials of his two-tier approach. These anti-globalists argue that a strongly egalitarian conception of distributive justice applies at the domestic level, but that the same principles do not apply globally. At the global level, the relevant norms prohibit aggression, require respect for human rights, and mandate the provision of humanitarian aid in emergency situations. But they do not require the implementation of a unitary scheme of egalitarian economic distribution. In defending the two-tier approach, these writers reject the arguments given for the extension of Rawls's theory from the domestic to the global level. They insist that there are morally relevant differences between the domestic and global cases, and that these differences call for the application of different normative principles.

The arguments that anti-globalists offer to support the two-tier approach differ in detail, but there is one generic strategy that is common to most of them. This is to identify some features that are said to be necessary and perhaps sufficient to trigger the application of egalitarian conceptions of distributive justice, and then to argue that a domestic society has those features but that the global order taken as a whole does not. For example, Samuel Freeman, whose account tracks Rawls's own position most closely, argues that distributive or economic justice regulates cooperative schemes, for cooperation is what makes possible the creation of economic value, through the production, exchange, use, and consumption of goods.<sup>3</sup> Social cooperation is in turn made possible by the basic legal institutions and social norms which define ownership, property, contracts, and the like. Without these cooperation is impossible, and without cooperation there is no economy to be regulated by principles of distributive justice. The role of such principles, then, is to articulate fair terms of cooperation. The principles spell out the appropriate ground rules of cooperation, and their function is to regulate the institutions that establish cooperation as a social possibility. Since we have no world government and the relevant institutions are all political products, it follows that the primary norms of justice must apply domestically, to the legal and political institutions of individual societies, rather than to the world as a whole. Although there are global institutions and arrangements of various kinds, and although they serve to extend the scope of cooperation, they are largely the product of agreements among independent states, and they presuppose the existing legal and institutional structures of those states. Unlike the national institutions, they play

no fundamental role in making economic cooperation possible in the first place.

Whereas Freeman emphasizes the role of social institutions in making economic cooperation possible, other writers highlight different features that are said to distinguish the social and global cases. By contrast to Freeman, Michael Blake argues that "[c]oercion, not cooperation, is the *sine qua non* of distributive justice."<sup>4</sup> His view is that the state is coercive of individual citizens in a way that international institutions are not. Although state coercion is necessary for individuals to lead autonomous lives, it also poses a threat to individual autonomy, and it is the resulting need to provide a justification for state coercion that triggers the demand for egalitarian justice within a domestic society. Since there is nothing comparable to state coercion of the individual at the global level, Blake maintains, different norms apply there.

Thomas Nagel, meanwhile, offers an account that overlaps with but also diverges from Blake's.<sup>5</sup> He too emphasizes the importance of coercion, but what he sees as salient is the fact that the members of society have a dual relation to the coercive system under which they live. On the one hand they are joint authors of that system and on the other hand they are subject to it and expected to accept its authority. This means that the coercive system implicates the will of each member in a special and specially complex way. It is the special involvement of the agency or will of its members that generates a presumption against arbitrary inequalities within the coercive system and, in so doing, provides the justification for an egalitarian distributive scheme. Nothing comparable exists on the global level.

Like Freeman, Blake, and Nagel, Andrea Sangiovanni defends the view that "equality is a demand of justice only among citizens . . . [and residents] of a state."<sup>6</sup> But he rejects the idea that the reason for this has to do with the coerciveness of the state, and he singles out the accounts of Blake and Nagel for criticism. His own account has something in common with Freeman's, but the notion to which Sangiovanni appeals is not cooperation but reciprocity. The main idea is this. The state provides its citizens and other residents with the basic goods that make it possible for them to develop and act on their plans. These goods include security from physical attack and the maintenance and reproduction of a stable system of property rights and entitlements. The state and only the state has the institutional infrastructure that makes it possible to deliver these goods. But these institutions in turn depend on the contributions of citizens and residents—paid in taxes, compliance, trust, and political participation. Each individual's ability to flourish thus depends not only on his or her talents, but also on the contributions of others in maintaining the basic legal and political institutions which provide security and a stable system of entitlements. It is in view of this mutual interdependence that a norm of reciprocity applies within the state: each member owes the others a fair return for his or her contributions to the collective goods on which they all depend. The fair return that citizens owe one another is provided by mutual subjection to an egalitarian scheme of distributive principles that mitigates the effects of morally arbitrary factors, such as people's natural attributes and social circumstances, on their distributive shares. Like Nagel, Sangiovanni maintains that the Rawlsian appeal to arbitrariness arises only among citizens who stand in certain relations to one another. In Sangiovanni's version of the argument, these people owe each other the mitigation of arbitrariness as a fair return for the



contributions each makes to the others. So interpreted, the appeal to arbitrariness cannot be generalized to the global level.

