Cosmopolitanism and the Evolution of Institutions

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Abstract

Cosmopolitans who take principles of distributive justice to apply globally have long struggled with the legacy of Rawls. Some parts of Rawls's view seem to support cosmopolitanism although he rejects this position himself. Samuel Scheffler and Miriam Ronzoni have each identified resources in Rawls's work that open the door to cosmopolitan conclusions but differ from those traditionally cited by cosmopolitans. Scheffler and Ronzoni argue that changing social circumstances, like those involved in globalization, may affect the scope of principles of distributive justice. But they also both take it to be an open question whether such principles have global reach presently. I argue that this reticence is not justified. Their arguments suggest that principles of distributive justice have long applied globally. Indeed, the view so strongly favors cosmopolitanism that further argument is needed to secure any room for unique domestic principles of distributive justice. I follow Rawls's lead and draw on Kant to indicate how such an argument might go. Finally, I argue that although the scope of principles of distributive justice is less historically contingent than Scheffler and Ronzoni suggest, there is still considerable room in this view for the evolution of institutions to shape the content of such principles.

What is the scope of distributive justice? Cosmopolitans who take principles of distributive justice to apply globally have long struggled with the legacy of Rawls. Some parts of Rawls's view seem to support cosmopolitanism although he rejects this position himself. Samuel Scheffler (2012) and Miriam Ronzoni (2009) have each identified resources in Rawls's work that open the door to cosmopolitan conclusions but differ from those traditionally cited by cosmopolitans. Scheffler and Ronzoni argue that changing social circumstances, like those involved in globalization, may affect the scope of principles of distributive justice. But they also both take it to be an open question whether such principles have global reach presently. I argue that this reticence is not justified. Their arguments suggest that principles of distributive justice have long applied globally. Indeed, the view so strongly favors cosmopolitanism that further

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https://doi.org/10.1017/S0031819125100934 Published online by Cambridge University Press

argument is needed to secure any room for unique domestic principles of distributive justice. I follow Rawls's lead and draw on Kant to indicate how such an argument might go. The resulting view suggests a place for distributive justice both within and beyond state borders. Finally, I argue that although the scope of principles of distributive justice is less historically contingent than Scheffler and Ronzoni suggest, there is still considerable room in this view for the evolution of institutions to shape the content of such principles.

1. Stage Setting

When arguing for his preferred conception of distributive justice, Rawls objects to allowing the distribution of the benefits and burdens of social cooperation to be improperly influenced by factors that are 'arbitrary from the moral point of view' (Rawls, 1999a, p. 63). Although here he has in mind factors like the distribution of natural assets and the contingencies of social circumstances within a single society, some cosmopolitans have argued that the state into which one is born is similarly arbitrary from the moral point of view and, therefore, not an appropriate basis on which to limit the scope of principles of distributive justice.[1]

Scheffler objects that Rawls's opposition is not to the influence of morally arbitrary factors as such, which after all continue to influence the distribution in some ways even on Rawls's preferred conception of justice (Scheffler, 2012, p. 162). Rather, Rawls's concern is with the specifically 'improper' influence of such factors. If this is right, then even if one's citizenship at birth is morally arbitrary, we cannot move directly from that observation to cosmopolitan conclusions about the scope of distributive justice. But Scheffler sees a potential route to cosmopolitan conclusions via an element of Rawls's view that might initially seem to foreclose those conclusions, namely, Rawls's claim that the primary subject of justice is the basic structure of society.

If the basic structure of society is the primary subject of justice, then the scope of principles of distributive justice might seem to depend on whether there is a global basic structure. This is a controversial matter because of ambiguity in the idea of the basic

[1] For a representative example, see Pogge (1989, p. 247). For a helpful overview of this position and the surrounding literature, see Blake and Smith (2024).

