Global Constitutionalism (2012), 1:2, 261–277 © *Cambridge University Press, 2012*
doi:10.1017/S2045381711000116

Global distributive justice? State boundaries as a normative problem

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Abstract: Should state borders matter for claims of distributive justice? The article explores, only to reject, the best reasons for an 'Anti-Cosmopolitan' position which grants some minimum international obligations, including social and economic human rights. At the same time this Anti-Cosmopolitanism rejects distinctly *distributive* principles of justice, familiar from discussions of justice among compatriots: There are no further limits on permissible global inequalities. 'Anti-Cosmopolitans' do not deny that the tangled web of domestic and international institutions has a massive impact on individuals, their life plans and opportunities, albeit often indirectly and surreptitiously. What they deny is that claims to equality or limits to inequality should apply across state borders. The article explores what it is about states that can justify such a disjunct in the normative claims individuals have against each other. Several arguments about such alleged salient aspects of states and their constitutions are considered, but are found lacking. The main conclusion is to challenge the reasons Anti-Cosmopolitans offer against bringing distributive principles to the 'Global Basic Structure'.

Keywords: cosmopolitanism; distributive justice; global constitutionalism; human rights

Introduction

Should state borders matter for claims of distributive justice? We live in a world with immense differences in wealth and life chances. Many – though not all – hold this current state of affairs to be deeply unjust. It must be better governed, they demand, be it by global democratic arrangements (Archibugi, Held and Kohler 1998), or other procedural constraints familiar from (domestic) constitutional values; by the recognition of international human rights obligations (Pogge 2008; Caney 2005), or both, with careful attention to potential conflicts between these normative standards (Gould 2004; Goodhart 2008).

https://doi.org/10.1017/S2045381711000116 Published online by Cambridge University Press

Agreement on the need to change dissolves when we ask what would count as a *just* distribution among individuals in a world such as ours, divided into states that enjoy some degree of sovereignty? In particular, should the existence of state borders matter for claims of distributive justice? Many hold that *different* norms of distributive justice should apply to domestic constitutions and to the international and global rules and institutions. These arguments are highly relevant when we seek to assess processes of constitutionalisation at levels above the state. A concern with such global constitutionalism requires attention to what it is about states, their constitutions or the territorial borders of their jurisdiction that might make such a normative difference. Answers to this question have implications for the appropriate standards of justice for a global order with certain features of constitutionalisation at levels above the state. What sorts of legitimate claims may foreigners have on such shared institutions? Answers to this question may thus also help explain *why* the 'constitutionalisation of international law' is an important topic of research: What kinds of constitutionalisation there are at the level of the state, as well as at levels 'above' and 'below' the state may affect the standards of justice, and the sorts of claims 'outsiders' have on such shared institutions.

These normative concerns become even more salient as we observe tensions in several disciplines, from various forms of statism or nationalism toward more cosmopolitan or global perspectives. To some, this uneasy fit with 'normal science' indicates that a paradigm shift is imminent. Consider political science, where *Methodological* or *Explanatory Nationalism* (discussed by e.g. Zurn 2002; Pogge 2008) gives primacy to sovereign nation states as sole or main actors to explain international or global affairs. This seems increasingly insufficient as various non-state private and public actors, and weak/wannabe states emerge as somewhat independent actors. In legal scholarship, *Constitutional Nationalism* might describe the (family of) view that the legality of the international legal system is solely or mainly based on the consent of sovereign equal states, and/or that any 'global constitution' is (therefore) thoroughly supervenient on national constitutions. This tradition is also questioned, or challenged (cf. Walker 2003; Petersmann 2006; Klabbers, Peters and Ulfstein 2009; Kumm 2009). In political philosophy, '*normative nationalism*' is questioned partly on empirical grounds. Normative nationalism holds that we have stronger obligations toward compatriots than among other human beings globally. Attention to this dichotomy is not new among philosophers – such 'moderate patriotism' was noticed and criticized in ancient Greek and Roman political thought. The topic was revived by Sidgwick 1919, and now generates much attention among philosophers – partly as an effect of the perceived 'paradigm shifts' in the other disciplines.

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The present article explores the best reasons for an 'Anti-Cosmopolitan' position with two important characteristics. It grants some minimum international obligations, including social and economic human rights. At the same time it rejects distinctly *distributive* principles of justice: There are no further limits on permissible global inequalities. Anti-Cosmopolitans do not deny that the tangled web of domestic and international institutions has a massive impact on individuals, their life plans and opportunities, albeit often indirectly and surreptitiously. What they deny is that the *same* principles of distributive justice should apply across state borders as among compatriots. In particular, claims to equality or against certain kinds of inequality stop at state borders.