#### IV. First Problem: Global Justice and Global Egalitarianism

THIS DEBATE ABOUT THE PROPER SCOPE OF EGALITARIAN JUSTICE HAS BEEN AT THE HEART of recent discussions of global justice, and it raises many important issues. Rather than entering into the debate myself, however, what I want to do is to call attention to some of its limitations, with an eye toward identifying some additional issues that need to be addressed if a satisfactory conception of global justice is to emerge. The first of the limitations I have in mind is perhaps already obvious. Both sides in the debate I have been describing accept an egalitarian conception of distributive justice, whether Rawls's own conception or a variant. The disagreement between them is about whether the proper scope of this conception is the individual society or the world as a whole. To put it another way, they disagree about whether the global application of the egalitarian conception is to be understood as additive or as unitary. But they share the view that the correct theory of justice is an egalitarian one.

This way of framing the debate binds the idea of global justice very tightly to a particular substantive vision of justice. Although I am sympathetic to that vision, it is not uncontroversial. Egalitarian conceptions of justice are not universally accepted either among political philosophers or among non-philosophers. Framing the debate about global justice as a debate about the proper scope of egalitarian principles masks the contested character of those principles themselves. In so doing, it limits the debate about global justice and makes it easier for egalitarians and non-egalitarians alike to evade certain challenges to their respective positions. Let me explain.

On the one hand, framing the debate about global justice as a debate about the proper scope of egalitarian principles makes it easier for those who reject egalitarianism to dismiss the idea of global justice out of hand. If global justice is identified with global egalitarianism, then non-egalitarians may see little reason to take global justice seriously. As a result, they may be less motivated to consider the question of what a non-egalitarian theory of global justice would look like. Yet much of the pressure to construe justice globally comes from the world's growing economic and technological integration, and such pressure provides a challenge to non-egalitarian theories too. In fact, there is one respect in which non-egalitarians have less reason to resist the globalization of justice than egalitarians do. Egalitarian theories are so economically demanding at the domestic level that their extension to the global level can seem unrealistic. But for those who advocate non-egalitarian conceptions, the idea that the principles of justice are global in scope presents no comparable obstacle, and so it may be harder for them to explain why justice as they understand it should not be globalized (although, as we will see, it needs to be asked what exactly that would involve). Yet as long as global justice is identified with global egalitarianism, this challenge can be more easily side-stepped.<sup>7</sup>

On the other hand, the identification of global justice with global egalitarianism can make the egalitarian view look easier to defend than it really is. If egalitarian principles are the only possible principles of global justice, then

anything at all that looks like a global injustice may be taken to support global egalitarianism. Obviously, however, this inference will not go through if there are other, non-egalitarian conceptions of global justice that also condemn these injustices. Consider, for example, Thomas Pogge's well-known arguments against what he calls the resource and borrowing privileges.<sup>8</sup> In the global order as currently constituted, the effective rulers of any country are normally recognized internationally as constituting its legitimate government, however brutal or corrupt they may be, and however they came to power. As such, they are authorized to sell the country's natural resources and to borrow money in the name of the country as a whole, even if they use these privileges to enrich themselves and plunder their nation's wealth. Pogge cites the resource and borrowing privileges as examples of the way in which the prevailing international economic order contributes to persistent global poverty and inequality. Yet the bearing of the resource and borrowing privileges on the case for global egalitarianism is obscure. No distinctively egalitarian principles of justice are required to condemn the brutal, corrupt, and thuggish dictatorships that Pogge has in mind. Arguing against them is like arguing against murder and theft. Indeed, it is arguing against murder and theft. Nor does the argument against extending the resource and borrowing privileges to these dictatorships depend on an appeal to egalitarian principles of distributive justice, any more than arguments against receiving stolen property domestically depend on an appeal to Rawls's difference principle.<sup>9</sup> Objections to the resource and borrowing privileges will look as if they support egalitarian principles of global justice only if we suppose that those are the only possible principles of global justice.<sup>10</sup>

The upshot of these considerations is that the relatively unreflective identification of the concept of global justice with a substantively egalitarian theory of justice has exerted a limiting and distorting influence on the discussion of the topic to date. Even the distinction between the unitary and additive conceptions, which seems at first glance like a straightforward distinction that is neutral with respect to the content of global justice, actually has its clearest application in relation to egalitarian conceptions of distributive justice. There is a clear contrast between the view that we should use egalitarian principles to assess each country's economic distribution separately and the view that we should instead use them to assess the global economic distribution as a whole. But how does the distinction between unitary and additive conceptions apply to Lockean or libertarian principles? After all, an individual's natural, Lockean right to be free of force, fraud, and aggression is not a right that holds only against co-nationals. But if that is correct, then it is not clear that the distinction between unitary and additive conceptions would capture the distinction between a Lockean conception of social justice and a Lockean conception of global justice. Indeed, it is not clear what the latter distinction even amounts to. So we see again how the implicit identification of the concept of global justice with a substantively egalitarian theory of justice serves to obscure certain questions from view. That is the first limitation I see in current debates about global justice. The second limitation is deeper and harder to explain.

