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essay
CHAPTER TWENTY-TWO

Distributive Justice at Home and Abroad

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The last decade or so has seen a dramatic increase in philosophical work on issues of global justice. One of the main questions has been whether principles of domestic justice appropriately apply at the global level. More specifically, do the arguments that support liberal egalitarian principles of distributive justice domestically entail similar or identical principles globally? Leaving aside skeptics who simply deny that any normative standards apply internationally, three families of answers to this question have emerged. Some say yes – the same egalitarian distributive principles apply at both the domestic and global levels because they both follow from a commitment to treating individuals as entitled to equal concern and respect. Treating individuals unequally on the basis of nationality or citizenship would be like treating them unequally on the basis of skin color or any other morally irrelevant property. Others, however, say that egalitarian principles only hold when individuals are in certain types of relationships with one another. Typically these are thought to be relationships that are institutionally mediated. Many who hold this position also assert that the recent process of globalization – principally, economic integration – has generated the necessary relationships or institutions on a global level, hence, egalitarian principles now apply. But others deny that economic relations alone are sufficient to establish the relevant type of relationship that would trigger egalitarian demands. I’ll be defending a version of this last position.

Before doing so, however, I want to emphasize that defenders of all three positions can recognize that the current global order, characterized by widespread and extreme poverty, is unjust. For some (roughly, the global egalitarians in the first two groups), this situation is unjust because justice demands an egalitarian distribution of wealth on a global scale, and the current distribution dramatically violates that requirement. For others (roughly those, like myself, in the third group), it is unjust because extreme poverty makes it impossible for many people to function at a minimally adequate level. According to this account, global inequality is evidence of the opportunities available to relieve this extreme poverty. But inequality would not in itself be
objectionable if everyone had resources that allowed them to function at a minimally decent level. I will be taking this latter position, but it is important to emphasize that given the current state of the world, there is likely to be considerable practical overlap between these three positions.

On my view, the duty of justice that each of us has toward everyone else has two parts. It requires, first, that we respect basic human rights, and second, that nobody be subordinated to the arbitrary choices of another person. The focus of this paper will be on the nonsubordination requirement, but let me first make a comment about the human rights requirement. Following the work of Henry Shue, I believe that human rights generate both so-called negative and positive duties. For example, in addition to having a duty owed to everyone not to murder them, we also have a duty owed to everyone to help them avoid being murdered. Perhaps a violation of the former would be a more serious injustice than a violation of the latter — perhaps, that is, in the event of a conflict, the former negative duty should receive greater weight than the latter positive duty. But this doesn’t mean that we can simply ignore the latter, or that it might not outweigh some other negative duties (for example, the duty not to lie). When human lives are at stake, even a positive duty can have great weight. If we accept that there is a human right to a share of resources necessary for a decent level of human functioning, this obviously implies that we all have a duty not to deprive people of those resources. But it also implies that there is a duty to assist them in securing such necessities. And given the extent of severe poverty in the world today, we citizens of wealthy countries are violating the positive duties — and arguably some negative duties, as well — that we owe toward those in extreme poverty.

But even if a focus on securing basic human rights generates duties of considerable urgency, it does not by itself generate a commitment to egalitarian principles of distributive justice. Once basic human rights, including a necessary share of resources, have been secured, distributive inequalities above that level do not (in general) violate human rights. Nor, I claim, does the nonsubordination requirement generate a general principle of egalitarian distribution. So, it’s somewhat unclear how my commitment to human rights and nonsubordination will generate any egalitarian principles of distributive justice at all. I will try to answer that question later, but first I want to develop a criticism of an influential argument for global egalitarianism that, as we will see, is based on a kind of luck egalitarianism.

Consider Kok-Chor Tan’s version of global egalitarianism which holds that “a just global distributive scheme would be one which meets [Rawls’s] second principle of justice — equality of opportunity and the regulation of global equality by the difference principle.” Tan holds that “the idea of equal respect and concern applies globally to all individuals and not just to citizens within bounded groups.” If a commitment to equal concern and respect generates Rawls’s egalitarian principles domestically, he argues, it also requires them on a global scale. However, Tan recognizes that “an account of global justice that does not allow sufficient space for the special ties and commitments that people reasonably find valuable is one which people may reasonably reject.” These special ties and commitments have independent worth and are not to be valued simply based on the instrumental contribution that they make toward achieving the goal of distributive justice. On the contrary, Tan holds, “theories of justice begin from the assumption that personal and partial pursuits are what give

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meaning and worth to individual lives, and that the aim of principles of justice is not to rule out those partial commitments and pursuits as such, but to define the social context within which individuals may freely and fairly pursue their own projects. I agree, and this is a fundamental point about liberal conceptions of justice: they are uncompromising but not all-controlling. Therefore, Tan restricts the application of the egalitarian principles to institutional design rather than to the regulation of “individuals’ day-to-day interaction with each other as such.” The model here, of course, is Rawls’s focus on the basic structure of society, now extended by Tan (and others) to the global institutional order.