In contrast, many thoughtful citizens, intellectuals and academics are committed to a presumption of political or economic *equality* among compatriots. Perhaps most famously, John Rawls argued at length that this follows from a commitment to *political* equality among citizens in the form of equal political rights (Rawls 1971). He took as the main subject of justice our shared political, social and economic institutions – the domestic 'Basic Structure' (BS). The BS of a just state should satisfy a 'Difference Principle': these institutions should jointly engender equal lifetime shares of economic wealth, unless incentives to some would also increase the amount enjoyed by those economically worse off. Several authors have agreed to such domestic egalitarianism, but hesitate to extend this principle to benefits among persons *globally*. *Other* normative standards of benevolence and justice are appropriate for the 'Global Basic Structure' (GBS) – if indeed there is one – than for a domestic basic structure. Many of these theorists agree that citizens and foreigners may have some sound normative claims on the international community, for instance that the GBS satisfies the *minimum vital needs* of all, e.g. in the form of international obligations to secure certain human rights, or to otherwise reduce or remove extreme global poverty. With regard to claims *beyond* that threshold, views diverge.

Some authors hold that foreigners have no further claims on shared international institutions to equal or other relative distributive shares: there are no further limits on permissible global inequalities. It is these views that are of concern in this article, discussed under the label of 'Anti-Cosmopolitan'. These theories defend some minimum international obligations, including social and economic human rights, but reject distinctly *distributive* principles of justice. Proponents include John Rawls, Thomas Nagel, Samuel Freeman, and Michael Blake (Rawls 1999: 38, 105; Blake 2001; Nagel 2005; Freeman 2006; cf. Barry and Valentini 2009). Of particular concern in this article – and of relevance when discussing constitutionalism beyond the state – is the following puzzle: What is it about states that can justify such a disjunct in the normative claims individuals have against each other? Is it their

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constitutions, other main institutions, their borders, features of their citizens, or some other aspects?

The present paper addresses only parts of this normative puzzle, largely phrased in terms of constitutionalism. Indeed, one of the more interesting Anti-Cosmopolitan arguments may hold that it is domestic *constitutions* and their territorial borders that grant normative plausibility to citizens' further distributive claims. This raises the stakes regarding the possible 'constitutionalisation of international law' – 'to what extent the international legal system has constitutional features comparable to what we find in national law' (Klabbers, Peters and Ulfstein 2009). What are the implications, if the international legal order is or becomes relevantly similar to domestic rules? For instance, Anne Peters speaks of 'global (or international) constitutional law': 'the most important norms which regulate political activity and relationships in the global polity (consisting of states and other subjects of international law)' (Peters 2006: 582). Its rules and practices include, *inter alia*, the treaties and practices that define sovereignty, the rules of the World Trade Organization, and *erga omnes* obligations. If these claims are correct, the same normative principles of *distributive* justice may apply to one or more global constitutions, as to domestic constitutions.

The second section explores the various reasons offered for why institutions, and a constitution and a domestic 'basic structure' in particular, support claims to *distributive* justice among those subject to these rules and practices. The third section considers, only to affirm, that the global set of institutions shares the salient features to such an extent that *some* principles of *distributive* justice would seem to hold also among foreigners. Various objections by Anti-Cosmopolitan authors are presented and criticised. The main conclusion is to challenge the reasons Anti-Cosmopolitans offer against bringing distributive principles to bear on the Global Basic Structure. The best justified principles of domestic and of global justice may still diverge. That is: state borders, or shared political, legal, social or constitutional practices and rules may matter for the substantive normative claims of justice. But the arguments considered here on behalf of Anti-Cosmopolitanism do not suffice to defend that view. The upshot is that a more cosmopolitan position seems more satisfactory. It has certain salient features (cf. Buchanan and Powell 2008: 349). First, this cosmopolitanism is not committed to equality across state borders. A weaker premise suffices: the principles of global distributive justice are '*comparative* principles concerned not merely with how individuals fare or are treated in absolute terms, but also in comparison with others' (Abizadeh 2007). Secondly, this cosmopolitanism is *not* a variety of constitutional – or institutional – cosmopolitanism of a

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kind that prefers a world order dominated by centralized institutions, rather than a multi-level, or federal, or confederal legal and political order. An obvious objection to such a centralized order is the risks of domination and dictatorship.

