Political Institutions in a Nonideal Theory of Global Justice

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Abstract
Theories advocating global principles of distributive justice usually operate on the assumption of normative individualism. When determining principles of justice for governing global distribution, they allow for taking into account only the interests of individuals at the foundational level. However, the conclusion cosmopolitans often draw on the basis of these principles and of the recognition of the injustice of current global distributive arrangements is that some kind of redistributive transfers among states are required. The paper investigates what justifies this move from a conception of justice that is individualistic in its foundations to real life requirements that hold between political institutions. I propose three considerations that might support posing international distributive requirements against states, as opposed to individuals directly. First, law-subjects have special claims on their states because it is only through the political institutions that they can have access to their fair share of resources. Fair individual shares of resources are substantially underdetermined, and political institutions help make them determinate. Second, there is disagreement about the right principles of justice and about their correct interpretation. Political institutions resolve disagreement and provide assurance by making and enforcing authoritative decisions, thereby preventing individuals from acting on their own judgement about what justice requires in a given situation. Third, outsiders are restricted in their access to a state’s territory as well as in their control over and access to resources within a state’s territory, since political institutions are assigned responsibility for taking care of resources within their territory. These reasons support regarding political institutions, and not individuals, as the addressees of claims of justice, while at the same time holding that the object of justice is individual well-being. Claims of justice with reference to resources on a state’s territory are addressed to political institutions governing their use and distribution, and not to separate individuals subject to their authority.

1. Individualist theories, institutional policies
Cosmopolitan positions about global justice derive our duties of justice from a requirement of equal concern that we owe to all our fellow human beings in virtue of their status of being human. The ground for this cosmopolitan outlook is a general individualist moral universalism, which grew out of Enlightenment ideals. The defining features of this outlook are the following.¹ First, it is individualistic, in the sense that it holds that all moral requirements must ultimately be justified by reference to their effects on individual well-being. In the justification of moral requirements only individual well-being plays a foundational role, and the value of other things, e.g. institutions, community, culture, relationships, etc. is always derivative. As Thomas Pogge formulates this feature of cosmopolitanism, the “ultimate units of moral concern” are individuals, not societies or

¹ This characterization follows the description offered by Thomas Pogge in Pogge (2002: 169).
peoples. Second, cosmopolitanism is \textit{universalistic} in the sense that it demands that all moral requirements be derivable from fundamental principles that consider the well-being of all humans. The ultimate scope of moral consideration is universal. Implicit in this feature is its \textit{weak egalitarianism}, in the sense that it prescribes an equal consideration of the interests of all individuals. Since all human lives are equally valuable, morality must prescribe an equal consideration of human interests, and, because of its individualistic outlook, it must not allow a division of humankind into states or peoples to have a fundamental role in determining how one individual should treat the interests of another. Finally, the scope of morality is \textit{general}: all moral requirements must be based on fundamental principles that hold for everyone, not only for some subset of individuals, such as compatriots, fellow-religionists etc.\textsuperscript{3}

Cosmopolitan theories of justice rely on this outlook, and therefore they do not regard institutions as having a foundational role in the justification of conceptions of justice. This does not imply, however, that institutions have no role to play whatsoever in cosmopolitan theories of justice. They might have secondary relevance in these theories, in particular they might be necessary for the implementation of justice. This is shown by the apparent tension between the justification of cosmopolitan theories and the policy proposals they yield. When determining principles of justice for governing global distribution, cosmopolitan theorists allow for taking into account only the interests of individuals at the foundational level. However, the conclusion they often draw on the basis of these principles and of the recognition of the injustice of current global distributive arrangements is that some kind of redistributive transfers among states are required. The paper investigates what justifies this move from a conception of justice that is individualistic in its foundations to real life requirements that hold between political institutions.

As I argue in the second part of this paper, the role political institutions play in a theory of justice is not merely instrumental in individuals’ discharging their preinstitutional duties of justice: institutions have a constitutive role to play with regard to the duties individuals have in promoting and upholding justice. I shortly present some considerations explaining the importance of political institutions in the implementation of a cosmopolitan theory of justice. I consider two main kinds of reasons. The first group has to do with the coordinating role of political institutions in defining standards of distributive justice to be followed by law-subjects, whereas the second emphasizes the responsibility assigned to states.