But Rawls’s focus on the basic structure has been criticized by G. A. Cohen and Liam Murphy, among others. Cohen argues that “justice cannot be a matter only of the state-legislated structure in which people act but is also a matter of the acts they choose within that structure, the personal choices of their daily lives.” Cohen identifies the following as his “root belief”: “there is injustice in distribution when inequality of goods reflects not such things as differences in the arduousness of different people’s labors, or people’s different preferences and choices with respect to income and leisure, but myriad forms of lucky and unlucky circumstance.” If justice aims at distributing benefits and burdens in a way that is isolated from such lucky or unlucky circumstances, there is certainly good reason to be concerned about the design of basic social institutions. But there is no good reason to be concerned exclusively with institutional design. After all, the “ethos” of a society and the choices made by individuals will also affect the pattern of distribution of goods. Or, as Liam Murphy asks,

*if equality or well-being is the underlying concern that produces a theory of justice, why would people not be directly concerned about these things? If people have a duty to promote just institutions, why do they lack a duty to promote whatever it is that just institutions are for?*

If we have a duty to promote institutions that eliminate the influence of brute luck, why don’t we have a duty to eliminate such influence directly?

Now on an extreme interpretation of Cohen’s approach, it would be wrong for individuals ever to act in such a way that resulted in an inequality unchosen by the people subjected to it. As it happens, Cohen rejects this extreme form of moral rigorism — or justice rigorism. He allows that “each person has a right to pursue her own self-interest to some reasonable extent.” In other words, Cohen grants that individuals have a self-interested prerogative that sometimes allows them to override the demands of distributive justice. David Estlund argues that these prerogatives should properly be much wider than Cohen suggests: “Given Cohen’s acceptance of a prerogative that limits the claims of justice, allowing some room for the pursuit of self-interest, he ought to recognize a range of related prerogatives.” But such prerogatives are less a modification of the account of justice and more a recognition that other values can sometimes be more important. As Estlund explains, these prerogatives are “permissible deviations in individual deliberation from what social justice would require considered alone.” That is, prerogatives are generated by competing values that sometimes override what distributive justice itself would require. An analogous position is available to a global egalitarian. She could, for example, recognize national prerogatives, which would provide scope for countries
to pursue their own narrow interests even when doing so generates inequalities among individuals globally that would be contrary to what distributive justice would require considered alone. But any such prerogatives would require that we abandon our understanding of justice as uncompromising but not all-controlling. If justice is a matter of promoting a certain pattern of equal distribution, then the only way to avoid making it all-controlling is to compromise it when it competes with other values that might also affect the pattern of distribution.

Consider an example in the domestic context. Suppose I own and run a pizza shop. I've invested everything in it, and I'm doing pretty well. I'm squarely in the middle quintile in income in my society. You, too, are in the middle quintile, working as an accountant. But you're ready for a career change. You decide to open a sushi bar, and you do so down the street from my pizza shop. Your restaurant does great business, lures away my customers, and soon I'm forced to shut down. I fall into the lowest quintile, while you make it into the top. Assume that although my level of well-being plunges, thanks to various forms of social provision, I still have access to adequate food and shelter and healthcare — and the same for my family members and dependents — so that we're all above the level at which basic functioning would be in jeopardy. In fact, suppose our society has arranged its institutions so that citizens in the lowest quintile — like me, now — are at least as well-off as the citizens in the lowest quintile would be if we had any other set of institutions.

Your actions resulted in a dramatic lowering of my level of well-being (as well as my "access to advantage"). You created a new and significant inequality, unrelated to how hard I worked or any changes in my preferences or anything that I agreed to. From my point of view, it was simply bad luck that you opened your restaurant where you did. And yet, I want to insist, you committed no injustice against me. It's not clear to me whether Cohen would say that your conduct falls within a personal prerogative. Perhaps he would say that that depends on your intentions in opening the business and perhaps what you do with the money that you make. But even if he thinks that your conduct would fall within a personal prerogative, that wouldn't show that it is just. Rather, it would show that it is permissible despite being contrary to what distributive justice would require if considered alone. In contrast to Cohen's analysis, I believe that in cases like this not only is your conduct just (not unjust), your motives are irrelevant. Of course, other virtues besides justice may be at stake, and your motives may be relevant to those virtues. Perhaps you were inconsiderate or even malicious. But as far as distributive justice is concerned, you have done no wrong, regardless of your motives or the effects of your actions on my welfare or even the effects of your actions on the general welfare.