### V. Second Problem: Global Justice and Moral Agency

ONE WAY TO APPROACH THE ISSUE IS TO ASK WHY GLOBAL JUSTICE STRIKES US A matter of urgent concern, to the extent that it does. A natural first reply would be to point to the extent of global poverty and suffering. But that cannot be the complete answer, since not every instance of suffering raises issues of justice. In principle, one might regard global poverty as raising issues not of justice but of humanitarian concern, which present individual agents with imperatives, based in duties of beneficence, to provide aid to those who are suffering. There is, in fact, a large literature devoted to what might be called "the morality of affluence," that is, to the duties of affluent individuals to help alleviate global poverty. Yet those who argue for norms of global justice normally see the emphasis on duties of individual beneficence as insufficient. There are at least three reasons for this. The first reason is normative and conceptual. Duties of individual beneficence are a response to human suffering and need. But justice, at least as conceived by advocates of global justice, is concerned with rights, power, and the control of resources. The point in appealing to norms of global justice is not that affluent people should use some share of their resources to assist those who are suffering, but rather that the poor have a claim on or a right to a share of those resources, which don't rightfully belong to the affluent in the first place. The second reason is instrumental in character. The thought is that relying on the uncoordinated actions of individual agents is an ineffective way of addressing the large-scale problems of global poverty. The steps needed to address those problems are too complex and require too much knowledge, understanding, and coordination to be appropriately assigned to individual agents as a matter of duty. Problems of global poverty require institutional solutions rather than individual acts of goodwill. The third and final reason, which is related, is diagnostic. The point is that the problems of global poverty are structural. Their causes lie in the constitution of our increasingly interconnected global order. What is needed is not an increase in individual giving by the affluent but rather a rewriting of the fundamental terms of global political and economic interaction, a restructuring of the practices and institutions of the international order itself. The force of these considerations can be brought out by an analogy between the problems of global poverty and the problems of domestic poverty prior to the development of the modern welfare state. At that earlier stage, individual agents did have duties of beneficence, and we can imagine that, rather than developing the institutions of the welfare state, activists and others concerned about poverty might simply have exhorted individuals to give more, while philosophers argued about the precise extent of the required individual sacrifices. But with hindsight we can see that the development of institutional solutions, embodying ideals of justice rather than beneficence, was both practically more effective and normatively more satisfactory.

Now this line of thought is instructive, but there are two important points to keep in mind. The first is that the three reasons I have cited have their intended force only when they operate in combination. The first reason favors justice over beneficence, but it does not by itself justify a shift in the locus of responsibility from individual agents to institutions, for individuals no less than institutions are subject to norms of justice. On the other hand, the second and third reasons

favor a shift in the locus of responsibility from individuals to institutions, but they don't by themselves favor justice over beneficence, for institutions no less than individuals may have duties to provide humanitarian assistance to those in urgent need. It is only when the considerations favoring justice over beneficence are combined with the considerations favoring institutions over individuals that the line of thought yields the desired conclusion, which is that we need principles of global justice to regulate the institutions of the entire global political and economic order.

The second point is that the idea that justice is an especially important virtue of institutions, which the line of thought I have sketched takes for granted, may sound like a platitude, but as it figures in contemporary discussions it is highly innovative and consequential. As with so much in this area, the innovation is due largely to Rawls, and in his work the claim has two sides. On the one hand, justice is the paramount virtue of social institutions, so that whatever other virtues such institutions may possess, they are unacceptable if unjust. On the other hand, the primary subject of justice is the basic structure of society; the principles of justice that apply to individuals are secondary, and can be identified only once the principles for institutions are in hand. In short, the principles of justice apply in the first instance to institutions, and there is no greater virtue for institutions than to live up to those principles. The effect of this combination of claims is to make the justice of social institutions the focal point of political philosophy. But neither claim has the character of a platitude. Historically, justice has often been thought to apply in the first instance to individuals, and only derivatively to institutions. And it has often been thought that what is most important for social and political institutions is not so much that they should be just but rather that they should wield authority legitimately, or that they should successfully deter violence and secure peace and stability, or that they should protect liberty, or that they should promote prosperity.