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structure. Rawls takes the basic structure to be 'the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls, 1999a, p. 6). Rawls seems to have supposed that such institutions would include a coercive legal structure. But is this a necessary component of a basic structure given the social role that structure is meant to serve? Answering 'no' suggests one potential avenue for arguing for the existence of a global basic structure: although there is no global legal regime that is comparable to the kind of legal regimes present domestically, there are nonetheless global institutions of a character that suffices to render applicable principles of distributive justice.[2] Scheffler, however, takes coercive legal institutions to be a necessary component of the basic structure and so he rejects this route to cosmopolitan conclusions about the scope of distributive justice.[3] Instead, he takes the most promising route to such conclusions to proceed via reflection on *why* Rawls takes the basic structure of society to be the primary subject of justice.

In the next section, I turn to examining Scheffler's take on the answer to this question, drawing also on Ronzoni's similar discussion. As Ronzoni helpfully puts it, 'the more pressing question is not whether we *have* a global basic structure, but whether we *need* one' (Ronzoni, 2009, p. 243). Both Scheffler and Ronzoni argue that contingent historical circumstances may necessitate global institutions that make distributive principles applicable, though ones that potentially differ from those that are applicable domestically. But both also take it to be an open question whether these circumstances presently obtain. After laying out their arguments, I will argue that they are mistaken on both fronts. Economic interaction of the sort that is involved in trade suffices to generate the moral problem to which Rawls takes principles of distributive justice to be a response. This kind of economic interaction has extended beyond domestic political borders for much of human history and is uncontroversially global in reach at present.

2. The Basic Structure

In *A Theory of Justice*, Rawls emphasizes two reasons for taking the primary subject of justice to be the basic structure, namely the

[2] For a helpful overview of such views, see Blake and Smith (2024).
[3] Here Scheffler draws on Freeman (2007).

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profound effect of the basic structure on shaping individuals' life prospects as well as their desires and aspirations. In the later essay 'The Basic Structure as Subject', Rawls highlights a further reason for taking the basic structure to be the primary subject of justice, namely the role of the basic structure in securing background justice (Rawls, 2005). As Scheffler helpfully explains, Rawls 'argues that agreements among individuals should be treated as morally authoritative only if they are made freely and under fair conditions, and that only the basic structure can secure the background conditions necessary to ensure that agreements are free and fair' (Scheffler, 2012, pp. 167–168). I am going to spend some time unpacking this thought.

The most obvious alternative to taking the basic structure of society to be the primary subject of justice is instead to take individual interactions to the primary subject of justice. Rawls invites us to consider what would follow from doing so: 'suppose we begin with the initially attractive idea that social circumstances and people's relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightaway we need an account of when agreements are free and the social circumstances under which they are reached are fair' (Rawls, 2005, pp. 265–266). As Rawls observes, the distribution resulting from voluntary transactions is fair only if the initial distribution of resources and opportunities is fair. But there are no workable principles for governing individual actions that could regulate the cumulative effects of those actions in the way needed to preserve background justice:

> All of this is evident enough if we consider the cumulative effects of the purchase and sale of landed property and its transmission by bequest over generations. It is obviously not sensible to impose on parents (as heads of families) the duty to adjust their own bequests to what they estimate the effects of the totality of actual bequests will be on the next generation, much less beyond. (Rawls, 2005, p. 268)

This passage suggests a distinctive way of thinking about the primacy of the basic structure. To be sure, the profound effects of the basic structure on people's life prospects and characters give us reason to attend to the basic structure when thinking about justice. Recall, though, Ronzoni's suggestion above. We need to attend not just to effects of the basic structure, but also to whether we should have the institutions that comprise it in the first place. The problem of background justice addresses this question. As Scheffler puts it,

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the problem of background justice shows how there 'are profound moral problems that only the basic structure can solve' (Scheffler, 2012, p. 168).

Rawls's position here is helpfully contrasted with both utilitarian and libertarian views, neither of which 'sees a need for special principles to regulate the basic structure' (Scheffler, 2012, p. 169). For utilitarians, the aim of maximizing aggregate utility applies to individuals and social institutions alike. For libertarians, the political, economic, and social institutions that make up the basic structure of society are evaluable in terms of whether their origins and operations reflect individuals abiding by the principles that govern their actions. In this way, these institutions are no different from any other form of association. Scheffler explains, 'By contrast, Rawls insists that the institutional framework of a complex, modern society constitutes a distinctive kind of moral subject, with a social role and a set of capacities that differ from those of individual agents. As such, it requires regulation by a distinctive set of principles' (Scheffler, 2012, p. 169).