Why should institutions be assessed by principles of *distributive* justice?

John Rawls and several who draw on his arguments chose as a central topic the 'basic structure of society'. He defines the 'basic structure' as the set of 'major social institutions' – that is, 'the political *constitution* and the principal economic and social arrangements' (Rawls 1971: 6–7, my emphasis). The institutions, on his view, are public systems of rules that create benefits, and shape participants' expectations.

Rawls' theory is *institutional*, in that it claims that principles of justice for institutions are different from the principles that should regulate individuals' actions. Other theorists challenge this 'pluralist' position from a *monist* perspective, that the same principles of justice and morality should apply to these two spheres (Murphy 1999). What can be said in favour of this form of pluralism? Answers to this question are important to assess whether a domestic constitution is relevantly different from the rules and institutions of a global constitution, so as to make principles of distributive justice applicable only for the former, but not to international rules and institutions.

What is it about institutions – and in particular about those of a BS, and especially those of a constitution – that justify principles of distributive justice?

A constitution assigns independently existing responsibility

One reason why some find monism more appropriate is if they regard a constitution and other institutions from the point of view of '*assigned responsibility*': 'special duties are devises whereby the moral community's general duties get assigned to particular agents' (Goodin 1988: 678). Constitutions on this view are *only* instrumental for certain duties that can be specified and justified independent of our institutional relationships (Nagel 2005). A constitution may for instance simplify our personal obligations of mutual aid, opening up space for us to pursue other duties and own projects. State borders just divide up this general obligation in a form of division of moral labour, so that each individual takes most responsibility for other citizens of their own state. Some interpret Rawls to only rely on such considerations when taking on the BS as a central subject matter (Murphy 1999; cf. Cohen 1997: 16; Julius 2003: 326–7).

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This is a flawed interpretation of Rawls (Pogge 2000; Scheffler 2006), for instance because Rawls' theory does not relieve citizens of all duties of justice. There are more reasons on behalf of Rawls' focus on the BS.

A constitution resolves coordination problems

Some institutions may help provide beneficial conditions for interaction – such as property rights and contractual obligations (Nagel 2005: 137). These institutions may thereby also increase our duties. This occurs when institutions help resolve certain collective action problems (Murphy 1999: 253; Pettit 2000, 110–13; Buchanan and Keohane 2006: 408). A constitution may establish institutions that provide assurance about others' compliance in several ways, such as by means of independent courts, compliance monitoring, or sanctions. Such institutions reduce the likelihood of free riding, and thereby remove one excuse citizens may have for doing their share. This may be why Nagel holds that sanction mechanisms maintained by states make the BS normatively significant (Nagel 2005).

Such coordination benefits are valuable, but on their own they do not support claims that substantive principles of *distributive* justice apply to them.

Constitutional and institutional division of labour

The BS may contribute to solve a special kind of coordination problem through means of what Samuel Scheffler calls an *institutional* division of labour (Scheffler 2006; cf. Rawls 1993: 268–9). The BS helps citizens secure a just distributive pattern as a result of the indirect, small and opaque effects of any individual action. The point is not that the constitution allows individuals to live with utter disregard for what justice requires – but rather that they may pursue their own projects more fairly by allocating their responsibility for background justice with the BS. Note that this argument does not support *distributive* principles of justice that constrain permissible inequalities. This point is especially relevant when considering charges that international justice leaves no room for such private or indeed national projects; we return to this below.

Domestic constitutions have special effects

Authors following Rawls often argue that the BS affects the normative claims its subjects can make among themselves. Any particular BS could be *otherwise*, in that other BSs would allocate legal powers in other ways among its subjects. Other BSs would thus engender different distributional

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patterns of benefits and burdens. The power to create and shape such a BS is thus of great importance.

Some such claims hinge on the view that the BS is a *social construction* in important senses. The domestic BS has a large impact, in several ways. A first important contribution of the BS is that it creates *new goods* through institutionalised cooperation. Rawls specifies these in the form of certain 'Social Primary Goods', (SPG). They are various legal powers and immunities: basic rights and liberties, institutional opportunities, and prerogatives of office and position, along with income and wealth (Rawls 1988).