So in making the justice of social institutions the focal point of political philosophy, Rawls was taking a highly innovative step, and indeed a fateful one. In the context of debates about global justice, the innovative character of the step is masked because Rawls is cast in the role of the conservative opponent of global justice, and his emphasis on the justice of *social* institutions is seen as a way of defending the wealth and privilege of affluent societies against claims of justice advanced on behalf of the global poor. But to the extent that those very claims are motivated by ideas about the special significance of global institutions and the ground rules under which they operate, they depend on and take for granted Rawls's insistence on the connection between justice and institutions.

My reason for making this point is not to set the historical record straight or to make sure Rawls gets credit for his contribution. Nor is it to highlight the contested character of the claim about justice and institutions and so to provide additional evidence of the ways in which debates about global justice have been shaped and limited by their Rawlsian, or contra-Rawlsian, origins. My aim instead is to call attention to some of the normative consequences of the institutional emphasis and, in so doing, to explain what I see as a second important limitation of the existing literature on global justice.

To do this, let me say a bit more about Rawls's reasons for treating the

basic institutional structure of society, rather than the conduct of individuals, as the primary subject of justice. Those reasons are complex, but for our purposes it will suffice to mention two of his ideas. The first one, which I have already noted briefly in passing, is that a society's major social, political, and economic institutions have such a profound impact, not only on people's prospects in life, but also on their characters and aspirations, that it is essential that they be regulated by principles of justice. These institutions establish and enforce the ground rules of social cooperation, and if the ground rules are unfair then not only the life prospects but also the goals and aspirations of many people will be stunted or deformed. The second idea is that, even under ideal conditions, *only* social institutions can implement and maintain a just social order. A modern economy is so complex that individual citizens cannot possibly be expected to keep track of its operations and to adjust their own conduct so as to make sure that fair arrangements are maintained. With the best will in the world, individuals will be incapable of achieving and preserving fair outcomes through the choices they make in their daily lives. Only suitably designed institutions can do that, by putting in place background mechanisms to prevent or correct deviations from fairness over time. So if, as the first idea has it, social institutions have great capacity to do mischief, it is also true, according to the second idea, that they have a unique capacity to do good, and for both reasons it is essential that they be regulated by an effective conception of justice.

According to advocates of global justice, the same points apply, *mutatis mutandis*, to the global economic order and the institutions and bodies that enforce its ground rules. The global order, which comprises the activities of national governments, multinational corporations, and quasi-governmental agencies like the World Bank, International Monetary Fund, United Nations, and World Trade Organization, and which is governed by a rapidly proliferating body of international legal regulations and instruments, serves to fix the ground rules of global economic activity in ways that profoundly affect the prospects of individuals throughout the world. There is no way to conceive of what a just world would even look like except by applying a unitary scheme of normative principles to this order as a whole. And given the complexity of the global economy, only global institutions could implement and maintain an economic order that conformed to that scheme of principles.

The question that interests me here is not whether this line of thought is compelling but rather what follows if it is. One thing that seems to follow is that, on a significant range of issues, there is a shift in the locus of moral agency and responsibility from individuals to institutions. There are social problems that are the responsibility of institutions rather than individual agents to address, and in addressing those problems institutions are to be guided by *sui generis* norms that do not apply to individual agents. If we accept this picture, however, it presents us with a number of difficult questions and challenges.

One question is how we are to conceptualize the agency of institutions? How are we to make sense of the idea of institutions as agents who have responsibilities that individuals do not have and are subject to norms that do not apply to individuals? By hypothesis, the agency of these institutions differs from the agency of individual human beings and is subject to different norms. Yet, at

the same time, institutions are staffed by individuals and, it seems, they can only do what they do by virtue of exercises of agency on the part of individuals who occupy roles within the institutions.

A second question is whether the diminished conception of individual moral responsibility that we are left with is normatively acceptable and humanly tolerable? Or does it serve only to ratify and legitimate the deplorable condition of modern human beings whose lives are increasingly subject to the brute power and pervasive control of large impersonal institutions? Alternatively, does it let individuals off the moral hook too easily, by fostering the illusion that justice can somehow be achieved without their committed efforts?

At the global level, the combined force of these questions, put in the most abstract way, is this. The more the case for global justice depends on a recognition of the pervasive role of global institutions and arrangements in structuring the lives of individuals worldwide, the more diminished a role it seems to leave for the moral agency of the individual human being. And this gives rise to a double challenge: to provide an understanding of the kind of agency that is being postulated at the global, institutional level, and to clarify the place of the individual moral agent in this globalized world.