Libertarians might push back against the problem of background justice by questioning whether it builds in a problematic conception of fairness from the start. Ronzoni offers this helpful reply. The problem of background justice, according to Ronzoni, does not require accepting a particular conception of fairness. Rather, '[t]he point here is of a methodological/ structural, rather than substantive, kind: what matters is that, given a certain account of when agreements are free and fair, that very account cannot be sustained in sufficiently complex social settings unless institutions with the power to maintain background conditions are in place' (Ronzoni, 2009, p. 239). If that is right, then the problem of background justice reveals that principles governing individual interactions are in an important way unstable unless they are situated in a basic structure governed by distinct principles.

The problem of background justice requires institutions regulated by distinct principles. But institutions that play this role also bring with them their own problems, namely the profound effects on life prospects and aspirations I noted at the outset. The distinct principles governing the basic structure thus reflect both the nature of the problem the institutions comprising it are trying to solve and the new problems those very institutions generate.

This understanding of the reason why Rawls takes the basic structure to require regulation by distinct principles of justice sets up two proposals for how cosmopolitans might find resources to draw on in Rawls's view. Cosmopolitans might employ this argument directly

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or use it as a model. Let us begin by considering the first of these options:

> [T]he absence of a global basic structure does not mean that problems of background justice cannot arise on the global level. After all, it is not the existence of the basic structure that gives rise to the need for background justice. Cosmopolitans may argue that, if injustice is to be avoided, it is as important to impose background constraints on the processes of economic globalization as it is to impose them on a domestic market economy. One effect of globalization, in other words, may be to shift the locus of the problem of background justice by making it difficult for any single society to ensure just background conditions for transactions involving its citizens. (Scheffler, 2012, p. 171)

I take Scheffler to here suggest that it is a historically contingent matter what institutions are called for to address the problem of background justice. While individual societies may have once sufficed for this purpose, that may no longer be the case. Ronzoni expresses a similar thought: 'If interaction between individuals across states, or indeed between sovereign states themselves, is sufficiently intense and complex to produce background justice–eroding effects, we might face problems of global background justice' (Ronzoni, 2009, p. 243). Whether we face a problem of global background justice depends on the kinds of interactions occurring.

In Section 3, I will problematize the extent of the historical contingency both Scheffler and Ronzoni attribute to the problem of background justice. Before doing so, however, let me introduce the way in which cosmopolitans might use Rawls's argument for the existence of distinct principles regulating the basic structure as a model rather than directly applying it to the global context. Scheffler claims:

> One striking implication of Rawls's position is that, as the social world develops, new social and political forms may emerge, and some of these forms may come to play such a distinctive and consequential role in human life – creating new problems, compounding old ones, and being indispensable to the solution of new and old alike – that they constitute, in effect, new types of moral subject, requiring regulation by *sui generis* normative principles. If this is correct, then morality depends on politics in the sense that, in order to know what normative principles should be applied to institutions, we need to attend to the actual institutions that have emerged in our world, to the problems

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> they have created and the problems they can solve, and to the social roles that they play. In short: new social forms may require new moral norms. (Scheffler, 2012, p. 169)

In arriving at this position, Scheffler emphasizes the same kind of historical contingency we have already seen him take to be operative in Rawls's view. Here, however, the historical contingency concerns how the evolution of institutions might occasion new moral problems that generate a need for regulation by new moral norms.

As I have indicated, I am going to question the extent of the historical contingency at work in Scheffler's and Ronzoni's original diagnosis of the problem of background justice. I will argue that the problem of background justice has long extended beyond state borders. I am nonetheless sympathetic with the idea that the way in which our actual social circumstances develop may affect the kinds of institutions that ought to regulate our interactions and shape the principles according to which they ought to do that. I return to this thought in Section 5, where I suggest that anthropogenic climate change provides a good example of how new moral problems may call for new institutional solutions. I take this to be in the spirit of Scheffler's suggestion that 'new social forms may require new moral norms'. For now, let us turn to considering the extent of the historical contingency at work in the problem of background justice itself.