Many of these goods are *constituted* by the constitution – regarding the constitution as a complex web of social practices. The SPGs are examples that the BS does not simply serve *instrumental* functions with regard to securing the distributive justice of independently existing goods and burdens. The question of how the SPG should be distributed only arises within ongoing institutions that constitute those goods, and among those who live under the constitution that creates them.

The BS affects individuals' life chances profoundly. Consider how these SPGs – legal powers, career opportunities, income and wealth – all have a wide range of effects on individuals' objective and subjective level of well-being. The BS drastically shapes individuals' conception of the good life, their expectations and aspiration levels.

I submit that these reasons support Samuel Freeman's claim that *constitutive institutions* have such a composition and structure individuals' lives in such ways that issues of distributive justice arises (Freeman 2006). Still, critics may ask why *egalitarian* claims are normatively salient among those subject to such a constitution, at least in a domestic BS?

Coercion of a kind that must be normatively legitimate

Another aspect of the BS is that it is maintained with a particular form of state coercion. Considerations of justice and legitimate rule primarily arise for questions of how to regulate such coercive power and influence that is in practice inescapable, or that otherwise subject some individuals to the arbitrary will of others (Abizadeh 2007; Cavallero 2010). The powers constituted and specified in a constitution affect an individual in potentially objectionable ways: they limit individuals' options, and may subject them to domination. The BS is a particular kind of coercion, claimed to be carried out 'in the subjects' name' (Nagel 2005: 121). What might this mean? One plausible explication is that a constitution must satisfy standards of normative legitimacy in order to create political obligations. Such standards must give expression, on

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Nagel's view, to a commitment to treat all as equals. Certain inequalities are thereby rendered indefensible:

> What is objectionable is that we should be fellow participants in a collective enterprise of coercively imposed legal and political institutions that generates such arbitrary inequalities. (Nagel 2005: 128)

One way to defend equal shares among equals when it comes to SPGs may be based on how SPGs are constituted. These goods result from cooperation in maintaining a constitution; treatment as equals of those who create these goods require that each get equals shares.

To summarize: there are several reasons why constitutions, as central parts of domestic BSs, should satisfy principles of distributive justice. They have large impact on individuals, and the goods they create are constituted by the participants' arguable equal role in maintaining shared practices. Only when each receives an equal share does a duty of justice apply to them so as to create a political obligation to comply with the BS.

I submit that quite similar arguments also support claims to bear principles of distributive justice to bear on the *Global Basic Structure* – and onto a 'global constitution' insofar as such a complex set of practices exist.

A *global* basic structure and a *global* constitution: Is there such a thing?

To fix ideas, think of a possible GBS as consisting of rules and institutionalised practices which structure individuals' actions, and serves similar functions globally as those of the domestic BS discussed. Where states play prominent roles, such a possible GBS includes the *domestic* BSs, as well as an *international* BS which includes international treaties – cf. Anne Peters' notion of 'global (or international) constitutional law'.

Is the impact, source, means, or objectives of such international law, international institutions and other international public practices so different in kind – or degree – from domestic BSs that principles of distributive justice are inapplicable to them or to a GBS as a whole? Such would seem to be the argument of 'Anti-Cosmopolitans' – whilst the GBS as a whole should still secure basic needs, up to some minimum level, somehow specified. This brings us to the core of debates about the 'constitutionalisation of international law': 'to what extent the international legal system has constitutional features comparable to what we find in national law' (Klabbers, Peters and Ulfstein 2009).

The following arguments challenge the Anti-Cosmopolitan premise that the domestic and international BSs are so fundamentally different as to reject all claims to global distributive justice. Anti-Cosmopolitans may

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hold that the combination of domestic and international institutions lacks the normatively relevant aspects of a GBS. International institutions and the goods they help create are allegedly so normatively different from domestic BSs that arguments of distributive justice fail to hold.

Objection: Domestic, not 'international or global' constitutions impact on individuals

One argument in defence of Anti-Cosmopolitan views is that international institutions largely regulate inter-state matters, and a limited number at that. The effects there are on individuals are hence the responsibility of state governments.

Two central causal factors that help explain *domestic* inequality are *state capacity* and *domestic political will*, e.g. to ensure a well-regulated market economy and redistributive taxation policies (Milanovic 2007: 40). These domestic factors are not a result of international rules, but should instead be regarded as domestic responsibilities. Similarly, economic inequality among states is difficult to explain as the result of international institutions, argue Anti-Cosmopolitans. Some alleged factors include neo-liberal trade regimes, modernization processes, and dependency theories, and at least some of these are matters of domestic choices as regards economic policies, export strategies, etc. The upshot is that individuals have only weak distributive claims on *international* institutions: such claims should instead be addressed to compatriots and their domestic elites who decide on the state's economic strategies.