I will return later to the question of how Rawls responds to the analogous challenge that arises with respect to his conception of social justice. Before doing that, however, let me now explain my second reservation. Put simply, it is that advocates of global justice have not done much to address or even to acknowledge the challenge just mentioned. Once again the point can be illustrated with reference to Pogge's work. Pogge argues forcefully that the "global economic order" is the primary cause of the prevailing levels of global poverty and inequality, both of which are unjust. At the same time, he argues that we—by which he means "affluent countries and their citizens"<sup>11</sup>—bear moral responsibility for these injustices. That is because "we are harming the global poor—by imposing on them an unjust global order under which the incidence of severe poverty, malnutrition, and premature death is foreseeably much higher than it would be under some feasible alternatives."<sup>12</sup> In so doing, we are violating our negative duty not to harm, a duty that is one of the most stringent and widely recognized of all our moral duties.

One way to understand the force of Pogge's appeal to negative duties, as it applies to individual citizens, is to contrast it with Peter Singer's famous but highly controversial argument to the effect that affluent individuals should contribute a much greater proportion of their resources to aid those who are suffering from poverty, disease, and malnutrition.<sup>13</sup> To argue for this conclusion, Singer relies on two premises: one apparently descriptive and one explicitly normative. The descriptive premise, which is not terribly controversial, is that most individuals in developed countries are doing relatively little at present to assist the global poor. The normative premise is, roughly, that all individuals have far-reaching duties to prevent harm and alleviate suffering. This is much more controversial, for both the stringency and extent of the so-called "positive duties" to which Singer appeals are disputed. Non-utilitarians regard these duties as being much weaker, in general, than our "negative duties" not to inflict harm ourselves. The reason Singer's conclusion is controversial, then, is because

it seems to many people to rest on an unusually expansive interpretation of the stringency and extent of our positive duties.

Like Singer, Pogge too relies on one apparently descriptive premise and one explicitly normative premise. But whereas Singer's normative premise is more controversial than his descriptive premise, in Pogge's case the reverse is true. Pogge's descriptive premise asserts that the affluent are not merely failing to help the global poor, but are rather harming them. His normative premise is that we have strong "negative" duties not to harm. Now the stringency of our negative duties is not in serious dispute. But Pogge's descriptive premise, namely, that we are in fact harming the global poor, is far more controversial than Singer's premise that we are not doing much to aid them.

It is easy to see why. Pogge says that the individual citizens of affluent countries are harming the global poor by "imposing" on them an unjust global economic order. But in what way do they do this? Many citizens, even in affluent societies, struggle just to make ends meet. Most have very little understanding of how the global economic order works. They have little understanding of the global financial system, of international trade and commerce, of global legal and regulatory regimes, or of the operations of bodies like the International Monetary Fund, World Bank, and World Trade Organization. Yet, by hypothesis, these things serve to constitute the global economic order. To be sure, virtually all individuals participate as consumers in activities that are part of that order; many participate as workers; some participate as employers or investors. But few if any have a comprehensive grasp of the order as a whole and only a tiny number are ever called upon to make decisions about how important aspects of that order should be designed. Relatively few even conceptualize the order *as* an order. Those who do are more likely to see themselves as passive in relation to it than as exerting active control over it. Many experience it as comprising a set of powerful forces and institutions that are unresponsive to their wishes and serve to shape and constrain their lives in ways that they resent and mistrust. Indeed, the case for global justice, modeled on Rawls's arguments for treating the basic structure of society as the primary subject of justice, rests in part on a version of this very perception. It turns on the idea that the complex institutional framework of the global economy exerts a formative influence that profoundly shapes the prospects, characters, and opportunities of individual agents, and that we need a *sui generis* conception of justice to regulate that framework.

It is true that the ordinary actions of individuals within the system – as consumers, workers, and even as small savers or investors – make miniscule contributions to complex causal chains linking those activities to events throughout the world. Still, few individuals are in a position to achieve more than the most rudimentary grasp of how those causal chains work or of the global institutions and practices that structure them. Moreover, if one is violating one's negative duty not to harm others, the appropriate response is normally to stop doing so. But opting out of the global economy is not an option. It is virtually impossible for anyone to live outside of that economy. So if simply participating in the global economy were sufficient to constitute a violation of one's negative duty not to harm others, it would be a very unusual type of violation, namely, one that nobody could avoid committing. In any case, though, the idea that such

participation on the part of individuals amounts to their *imposing* the global order on the poor seems at best an overstatement.