3. Historical Contingency

To forestall confusion, it will be helpful to begin by introducing an understanding of the problem of background justice that I take both Scheffler and Ronzoni to reject, and rightly so. One might think that the problem of background justice obtains only when our interactions in fact erode background justice. Call this understanding of the problem of background justice *Actual Erosion*. Reflection on the example of bequest that Rawls uses to bring the problem of background justice into focus can be used to problematize *Actual Erosion*. Does the normative pressure toward identifying distinct principles governing a basic structure depend on whether problematic accumulations of land or wealth are underway? No. Even if we imagine ourselves in a circumstance in which background conditions are presently fair, principles governing individual actions by themselves will be insufficiently action guiding. They invite us to either turn a blind eye to our potential role in undermining fair background

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conditions or to engage in unwieldy calculations about our potential impact. When I ask myself, 'May I leave this land to my child as an inheritance?' I am already stymied because the principles governing the answer to this question do not manage all the normatively significant consequences of this choice. This is so even if no one in my vicinity is already amassing holdings that compromise the fairness of background conditions. As Rawls explains, 'fair background conditions may exist at one time and be gradually undermined even though no one acts unfairly when their conduct is judged by rules that apply to transactions within the appropriately circumscribed local situation' (Rawls, 2005, p. 267). I take Rawls to hold that the problem of background justice obtains even at the beginning of this story.

This diagnosis of the problem posed by bequest suggests that we should instead turn our attention to what I will call the *Potential Erosion* understanding of the problem of background justice. The problem of background justice gets a foothold only where individuals are interacting with each other in ways that involve the potential to erode fair background conditions, whether or not that potential has been realized. If this is right, then we need to know what kinds of interactions have this potential and how historically contingent those kinds of interactions are. In different ways, both Scheffler and Ronzoni suggest that the relevant interactions are quite historically contingent.

Let me begin with Scheffler. As I noted, when contrasting Rawls's view with utilitarianism and libertarianism, Scheffler takes Rawls's focus on the basic structure of society to be a focus on 'the institutional framework of a complex, modern society' (Scheffler, 2012, p. 169). Scheffler later returns to this theme when developing the idea that new social forms may necessitate new moral norms. He takes this to be in keeping with the historically situated nature of Rawls's argument:

> Critics may well be right to say that the very idea that there are special principles of 'social justice' that do not apply directly to individual agents is a distinctively modern one, which finds no echo in the thought of the ancients or their successors up to the modern age. But as a modern idea it presumably emerged in response to a modern predicament and, as far as I can see, it is none the worse for that. (Scheffler, 2012, pp. 169–170)

Perhaps the 'modern predicament' here is just the very existence of the institutional framework of a complex, modern society. But that will not do if we take the problem of background justice to

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indicate that the need for principles governing the basic structure may potentially precede the existence of the relevant institutions, as we have throughout supposed. Instead, then, perhaps we should take the modern predicament to be the problem of background justice itself. That would suggest taking the kind of interactions that have justice-eroding potential to have a specifically modern character. Scheffler, however, does not elaborate on the character of these interactions.

Rather than focusing on modernity, Ronzoni focuses on complexity, characterizing the relevant kind of interaction as 'so complex and intense that it is bound to erode background justice in the long run' (Ronzoni, 2009, p. 240). Notice that this gloss involves an understanding of the problem of background justice that is somewhere between *Actual Erosion* and *Potential Erosion*, which we might call *Inevitable Erosion*. As an interpretative matter, *Inevitable Erosion* captures something of the spirit of Rawls's discussion. As he puts it,

> [W]hen our social world is pervaded by duplicity and deceit we are tempted to think that law and government are necessary only because of the propensity of individuals to act unfairly. But, to the contrary, the tendency is rather for background justice to be eroded even when individuals act fairly: the overall result of separate and independent transactions is away from and not toward background justice. (Rawls, 2005, p. 267)

But even in this passage, it is unclear how much space there is between *Potential Erosion* and *Inevitable Erosion*. If the tendency of separate and independent transactions is toward eroding background justice, there would not seem to be much difference between these two views after all.

