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Just Health, from National to Global: Claiming Global Social Protection

Gorik Ooms and Rachel Hammonds

Introduction

Out of every thousand children born in Sierra Leone, 262 will die before their fifth birthday; out of every thousand children born in San Marino, two will die before their fifth birthday.¹ Global health inequalities like this are so appalling that merely considering that they may not be inequities – ‘inequalities which are judged to be unfair and unjust’² – may seem outrageous. Yet that is exactly what Norman Daniels does in the final chapter of ‘Just Health: Meeting Health Needs Fairly’, when he tries to move his concept of justice in health from the national to the global level, and with disarming honesty admits that he has no straightforward answers to the many questions this transition raises.³

To qualify global inequalities as inequities requires a concept of global justice. We could use a rather straightforward concept of global justice: all humans should enjoy fair equality of opportunity, or, as Darrel Moellendorf argues, global justice demands a situation in which ‘a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter’s parent’.⁴ To have the same chance to become a senior executive at a Swiss bank, all children of the world would first of all need to have the same chance of surviving to their fifth birthday. That would require, among other things, that all the world’s women enjoy the same access to quality education, adequate nutrition, safe water and quality health care including emergency obstetric care. Under the current global system ensuring that all children have the same chance of surviving to their fifth birthday would require such massive transfers of financial resources that many of the present social protection efforts within the wealthier countries

1 World Health Organisation, *World Health Statistics 2009* (Geneva: World Health Organisation, 2009), 40–3.

2 Hilary Graham, *Unequal Lives: Health and Socioeconomic Inequalities* (Berkshire: McGraw-Hill Open University Press, 2007), 3.

3 Norman Daniels, *Just Health. Meeting Health Needs Fairly* (Cambridge, UK: Cambridge University Press, 2008), 335.

4 Darrel Moellendorf, *Cosmopolitan Justice* (Boulder: Westview Press, 2002), 49.

may become unaffordable. At this point the logical consequences of applying Moellendorf's principles of global justice run into conflict with principles of national justice advanced by other thinkers including David Miller. If one supports Miller's contention, 'that nations are indeed communities of the kind that can support special obligations',⁵ just as family members have special obligations towards each other, then the special obligations of inhabitants of wealthier countries towards each other can trump obligations they may have towards inhabitants of poorer countries.

Whether or not we agree with the position that demands of national justice trump demands of global justice, such thinking is in line with present political reality. Whatever inhabitants of a country feel they owe to each other will likely trump whatever they are willing to provide to inhabitants of other countries. On top of being a political reality, this position is in line with the principle of state sovereignty, which has been challenged but remains a building block of international law.⁶

The first section of this chapter focuses on the dichotomy between Rawls' principles of national and global justice. It draws on the work of Daniels, Moellendorf and Miller that addresses John Rawls' 'Theory of Justice',⁷ and his reluctance in 'Law of Peoples',⁸ to expand his principles of justice to the global level. We go in the opposite direction, moving an elaborated version of Rawls' first principle of global justice back to the national level, and argue that it would undermine his second principle of (national) justice. Then we examine the objections that Rawls may have raised towards applying his first principle of global justice at the national level, and argue that these objections are equally valid at the global level.

The second section of this chapter proposes an alternative set of principles of justice that allow for special obligations towards compatriots, but nonetheless demands similar less intense obligations towards inhabitants of other countries. Our principles draw no fundamental distinction between obligations towards compatriots and obligations towards those living in other countries, only a difference in their intensity. We also try to address what we believe was Rawls' main fear in extending his principles of justice from the national to the global. Finally we discuss how a global-level, low-intensity social protection mechanism is both practically feasible and does not conflict with Rawls' first principle of national justice.

5 David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 34.

6 David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2006), 20.

7 John Rawls, *A Theory of Justice. Revised Edition* (Cambridge, MA: The Belknap Press of the Harvard University Press, 1999).

8 John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2001).

Principles of national and global justice

Rawls' 'Theory of Justice' proposes a concept of national justice – for communities of people sharing a government. It is based on two principles:

- 1 *Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the scheme of liberties for all.*
- 2 *Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and conditions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).⁹*

In applying this theory to the global level in 'The Law of Peoples', Rawls proposes fundamental adjustments. The idea of distributive justice cannot be transformed into 'distributive justice among peoples', or so argues Rawls. Peoples must be allowed to take their own decisions and then should bear the consequences of their choices. For Rawls, there is a 'duty of assistance' between peoples, but this duty is less demanding than (national) distributive justice: 'The crucial point is that the role of the duty of assistance is to assist burdened societies to become full members of the Society of Peoples and to be able to determine the path of their own future for themselves.'¹⁰

To illustrate his point, Rawls provides the following example.¹¹ Two different countries 'provide the elements of equal justice for women', however, 'the first happens to stress these elements and its women flourish in the political and economic world', while the second 'because its prevailing religious and social values, freely held by its women, does not reduce the rate of population growth and it remains rather high'. Then, 'some decades later, the first society is twice as wealthy as the second'.¹² Can the first country now be obliged in any way to support the latter? No, or so argues Rawls, without providing much explanation except that 'this latter position seems unacceptable'.