It is far more plausible, of course, to assert that the governments of affluent countries help to impose the global economic order. It is also true that, in so doing, they are normally to some degree responsive to the interests of their citizens. But while this confirms that national governments belong to the network of global institutions whose interactions require regulation by principles of global justice, it falls well short of establishing that individual citizens have violated their negative duties by imposing the global order on the poor.

For my purposes, what is interesting about the argument I have been criticizing is that, to make the case for global justice, it emphasizes the causal and normative role of the global economic and political framework that fixes the ground rules of interaction for individuals worldwide. To that extent, it models itself on Rawls' arguments for treating the basic structure as the primary subject of justice, by emphasizing that global institutions exert a special kind of agency that requires regulation by a special set of norms. But then, instead of asking about the acceptability of the presumably reduced conception of individual agency that this implies, it reverses course and *inflates* the role of individual agency, by insisting that the global institutional order is itself imposed by individual citizens. But this combination of claims is unstable. If the institutional order plays a *sui generis* causal role that requires regulation by *sui generis* institutional norms, then the causal role of individual agents is to that extent reduced and not increased. If, on the other hand, ordinary individuals themselves impose the global order, then the case for developing norms of global justice that go beyond the norms applying to individual agents is to that extent undermined. What is most significant about the combination of these claims is not, however, its instability, but rather that its effect is to obscure the deepest challenge posed by the argument for global justice: the challenge of explaining the precise kind of agency that must be postulated at the global, institutional level for the argument to succeed, and of helping us reconcile ourselves to the diminished normative role of the individual agent that seems to be implied by this vision of our globalized world.

## VI. Social Justice and Moral Agency

RAWLS FACES AN ANALOGOUS CHALLENGE ON THE SOCIAL LEVEL, AND IT IS NOT CLEAR how successfully he deals with it. Although he insists that the basic structure has a distinctive social role and that it must "carry out . . . operations"<sup>14</sup> that no individual can perform, he offers no explicit account of the kind of agency that that is embodied in the institutions of the basic structure. He provides a conception of justice that applies to institutions, but not of the kind of agency that must be exercised in order to secure compliance with that conception. So, for example, when he says that the "[basic] structure itself should make the adjustments necessary to preserve background justice,"<sup>15</sup> he is ascribing agential powers to "the basic structure itself," but it is not clear how we are meant to conceptualize the agential powers of institutions.

One thing Rawls does tell us is that the principles that regulate the basic structure are chosen by individual agents under the conditions of freedom and equality that characterize the original position. This means that, even though



institutional agents have a different social role than individual agents, the norms governing institutions are answerable to a conception of free and equal individuals rather than to any conception of institutions. Moreover, a just society must be a representative democracy, and in this way the theoretical answerability of institutions to individuals is also given concrete, political expression. The upshot is that individuals remain normatively fundamental in both theory and practice. This is reinforced by two other elements of Rawls's position. On the one hand, the primary aim of just institutions is to make it possible for free and equal individuals to pursue their diverse conceptions of the good within a fair framework of cooperation. Within that framework, individuals may be guided by their own conceptions of the good life and by the moral values and principles that apply to individual conduct. The principles that apply to institutions do not supplant the principles of personal morality or the ideals of personal virtue. At the same time, individuals also have a role in securing social justice, because a just cooperative framework depends for its stability and effectiveness on the possession by individuals of a sense of justice that leads them wholeheartedly to support the institutions that make up the framework. In addition, Rawls insists that individuals have a natural duty to support just institutions. In all of these ways, his scheme is meant to preserve the moral centrality of individuals despite its institutional focus.

Nevertheless, it is unclear how successful Rawls is in addressing the challenge posed by his shift in focus from individuals to institutions. As I have indicated, his account of institutional agency is underdeveloped. And his attempt to reconcile the moral centrality of individuals with his emphasis on the basic structure as the primary subject of justice remains controversial. Defenders of classical liberalism see Rawls's emphasis on the primacy of the basic structure as implying a diminished conception of individual agency and responsibility. On the other hand, some egalitarians see it as undermining the cause of justice by placing the burden of securing just arrangements entirely on social institutions, and leaving individuals free to pursue their own economic interests. We may note in passing that this egalitarian criticism dovetails with the criticisms leveled at Rawls by advocates of global justice. Defenders of egalitarian conceptions of social justice see his emphasis on the basic structure as a device to shield affluent individuals from potentially burdensome demands made in the name of the domestic poor. Defenders of egalitarian conceptions of global justice, meanwhile, see it as a device to shield affluent societies from potentially burdensome demands made in the name of the poor worldwide. Both groups construe Rawls's focus on the fairness of basic social institutions as being—in effect if not intent—a device for enabling the affluent to evade burdensome moral demands. And social egalitarians join with Lockean liberals in rejecting Rawls's picture of individual moral agency. From their different perspectives and for different reasons, these two groups converge on the claim that Rawls assigns individual action too small a role in determining what counts as a just outcome.