Whichever characterization of the problem is ultimately most apt, Ronzoni takes a certain kind of complexity in our interactions to be required for the problem of background justice to obtain. In what follows, I give three reasons for doubting that this is so, reasons which will simultaneously cast doubt on the idea that the problem of background justice arises only in the context of modernity. Each of the reasons points to an interpretative difficulty faced by these proposals. First, I begin with concerns about how these proposals cohere with the motivation for the problem of background justice. Then, I suggest they fit poorly with Rawls's discussion of the circumstances of justice. Finally, I will call into question the possibility of reconciling these proposals with Rawls's commitment to treating the basic structure as the primary subject of justice.

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To begin, let us return to the example of bequest. That example suggests that interactions that make possible the accumulation of wealth or resources are sufficient to generate the problem of background justice. But transferrable property is all that is needed to get that story going. Although that is not a necessary feature of human life, it also does not require interactions that are more complex than they have been for much of human history let alone interactions have a distinctively modern character.

Second, the problem of background justice should cohere with other elements of Rawls's view. But requiring complexity or features of modernity to trigger this problem does not cohere well with Rawls's discussion of the circumstances of justice. Rawls takes the circumstances of justice to be 'the normal conditions under which human cooperation is both possible and necessary' (Rawls, 1999a, p. 109). Among these circumstances, he emphasizes moderate scarcity that motivates cooperation along with conflict over how the fruits of cooperation are to be distributed. To be sure, we might expect these conflicts to deepen the more complex our interactions. But nothing about the circumstances of justice seems to require that our interactions be especially complex or that they have a distinctively modern character.

Finally, consider the ambitions of Rawls's project. It would be a curious concession to the libertarian to accept that principles governing individual interactions may be stable in any significant set of social circumstances. Such a concession would surely problematize the primacy of the basic structure in theorizing about justice.

Suppose, then, that the kinds of interactions that are needed to generate a problem of background justice are not especially complex nor especially tied to institutions of modernity. This understanding of the problem of background justice problematizes the way in which both Scheffler and Ronzoni take it to be an open empirical question whether the problem of background justice obtains globally at present. The potential for problematic accumulations of wealth is one that basically any form of trade brings with it. And that suggests that the problem of background justice obtains between any parties that are not economically isolated from one another. This is a condition that has long been met by most of the world.

Of course, the problem of background justice was formulated for interactions between individuals. The principles governing individual interactions are unstable unless they are situated in institutions that regulate their effects. But individual interactions across borders are mediated by states. Could this affect whether a problem of background justice obtains globally? It is difficult to see how it

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could, as the problem simply recurs at the level of state interaction. Suppose two states sign a trade agreement. Must they reflect on the potential effects of this agreement on their other trading partners, let alone those who are more distantly implicated in their trade? How could they do this without engaging in the very kinds of unwieldy calculations that render the management of the problem of background justice by individuals untenable? These questions suggest that a global problem of background justice cannot be bypassed simply through state action regulated by whatever principles apply to those actions.

I suggest, then, that it is entirely straightforward that there is a problem of background justice that encompasses most if not all of the world today. The scope of this problem is in an important sense historically contingent. The problem of background justice does not arise, at least via this route, between economically isolated communities. And there certainly have been, and in a few places still are, such communities in the world. At the same time, though, trade across borders is hardly a new phenomenon. This observation unsettles Rawls's attempt to begin theorizing about principles of justice for a single, closed society and then treat principles governing the relations between such societies as a further step. Since the problem of background justice often exceeds the boundaries of particular states, this strategy carves up the discussion in way that cuts across what is normatively relevant.

Here is another way to put the problem. Rawls formulates the problem of social justice for 'the basic structure of a closed system' (Rawls, 2005, p. 271, fn. 9). But the argument that results is applicable only to societies that are in fact closed. Trade negates this condition. In the next section, I turn to considering what this means for theorizing about justice.