But what exactly is unacceptable about this position? Examining Rawls' principles of global justice – 'Principles of the Law of Peoples' – it is the first that seems to explain best why the position is unacceptable: 'Peoples are free and independent, and their freedom and independence are to be respected by

9 John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: The Belknap Press of the Harvard University Press, 2001), 42.

10 Rawls, *Law of Peoples*, 118.

11 In fact, Rawls provides two examples, but the essential arguments are the same. The other example compares two countries, one investing heavily in industrialization, the other 'preferring a more pastoral and leisurely society'.

12 Rawls, *Law of Peoples*, 117–18.

other peoples.’¹³ Applied to the example above, it leads to two similar but different arguments:

- 1 The second country is presumed to be responsible for its relative poverty – its destitution is due to the choices its people freely made. It may have been affected by choices made by other countries or by people living in other countries, but as it is independent, it could have kept those negative influences out, so even if its destitution could be attributed to external factors, the country is still responsible for letting these external factors influence its prosperity. This we call the ‘self-containment’ argument. If countries are self-contained, or could be self-contained if they wanted, then ultimately the responsibility for the well-being of the inhabitants of a country rests within that country.
- 2 The first country may not want to support the second country and that opinion may be the result of the conscientious judgements and values freely held by its inhabitants. If we were to confirm a principle of global justice that obliges the first country to support the second, which would overrule the decision freely taken by the first country; then it would no longer be free. Furthermore, if the first country were nonetheless obliged to support the second, it should at least be allowed to demand that the second country adopt the policies that allowed the first country to become wealthier (otherwise the first country will have to support the second forever). Then global justice would overrule the conscientious judgments and values held by the inhabitants of the second country. This we call the ‘autonomy’ argument.

Similar arguments can be made against Rawls’ second principle of (national) justice. Within a state, different individuals, different families and different communities make different choices. Some parents encourage their children to develop their commercial talent, others encourage their children to develop their scientific or artistic talent – and these choices and preferences may lead to differences in income and wealth. At the national level, the self-containment argument would suggest the following with regard to obligations of support to others. Person A would have no obligation of support to destitute person B unless we can demonstrate that person A is responsible somehow for the destitution of person B, and that the influence of person A on person B’s destitution was beyond the control of person B. The autonomy argument would suggest that free and equal people have different values about solidarity and individual responsibility, so any principle obliging person A to provide support against his or her will would undermine the autonomy of person A.

13 Ibid., 37.

Further, any requirement that the persons receiving support would be obliged to try harder to support themselves would undermine their autonomy.

What would that mean in practice? All member states of the Organisation for Economic Co-operation and Development (OECD) have developed social protection schemes; schemes through which more than 20 per cent of the Gross Domestic Product (GDP) is collected and re-distributed.¹⁴ Inhabitants of OECD countries are not free to decide individually how much they will contribute. They may have a right to vote in favour or against the policies, or for the politicians that decide the policies, but everyone has to comply with the decisions taken on their behalf, or face the consequent fines or prison. Similarly, people are not entirely free to exercise their autonomy when it comes to their claims for social protection: people who refuse to work may be excluded from some social protection efforts, for example. With the self-containment argument in mind, we should wonder why OECD countries are doing this. If every person is responsible for the consequences of his or her choices, why would they collectively decide to re-distribute 20 per cent or more of their income? With the autonomy argument in mind, we should question the legitimacy of taxation and the legitimacy of conditions imposed upon those benefitting from social protection.

Social protection efforts started to emerge long before Rawls developed his theory of justice, so we cannot hold him accountable. But we know that he approves of such solutions. So how would he deal with the self-containment and autonomy arguments, if used against social protection at the national level?

Let us start with the autonomy argument. Have people who comply with national tax obligations or conditions that come with social protection benefits lost their autonomy? On the contrary, Rawls would argue, people who comply with the principles of justice are truly autonomous: 'by acting from these principles persons are acting autonomously; they are acting from principles that they would acknowledge under conditions that best express their nature as free and equal rational beings.'¹⁵ But what about individuals who truly disagree, and who are nonetheless forced to comply? For Rawls, 'it is not true that the conscientious judgments of each person ought to be respected; nor is it true that individuals are completely free to form their moral convictions.'¹⁶ In other words: when we know what justice demands, we should not be protective of those who would prefer to act unjustly. If autonomy were understood as freedom to behave exactly how one wants to behave, it would lead to anarchy. The real challenge is to find out what justice demands: 'How do we ascertain that their conscience and not ours is mistaken . . .?'¹⁷

14 Willem Adema and Maxime Ladaique, *How Expensive is the Welfare State? Gross and Net Indicators in the OECD Social Expenditure Database (SOCX)* (Paris: Organization for Economic Cooperation and Development, 2009).