A response to this Anti-Cosmopolitan argument may firstly agree that states differ in their opportunity spaces and in how these are exploited by the domestic authorities. But it does not follow that such a GBS as there is falls outside the scope of principles of distributive justice. We may still insist that the domestic opportunity spaces and the choices made are also shaped by the GBS, be it concerning the economy, or trade rules that shape negotiations between multinationals and host governments, or the impact on global markets by agricultural subsidies in rich countries, or the rules for global capital mobility. Such rules affect the options for many states, ranging from production to taxation. Furthermore, we must consider the *indirect* effects of the GBS. Much harm is no doubt wrought by the quality of domestic institutions (Risse 2005: 356–79). But it does not follow that outsiders can do little about this. To the contrary, many may argue that outsiders are doing much to *maintain* the present situation. International rules affect the political will of many domestic governments, who depend on access to international markets to buy weapons and make loans, and to sell the territory's natural resources. Such legal privileges are crucial parts

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of the GBS (Pogge 2008). If such rules failed to recognise ownership claims of dictators to these natural resources, the governments in place would presumably have somewhat different preferences. Sovereign states are partly constituted by the 'Global Constitution'.

A further response is that such claims reify statehood and domestic constitutions. The powers and immunities of states are themselves partly defined by international law and institutions, indeed by what some see as a Global Constitution. On the view sketched here, states are complex sets of legal rules and practices – and these are parts of our current GBS. 'Sovereignty' as a bundle of legal powers is constituted by the GBS; the distribution of benefits and burdens that result from such bundling should therefore not be regarded as only the result of domestic institutions. Several legal powers and immunities define the state as an international legal actor and specify how its borders and citizens are treated by other actors such as states. Statehood is a question of satisfying certain criteria set by states jointly, laid out as conditions of international law concerning population, territory and autonomy. Sovereignty itself may therefore be regarded as Social Primary Good. To be a state in the global legal order and on the international arena is therefore to be so constituted by *other* states. It is international rules that allow governments to establish treaties, acquire international debts, etc.

Against this view, Freeman might be thought to offer an objection: 'peoples can and have controlled territories without a need for any sort of norms of cooperation or even recognition by other peoples at all… a people's control of a territory is not necessarily cooperative or in any way institutional' (Freeman 2006: 248). However, the historical claim is not relevant for the view laid out above, about the present institution of sovereignty – which centrally includes recognition by international law. Likewise, the ability of a state to enter treaties is not simply a matter of a government declaring itself to be a state, but also on the fact that these authorities satisfy certain conditions identified in international law. I submit that the GBS includes such international rules about sovereignty, and a wide range of background rules – arguably with 'constitutional features' – for reaching specific agreements on a wide range of issues. Rules for trade, investment, currency exchange or travel have great effects on individuals, and share several of the normatively salient features of domestic constitutions.

The rules of the GBS impact fundamentally on individuals' starting points, life chances and preference formation, though often with the rules that constitute states as intervening causes. Importantly, these rules are malleable: the European Union causes changes to these rules, reconfiguring the state system and the concept of 'sovereignty' in Europe. It is thus of

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urgent practical relevance to ask for the justification why the rules of state sovereignty carve out rights and immunities the way they currently do.

Objection: Global institutions – and a 'global constitution' – are supervenient agreements among states

While there are global or international institutions, some hold that these are not 'basic' and should as such not be subject to principles of distributive justice (Freeman 2006: 247). There are empirical and normative flaws in this argument. Freeman firstly holds that states remain the central authors of international regulations (Freeman 2006: 247). But the creation and the substantive contents of such regulations are in fact to a certain extent *not* controlled by state governments. One obvious area is customary international law; but more generally Mattias Kumm argues that the obligations of international law are no longer firmly grounded in the specific consent of states and its interpretation and enforcement is no longer primarily left to states. Contemporary international law has expanded its scope, loosened its link to state consent and strengthened compulsory adjudication and enforcement mechanisms (Kumm 2004).