This is not to say that the only issue of justice is whether your conduct is legal (a view that Cohen sometimes attributes to his opponents). Perhaps there are no laws concerning slander, and you scared customers away from my restaurant by falsely claiming that my pizza was making people sick. Or worse, suppose you engage in this slander, knowing that there are laws against it but that courts will not admit testimony from plaintiffs of my race against defendants of your race. Justice is not merely a matter of conformity with law, since laws can be inadequate or unjust. Your conduct might be unjust even if in conformity with the law. But in examples like these, the injustice is not that you have violated the norms of distributive justice.

Tan defends his institutional focus against Cohen's criticisms by arguing:
if we are concerned about equality because of a direct concern with mitigating the effects of contingencies on people's life chances, there is no immediate reason why such a concern must take us beyond the basic structure. The belief of institutional (luck) egalitarians is that an appropriately ordered basic structure will come close to nullifying the effects of chance and brute luck on people's lives without intruding on people's liberties to pursue their ends.23

But we have just seen a case in which a concern with mitigating the effects of contingencies would take us beyond the basic structure. Although institutions can (and should) mitigate some of the most damaging effects of bad luck, they cannot come anywhere close to nullifying the effects of chance and brute luck. Tan offers two replies to this criticism. The first is that the outcome of a business venture is not the kind of luck that luck egalitarians need to nullify, even though how things actually do turn out in this venture is to some degree affected by luck."24 Perhaps it is a matter of "option luck" (for which we hold individuals responsible) rather than "brute luck" (for which we compensate individuals). However, if the impulse to egalitarianism is to compensate individuals for outcomes that they have not chosen or are not responsible for, it is hard to see why I shouldn't be entitled to compensation from you when you drive me out of business. I didn't form any agreement with you and if not for your conduct, I would have been much better off. It may be true that there are actions that would have protected me against this outcome. But the test of option luck cannot be that individuals could have taken steps that would have led to a different outcome since this would expand option luck to encompass virtually all outcomes. Being struck by a meteorite is brute luck, not option luck, even if I could have moved to a different spot just before it struck, to take Ronald Dworkin's example.25

Tan's other "more important" reply is that the institutional focus is necessary in order to make space for individual choice and pursuit of diverse ends.

As long as the effects of luck can be sufficiently (even if not completely) mitigated by institutional means, any attempt at countering the effects of luck in personal conduct by interfering with personal pursuits within the rules of just institutions will be overly broad. The residual inequalities of luck on personal life is acceptable given the greater costs of attempting to eliminate these inequalities.26

I agree with Tan that a comprehensive application of egalitarian demands to personal conduct is overly broad. But as we saw with Cohen's personal prerogatives, Tan's argument here is not that personal conduct is just even when it generates inequalities that are not chosen (by those affected by it). Rather, his argument is that enforcing justice in such cases would be too costly in terms of other competing values such as personal autonomy. Ultimately, Tan shares something like Cohen's "root belief" regarding the nature of justice. As he says, "The aim of distributive justice is to counter the effects of unchosen inequality of circumstances on persons...."27 But once again, virtually any action that affects others risks generating an inequality that is not chosen by those affected by it. If distributive justice is a matter of eliminating these effects, it threatens to be all-encompassing. Both Cohen and Tan resist this implication — Cohen by granting personal prerogatives and Tan with his institutional focus, which is, in effect, simply a very large personal prerogative. But they can only avoid
making distributive justice all-encompassing by compromising it when it competes with other values (such as personal autonomy).