15 Rawls, *Theory of Justice*, 452.

16 Ibid., 452–3.

17 Ibid., 453.

If that is what personal autonomy means, then the autonomy argument can be invalidated at the global level too. The real challenge is to find out what global justice demands. If some states prefer to behave unjustly, we should not – or at least not as a matter of principle – condone their desire to behave unjustly. That concept can be easily understood when we think about states desiring to invade other states. And if we were to find that justice demands that states not only leave each other in peace, but also support each other, then a state that prefers not to support others should not expect to meet with approval for such unjust behaviour. The same can be argued for a state that may be willing to accept support, but unwilling to make certain choices that would reduce its need for support: if justice demands that states make those choices, the autonomy argument does not turn unjust reluctance into just behaviour. In fact, the autonomy argument does not add much to the debate about the demands of global justice, but it does highlight a procedural challenge: how do we ascertain what the true demands of global justice are, in the absence of a global government where states' representatives can deliberate and decide? We return to this challenge in the second section of this chapter.

To be sure, we do not consider global justice as a matter of states' rights and duties towards each other; we are convinced that it is fundamentally tied to individuals' rights and duties towards each other across borders. For now, we stick to Rawls' paradigm for a 'Society of Peoples'. The autonomy argument is easier to counter when used to deny the existence of a duty between individuals to support each other across borders. If that is what justice demands, then a state that refuses to support others is to be seen as a collective of individuals of which the majority prefers to behave unjustly, and their autonomy does not justify their unjust collective preferences.

We countered the autonomy argument, using Rawls' own counter-arguments, both at national and global level. But we have not yet dealt with the self-containment argument: in as much as the destitution of some countries is – or should be considered as – a consequence of their own choices, the relatively richer countries should not be obliged to support the poorer. Again, this argument can be transposed to the national level. In a country where people are free to decide the level of energy and resources they invest in their education and that of their children, are free to move around and look for a better job, are free to decide how hard they really want to work, should individuals or families not then be considered self-contained units too? If so, then why should richer individuals or families be obliged to support poorer individuals or families? If richer individuals earned their income and wealth in an honest manner, should we not then agree with Robert Nozick that '[t]axation of earning from labor is on par with forced labor'?¹⁸

18 Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 169.

Rawls would answer that we cannot attribute the relative poverty of individuals entirely to the choices they made, and that we cannot exonerate the relatively wealthy from having contributed to the relative poverty of others. Within a competitive environment, some are unable to make full use of their talents and commitment because others with fewer talents and less commitment have more opportunity – for example because their parents were richer and able to pay for private education. Rawls acknowledges that problem, and argues that ‘background institutions must work to keep property and wealth evenly enough shared over time to preserve the fair value of the political liberties and fair equality of opportunity over generations’.¹⁹ The problem Rawls refers to is what Gunnar Myrdal calls ‘cumulative causation’: centres of economic growth – families, clans, cities – investing their gains in future competitive advantages and becoming even stronger, while the periphery of these centres undergoes a ‘backwash effect’ and becomes even weaker.²⁰ To illustrate that his theory of cumulative causation really is common sense, Myrdal refers to Matthew’s Gospel,²¹ and later the phenomenon that became known in economics as the ‘Matthew Effect’.²² More than 50 years ago Myrdal predicted that if less developed countries would open up to a global market, they would not benefit but instead would become relatively poorer. Contemporary economists find that indeed a globalizing economy allowed a Matthew Effect to happen. One of these economists, Branko Milanovic, calls the problem ‘bad inequality’ or inequality that ‘provides the means to preserve acquired positions’, as opposed to ‘good inequality’ or inequality that ‘is needed to create incentives for people to study, work hard, or start risky entrepreneurial projects’.²³

Whenever we compare two individuals, living in the same country, who acquired very different levels of personal wealth, we find a wide range of potential explanations: uneven intelligence, uneven commitment to hard work, uneven willingness to take risks, uneven luck and uneven opportunity. For Rawls, the plausibility of inequality of opportunity as one of the causes of wealth inequality, and the reality of wealth inequality as a cause of inequality of opportunity, are sufficient arguments to claim measures like taxation and re-distribution of income – not limited to a single generation, not to create a level playing field once, but continuously, over generations. It is important to understand that these arguments are sufficient for Rawls (at the national level): one

19 Rawls, *Justice as Fairness*, 51.

20 Gunnar Myrdal, *Rich Lands and Poor: The Road to World Prosperity* (New York: Harper and Row, 1957), 12.

21 ‘For to the one who has, more will be given, and he will have an abundance, but from the one who has not, even what he has will be taken away.’ Matthew 13:12, English Standard Version of the Bible.

