

The evolving spheres of international justice

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The Athenian position in the Melian dialogue that the strong do what they can and the weak suffer what they must boldly expresses the realist theme that powerful states will not treat others equally if this seems likely to harm vital interests or jeopardize the balance of power. According to classical realism, justice (the idea that equals should be treated equally and unequals unequally) does not, and cannot, play a central role in the competitive world of international politics. From that standpoint, what is true of states is just as true of the relations between individuals and groups within world society. Justice is principally a matter for the inner world of bounded communities; its role is marginal at best in their external relations.¹

Two contrasting themes emerged in the 1970s in opposition to this doctrine. The first argued that order between old and new, former colonial and newly independent, states would be bolstered by redistributing power and wealth from the rich to the poor.² The second argued that with the rise of interdependence the distinction between domestic and international relations is increasingly blurred and questions about who benefits from global arrangements inevitably raise justice considerations.³ These developments were the prelude to the more radical challenge to the realist dismissal of justice considerations which has emerged in the most recent phase of globalization.

Globalization (the compression of time and space and the universalization of economic and social relations) has reinforced the critique of realism by encouraging a rigorous analysis of equitable approaches to coping with global warming and ozone depletion. Meanwhile, global economic inequalities, which continue to increase with the hegemony of neo-liberal conceptions of society and economy, have lost none of their importance.⁴ Bounded political communities

¹ Martin Wight, 'Why is there no international theory?', in Herbert Butterfield and Martin Wight, eds, *Diplomatic investigations: essays in the theory of international politics* (London: Allen & Unwin, 1966), ch. 1.

² Hedley Bull, *The anarchical society: a study of order in world politics* (London: Macmillan, 1977).

³ Charles Beitz, *Political theory and international relations* (Princeton, NJ: Princeton University Press, 1979).

⁴ Andrew Hurrell and Ngaire Woods, eds, *Inequality, globalization and world politics* (Oxford: Oxford University Press, 1999).

remain important in world politics but their boundaries have become increasingly porous, and realist and communitarian arguments that the interests of co-nationals must trump allegedly more abstract obligations to the rest of humanity have come under growing pressure. Justice considerations have moved to the centre of the discipline as questions about transnational justice (justice between individuals within world society) have become as important as international justice (justice between societies within the system of states).⁵ Few could have foreseen this dramatic change even fifteen years ago when there were good reasons to suppose that superpower rivalry and bipolarity would survive well into the foreseeable future. Justice considerations have become more important with the passing of the age of bipolarity, reinforced by the evidence that inequalities of wealth continue to grow. New opportunities provided by the end of bipolarity exist alongside renewed grounds for despair.

Spheres of international justice

Global economic inequalities continue to frame discussions about justice, but they exist alongside an expanding circle of concerns, as the contributors to this issue reveal. One task for the contemporary student of justice in international relations therefore is to identify the different realms of international justice. The following seven spheres are suggested by the articles above:

- the first is the longstanding realm which concerns the distribution of the world's resources, the means by which these are justified and the grounds on which they are challenged. The context in which such questions are raised has changed in the last few years. Twenty years ago, the issue was whether the Great Powers would or should transfer wealth to the poor.⁶ With the end of geopolitics in the advanced industrial core regions of the world, the emphasis has shifted to the status of the new geo-economic order shaped by liberal economic rationalism.⁷ In this changing context, the target of justice claims is transnational corporations and international organizations such as the IMF and the World Bank as much as resistant nation-states.
- a second domain revolves around the phenomenon of transnational harm. Globalization increases the opportunities for, and the incidence of, transnational harm (injury to individuals or groups which is caused by other societies or transnational corporations, and injury which is spread across

⁵ Onora O'Neill, 'Transnational justice', in D. Held, ed., *Political theory today* (Cambridge: Polity, 1991), ch. 11.

⁶ Robert Tucker, *The inequality of nations* (New York: Basic Books, 1977); Stephen Krasner, *Structural conflict: the Third World against global liberalism* (Berkeley, CA: University of California Press, 1985).