Yet whatever difficulties Rawls may face in attempting to meet the challenges I have described, the difficulties facing advocates of global justice are greater. So far as the conceptualization of institutional agency is concerned, Rawls's account may be underdeveloped, but at least he has the advantage that

the kinds of institutions he is discussing are well-established. Although there are questions about how to conceptualize the kind of agency they exercise, as a practical matter their social role is manifest and their capacity to function, however imperfectly, is not in doubt. By contrast, global institutions are at an earlier, emergent stage, and their role and structure are less well established and understood. So in assigning to "the global economic order" the responsibility for securing the background conditions necessary for achieving global justice, one is relying on a conception of institutional agents that is not only radically undertheorized but also, as things now stand, practically undefined.

At the level of individual moral agency, meanwhile, recall the three elements of Rawls's account. First, there is the insistence that, as a normative matter, social institutions are answerable to individual agents. This is true both at the theoretical level, where the norms governing institutions are selected by individuals in a choice situation that models the freedom and equality of citizens, and at the practical level, where the institutions of representative democracy provide mechanisms of political accountability. Second, there is a conception of the division of moral labor between individuals and institutions. The point of just institutions is to allow individuals to pursue their diverse conceptions of the good and to honor the values of personal morality and the ideals of personal virtue within a fair cooperative framework. Third, there is a specification of the duties of individuals in relation to institutions. Individuals have duties to uphold just institutions and they must have a sense of justice that leads them wholeheartedly to do this. Advocates of global justice have done little to articulate a comparable conception of individual moral agency. And, as we have seen, some of their efforts to do so leave us with a picture of individual responsibility that is so inflated as to call into question the need for special norms of institutional global justice in the first place.

### VII. The Future of (the Idea of) Global Justice

DESPITE ALL THE DOUBTS I HAVE BEEN EXPRESSING, I THINK THE IDEA OF GLOBAL JUSTICE IS here to stay, although I think it is too soon to know what form the most compelling conception of global justice is likely to take. In my view, the arguments of two-tier theorists have shown that a simple generalization of the considerations in favor of egalitarian principles of social justice will not be enough to support the extension of egalitarian principles to the global level. Yet I am troubled by the sharp discontinuity that two-tier theorists postulate between the principles that apply domestically and those that apply globally. This discontinuity is taken to reflect a deeper discontinuity between the circumstances of individual societies, in which the features that trigger egalitarian principles of justice are present, and the circumstances of the world as a whole, in which those features are absent. But these alleged discontinuities seem incongruous with our actual situation. We live in a time of global institutional flux, which is characterized by the rapid intensification of global economic and technological integration and by the associated emergence of a host of new international organizations and rule-making bodies that serve to structure and regulate global economic, technological, and political activity. Even if anti-globalist critics are correct in saying that current global institutions and organizations do not play the same role that the basic structure of an individual

society does, the role that they do play is highly consequential and it is likely to become more so. As those institutions and organizations evolve and their role changes, the regulative norms that apply to them may themselves require revision or replacement. From this perspective, two-tier views begin to look like vain attempts to draw philosophical lines in the sand, lines which are likely to be swept away by as yet unanticipated changes in global institutions and practices.

Here again it is useful to compare the case of global justice with the case of social justice. Most of the theories of social justice with which we are familiar are tailored to the case of the so-called nation-state. But the nation-state is a specific historical formation, and a relatively recent one at that. Philosophers who have articulated principles to apply to that case have, in effect, been developing norms to regulate a specific form of political organization that emerged as a result of a long historical process. Rawls himself can be viewed as responding to an even more specific form of political organization, for he produced his theory of social justice, with its emphasis on the importance of improving the position of the worst-off members of society, only after the institutions of the modern welfare state had become well-established. Just as familiar theories of social justice were developed in response to forms of political organization that developed gradually over time, so too the most compelling theories of global justice may emerge only after the institutional configurations they seek to regulate have achieved greater definition and stability.