\textsuperscript{2} Pogge (1989: 38, 113)
\textsuperscript{3} Pogge: (2002: 169)
for the preservation of natural resources within their territory. Both of these considerations
assume that states have certain territorial rights. In order to be able to assess the force and the
limitations of these arguments, however, I need to start by surveying some of the
characteristics of the territorial state system that characterizes politics as we know it,
representing the domain of nonideal theory.

2. The territoriality of political rule
Governance in modern politics has been intimately linked with territoriality. The system of
modern states that formed in the late renaissance period in Europe, and has grown to
encompass virtually the whole of the planet by the 20th Century, includes a significant
territorial dimension in the exercise of political authority and in the distribution of resources.
The state system is characterized by two central features: territoriality and sovereignty.
Modern state is territorial in the sense that in the state system “rule is defined as exclusive
authority over a fixed territorial space.” Territory becomes one of the defining features of
political rule: reference to a particular geographical area is not only derivative, as it is in
feudalism for example, but constitutive of this particular form of governance.\(^4\) On the other
hand, the modern state is regarded as sovereign, in the sense that “it claims final authority and
recognizes no higher source of jurisdiction.”\(^5\) Of course the two features are closely related:
when states claim sovereignty, they claim final authority within a particular territory.

This system of territorial states, though in a much modified form, still characterizes
the world’s political setup at the beginning of the 21st Century. For the time being, I focus on
the territorial nature of political rule to which modern states claim to have a right to. In the
following paragraphs I am going to lay out its main characteristics and its implications to
considerations of global distributive justice.

Territorial states, when claiming political authority, do not merely assert the fact of
their actual power over a number of people, or over a circumscribed area. What they claim is
rights of various sorts that are claimed to have a moral grounding. We can sort these rights
claimed by states into three categories.\(^6\) First, states claim rights over their subjects. Second,
states claim rights against aliens. Finally, they claim rights over the use of their territory. Each
of the three categories has a territorial dimension, as we will shortly see. Let us see in detail

\(^4\) Spruyt (1994: 40)
\(^5\) Spruyt (1994: 35)
\(^6\) I borrow this typology from Copp (1999: 18, 22-3), and Simmons (2001: 302-6).
what particular rights have traditionally been thought to belong under these three categories of rights claimed by states.

The first group of rights is perhaps the most widely discussed in the political philosophy literature, mainly in connection with the issue of political obligation. States claim rights over subjects in the sense that they are regarded as entitled to be the exclusive imposer and enforcer of legal requirements on their subjects, i.e. mainly all those within their territory, who in turn are thought to have a corresponding moral obligation to obey these requirements. These rights have a territorial dimension because, as a central case, the state’s jurisdiction, i.e. the scope of its subjects is defined with reference to the territory over which the state claims rights of control. Those persons who find themselves on the territory of a state are by this fact regarded as bearers of legal obligations and rights imposed and enforced on them by this state. I refer to this as the central case because there are exceptions to it: citizens of state A residing in state B are still bound by the laws of state A, even though they are not within A’s territory. Conversely, residents of state A who are not its citizens are not bound by some of A’s laws.

Rights against aliens include a state’s right not to be interfered with in governing their subjects or territory by other persons, groups of persons, or states, and a right to control and prohibit movement across their borders. The latter is perhaps the most conspicuous of these rights: most of us travelling abroad encounter states’ control of movement across their borders, and large numbers of people also experience that states claim a right to restrict and fully control immigration to their territories. States’ claims to rights of non-interference, on the other hand, are related to claims of self-determination, self-government, or external sovereignty, which are also regarded as important for states’ exercise of political authority.