22 Daniel Rigney, *The Matthew Effect: How Advantage Begets Further Advantage* (New York: Columbia University Press, 2010).

23 Branko Milanovic, *Worlds Apart: Measuring International and Global Inequality* (Princeton and Oxford: Princeton University Press, 2005), 12.

does not have to demonstrate that those who are supposed to contribute are somehow guilty of enjoying excessive opportunity and therefore responsible for unfairly outcompeting others, nor does one have to demonstrate that those who are supposed to benefit from re-distribution are somehow victims of the excessive opportunity of others. Taxation of income and re-distribution of income is not a correction for identifiable harm done.

If distributive justice is not a matter of correcting for identifiable harm done, what is it then? What moral arguments can we develop to argue that a person has to give up part of his or her income to support another person, if the first is in no identifiable way responsible for the destitution of the second? We can imagine at least two:

- 1 The functionality of a society in the long run should be everyone's concern. Inequality of income and inequality of opportunity are mutually self-amplifying and lead, if uncorrected, to a situation in which a part of society will refuse to cooperate. Therefore, all should contribute to keeping inequality of income and opportunity within acceptable ranges.
- 2 A society can be understood as a huge web of cooperation, composed of an endless network of interactions that connect all members and through which all members have some impact on all other members. For example, when a person takes a taxi in New York, he or she pays the taxi driver, and indirectly the bank that gave the driver a loan to buy his car, and the factory where the car was made. The taxi driver then buys a pizza and indirectly pays the farmer who grew the tomatoes. And so on. This endless web of cooperation produces benefits and the benefits are shared, but unevenly. The unevenness can be fair – for example, if workers at the factory where the car was made do not take as much risk as the factory owner – or unfair – for example, if the factory owner only earns more because he or she inherited the factory. The uneven sharing of the benefits of cooperation can exacerbate pre-existing unfairness, amplifying inequality of opportunity – the factory workers are so poorly paid that they cannot send their children to school, and their children will never have a chance to become engineers; the factory owner can purchase the most expensive private education for his or her children, even if they never make any serious effort, they will still end up in very comfortable positions. At this point, we can argue that harm is being done to those who are arrested in their underprivileged positions. But it is not easy to attribute the responsibility for the harm done. We can blame the owner of the car factory. But he or she will blame the taxi driver, who wants the cheapest car. The taxi driver will blame the client who does not want to pay more for a 'fair taxi ride'. In the end, the client who wanted a ride

at a reasonable price may have contributed to the very low salaries of undocumented migrants at a tomato farm in Fresno. Within a society that agreed to leave the distribution of the benefits of cooperation entirely to market forces, cooperation will do harm, but a lot of the harm done would be unintended, unidentifiable and unforeseeable. Any cooperation carries with it the risk of unintended harm-doing, for which correction is needed. We cannot be sure, but we can assume that those who obtain the bigger shares of the benefits of cooperation are those who contributed most to the good of cooperation but also those who contributed most to the bad of cooperation. We do not need to suspect them of having enjoyed and sustained excessive opportunity; we can assume that they are or should be willing to finance an insurance policy against their unintended, unidentifiable and unforeseeable contribution to the harm done by the cooperation.

Both arguments can be used to challenge Nozick's characterization of taxation as on par with forced labour. On the basis of our above analysis we would argue that a just person understands that she or he has a contribution to make to a functional society. Also, a just person understands that a society that leaves the distribution of the benefits of cooperation entirely to market forces will do harm, and therefore a just person will agree to underwrite an insurance policy against his or her unintended, unidentifiable and unforeseeable contribution to the harm done. Rawls explicitly endorses the first argument, for example when he writes: 'To ensure stability men must have a sense of justice or a concern for those who would be disadvantaged by their defection, preferably both.'²⁴ The second argument comes from Rawls too, but we have to acknowledge that we may have pushed the logic further than he intended. However, we find support in his comments that '[t]he social system is to be designed so that the resulting distribution is just however things turn out' and that '[w]ithout an appropriate scheme of these background institutions the outcome of the distributive process will not be just',²⁵ which we can turn around to argue that in a society that does not contain the necessary corrective policies, those who benefit the most have the highest at risk of contributing to the injustice done to those who received least.