In order to restore our understanding of justice as uncompromising but not all-controlling, we should begin again with the two components I asserted at the beginning of the paper: respect for basic human rights (including a right to a share of resources necessary for adequate functioning) and nonsubordination. Distributive inequality does not violate basic human rights as long as the rights are secured at an adequate threshold level for all. Nor does distributive inequality necessarily subordinate the will of one person to another. As Tim Scanlon observes, "It does not seem that in general we are under even a 'prima facie' duty to promote the equal welfare of all." On the other hand, when individuals share political and legal structures, the nonsubordination requirement puts constraints on the permissible designs of those structures. Individuals have a duty to ensure that basic institutional structures are just. They do not have a duty to ensure that any particular pattern of distribution is achieved. So on my view, there is no mystery as to why opening a restaurant could involve no injustice toward me. You have no direct egalitarian duty of distributive justice toward me, although you do have a duty to ensure that the basic structure that we share is just, and assuming it to be just, you have a duty to comply with its requirements. If these duties are satisfied, then there is no injustice because although your actions have a negative effect on my well-being, not chosen by me, they do not subordinate my will to yours.

This view may look suspiciously libertarian. There may appear to be a close similarity between my restaurant example and Nozick’s rejection of patterned principles of distributive justice and his famous discussion of Wilt Chamberlain. But there is a crucial difference, and my position is not libertarian. After all, in my example, I specified that your conduct takes place within a basic structure in which members of the lowest quintile do at least as well as the members of the lowest quintile would under any other institutional arrangement. I defend an egalitarian standard, such as the difference principle, for evaluating the basic structure. But what grounds are there for restricting the egalitarian focus to the basic structure and not evaluating individual conduct according to that same standard? For that matter, why should egalitarian principles apply at all if, as I’ve said, inequality does not in general violate the nonsubordination requirement?

The answer can be developed from an element of Kant’s political philosophy. Suppose that you and I were in a state of nature—that is, outside of any political or legal structures. Each of us cultivates our crops in isolation from each other, and we are able to satisfy our basic needs. Justice does not require distributive equality in such a situation. The fact that you’ve produced more than I have, whether this is due to hard work or to brute luck, does not by itself subordinate my will to yours. As long as our basic rights are secure, there is not yet any injustice in view. Of course, in this condition our basic rights are not very secure for a variety of reasons, and this creates pressure to enter political society. But I want to focus elsewhere, and from here on, I will assume basic human rights are not at issue.

There is a kind of proto-property in this condition. In the simplest case, if I steal the rice that you have grown, I have committed an injustice against you. I have deprived you of the means that you are entitled to use in pursuing your ends and have appropriated those means to my ends. I have, in effect, subordinated your will to mine.
or part of it, anyway – to mine. We can also imagine, in this condition, simple trading. I may exchange some of my beans for some of the rice that you have produced. Assuming, in the classic formulation, that there is no force or fraud, there is no injustice because there is no subordination. But simple cases like this, on which the libertarian edifice is constructed, are misleading because they do not take us far enough. If we interact with one another more than only occasionally, we will be able to sustain this system of proto-property only for a short time and only if we are very lucky. Or more precisely, only if we are very lucky we will be able to avoid committing injustice toward each other.

To see why, consider first Locke’s argument for entering political society from a state of nature much like the one I’ve described. Now in the ideal, individuals would be in a State of perfect Freedom to order their Actions, and dispose of the their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.8

In the ideal, we would exist in a state of justice. Unfortunately, human nature being what it is, sooner or later someone will be inclined to violate the law of nature and to act unjustly.11 I may be tempted to steal your rice, for example. In order for the law of nature not to be in vain, Locke argues, it must be enforced, and if anyone has the power to enforce it, then everyone has that power.12 But again, human nature being what it is, “it is unreasonable for Men to be Judges in their own Cases, [since] Self-love will make Men partial to themselves and their Friends.”13 Hence, Locke concludes: “Civil Government is the proper Remedy for the Inconveniences of the State of Nature, which must certainly be Great, where Men may be Judges in their own Case.”14 So, for Locke, it is possible for us to interact in the state of nature without violating the nonsubordination requirement. However, owing to the deficiencies of human nature – our tendency to violate the law of nature and our inability to enforce it impartially – this is very unlikely. As a result, it makes sense to set up a state with the power to enforce the law of nature impartially. For Locke, entering political society does not fundamentally change the structure of property rights that existed in the state of nature. What is gained is the effective and impartial enforcement of those pre-existing rights.