Finally I turn to states’ rights over territory. Though the rights belonging to this group are much less discussed in the political philosophy literature, they are often taken for granted at the level of political practice. These include various rights claimed by states such as “rights to reasonably full control over land and resources within the territory that are not privately owned”, rights to specify property by enacting a property law regime governing the acquisition and transfer of property, as well as laws in criminal law against force and fraud in seizing property, and also rights to restrict the uses of property on their territory (e.g. by zoning laws, laws regulating the exploitation of natural resources, laws restricting hazardous

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8 In including the right to control and prohibit movement across the state’s borders under this category I diverge from the categorization provided by Simmons (2001: 306).
9 Among the few notable exceptions in the political philosophy literature that do attempt to justify such rights we find Copp (1999); Baldwin (1992); Simmons (2001); and Schmidtz (1991).
activities in populated areas etc). Importantly, states claim the right to tax and regulate uses of even privately owned resources on their territory, which plays an important role in maintaining the conditions of background justice in which free interactions among persons can lead to a just distribution.

3. The relevance of territorial rights in nonideal theory

I set aside for a moment the important question about how many of these rights claimed by states, if any, are justified in the face of cosmopolitan theories of justice. It may turn out on reflection that many of them are unjustifiable, or can be justified only in a much modified form. I will discuss such possibility later. For now, we can observe that the implications of these rights claimed by states, especially of those under the second and third category, for the implementation of principles of distributive justice are very significant. Suppose we have reached an agreement on the principles of global justice, which turn out to prescribe an egalitarian distribution. As we have seen, cosmopolitan conceptions of justice are individualistic in the sense that, when determining principles of justice to govern distribution, they allow for taking into account only the interests of individuals at the foundational level. If we consider egalitarian versions of cosmopolitanism, such theories would then prescribe a globally equal distribution of resources, possibly with the proviso that interpersonal distributive inequalities are justified only to the extent that they result from the voluntary choices of individuals. Institutions must be so designed that they meet the requirement of a globally equal distribution of resources.

However, we have to distinguish between the ground for requirements of justice, and the manner in which they are implemented. Even though the underlying theory of justice that is supposed to guide the distribution of resources does not see institutions as playing a foundational role in its justification, the access of individuals to resources is not immediate even under a just distribution. Even if we can justify the claim that an equal distribution of resources is a demand of distributive justice without attributing a foundational value to institutions, and accept the claim that it is only individual well-being that matters when assessing the justice of institutions or distributions, individuals can have access to their fair share of resources only through political institutions they are subjects of. While the object of justice is individual well-being, the addressees of claims of justice are political institutions, and not separate individuals. Individuals make claims of justice on the political institutions of

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10 Copp (1999: 22-3)
11 This would correspond to a cosmopolitan version of luck-egalitarianism.
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their states, and on global institutions if they exist; they do not make claims to resources vis-à-vis other individuals as individuals. We can see this if we consider the ways in which claims of justice are made on states both by subjects and by non-subjects. Let us seem them in turn, and also some considerations that might support this role of political institutions.

4. The claims of insiders – political institutions making a difference

From inside the state, subjects have special claims on their states because it is only through the political institutions that they can have access to their fair share of resources, as defined by justice. We do not typically make claims of justice on our fellow-citizens individually, even if we think we are unjustly disadvantaged under the existing institutional scheme and some of them are unjustly advantaged. For instance, if I think A has more resources than he would have under a just distribution, and I have less, I do not demand that he should pay some amount over and above his fair share to my account. This is so even if his payment to me could cancel some injustice. Why is this so? Does it have to be so? Here I briefly mention two possible considerations supporting an affirmative answer. Both of these focus on the coordinating role of political institutions, and rest on the recognition that institutions sometimes make a difference to the preinstitutional duties of individuals. That is, they argue that the role played by institutions is more than merely instrumental in discharging individual duties existing prior to and independently of the rules or commands of institutions.