To conclude this section, we argue that both arguments are valid at the global level too. Today, a vast majority of the world's people are connected in a global society and engaging in the global system of cooperation. All people are in some way connected. The taxi driver of our example may not only buy a pizza, he may also buy a cup of coffee for which the beans were grown in Kenya, or a shirt that has been made in a factory in China. By taking a taxi in

24 Rawls, *Theory of Justice*, 435.

25 *Ibid.*, 243.

New York, the client contributes to the distribution of benefits in Kenya and China and so on.

If distributive justice is a matter of contributing to a functional society, can we not argue that the global society needs distributive justice too? Is our global society, as currently structured, dysfunctional as Jean Ziegler warns in 'La Haine de l'Occident' or 'Hate for the West'?²⁶ In our opinion, 'hate' may be too strong a word, but a 'grudge' towards the global West is a reality.²⁷ The fact that the global West continues to reject responsibility for extreme human suffering in other parts of the world is deeply problematic for the functionality of global society.

Furthermore, present global inequalities far exceed the point where one may have real doubts about whether they may contain at least some bad or self-amplifying inequality. Any cooperation carries with it a risk of unintended, unidentifiable and unforeseeable harm-doing and that risk is very high for cooperation between a person living in a high-income country and a person living in a low-income country. Those who benefit most from the benefits of global cooperation should therefore also contribute most to a form of insurance to mitigate unintended, unidentifiable and unforeseeable contributions to harm-doing.

Global justice and the governance problem

Simon Caney is not alone in attributing Rawls' rejection of distributive justice beyond borders to his perception of states as 'reasonably self-contained systems of cooperation'.²⁸ This perception of self-containment creates a dichromatic picture. If two people live in the same state, they belong to a single system of cooperation, and they should support each other (to support the functionality of the cooperation in the long run, or because the impact of cooperation is assumed to contain a risk of harm-doing). If two people live in different states, they belong to different systems of cooperation and they should not support each other (they have no common system of cooperation to sustain, and they have no significant inevitable impact on each other), or that is what the dichromatic picture suggest.

This dichromatic picture is insufficiently sensitive to accurately represent present political reality within states, let alone present economic reality. In the current political reality, people do not belong to a single self-contained system

26 Jean Ziegler, *La Haine de l'Occident* (Paris: Editions Albin Michel, 2008).

27 Gorik Ooms, 'Why the West is Perceived as Being Unworthy of Cooperation', *Journal of Law, Medicine & Ethics*, 2010, 38(3): 594–613.

28 Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2006), 108.

of cooperation; they belong to many systems or layers of cooperation. And they support each other in each of those systems or layers, in accordance with the estimated level of intensity of cooperation that happens within each layer. For example, the average inhabitant of a member state of the European Union pays taxes and participates in social protection at the level of the city he or she lives in. In many European Union member states, there are taxes at the sub-state level ('communities' or 'regions' in Belgium; 'länder' in Germany). The largest amount of tax is levied at the state or national level. Finally, all member states of the European Union contribute financially to the running of the European Union, which now contains some mutual social protection, albeit very modest.

Within the United States of America, the situation is similar. Most people pay taxes at the municipal level, that is to the city in which they live, at county level, at the state level (e.g. as income tax or sales tax) and then at the federal level.

Obviously, there are historical reasons that explain the multiple layers of social support schemes. But perhaps they are more than just legacies from the past. They may reflect the existence of different layers of society, each of them requiring a different intensity of mutual social protection to remain functional. In a very wealthy city, the minimum level of well-being to be guaranteed to all inhabitants in order to keep the city functional may be higher than the minimum level of well-being to be guaranteed to all inhabitants of the state for the state to remain functional.

The multiple layers may also reflect how geographical proximity is accepted as an indicator of the level of intensity of cooperation, and therefore as an approximation of the risk of unintended, unidentifiable and unforeseeable harm-doing, and therefore an approximation of the level of social protection required to correct harm-doing. Two people living in the same city are presumed to cooperate intensely, and therefore are presumed to have an intense and inevitable impact on each other's well-being, thus, the risk they may be harming each other is high. Consequently, they should support each other more intensely than two people living in different cities should.

Multiple layers of social protection may reflect two implicitly accepted principles of justice, the first based on a political duty to contribute to the functionality of the societies one belongs to, the second based on the duty to avoid or correct unintentional, unidentifiable and unforeseeable harm to others. These are two different but related principles. Both are derived from the inherent unjustness of the results of the market-based distributive process that amplifies pre-existing inequality of opportunity: the first acknowledges that if uncorrected the self-amplification of inequality of opportunity will break down a society, the second acknowledges that if uncorrected the self-amplification of inequality of opportunity will put those who receive the biggest shares of the benefits of cooperation in a position where they are involved in unintentional, unidentifiable and unforeseeable harm-doing.