We witness a broad rise in international organizations and treaty bodies that enjoy a broad range of powers. And 'as the decision-making powers of international organizations increase, both formally and in practice, the need for control of such powers increases accordingly' (Ulfstein 2009: 60). Even when states are in control, the chains of command and accountability from governments to their delegates are too long and opaque for meaningful citizen control and informed consent – which would seem crucial for the normative claim. Private parties increasingly engage in 'private governance' of the substance of treaties, which de facto leave governments with neither choice, exit nor voice. Consider the International Organisation for Standardisation (ISO) or transnational civil society organisations (Keck and Sikkink 1998; Hall and Biersteker 2002; Ruggie 2004; Follesdal, Wessel and Wouters 2008). In addition, many treaties evolve far beyond what the states could have expected: witness the law making by the European Court of Justice. Free trade and foreign investment are only two of very many issue areas that witness similar 'dynamic interpretation' (Sands 2005: 8). The upshot is that Freeman's description is empirically incomplete: the current web of international institutions does not exclusively consist of norms agreed among states. A weaker claim may be that states tacitly consent when they refrain from withdrawing from any particular treaty. But even this view is difficult to square with international law. Consider that article 54 of the *Vienna Convention on the Law of Treaties* also regulates the procedures for when and how a party may terminate or

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withdraw from a treaty[1] – where such termination must be in conformity with the provisions of the treaty or by consent of all the parties.

These empirical worries raise some of the central normative concerns even more clearly: why should *state consent* render these international norms and institutions immune to principles of distributive justice? Governments' consent can hardly be taken to express or indicate the acts of 'peoples' in ways that create any normative obligations or responsibility: Too many governments lack meaningful accountability mechanisms. It might arguably be better that only human rights respecting democracies were recognized as authors of such norms.

Objection: The nature of coercion is different domestically and globally

One reason to hold that state consent invalidates comparisons between a domestic BS and a set of international institutions is that the coercive nature of a domestic BS raises particular challenges of normative legitimacy. Since by hypothesis states *consent* to international rules and institutions – and whatever global constitution there is – there is no inter-national coercion in need of justification.

An objection to this claim challenges the conception of coercion. Several though not all states are de facto coerced to accept the existing international rules: exit from certain regimes is economically or politically impossible (Cavallero 2010). Though the threat is not one of military intervention, consider that states face economic hardship outside the WTO.

A second Anti-Cosmopolitan argument grants this point about coercion, but objects that this kind of coercion is relevantly different from that exercised by domestic BSs (Blake 2001: 280; Nagel 2005):

> [n]o matter how substantive the links of trade, diplomacy, or international agreement, the institutions present at the international level do not engage in the same sort of coercive practices against individual moral agents (Blake 2001: 265).

What difference might there be between these kinds of coercive practices? Nagel may – correctly – hold that the domestic BS enables stable expectations about the conduct of others, inter alia by means of threats of sanctions by domestic courts and police. Extending that point, the concern may be that absent global enforcement agencies, a GBS cannot really exist: it cannot stabilize expectations and provide assurance of states' future actions. However, international enforcement may not be required. States

[1] I am grateful to Geir Ulfstein for this point.

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do – surprisingly – tend to comply with treaty obligations to a significant degree, partly because these obligations have been internalized and accepted by several domestic significant actors, and non-compliance can signal lack of trustworthiness in general – toward other states, corporations – and the domestic population (Chayes and Chayes 1995; Sands 2005; Franck 2006; Simmons 2009). In addition, even 'non-binding' international rules have some mechanisms for ensuring compliance (Guzman 2010; Guzman and Meyer 2010). So the lack of strong international sanctions does not prevent the existence of a sufficiently robust GBS.

Another argument might draw from the need to create political obligations among subjects. I suggested that this is one reason why the BS must satisfy principles of justice which treat all subjects as equals. Nagel might argue that a GBS does not need to elicit such obligations of compliance based on a sense of justice, i.e. from a sense that the rules are normatively legitimate. However, such obligations do seem required to ensure expectations under the conditions of complex global interdependence of states and individuals. Actors must see the international institutions as normatively legitimate (Bodansky 2008: 309), or 'protolegitimate' (Julius 2006: 182). Matthias Kumm likewise argues that this becomes even more important as state consent recedes as legitimating mechanism for international law (Kumm 2004: 907–8; Buchanan and Keohane 2006). I submit that similar normative challenge of justifiability and legitimacy seem appropriate to raise against international rules and institutions, and toward a global constitution, as toward the domestic BS. The issue is whether such coercion be defended as legitimate, i.e. as carried out 'in the name' of those subject to it.