The first consideration emphasizes the collective nature of various moral requirements. It starts out from the recognition that the outcome and moral evaluation of our actions depend not only on what we individually do, but also on what other people do. Many of our duties are conditional on the actions of others. This is because in many cases the morally required consequence is brought about only if everyone in a group, or a sufficiently large number of people follow the same course of action. However, we are often uncertain about what other people think is the morally best action, and what action they would follow on the basis of their independent judgement. In such cases coordination is needed among individuals to create the assurance that the others act in certain ways. Institutional rules are an effective means to provide individuals with the requisite assurance to secure coordination. Individuals may thus be required to comply with the rules of existing institutions instead of acting in a way that they think would bring about a morally better outcome, if others followed suit.

12 Waldron (2003: 50)
13 See Waldron (2003: sections IV-V)
In addition to necessitating concerted action, moral requirements are often subject to pervasive disagreement. In cases when individuals have to act in concert but nevertheless disagree about the morally best joint action, resolution and enforcement is required. Institutions, by yielding and enforcing authoritative decisions, are capable of supplying assurance to individuals subject to them, and hence of resolving conflicts. Thus, parties are morally required to comply with institutional directives, even if they judge some alternative course of action morally superior.\footnote{See the general argument for the value of democracy along these lines in Waldron (1999).}

These considerations to the effect that institutions do make a difference to what individuals ought to do were based on the need for assurance to coordinate action and solve conflicts due to certain individual characteristics of the parties involved in a collective enterprise. However, in other cases it can be the characteristics of the content of moral duties that necessitate setting up institutions. The content of moral duties is very often underdetermined. The moral importance of regulating human conduct in such instances often requires prescribing some determinate course of action for agents, because such moral duties are in need of further specification.\footnote{Kis (2002)} In cases like these individuals cannot rely on their own interpretation of their moral duties, and act accordingly. This is because diverging interpretations are likely to result in disagreement, which cannot be dissolved with more information and better reasoning. However, individuals have to act in a concerted manner, and need to have grounds for forming reasonable expectations about the actions of others involving large stakes. Furthermore, they need to have assurance that their reasonable expectations about such actions are going to be met. Underdetermined duties must be specified before we may act on them.

Institutions are capable of specifying underdetermined duties, and if there is an institution in place that does just this, individuals are duty-bound to comply with the rules or commands of the institution, because the institutional settlement makes individual moral duties sufficiently determinate.

5. The requirements of distributive justice

The previous section has indicated that institutions can sometimes make a difference to individual duties either because of the existence of disagreement about duties or because of the indeterminacy of those duties. Since the focus of the paper is on requirements of distributive justice, it remains to be seen whether they encounter the same problems, and thus
necessitate institutional settlement. If it were the case, we could show that institutions do make a genuine difference to requirements of justice binding individuals, since it would be either morally counterproductive for individuals to act according to the demands of justice by following their own judgement, or it would be impossible to tell what individuals ought to do in the absence of the institution.

Now, suppose we accept the principle that “egalitarian justice ought to be promoted”. An important observation with regard to egalitarian justice is that egalitarian distributive principles can be realised by more than one kind of institutional scheme. Several combinations of tax, welfare, and educational schemes can achieve egalitarian justice to the same extent. However, the importance of justice being done makes it necessary that exactly one particular institutional setup be settled on for the whole society, and that, once one such a setup is settled on, every member of the society must follow the rules of its institutions. We cannot independently follow courses of action that we think we would be required to follow under our favoured egalitarian scheme: justice can be done only if we act in concert. Sometimes decision about various particular setups can be made on the basis of which of these is more likely to approach egalitarian justice, given the specific circumstances and culture of the society. In other cases, however, no such ground is available on the basis of which a decision could be made. I now briefly introduce two problems, under the headings of disagreement and systematicity of institutional schemes, that call for institutional settlement.