We believe that these principles are equally applicable to cooperation beyond state borders. There is a global society that urgently needs to become one which serves the interest of all people, but the current inequality of opportunity in global society is staggering and self-amplifying and a lot of so-called cooperation continues only because the less powerful partners have, thus far, no alternative. For the inhabitants of countries to which the vast majority of the benefits of global cooperation accrue, it has become almost impossible to avoid the risk of unintentional, unidentifiable and unforeseeable harm-doing. When we, inhabitants of one of those countries, buy a pound of coffee, we can buy one with a 'fair trade' label. This label tells us that the farmer who grew the beans received a fair price, whatever that means – other than that the price the farmer would normally receive is hugely unfair. What we do not know is where all the other persons whose services we purchase buy their coffee – if they prefer 'unfair' coffee, we indirectly support that, whether we like it or not. Furthermore, the fair trade certification process exists for only a few of the goods we consume. In a world without global standards for minimum decent wages, and a global market economy that relentlessly drives consumer prices as low as possible, making sure that we do not unintentionally harm others has become an impossible task. Those who value global justice should be willing to pay for insurance against unintentional harm-doing, in the form of a global mutual social support scheme.

And therefore, the burning questions – excluding those harking back to the times in which states were truly self-contained systems of cooperation; the 'good old times' that never existed – are not about whether we should develop a global low-intensity layer of mutual social support, but about how to develop, manage and govern it. It is not difficult to imagine a multi-layered social protection scheme with a global low-intensity layer, as Figure 5.1 illustrates, but it would be difficult to govern it.

Our principles of global justice flow from those proposed by Thomas Pogge in 'World Poverty and Human Rights', which are focused on 'human rights deficits that are *causally traceable to social institutions*', on 'those who *actively cooperate* in designing or imposing the relevant social institutions' and on 'compensatory duties to the amount of harm one is responsible for by cooperating in the imposition of an unjust institutional order'.²⁹ We are in agreement with Pogge that a lot of the present human rights deficits in low-income countries are due to past and present global social institutions that caused and cause harm in intentional, identifiable and foreseeable ways (think the slave trade, colonialism, modern-day agricultural export subsidies). However, with Daniels we agree that:

International harming is complex in many ways. The harms are often not deliberate; sometimes benefits were arguably intended. Harms are often mixed

29 Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms: Second Edition* (Cambridge: Polity Press, 2008), 26.

Figure 5.1 Multi-layered social support with a global low-intensity layer

*with benefits. In any case, great care must be taken to describe the baseline in measuring harm. Such a complex story about motivation, intentions, and effect might seem to weaken the straightforward appeal of the minimalist strategy, but the complexity does not undermine the view that we have obligations of justice to avoid harming health.*³⁰

We could presume that those who obtain the greatest share of the benefits of global cooperation are probably contributing most to the harm that is being done. But this line of debate often involves complex discussions relating to causation. For our purposes all we need to presume is that those who obtain the greatest share of the benefits of global cooperation are most at risk of being involved in unintended, unidentifiable and unforeseeable contributions to harm-doing, and therefore are obliged to contribute most to an insurance to mitigate against unintended harm-doing.

If the justification of a claim to global social protection lies in the dual assumption that cooperating individuals should support each other to keep global society functioning and that cooperating individuals should be willing to underwrite insurance against unintended, unidentifiable and unforeseeable involvement in harm-doing, that claim would logically aim for a mechanism to which all individuals contribute, under agreed conditions, and from which all individuals receive support, again under agreed conditions. That is what

30 Daniels, *Just Health*, 340.

Milanovic proposes: ‘creating a global body (Agency) that would be financed by a tax raised from the rich in rich countries (i.e. a tax on goods or activities with very high income elasticity) and which would transfer these funds to poor *individuals* in poor countries.’³¹

For practical and political reasons, we would propose a scheme that builds on the existing national social support institutions and enables ‘cross-subsidies’ between states. We imagine a fund that would collect contributions from national social protection schemes and transfer them to national social protection schemes. What would such a scheme require?

First, states as representatives of their inhabitants would have to agree on what a global social protection scheme should cover (and what it should not cover). Then, they would have to agree to what extent states should provide this coverage themselves, and to what extent they can rely on support from other states. Once we know how much support would be needed, states would have to agree which states should provide the support and how that burden will be shared. Finally, states would have to agree on a mechanism. These are exactly the questions we are trying to answer as members of the Joint Action and Learning Initiative on National and Global Responsibilities for Health.³² We do not want to pre-empt the answers to these questions here, but we do need some preliminary answers to illustrate the practical feasibility of the proposal and to address what may have been Rawls’ primary concern – that any form of global distributive justice would negatively affect his first principle of (national) justice.