Of course, the nation-state continues to be the most important unit of political organization in our world, and it is likely to remain so for the foreseeable future. Nevertheless, the idea that we may need new, *sui generis* norms to regulate emerging global institutions and organizations does not strike me as at all implausible. In principle, it is possible to raise questions of fairness with respect to any form of significant human interaction. In practice, many factors may prevent such questions from actually being raised, even for very long stretches of time. But the denser and more consequential those forms of interaction are, and the higher the stakes involved, the more likely it is that the questions will get raised sooner or later. It hardly needs saying that the prevailing forms of global economic and political interaction are becoming ever denser and more consequential, and the facts of global poverty and inequality make clear how much is at stake in fixing the terms of global interaction. Moreover, the extreme disparities in the power and bargaining position of the participants in the global economy are more than sufficient to raise concerns of fairness both about the prevailing terms of interaction and about the nascent bodies and organizations charged with setting and enforcing those terms. Nor do these questions arise only in principle; they are already the focus of intense debate throughout the world and in many different settings.

Once such questions are raised with respect to some new practice, it is impossible to say *a priori* where they will lead. Novel practices present novel constellations of morally relevant features and factors, and the norms we are used to applying to older practices may not fit the new ones very well. That is why Rawls thought that, rather than applying traditional maxims of personal justice to the special case of government, we needed to develop new, practice-specific principles of justice to regulate the basic institutional structure of a complex,

modern society. It is true that, at least for now, emerging global institutions and practices don't have all the salient characteristics of domestic institutions and practices. However, it does not follow that the content of global justice can be fixed, once and for all, without knowing what form global arrangements may eventually take. Global justice may not end up looking like domestic justice, but as long as the density of human interaction across national borders continues to grow, questions of global fairness will only gain in urgency, and it remains to be seen what norms of fairness will emerge, eventually, from the debates that are now underway.<sup>16 17</sup>

### Notes

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

<sup>2</sup> John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

<sup>3</sup> Samuel Freeman, "Distributive Justice and the Law of Peoples," in *Justice and the Social Contract* (New York: Oxford University Press, 2007), pp. 297-321.

<sup>4</sup> Michael Blake, "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30 (2002): 257-296, at 289.

<sup>5</sup> Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113-47.

<sup>6</sup> Andrea Sangiovanni, "Global Justice, Reciprocity, and the State," *Philosophy & Public Affairs* 35 (2007): 3-39, at 3-4.

<sup>7</sup> This is not to say that all libertarians and Lockeans have in fact avoided confronting it. For a notable exception, see Loren Lomasky, "Liberalism Beyond Borders," *Social Philosophy and Policy* 24 (2007): 206-233.

<sup>8</sup> See, for example, Thomas Pogge, *World Poverty and Human Rights* (Cambridge, UK: Polity Press, 2002), Chapters Four and Six.

<sup>9</sup> This is forcefully argued by Leif Wenar in "Property Rights and the Resource Curse," *Philosophy & Public Affairs* 36 (2008): 2-32.

<sup>10</sup> It is unclear whether Pogge himself would disagree with this conclusion. On the one hand, he has at various times defended egalitarian principles of global justice of varying degrees of strength. Moreover, he seems to think, mistakenly in my view, that objections to the resource and borrowing privileges count against Rawls's position in *The Law of Peoples*. (See Pogge, "Assisting' the Global Poor," in Pogge and K. Horton eds., *Global Ethics: Seminal Essays* [St. Paul, MN: Paragon House, 2008], pp. 531-64.) On the other hand, he has also argued that even "libertarian sympathizers" who recognize only negative duties have reason to accept stringent obligations of certain kinds to the global poor. (See, for example, Pogge, "Severe Poverty as a Violation of Negative Duties," *Ethics and International Affairs* 19[2005]: 55-83, at 61-62.) To that extent, he might not find the conclusion argued for above unconvincing.

<sup>11</sup> Pogge, *World Poverty and Human Rights*, p. 109.

<sup>12</sup> Thomas Pogge, "'Assisting' the Global Poor," pp. 531-64, at 550. See also Pogge, "Severe Poverty as a Violation of Negative Duties."

<sup>13</sup> "Famine, Affluence, and Morality," *Philosophy & Public Affairs* 1(1972): 229-243.

<sup>14</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 284.

<sup>15</sup> *Ibid.*, p. 268.

<sup>16</sup> Many of the points made in this section are emphasized by Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia?," *Philosophy & Public Affairs* 34 (2006): 147-75. I am greatly indebted to their discussion. See also A.J. Julius, "Nagel's Atlas," *Philosophy & Public Affairs* 34 (2006): 176-92.

<sup>17</sup> Earlier versions of this article were presented to a philosophy department colloquium at Ohio University, to a seminar on political theory at Columbia, to the 2013 Brave New World conference at the University of Manchester, and to audiences at the NYU, Chicago, and Yale law schools. I am grateful for the helpful comments I received on all these occasions.