Suppose first that there is disagreement in a society about which of the various possible institutional schemes is most likely to achieve egalitarian justice, given the specific circumstances of the society. There are two main schemes that are likely to yield an egalitarian distribution in the society. Scheme A would rely more heavily on a progressive income tax and would keep taxes on consumption low, whereas scheme B would operate with higher consumption taxes and would tax incomes less heavily. Some people think it is scheme A that best promotes equality, others think it is scheme B. Suppose further that both schemes are reasonably just. Given that most people comply with A, the need for coordination and conflict resolution makes it necessary for an individual to comply with the rules of A, no matter whether that individual thinks it is the best possible egalitarian scheme, and whether he is right in his judgement. An individual is not permitted to act in a way that she thinks best promotes equality instead of complying with A. Here institutions make a difference to what individuals ought to do with regard to egalitarian justice, because of disagreement and the need for coordination and conflict resolution in a society.
The second case for the difference-making capacity of institutions derives from instances when even considering all contingent facts about the society is unlikely to narrow down the number of institutional alternatives to exactly one. There are likely to be several combinations of institutions within schemes that are just as egalitarian.\textsuperscript{16} This point is emphasized in Rawlsian theory by its requirement that the institutions of a society must be assessed as a single scheme for the purposes of justice.\textsuperscript{17} It makes no sense to say that the tax rate applying to a person is just as long as we do not look at the whole scheme of institutions including property regulations, welfare provisions, and educational system. In order to settle on one particular combination an arbitrary decision must be made about which particular setup the scheme must meet. Once a decision is made, individuals to whom the scheme applies must comply with its rules in order to secure egalitarian justice to the greatest possible extent. They are not to follow what they, in their own judgement, think justice requires in part because it is the institutions that impose on them sufficiently determinate duties. Institutions specify the essentially undetermined demands of egalitarian justice by marking out a unique set of just distributive rules. Without institutional rules it would be impossible to tell what justice requires us to do. Again, institutions make a difference as to what individuals ought to do, this time because of the objective characteristics of moral principles in general, and egalitarian principles of justice in particular.

Having seen two important cases when institutional settlement is necessary for promoting egalitarian justice, it only remains to note that these examples are central even to a cosmopolitan theory of egalitarian justice. Both disagreement about the demands of justice and the indeterminacy of their content are a permanent characteristic of politics.\textsuperscript{18} As for disagreement, John Rawls insists that “a diversity of conflicting and irreconcilable comprehensive doctrines” is “not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy.”\textsuperscript{19} Reasonable pluralism, Rawls argues, results from “the work of free practical reason within the framework of free institutions.”\textsuperscript{20} Moral concepts, including the concept of justice, involve various “burdens of judgement” which make disagreement a permanent feature of life even under free institutions.\textsuperscript{21} Also, the complexities of social life under institutions render the demands of egalitarian justice indeterminate. We need institutions to resolve disagreement and make the demands of justice

\textsuperscript{16} Waldron (1993: 24)
\textsuperscript{17} Rawls (1999a: 3-4, 6-7)
\textsuperscript{18} An important argument for authority emphasizing this point is provided in Waldron (1999)
\textsuperscript{19} Rawls (1999c: 474)
\textsuperscript{20} Rawls (1993: 37)
\textsuperscript{21} For an explanation of why this is so, see Rawls (1993: 54-8).
determinate for us. So, it is our political institutions on which we make claims of justice because they make the demands of justice determinate and resolve disagreement about the right principles and their application.

6. The case of outsiders

We have seen some reasons why citizens may not be able to make demands of justice on one another directly, and why they make such demands on political institutions exercising authority over them. On the other side of the coin, claims of justice are made on political institutions not only from inside, i.e. by the subjects, but also from outside, i.e. by people not subject to their authority. Outsiders are excluded, at least to a certain extent, from access to a state’s territory as well as, to a certain extent, from control over and access to resources within a state’s territory. We can see this the most easily when we consider some rights claimed by states under the categories I called rights against aliens and rights over territory. For instance, with regard to rights against aliens, in most cases individuals are not free to take up residence in a country of their choice because of states’ claim to right to control and prohibit movement across their borders. However, when exercising this right, states can be and have been held to account on grounds of justice, for instance on behalf of refugees seeking asylum due to political or economic reasons. These claims of justice are made on political institutions and not on citizens one by one.