When it comes to health, the World Health Organisation (WHO) estimates that US\$65 per person per year is needed to provide ‘Universal Health Coverage’ of essential health-promoting and health-protecting goods and services.³³ This estimate includes private health expenditure of about \$15 per person per year in low-income countries, on average; meaning that governments of low-income countries should be in a position to spend \$50 per person per year – for health only. Even the poorest countries of the world are able to generate some domestic government income; we assume that domestic government revenue equivalent to 20 per cent of GDP is within reach of all countries, and that all countries can allocate 15 per cent of domestic government revenue to health.³⁴ Combining those estimates with the present GDP of countries, we estimate that

31 Branko Milanovic, *Global Income Inequality: What It Is and Why It Matters* (Washington, DC: World Bank, 2006), 29.

32 Lawrence O. Gostin, Eric A. Friedman, Gorik Ooms, Thomas Gebauer, Narendra Gupta, Devi Sridhar, Wang Chenguang, John-Arne Røttingen and David Sanders, ‘The Joint Action and Learning Initiative: Towards a Global Agreement on National and Global Responsibilities for Health’, *PLoS Medicine*, 2011, 8: 5.

33 World Health Organisation, *The World Health Report: Health Systems Financing: The Path to Universal Coverage* (Geneva: World Health Organisation, 2010).

34 Gorik Ooms, Rachel Hammonds, ‘Taking up Daniels’ Challenge: The Case for Global Health Justice’, *Health & Human Rights*, 2010, 12(1): 29–46.

about \$40 billion per year would be needed to cover the gap between the aim of public health expenditure at \$50 per person per year and realistic domestic government income for health. As the combined GDP of the members of the OECD stands at about \$40 trillion per year, and only 0.1 per cent of that amount would provide \$40 billion per year, the easiest solution would be to ask these high-income countries to share the burden among themselves. However, we are also exploring more inclusive schemes, under which all countries would contribute and receive. Finally, we are looking at the Global Fund to fight AIDS, Tuberculosis and Malaria (Global Fund) as one of the models that could be used. The Global Fund was originally created to collect and distribute \$10 billion per year. It has yet to reach that level of distribution, but it nonetheless is a multi-billion dollar non-profit foundation, governed by its own by-laws and the law of Switzerland.³⁵ It has a board comprised of 20 voting members: richer countries have eight voting members and two other voting members (one representing the private sector and the other representing private foundations) and are considered as being on the side of richer countries; poorer countries have seven voting members, and the three voting members representing civil society organizations are considered to be on the side of the poorer countries.

The current structure and *modus operandi* of the Global Fund are controversial and it is obvious that if it ever were to be transformed into a global social protection scheme, several of its present features would have to be changed. The purpose here is not to critically analyse the Global Fund in its current form as an efficient or effective instrument for development assistance, but to critically analyse from a philosophical angle, whether its governance structure can stand the test of Rawls' first principle of (national) justice, according to which '[e]ach person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the scheme of liberties for all'.³⁶

To be functional, a global social protection scheme would require reliable contributions; contributions that do not depend on purely discretionary decisions by contributing states. A solution needs to be found that seriously constrains the discretionary character of the contributions. Even if we set aside the practical problems this raises for a while – about how to make a reluctant state contribute – there is a philosophical problem: would any imaginable solution not inevitably lead to a situation in which the liberties of the inhabitants of the contributing states are negatively affected, because they would no longer be in a position to vote for a policy that ends the contributions? Furthermore, a global social protection scheme would impose certain conditions on recipient states, if only to make sure that transfers are used in ways supported by the

35 Global Fund to fight AIDS, Tuberculosis and Malaria, *By-laws, as Amended 21 November 2011* (Geneva: Global Fund to fight AIDS, Tuberculosis and Malaria, 2011).

36 Rawls, *Justice as Fairness*, 42.

contributing states.³⁷ No matter how strict or flexible these conditions are, they would affect the liberties of the inhabitants of the states receiving support negatively.

To some extent, we have already discussed this problem when we countered the autonomy argument. If we know what justice demands, then we should not defer to those who prefer to behave unjustly (even if their opinion is shared by a majority in the country where they live). If it were possible to oblige all states to contribute, whether a majority of inhabitants agrees or not, this would not in our opinion create a conflict with Rawls' first principle of (national) justice, as that principle does not condone unjust preferences.

The real challenge is how to ascertain what global justice demands exactly. If it is relatively easy to argue that present global inequalities demand a degree of global social support, it is far more difficult to obtain a consensus on what exactly it should entail. Can a board comprised of 20 persons be entrusted with this task?