For Kant, however, the structure of property rights in the state of nature really is inadequate – he calls it “provisional”15 – and not only because of human failings and the lack of impartial enforcement. A political structure is necessary “however well disposed and law-abiding human beings might be.”16 The important issue is not the human tendency to violate natural property rights but rather their indeterminacy. Suppose that the beans that I deliver to you in exchange for your rice are not of the quality that you expected, but are no different from any others that I produce. Or suppose that you claim two un-owned plots of land, intending to rotate your crops over time. You plant seeds on one plot and allow the other to go fallow. Seeing that the second plot has not yet been worked, I plant it and claim it for my own. Or suppose that I allow you to use my trap to hunt, while I use your fishing pole. You use the trap properly, but it is destroyed by a wild animal. I keep your fishing pole as compensation, but you demand it back, claiming that you did no wrong. In cases like these, the main problem is not that I have violated your property rights or that
we lack adequate enforcement. The problem is deeper. There are indefinitely many property regimes that would seem to be consistent with the nonsubordination requirement. According to some of these, my actions would be just while according to others they would be unjust. The specification of additional details in these cases would not help resolve these indeterminacies, nor would further reflection on basic human rights and the nonsubordination condition. We need a political regime not only to apply and enforce property rights impartially, but also to make the rights determinate in the first place. 79

So, for Kant it is possible that in the state of nature we will successfully trade beans for rice. But if we do so, it is only because we are simply lucky that our understandings of our property rights have not brought us into conflict. And we can’t count on sustaining that luck. Although there are many schemes of property rights that would be consistent with the nonsubordination requirement, there is no way to select one without subordinating the will of one person to another. No individual has the authority to impose any particular scheme on anyone else. It is precisely because of the diversity of potentially permissible schemes and the lack of a legitimate mechanism for selecting one of them that there is no way to avoid injustice in the state of nature. As Kant explains,

It is true that the state of nature need not, just because it is natural, be a state of injustice of dealing with one another only in terms of the degree of force each has. But it would still be a state devoid of justice, in which when rights are in dispute, there would be no judge competent to render a verdict having rightful force. 80

In such a condition, any resolution would be unjust because any imposition of a particular scheme would subordinate the will of one person to that of another.

In order to avoid the injustice of subordinating the will of one person to that of another in the selection of an economic scheme and system of private property, we need a just political structure. We need, that is, a political mechanism that itself respects the nonsubordination requirement. And here we first see the transformation of the nonsubordination requirement into a demand for equality — in this case, political equality. A political mechanism selects laws that will be coercively imposed on a society, so if individuals are not treated as equals in this process, the choices of others will be coercively imposed on them, and this is precisely what the nonsubordination requirement prohibits.

Now the political equality that is required to satisfy the nonsubordination requirement is not the same as distributive equality, and it may seem as though the nonsubordination requirement only entails the former. 81 The thought would be that once a just political mechanism is in place, it can select any of the economic schemes that we have already seen are compatible with the nonsubordination requirement. And there is a sense in which that is correct. Any choice that a just political mechanism makes from this range of permissible economic schemes would be legitimate. But this does not mean that all of these choices would be equally just. Different members of the society, we assume, have different preferences concerning which of the permissible schemes would be best. Now consider the issue from the perspective of a participant in the political process — a legislator, for example. On what grounds should the legislator vote for one scheme over another? If she votes for one scheme

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because she believes that her own interests would best be served under that scheme, her vote would be violating the nonsubordination requirement. She would be saying that she can elevate her own interests over the interests of others in the design of the basic scheme of rights that will be imposed on everyone. Voting on the interests of any narrow constituency would be objectionable for the same reason. To respect the nonsubordination requirement in selecting an economic scheme, a conscientious legislator must vote on the basis of principles that can be justified to all reasonable citizens, not only to some.

It is a nontrivial task to determine which principles can be justified to all reasonable citizens. One way to model this choice is to consider it from Rawls’s original position. This heuristic device has the virtue of displaying the transition from the nonsubordination condition to the egalitarian principles of distributive justice. I think a strong case can be made that the parties would choose Rawls’s principles of justice — an equal scheme of basic liberties (including ensuring the fair value of the political liberties), as well as fair equality of opportunity and the difference principle — but my argument does not depend on the specifics of these principles. The point is that we will get some kind of egalitarian constraint on the design of the basic economic institutions. Anything else would subordinate the will of one to that of others in the selection and imposition of a scheme and therefore would be unjust. A scheme that is less egalitarian than the principles require may still be legitimate if it is selected by a just political procedure. And this may be sufficient to avoid the problem of injustice in the state of nature that we discussed. But if the selection of the scheme is based on principles that cannot be justified to all, then there is still a violation of the nonsubordination requirement and therefore the selection of that scheme, even if legitimate, is unjust.