⁷ See Richard Falk, 'Democratizing, internationalizing and globalizing', and Stephen Gill, 'Structural change and global political economy: globalizing elites and the merging world order', in Y. Sakomoto, ed., *Global transformation: challenges to the state system* (New York: United Nations University Press, 1994), chs 18 and 11.

frontiers by market forces and by global trends which harm the environment). Events in Bhopal and Chernobyl have increased the importance of what Shue has called the export of hazards and what Beck calls the global risk society.⁸ This domain raises rather different questions from those that arise in the context of global inequalities.⁹ The former are concerned with global regulation and with legal redress and compensation. This has significance for what we shall call below the domain of cosmopolitan national and international law.

- a third sphere of international justice arises with the development of global institutions which face a global democratic deficit. The important question here concerns the unequal distribution of the access to decision-making, of unequal access to institutionalization in Bohman's terms.¹⁰ Running parallel to the argument for cosmopolitan democracy, the issues here concern the democratization of international organizations and regimes, a task made possible by the growth of a transnational civil society and made necessary by the fact that the democratic project cannot be secured by separate experiments in 'democracy in one country'.¹¹ The growing importance of this third sphere is a direct result of the increased importance of international monitoring and surveillance under conditions of globalization.
- a fourth sphere is introduced by the new diplomacy of managing the global environment. Cooperative ventures to reverse or contain damage to the environment raise distinctive questions about equity which are reminiscent of long-standing discussions about burden-sharing in military alliances. Justice in connection with environment diplomacy raises important questions about the special obligations that fall on established industrial states. Not only do they have a greater capacity to contribute to international measures but they are also primarily responsible for environmental damage in the first place. The dependence of the rich on willing cooperation on the part of poor or industrializing states may create new possibilities for building justice considerations into cooperative ventures.¹² Industrializing states will not agree to delay their industrialization so that affluent peoples are shielded from appropriate burdens. Order and cooperation in this area are improbable without significant efforts to ensure justice between the contracting parties. Additional questions are raised by arguments that current arrangements should have regard for inter-generational justice.

⁸ Henry Shue, 'Exporting hazards', in Peter G. Brown and Henry Shue, eds, *Boundaries: national autonomy and its limits* (Totowa, NJ: Rowman & Littlefield, 1981), ch. 4; and Ulrich Beck, *Risk society: towards a new modernity* (London: Sage, 1992).

⁹ One can imagine a world without inequalities or without unjust inequalities but with unacceptable levels of transnational harm.

¹⁰ See James Bohman, 'International regimes and democratic governance: political equality and influence in global institutions', in this issue.

¹¹ David Held, *Democracy and the global order: from the modern state to cosmopolitan governance* (Cambridge: Polity, 1995).

¹² See Henry Shue, 'Global environment and international equality', in this issue.

- a fifth realm of justice is created by urgent questions regarding migration and resettlement. The problem of displaced peoples raises important ethical questions about the rights and wrongs of permitting or denying outsiders admission to bounded communities. Refugee problems raise questions about whether states are making their just contribution to the solution of problems which they caused (as in the case of the United States and its allies which were involved in the conflict in South-East Asia). The distribution of membership, as Walzer has called it, raises foundational issues about national obligations to assist the members of other communities.¹³ The fifth sphere of international justice concerns, then, the fundamental rights and duties of bounded communities.¹⁴
- a sixth domain has been created by demands that the basic structure of international society should ensure justice between different cultures. Claims that prevailing institutions and policies fail to respond to the specific needs and traditions of subordinate peoples, such as indigenous societies trapped within colonial matrixes of power, are at the forefront of contemporary discussions about order and justice.
- a seventh sphere of international justice has arisen with protests against 'speciesism'.¹⁵ No contemporary account of order and justice in international relations will be complete unless it addresses the issue of justice between different species. Visions of 'simian sovereignty' which defend the creation of protected territories for the great apes, and the larger web of issues which concern the protection of endangered species, are evidence of an irreducible sphere of justice which is concerned with humanity's treatment of other sentient beings.¹⁶

An intriguing philosophical question is whether there are any overarching ethical principles that link all or most of these spheres. Various answers are possible. They include the argument that individuals from different parts of the world are increasingly subjected to universal social and economic processes which they cannot control, which powerful actors are more obviously able to shape and which generate indefensible inequalities. A leading theme in liberal responses to global interconnectedness is that there are no morally relevant distinctions between the members of different societies, or none so fundamental as to justify the global inequalities which currently exist.¹⁷ A key proposition is that we have obligations to help the poor overcome the effects of inequalities, even if we have had no part in creating them.