Also, with regard to rights relating to resources on their territory, we have seen that states claim rights to control resources that are not privately owned, rights to regulate property by a property law regime and by criminal law, rights to restrict the uses of property, and also the right to tax and regulate uses of privately owned resources. These rights exclude, to varying degrees, outsiders from access to and control over resources who, not being citizens, cannot influence the way decisions about regulation are made. This would not be a problem if outsiders had no stake in the way resources are used and distributed domestically. However, this is not the case. There are significant external effects which must be taken into account when we want the global distribution of resources to be just. Here again, however, claims of justice with reference to resources on a state’s territory are addressed to political institutions governing their use and distribution, and not to separate individuals subject to their authority.

Can we find a justification for excluding outsiders from access to territory and resources? Here again, we need to consider the functions political institutions play. As I pointed out earlier, political institutions, by regulation and control, coordinate the use of resources and their distribution in accordance with justice on their territory. A further important function
they have is that they are assigned responsibility for taking care of resources on their territory. John Rawls argues in *The Law of Peoples*, an essential function of governments is to “be the representative and agent of a people as they take responsibility for their territory and its environmental integrity, as well as for the size of their population.” The function of a territorial state as he sees it is to preserve the territory’s natural resources and its capacity to support those living on the territory *in perpetuity*. The rationale provided for this view is analogous to the way Rawls sees the institution of property is justified. In his view the point of the institution of property is to prevent some asset from deteriorating by assigning a specific agent responsibility for maintaining it, and to require that the agent bear the costs of not doing so. The agent is assigned consequential responsibility for exhausting the resource. This creates an incentive for agents to preserve the resource, rather than to deplete it.

The territorial state too, in Rawls’s view, performs this function: in this case the asset is the territory’s natural resources and its capacity to support those living on the territory *in perpetuity*. To this effect prudent social and economic policies should be pursued within a territory: e.g. population growth should be controlled, investment and savings rates should be kept at an appropriate level. In principle this consideration is compatible with a wide range of institutional schemes, however, it seems, that any such scheme will contain a number of territorially based, decentralized political units exercising jurisdiction over their territory. The reason for this is that because of collective action problems responsibility for taking care of resources cannot be left to individuals, thus there must be territorial institutions capable of issuing and enforcing authoritative commands over the use of resources on their territory.

This function of states represents a collective responsibility of the subjects. Regulating the use of resources, population control and controlling immigration enables states to discharge this responsibility. Governments act in behalf of their subjects; however, their responsibility for the resources of their jurisdiction entails duties vis-à-vis outsiders as well. Governments have to regulate resource use and movement across borders in a way that is compatible with the requirements of global justice. Principles of global justice function as constraints on domestic policies.

As we have seen, the fact that in many cases claims of justice are addressed to political institutions and not to individuals is due to the territorial dimension of various rights claimed

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22 Rawls (1999b: 39)
23 Rawls (1999b: 8)
24 One important way it might do so is by playing a role in overcoming “tragedy of the commons”- type situations. For a general description of these see Hardin (1968).
25 Here I go beyond the conception of international affairs advocated in Rawls’s *Law of Peoples*. 
by states, and may be a permanent characteristic of politics. For some functions of governance at least, it may not be a contingent matter that they are performed on a territorial basis. However, as we will shortly see, the justification of specific territorial arrangements for the performance of these functions is significantly constrained by considerations of global justice.

7. The place of territorial political institutions in cosmopolitan justice
Territorially based political units are indispensable for discharging principles of distributive justice, thus they have an important role to play in the theory. One important qualification is in order, however.

From what has been said the only thing that follows is that some sort of territorial governance is necessary for discharging the requirements of distributive justice and, perhaps, that political units in a just global order will have various rights to territory. It does not follow, however, that particular states have rights to particular territories, with all the rights traditionally associated with territorial states. Nation-states’ claim to territorial rights is not the last word in a cosmopolitan theory of justice. There might be several reasons why nation-states in their current form are not the appropriate bearers of at least some of these territorial rights, hence why the state-system as we know it needs to be replaced by some alternative global political regime. In the remainder of the paper I will concentrate on two kinds of reasons calling for such reform: contingent, and permanent.