So, I’ve argued that from the state of nature it is a requirement of justice that individuals make a collective decision concerning the scheme of property rights that they will enforce against one another. We need a political mechanism to do this, and the nonsubordination requirement must apply to this process as well as to the scheme chosen. This is more demanding than it might seem, for the nonsubordination requirement in effect becomes a standard of reciprocity that applies to the design of the political structure as well as to the justifications that are offered within that process. An equal right to vote, for example, is insufficient by itself. If a numerical majority selects a scheme on the basis of their narrow self-interest, a minority may properly complain that their wills are being subordinated to those of the majority in the selection process. Fundamental political decisions must not be merely an expression of the private interests of the majority. They must not simply reflect the will of all, as Rousseau would put it. Political actors must aim to provide justifications that all reasonable citizens can accept. They must aim at identifying the general will.42 By reflecting on the choice from the original position, we can consider which principles should apply to the scheme of property rights in order to meet this justificatory burden. Whatever the details — and again, I leave them aside — it seems clear that it will involve some kind of egalitarian commitment. The collective decision regarding economic schemes must treat all individuals as free and equal.

On the view that I have been defending, a scheme of property rights is not purely conventional, since it must respect basic human rights and the nonsubordination requirement. However, property rights are essentially indeterminate and incomplete outside.
of a legitimate political and legal system that can specify them, apply them to particular cases, and enforce those judgments.19 Kant's insight was that justice itself requires that we enter into a legitimate political structure in order to avoid injustice in our property claims. When it comes to the selection of a scheme of property rights through a just political mechanism, the nonsubordination requirement entails an egalitarian standard. However, distributive justice is not a matter of achieving any particular pattern of distribution. As Rawls puts it, "If it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is better than another, then there is simply no answer to this question."20 Instead, distributive justice, as opposed to allocative justice, is a matter of pure procedural justice. Once a just scheme of property rights and economic institutions is in place, "the distribution that results will be just (or at least not unjust) whatever it is."21 A large inequality in the resulting allocation of goods may be unjust if it came about through a violation of just procedures, or if it undermines the fair value of the political liberties, or if it undermines fair equality of opportunity, or if it generates excusable envy that undermines self-respect. Beyond this, a large inequality may be evidence that the basic structure does not satisfy the difference principle if it seems likely that the least advantaged would do better under a different economic regime. But even if this is so, the injustice lies not directly with the shares that different people receive but with the background institutional arrangement. The institutional scheme, not the specific allocation of goods, is subject to an egalitarian requirement because it is in the selection of the scheme that the nonsubordination requirement might be violated.

Up to this point, I've been talking about the global egalitarians in the first group that I identified at the beginning of this paper. Now I want to say something very briefly about those in the second group who predicate their egalitarianism on the emergence of global institutions. Near the beginning of A Theory of Justice, when Rawls introduces the idea of the basic structure, he writes: "The basic structure is the primary subject of justice because its effects are so profound and present from the start."22 Cohen cites this passage to make the case for applying an egalitarian standard not only to the basic structure but to individual actions as well.23 After all, as we have seen, individual actions can dramatically affect the distributive shares of others. In an era of globalization, international institutions can also have profound effects on the well-being of individuals around the world. Not surprisingly, Darrel Moellendorf cites this same passage from Rawls when he argues that because

the global economy has a substantial impact on the moral interests of persons in virtually every corner of the world... duties of justice exist between persons globally and not merely between compatriots. The effects of global economic institutions and principles on the life prospects of persons are, in Rawls's words, "profound from the start."24

But I have been arguing that having profound effects on others is insufficient to establish that there are egalitarian demands of distributive justice.25 Economic schemes must satisfy an egalitarian standard because that is the only way for them to satisfy the nonsubordination requirement. But assuming such a scheme to be in place, an individual action does not violate this requirement even when its effect on the allocation of goods is profound.

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Justice does not require that the distribution of goods conform to any particular pattern, either domestically or globally. Distributive inequality as such does not offend justice, either domestically or globally. Of course, as I said earlier, human rights do apply globally, and given the extreme poverty in the world today, inequality points to our unfulfilled obligation to provide assistance in securing them. The nonsubordination condition also puts constraints on permissible global interactions that are arguably violated by current practice. For example, although all members of the World Trade Organization have nominally equal standing, so-called “green-room” negotiations often exclude all but the most powerful states, and “close to 70 percent of the total developing-country membership of the WTO... was handicapped” by lack of adequate staffing. Among developing countries, “the vast majority have only weak or no representation.” And the International Monetary Fund, which one defender of globalization has described as “a secretive and arrogant organization,” does not have even a formal policy of one country, one vote. These policies and practices arguably subordinate the choices of the members of one state to those of another. But again, none of this entails an egalitarian principle of global distributive justice.