4. Background Justice Across Borders

Given the preceding discussion, one natural way of thinking about the scope of principles of distributive justice is as tracking the reach of the problem of background justice or, what hopefully amounts to the same thing, as tracking the reach of the circumstances of justice.[4] Trade across borders problematizes taking the scope of principles of

[4] One wrinkle is that Rawls includes among the circumstances of justice coexisting 'together at the same time on a definite geographical territory' (Rawls, 1999a, p. 109). But it is a little difficult to say what constitutes

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distributive justice to be limited to states. One might then take it that we should model parties in the original position as choosing principles to govern institutions that encompass everyone who is together subject to the problem of background justice. This would be a kind of nascent cosmopolitanism. It would stop short of requiring the parties to take the whole world as necessarily within the scope of principles of justice. But the scope of those principles would be a potentially moving target, one that would at present encompass all or almost all the world.

This rolling view of the scope of principles of justice would also problematize the existence of distinct political communities that fall within that scope. Whether or not the very idea of a basic structure involves coercive legal institutions, regulating the basic structure via Rawls's two principles of justice certainly does. Thus, the rolling view of the scope of principles of justice would seem to bring with it a rolling view of the scope of coercive legal institutions.

I want to suggest, however, that there might be room yet in the view for maintaining political communities that are less extensive than the set of all those who are together subject to the problem of background justice. If the problem of background justice potentially transcends state borders, a natural division among types of conceptions of justice suggests itself: two-level views involve a division of labor between state and international institutions while single-level views take justice to regulate only one all-encompassing set of institutions. What reasons might parties in the original position have to prefer two-level views? Rawls says curiously little about why he follows Kant in taking the relevant question of global justice to be about how independent states relate to one another (Rawls, 1999b, p. 10). This is especially unfortunate because commentators have long been concerned that Kant's approach does not cohere well with Kant's own foundational commitments.[5] Be that as it may, I think there may be productive ways of incorporating the reasons Kant cites against a world state into a broadly Rawlsian approach to questions about justice.

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a 'definite' geographic territory in a way that does not assume something like politically demarcated borders, which is the very assumption I am calling into question. Moreover, trade across borders demonstrates that the moderate scarcity that motivates the mutually advantageous cooperation distinctive of the circumstances of justice is not so neatly geographically confined.

[5] For a discussion of this problem, see Pallikkathayil (2024).

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Let us begin with what I will call *the instability objection* to a world state. Kant responds to the prospect of fusing all states into one with the following observation: 'as the range of government expands laws progressively lose their vigor, and a soulless despotism, after it has destroyed the seed of good, finally deteriorates into anarchy' (Kant, 1996, p. 336). Stability is a familiar Rawlsian concern, and one that Rawls uses to evaluate competing conceptions of justice.[6] He argues,

> It is evident that stability is a desirable feature of moral conceptions. Other things equal, the persons in the original position will adopt the more stable scheme of principles. However attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it. (Rawls, 1999a, p. 298)

Although much more would need to be done to defend this claim, one might argue that two-level views are preferrable in terms of their ability to engender genuine commitment to just institutions. Perhaps the farther institutions stretch, the less readily they provide assurance that others are doing their part in the cooperative scheme. Alternatively, or in addition, perhaps the farther institutions stretch, the less invested those governed by them are in maintaining them. These are both ways of giving sense to Kant's thought that in such circumstances the laws 'lose their vigor'.

Next, consider what I will call the *self-determination objection* to a world state. Kant argues that states 'already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right' (Kant, 1996, p. 327). The parties in the original position know 'the general facts about human society' and 'understand political affairs and the principles of economic theory' (Rawls, 1999a, p. 116). We may thus presume that they know that human beings have long organized themselves in political communities that are less extensive than the scope of the problem of background justice that they face. Single-level conceptions of justice leave no room for these kinds of projects of collective self-governance, which are a familiar fact of human life and which those participating in them may value.[7] Other things equal, the

[6] For a critical discussion of Rawls's treatment of stability, see Pallikkathayil (2023).

[7] For a helpful discussion of why this relationship might be valued, see Stilz (2015).

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parties in the original position have reason not to select a conception of justice that requires abandoning these projects whenever the problem of background justice expands its reach.

I have suggested two reasons parties in the original position might have to prefer two-level conceptions of justice to single-level conceptions. These considerations and any others would need to be compared with any that might favor single-level conceptions before concluding the case for two-level conceptions. These remarks are therefore at best preliminary. But they suggest that there may be room in the view for principles of distributive justice that apply within states and distinct principles of distributive justice that regulate the interactions between states that are together subject to the problem of background justice.