Contingent considerations might lead us to the recognition that some territorial rights usually associated with states have become outdated in the sense that, due to modern developments, either most states are no longer capable of exercising certain functions traditionally thought to justify these rights, or it is desirable that functions previously exercised by territorial states be transferred to supranational institutions. Recent social, economic, ecological, and technical developments have brought about the demand for supratenitorial coordination in many areas. For instance, financial markets have become supratenitorial because of the liberalization of foreign exchange movements and the global volatility of capital due to developments such as the use of electronic transfer. As a result, global finance cannot be regulated and taxed by any single territorial state. This has been seen as a huge problem as states’ control over resources has significantly diminished, and their vulnerability has increased. One very significant element of states’ rights over their territory, that of restricting outsiders’ control over and access to resources has in the case of many states come to be symbolic. The unprecedented rapidity of capital movements has made access to resources for foreign residents very easy in most countries. Responding to this
problem has required supranational coordination and transnational cooperation.\textsuperscript{26} Similarly, much of modern information technology, most notably the Internet, has developed features making it unsuitable for territorially based regulation. Alternatives to nation-state based territorial regulation have been introduced in the form of supranational regulatory bodies, transnational regulation by intergovernmental networks and by private regulation.\textsuperscript{27} Also, due to the increase of the prospects for external effects of domestic economic activities, growing concern about cross-border environmental problems calls for regional and global coordination. Regulation by territorial states is now clearly incapable of decreasing global environmental risks.

Permanent considerations, on the other hand, might emphasize that not all the rights states have claimed may be justified on a cosmopolitan basis, and we may find that some of them are to be rejected. Perhaps the most obvious and the least contested case concerns the group of rights I termed as rights over subjects. The view that human rights place a significant limit to what states may do to their subjects has gained an ever increasing acceptance since at least World War II. It is now widely believed that states ought not to impose and enforce legal requirements on their subjects which are gravely unjust and, in the limiting case, violate basic human rights. However, in addition to domestic justice, considerations of global justice as well put a limit to state sovereignty. From among the group of rights I referred to earlier as rights against aliens, states’ right to prohibit movement across their borders is significantly qualified by the aliens’ right to free movement, for example. A right to cross-border migration may be justified, for example, by pointing out that someone is persecuted in her home country, or cannot fulfil even her basic needs due to crushing poverty. It can be claimed that prohibiting immigration in these cases would violate principles of justice, thus states do not have an unqualified right to do so. In a similar vein, from among the group of rights I called rights over territory, states’ control over resources within their territory is qualified by considerations of justice. For instance, a state’s laws regulating the exploitation of natural resources might be constrained by justice-based considerations, given a cosmopolitan commitment to an equal right of all humans to a share of the earth’s resources, or given the requirement to avoid causing harm by environmental pollution to people outside the state.

Justice-based considerations give us compelling reasons to replace the state-system with an alternative global political regime. For example, nothing in the argument for territorial rule has as yet ruled out the possibility that a world-state or a worldwide federation could or

\textsuperscript{26} Scholte (2002: 192-5)
\textsuperscript{27} Perri 6 (2002: 149-56)
should possess the territorial rights usually associated with nation-states. There are cosmopolitan theorists who advocate this solution, though a world-state is not the only, not even the most desirable, alternative to the system of nation-states.²⁸

One ingenious alternative was presented by Thomas Pogge in ‘Cosmopolitanism and Sovereignty’. He proposes a multilayered global institutional scheme in which authority is “vertically dispersed” rather than concentrated almost entirely at the level of nation-states. This system would be superior to the system of nation-states because, by dispersing authority over various levels rather than concentrating it in states, it could significantly reduce the likelihood and the intensity of conflicts within and among states, “thereby reducing the incidence of war, poverty, and oppression”.²⁹

Pogge’s scheme would represent a significant improvement over the current system of nation-states, however, it is still characterized by an exclusive focus on territorial rule. It operates on the assumption that sovereignty is properly exercised over territorially defined units.³⁰ However, this assumption has been shown untenable by developments over the last decades. As we have seen, numerous economic, environmental, and political issues have arisen that cut across state boundaries and defy territorial regulation, such as crime on the Internet, regulation of financial markets, prosecution of violation of human rights, and environmental protection. Such issues support the claim that, for a range of human activities, territorial governance may not be a good, or the best, way of regulation.