Let me conclude by considering two objections. First, it might be acknowledged that global inequality as such does not violate the nonsubordination condition and so is not unjust. However, with increased international trade, there are more and more opportunities for conflicts among different systems of property and private law. If there is a dispute among parties to an international contract, under which system should it be adjudicated? Just as in the state of nature the imposition of one party’s judgment (even if reasonable in itself) on another would violate the nonsubordination requirement and be unjust, it might be argued that we need a global system of property that will carry egalitarian demands with it.

This argument is not successful because there are crucial differences between individuals in the state of nature, where there are no legitimate political structures, and individuals who are subject to different legitimate systems of property. International contracts can raise difficulties, but these are issues of jurisdiction which can usually be resolved through a large body of case law, bilateral or multilateral treaties, or, perhaps most simply, by having the contract itself specify the applicable system for dispute resolution. None of these mechanisms is available to parties in the state of nature, where no system of private law is available, and therefore there is no nonarbitrary mechanism for the specification of rights, or for their application to particular cases, or for the enforcement of such judgments.

Whether or not it is a requirement of justice that we establish a global system of property, perhaps it will be said that we already have one, carrying with it egalitarian demands. Nothing I’ve said rules out the possibility of creating such a global scheme, but it does not yet exist. We do not have a global political mechanism that can specify the content of property rights, a global judiciary that can apply them to particular cases, or a global enforcement mechanism. The WTO has made some controversial moves in this direction with respect to intellectual property. But we are far from the point that we could properly say that there is a single global system of property and private law, and there are essentially no prospects for such a system in the short or even medium term. The European Union is perhaps another matter, and it may very well be the case that it is sufficient to generate egalitarian distributive demands across the borders of its member states. The specifics of this case continue.
to evolve, and I remain agnostic on this point. Still the very uncertainty about this case reveals just how far we are from a single system of property and private law on a global scale.

Globalization has increased our influence on one another across borders. We now have new opportunities to enter into cooperative projects to pursue our various goals. There are also new opportunities for injustice, when we fail to respect the basic human rights of others or subordinate and exploit them. But justice does not require that we promote a pattern of equal distribution of goods on a global scale any more than it requires that we do so in our ordinary, day-to-day activities. Rather, it requires that we use egalitarian standards when we design our basic institutions, including both our political institutions and the structure of our property rights. The strong temptation is to think that egalitarian demands on the design of the basic structure arise from the independent value of an equal allocation of goods. But this gets things close to backwards. As Arthur Ripstein argues, it is a mistake to assume “that morality is complete without institutions, so that institutions should be designed so as to approximate a result that can be specified without reference to them.”

Justice requires that we enter a political structure guided by the ideals of freedom and equality in order to make our rights complete and determinate. Such structures fundamentally change our relations with one another because they give each of us a scheme of determinate rights compatible with a like scheme for others. In order to avoid unjust subordination, we must assess those schemes that we coercively impose on ourselves according to an egalitarian standard. If we had a global political structure that had the ability to specify rights, apply them, and enforce them, then it too would be subject to an egalitarian standard of evaluation. But a global political order is not required by justice, and in its absence there is no occasion for egalitarian demands of distributive justice on a global scale.

Notes

1 Versions of this paper were presented at the XXIII World Congress of Philosophy of Law and Social Philosophy in Krakow, Poland, August 2007, and at the University of Tennessee, in November 2007. Thanks to both audiences, and to Kristen Hessler, George Klosko, and Arthur Ripstein for valuable discussion and suggestions.


5 See, for example, the data cited in Mandle, Global Justice, Ch. 5.
20 In general, I will now use “inequality” as shorthand for any distribution contrary to whatever pattern is taken to be required by the principles of distributive justice, including, for example, the goal of eliminating the influence of luck or unchosen circumstances. The precise metric is unimportant to my argument.
22 Cases, that is, in which: 1. the basic structure is just; 2. the conduct is legally permissible; 3. the basic institutional design is not at stake; 4. basic human rights violations are not at stake; and 5. no person’s private will is subordinated to another’s.
23 Tan, *Justice and Personal Pursuits*, p. 356. In this article, Tan does not endorse luck egalitarianism, but elsewhere he does. See, for example, note 27 below.
26 Tan, *Justice and Personal Pursuits*, pp. 358–9, note excluded.
There are other important differences between my position and standard libertarian views. For example, libertarians often assume that there are no positive duties in the state of nature. But I have already asserted that human rights generate both negative and positive duties. See note 6 above.