5. Historical Contingency Revisited

I have identified one important respect in which it seems that the scope of principles of distributive justice is historically contingent. The problem of background justice may be more or less extensive. This still falls short of the kind of historical contingency both Scheffler and Ronzoni endorse because for much of human history this problem has extended beyond the borders of distinct political communities. The need for principles that regulate the background conditions in which these communities and their inhabitants interact is thus nothing new and comes close to being an ordinary fact of human life.

Although the need for distinct principles of distributive justice that operate across borders is less historically contingent than Scheffler and Ronzoni suppose, the character of those principles may still be highly dependent on contingent historical developments. The kind of institutions called for to regulate trade may depend in important ways on the kinds of trading that are possible and prevalent. But there is also room for an even more striking form of historical contingency to shape the distributive principles called for across borders. To see this, let us return to Scheffler's suggestion that the evolution of institutions might occasion new moral problems that generate a need for regulation by new moral norms.

Recall that Scheffler suggests cosmopolitans might use Rawls's argument for the existence of distinct principles regulating the basic structure as a model rather than applying it directly. He argues that doing so would require establishing that three conditions obtain. First, *the consequential role condition* requires that

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new 'practices and arrangements have come to exert a profound and morally consequential role in human affairs' (Scheffler, 2012, p. 170). Second, *the irreversibility condition* requires that 'it would be either unfeasible or undesirable simply to undo the relevant practices and arrangements' (Scheffler, 2012, p. 170). Finally, *the moral indispensability condition* requires that 'there are urgent moral problems—akin to the problem of background justice—that could not be solved either by individual agents or by the basic structures of individual societies even if both complied fully with the respective norms that apply to them, but which could be solved if the relevant global practices and organizations were regulated by *sui generis* principles of justice' (Scheffler, 2012, p. 170).

I suggest that the processes of industrialization that have led to anthropogenic climate change meet all three conditions. Industrialization straightforwardly meets *the consequential role condition* and *the irreversibility condition*. Does industrialization also meet *the moral indispensability condition*? As a cause of climate change, industrialization contributes to a new and urgent moral problem, the reach of which extends even to economically isolated communities since they too are vulnerable to the effects of climate change. Is this a problem that could be addressed by states abiding by whatever principles govern their actions both domestically and internationally? Here are two reasons to think that the answer is 'no'. First, the problem of climate change could arise even without any obvious violation of the principles governing individual state actions. For example, no particular state is responsible for bringing about the human rights deficits that climate change is generating. Principles requiring states to respect human rights thus do not seem to preclude the actions that are in fact undermining them. Second, attempts to address climate change merely through traditional treaties face a substantial obstacle. Multilateral agreements that fall short significantly short of global acceptance are not up to the task of addressing climate change. But states have reason to decline to participate in climate change mitigation treaties and so free ride on the efforts of others. This is precisely the kind of problem that calls for an institutional solution. Any institution up to the task of addressing climate change would seem likely to itself have profound effects, which in turn would shape the principles that were appropriate for regulating it. The processes of industrialization that have precipitated the problem of climate change thus provide a compelling example of how changing social forms might require new moral norms to govern evolving institutions.

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6. Conclusion

The Rawlsian view Scheffler and Ronzoni propose takes very seriously ways in which the unfolding of history may shape principles of distributive justice. Although I have argued that there is one respect in which they overestimate the extent to which this is so, I have also argued that they are right to insist that the historically contingent evolution of institutions may call for genuinely new principles of justice. But it is worth emphasizing how far this approach departs from Rawls's own view of these matters. Although Scheffler and Ronzoni begin with Rawls's description of the problem of background justice, Rawls does not seem to move from that problem to treating principles of justice as historically situated in the way that they suggest. In this respect, Rawls seems to have more in common with the cosmopolitan who advocates applying principles of distributive justice globally. Both Rawls and this kind of cosmopolitan seem to take the correct principles of justice to be timeless. Although this paper has made a preliminary start on comparing these perspectives, there remains much more to be done.

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https://doi.org/10.1017/S0031819125100934 Published online by Cambridge University Press