Let us return to the national level. When people disagree on what justice demands, how can we 'ascertain that their conscience and not ours is mistaken . . . ?'³⁸ In 'Political liberalism', Rawls expresses his lukewarm trust in 'deliberative democracy': parliamentary democracy as we know it, but enhanced or 'pimped' with additional features. To name only two: deliberative democracy 'limits the reasons citizens may give in supporting their political opinions to reasons consistent with their seeing other citizens as equals', and calls for 'public financing of elections, and the providing for public occasions of orderly and serious discussion of fundamental questions and issues of public polity'.³⁹ Not many 'real life' parliamentary democracies live up to these standards.

If parliamentary democracies as we know them are not good enough, what can we say about a board comprised of 20 persons? On the one hand, we can argue that a board comprised of 20 persons designated by a multitude of platforms of which none lives up to the ideal of deliberative democracy, can never be trusted to ascertain what global justice demands. On the other hand, we can argue that if we can live with imperfect solutions at the national level, we should not aim for perfection at the global level.

We could aim for an international agreement based on consensual answers to the questions above (what global mutual social support should cover; what individual states should cover themselves; how the burden of international

37 Depending on the design, many or all states could be contributing and receiving at the same time. That would overcome the contributor-recipient dichotomy, but raises the problem that inhabitants of states could no longer vote for policies that are incompatible with the requirements of global social protection.

38 Rawls, *Theory of Justice*, 453.

39 John Rawls, *Political Liberalism. Expanded Edition* (New York: Columbia University Press, 2005), 448–9.

support will be shared; and what mechanism will be created to manage global mutual support). Then no person would be expected to comply with something his or her government – democratically elected or not – does not agree to. Rawls' second principle of global justice holds that '[p]eoples are to observe treaties and undertakings' and his third that '[p]eoples are equal and are parties to the agreements that bind them'.⁴⁰ In other words, there is no contradiction between individuals having rights to participate in collective decisions and states adhering to treaties and international undertakings that reduce the future scope of collective decision-making. The international agreement could take the form of an international convention, or the form of an international common undertaking like a global fund: whatever the form it does not negatively affect Rawls' first principle of (national) justice as long as it is based on an agreement to which states voluntarily adhere. Then a board composed of 20 persons could perhaps be trusted enough to fine-tune and implement the prior agreement.

The real problem with this approach is that it will be limited to what the most powerful countries are willing to commit themselves to. And that is likely to be less than what global justice demands. So Thomas Nagel may have been right when he speculated that 'the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states'.⁴¹ The context in which a global social protection scheme has to be negotiated faces a legitimacy problem. The most powerful states will at best embrace a scheme that is far too modest to be called just. But we have to be clear about where the injustice lies: not in constraining the discretionary character of states' decisions about international solidarity, but in insufficiently constraining states' discretion for want of a more representative platform. We therefore disagree with Nagel's conclusion that 'the global scope of justice will expand only through developments that first increase the injustice of the world': moving from the present situation of no global social protection towards some global social protection would not increase global injustice, it would decrease global injustice.

Conclusion

A critical analysis of Rawls' rejection of the application of his principle of distributive justice at the global level allows us to develop two arguments: an argument flowing from self-containment (countries can determine their own

40 Rawls, *Law of Peoples*, 37.

41 Thomas Nagel, 'The Problem of Global Justice', *Philosophy & Public Affairs*, 2005, 33(2): 113–47.

future path and therefore there should not be an obligation of support between countries) and an argument based on autonomy (it is preferable that countries make their own decisions). Both arguments can be used at the national level and would undermine Rawls' principle of distributive justice. In defence of his distributive justice principle, Rawls may have argued that individuals and families are not self-contained but rely on cooperation, that to prevent cooperation from becoming unfair or harmful wealth must be sufficiently evenly shared to ensure equality of opportunity, and that personal autonomy cannot be used as an argument to condone individual unjust behaviour.

We transpose these arguments to the global level and argue that any cooperation between individuals, within or across state borders, contains a risk of unintended, unidentifiable and unforeseeable harm-doing, and therefore requires correction in the form of social protection. The intensity of the correction required (or the intensity of social protection required) depends on the intensity of the cooperation. It is therefore justifiable that inhabitants of the same country protect each other more than they protect inhabitants of other countries, but global justice requires that people protect each other across borders too.

A global social protection scheme is feasible in the form of cross-subsidies between national social protections schemes, and it does not conflict with the principle that inhabitants of a state ought to be allowed to participate in decisions about contributions or about policies that make them eligible for support. The price for such a solution, however, is to accept the political reality that global mutual social support is only feasible if the world's most powerful countries are supportive of its establishment, and this will probably result in an insufficiently ambitious global layer. Nonetheless, if all other factors hold constant, it would not increase global injustice, it would decrease global injustice.