Or, more precisely, someone will accuse someone else of violating the law of nature. The structure of the problem is the same whether there was an actual violation or not.


All citations to works by Kant will be to the translations included in *Practical Philosophy*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), as follows: *The Metaphysics of Morals*, sec. 9 and 15, pp. 409, 416 [Ak. 6: 256, 264].


Kant himself recommends resolutions to some analogous problems in the state of nature, despite his claim that "The indeterminacy, with respect to quantity as well as quality, of the external object that can be acquired makes this problem [of the sole original external acquisition] the hardest of all to solve." (*The Metaphysics of Morals*, sec. 15, p. 418 [Ak. 6: 266]. For example, he asks, "in order to acquire land is it necessary to develop it [build on it, cultivate it, drain it, and so on]?" And he answers: "No... When first acquisition is in question, developing land is nothing more than an external sign of taking possession, for which many other signs that cost less effort can be substituted" [The Metaphysics of Morals, sec. 15, p. 417 [Ak. 6: 265]]. Signs, however, are conventional, and are subject to dispute in the absence of an authoritative determination. He also suggests that when an object is loaned, the borrower is responsible if the object is lost or damaged (regardless of negligence). But this seems to be largely an appeal to convention as well: "For it is not a matter of course that the owner, in addition to granting the borrower the use of his thing... has also issued the borrower a promise against any damage that could arise from his having let it out of his custody" [The Metaphysics of Morals, sec. 38, p. 444 [Ak. 6: 298–9]].


Kant himself apparently thought this. See, for example, "On the Common Saying: That May Be Correct in Theory but Not in Practice," p. 292 [Ak. 8: 291–2]. On the other hand, he did hold that a legitimate state must "maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs" (*The Metaphysics of Morals*, sec. 49, p. 468 [Ak. 6: 326]); cf. "On the Common Saying...", p. 298 [Ak. 8: 298–9].

For Rousseau, the general will is the basis of the demand for the equality among citizens: "the fundamental pact, rather than destroying natural equality, on the contrary substitutes a moral and legitimate equality for whatever physical inequality nature may have placed between men, and that while they may be unequal in force or in genius, they all become equal by convention and by right." Rousseau, *The Social Contract and Other Later
Political Writings, ed. Victor Gourevitch (Cambridge: Cambridge University Press, 1997), bk. i, ch. 9, para. 8, p. 56.

43 Ripstein, “Authority and Coercion,” p. 32.

44 Rawls, A Theory of Justice, p. 76.

45 Rawls, A Theory of Justice, p. 77.


51 Thus, the view I am defending is a form of what Joshua Cohen and Charles Sabel call “weak statism” in “Extra-Rumpublicam Nulla Justitia? Philosophy and Public Affairs 34 (1) [Spring 2006], p. 150.


54 Compare Kant, “Toward Perpetual Peace,” p. 327 [Ak. 8: 355-6]: “what holds in accordance with natural right for human beings in a lawless condition, they ought to leave this condition, cannot hold for states in accordance with the right of nations (since, as states, they 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).” Instead, he argues, reason requires a “political league” that “does not look to acquiring any power of a state but only to preserving and securing the freedom of a state itself and of other states in league with it, but without there being any need for them to subject themselves to public laws and coercion under them (as people in a state of nature must do).”

55 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) itself arguably violated the non-subordination requirement in both its content and the process of its creation. It “was a major source of the North-South contention in the lead-up to the Uruguay Round [that created the WTO].” Eventually, “the EC and the United States successfully drafted an intellectual property agreement in the context of the Uruguay Round and imposed it on developing countries.” John Barton, Judith Goldstein, Timothy Josting, and Richard Steinberg, The Evolution of the Trade Regime: Politics, Law and Economics of the GATT and the WTO (Princeton, NJ: Princeton University Press, 2006), p. 140. TRIPS is a rather anomalous part of the WTO, since “the main effect of the agreement is to protect rents in profitable activities. The thrust of the TRIPS is therefore very different from the notion of ‘driving out’ rents by the steady reduction of protection at the border.” Barton, et al., The Evolution of the Trade Regime, p. 142. Even many defenders of the WTO are critical of TRIPS. See, for example, Jones, Who's Afraid of the WTO?, pp. 158-60, and Wolf, Why Globalization Works, pp. 216-17.