As we have seen, an increasing number of functionally defined, nonterritorial bodies are already in place. Thus territorial political authority has in practice already been supplemented by a horizontally dispersed, functionally defined system of global governance. This multilayered system is very complex and its development does not point in the direction of a unitary world-government. It is rather a mixture of various levels and forms of governance making up a system with “criss-crossing lines of authority”.³¹ Jurisdictions within it are not clear-cut, but often competing or overlapping, “generating ambiguities about the principal location of authority and political responsibility.”³² Some of the institutions making up this system have powers of enforcement, others operate on the basis of voluntary self-regulation. Some of them have territorial jurisdiction, others do not, and even when territorially defined, authority is often not located at the level of nation-states (see the

²⁹ Pogge (2002: 181-9)
³⁰ Kuper (2000: 657)
³¹ Kis (2001: 223)
³² Held and McGrew (2002: 10)
institutions of the EU). Some of these institutions perform a limited set of functions, others have a wider scope of authority.\textsuperscript{33} Some of them have supranational authority such as the UN network, others are transnational, such as transgovernmental and business networks, NGOs, yet others operate at the substate level, such as community associations and city governments.\textsuperscript{34} This is a complex, multilayered scheme of institutions performing supra- and transnational, regional, and local governance with a mixture of functionally and territorially defined authority.

The elements of this scheme have been set up for various reasons, prudential and moral. Considerations of global justice may not figure very prominently behind many of these. However, requirements of global justice do push us further in the direction of relying on some of the existing elements, reforming others so that they better fit principles of global justice, and establishing new ones, rather than returning to the system of territorially defined nation-states.

**Summary and conclusion**

Cosmopolitan theories are committed to a requirement of global redistribution on the basis of justice. This commitment is grounded in the outlook of individualist moral universalism, according to which the interests of each individual are to be given equal consideration in the justification of distributive rules. This outlook does not regard institutions as having a foundational role in the justification of principles of justice. In the paper I presented some considerations that might support the claim institutions in general, and political institutions in particular, might be indispensable for the implementation of principles of global justice. These support addressing claims of justice to political institutions rather than individuals. I rehearsed three arguments that might support the view that territorially demarcated political institutions might be necessary for the performance of some functions indispensable for securing justice. The first two were grounded in the recognition that political institutions play a noninstrumental role with regard to individual duties of justice, whereas the third considered the interests of future generations. First, I argued that the demands of egalitarian justice are substantially underdetermined, and institutions can help make them determinate. In many cases what our fair shares of resources are cannot be determined without there actually being political institutions specifying these. Second, I noticed that even if fair shares of resources

\textsuperscript{33} Kis (2001: 223)

\textsuperscript{34} For an illuminating account of the working of intergovernmental networks and of their increasing significance for transnational governance, see Slaughter (2004).
could in principle be determined without institutions, there still is disagreement in every society about principles of justice and, even if they agree on these, they disagree about the correct interpretation of such principles. In cases of such fundamental disagreement we need political institutions that coordinate individual conduct and provide assurance by making and enforcing authoritative decisions, thereby preventing individuals from acting on their own judgement about what justice requires in a given situation. Finally, I pointed out that political institutions might have a key role in preventing resources within a territory from deteriorating by bearing responsibility for their preservation. However, the various roles played by institutions in the implementation of principles of justice, important as they are, do not override considerations of global justice, but are constrained by them. Reasons of global justice may prescribe the replacement of the current system of nation-states by a feasible alternative that is more sensitive to the demands of global justice. Such a reform is likely to proceed in the direction of a horizontal dispersal of sovereignty among territorially defined political units, and a vertical dispersal of authority by a growing emphasis on functionally defined authority in global governance.
Bibliography