Objection: Global distributive justice leaves no room for individual and national projects

A somewhat different kind of objection to accepting a GBS is that the requirements of global justice will be unreasonably demanding.[2] There would seem to be a normative tension between maintaining a GBS that is justifiable toward all as equals, and the obligations citizens have toward compatriots and other associative obligations. Will not global impartiality 'squeeze out' and override any special duties that entail unequal shares? Some argue that the challenge is to explain how, if at all, 'if justice really does generate nonparticularized reasons, how does the scope of those reasons get reduced by the individual's relation to a particular set of institutions' (Scheffler 1997: 197; cf. Miller 1995: 60). Once cosmopolitans

[2] I owe this objection to Ronald Dworkin.

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have ensured that institutions give individuals globally their due, nothing would be left to distribute among conationals (MacIntyre 1984: 6).

In response, several observations may be made. Firstly, this criticism ignores that I am here concerned with assessing institutions that shape projects and foster expectations. Conflicts between our projects and current distributive obligations, and principles of justice for a GBS will be much less frequent in a world where our projects and domestic BS have been shaped from childhood in light of just expectations. So the way to consider the normative significance of this tension must be by assessing its impact once interests and expectations are shaped by what appear to be permissible institutional arrangements at the domestic level that surround and shape us (cf. Piper 1987; Railton 1984; Nagel 1986; Pogge 1989: 101). While the GBS may give rise to claims of distributive justice, it remains an open question whether the claims of non-citizens is to equal shares – e.g. in the form of a 'Global Difference Principle', or to some less egalitarian principle that is still concerned to limit differences in income and wealth. Equal respect may well allow larger economic differences in a multi-level legal and political order, for instance to allow for the value of political autonomy (Follesdal 2003). Moreover, such conflicts need not appear to us as alienating. The pull of justice will seldom appear as a requirement that we sacrifice our deeply held, clearly defined interests and values for the sake of abstract principles of justice. Instead, the conflicts may be experienced as tensions between particular rules of our social institutions and our relatively unspecified, yet strongly held values and commitments. Such conflicts are not between local, internal norms and standards 'external' to the communities (Walzer 1983: 33), but between norms and standards 'internal' to our practices at various levels of generality: 'global' notions of equality and freedom, as well as more 'local' norms within a domestic setting, where the similarity of the GBS with the domestic BS may in time strike us as reason to adjust our commitment to compatriots in favour of other subjects of our shared GBS.

Conclusion

Some authors have questioned whether to bring principles of *distributive* justice to bear on the global order as a whole, including those rules and institutions that some have labelled a 'global constitution'. Instead, these authors have maintained 'Anti-Cosmopolitan' positions: Basic needs exhaust the claims on shared international institutions. There are no further limits on permissible global inequalities. I have addressed and sought to rebut some of these arguments. The impact, source, means and functions of the 'Global Basic Structure' are not so different from the domestic basic structure, as to render claims of distributive justice a category mistake.

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The international legal and political order is partly constitutionalised in several relevant ways. International rules and organizations, as well as non-state actors, drastically affect, enhance and restrict states' ability and legal authority to determine their international and domestic policies. Indeed, the bundles of legal powers and immunities that are sovereign states are themselves part of the GBS – a web of practices, regulated by rules, which all of us participate to maintain.

These arguments may themselves be seen as expressions of the 'constitutionalisation of international law', in the sense that principles of legitimacy are increasingly brought to bear on the web of international rules and practices. Some of us derive great benefits from these constitution-like rules, and exercise much control over the rules. Others mainly suffer large disadvantages from this common project. Some argue that such inequities engendered by international law are incompatible with a commitment to treat all as political and social equals. I have suggested that these worries cannot be easily dismissed.

Acknowledgements

I am very grateful for comments received at the conference on *Constitutionalism in a New Key? Cosmopolitan, Pluralist and Public Reason Oriented* in Berlin January 2011, a *Politics, Philosophy and Economics* workshop in New Orleans February 2009, and from two anonymous referees. This article further develops arguments previously presented in Follesdal 2009; 2011a and 2011b. Special thanks to Tom Christiano, Geir Ulfstein and Andrew Williams for additional very helpful and constructive comments. This research was partly conducted under the auspices of the ERC Advanced Grant MultiRights, and the Centre for the Study of Mind in Nature (CSMN).

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