¹³ Michael Walzer, *Spheres of justice: a defence of pluralism and equality* (Oxford: Blackwell, 1995), ch. 2.

¹⁴ See Richard Devetak and Richard Higgott, 'Justice unbound? Globalization, states and the transformation of the social bond', in this issue.

¹⁵ See Peter Singer, *Animal liberation: a new ethic for our treatment of animals* (London: Cape, 1976).

¹⁶ Robert E. Goodin, Carole Pateman and Roy Pateman, 'Simian sovereignty', in *Political Theory* 25, 1997, pp. 821-49.

¹⁷ See Charles Beitz, 'Social and cosmopolitan liberalism', in this issue.

This is a contentious argument since some argue that such moral obligations can properly fall only on those who have caused such inequalities.¹⁸ A separate strand of thought argues that global structures cause injury or harm to persons living in different parts of the world; societies increasingly export hazards to one another and modern systems of production and exchange spread injury across national borders. We may not cause inequalities elsewhere but we may cause injury to outsiders, and from this there arises the obligation to ensure that the vulnerable are able to contest the way they are treated and have the capacity to 'refuse offers'.¹⁹

A related theme is that global structures violate commitments to the politics of consent: there is a global democratic deficit that must be reduced if worldwide arrangements are to be legitimate. From this vantage point, it is the consent of all who stand to be affected by these arrangements, irrespective of their citizenship or residence, which is the preferred ethical objective. Bohman's argument for equal rights of access to decision-making and 'equal rights of institutionalization', supports the development of a worldwide public sphere that will democratize global politics.²⁰ The general argument is similar to the claim that a society which admits outsiders yet fails to confer citizenship after a reasonable interval is a tyranny of sorts.²¹ Justice requires efforts to project democratic commitments beyond national frontiers so that those who have been incorporated within global social and economic relations have increased possibilities of representation and voice.

Whether, and how, any of these ethical themes provide the foundations for reflecting on each of the spheres of international justice, and the relations that exist between them, is a matter best left to the moral and political philosophers.²² Technical detail aside, the larger point that comes out of this discussion is that realist and communitarian claims that duties to co-nationals should have precedence over duties to the rest of the human race are increasingly insecure.²³ Considerations of global justice have to start from the assumption that the moral relevance of the distinction between insiders and outsiders has to be demonstrated rather than presupposed. Put differently, the moral significance of boundaries cannot simply be postulated as a vital element of the political theory of the state. It has to be decided from a vantage point which asks the fundamental question of what each human being owes all others, and what each can reasonably expect in return. This revised point of departure in international political theory is a small revolution in thinking about global justice in recent years.

¹⁸ For further discussion of this theme, see Thomas Pogge, 'A global resource dividend', in D. A. Crocker and T. Linden, eds, *Ethics of consumption: the good life, justice, and global stewardship* (New York: Rowman & Littlefield, 1998), ch. 25.

¹⁹ O'Neill, 'Transnational justice', p. 302. See also Shue, 'Exporting hazards'.

²⁰ See Bohman, 'International regimes and democratic governance'.

²¹ Walzer, *Spheres of justice*.

²² The consent of all actors is not possible in all seven of the spheres mentioned above, most obviously in the case of other species where the capacity to recognize suffering on the part of other sentient beings can stand in its place.

²³ O'Neill, 'Transnational justice', pp. 279–82.

The role of the state

The universalistic ethic that runs through so many of the contributions to this issue raises intriguing issues about the ethical functions of the state. Classical theories of the state argued that the state's first task is to protect the interests of insiders. Realism has always made this point most forcefully, and is therefore one of the main targets of contemporary advocates of cosmopolitan liberalism. Members of the Grotian or rationalist tradition have taken a different standpoint which is that states should avoid causing harm or injury to one another and should not impose costs on others for the sake of insubstantial national gains. This obligation was regarded as a remnant of the primordial universal obligation not to cause others harm which bound all humanity in the original state of nature. When the original argument was made in the seventeenth and eighteenth centuries, the level of cross-border, or transnational, harm had not reached the heights that exist today. The defence of state sovereignty, and the claim that the state is entitled to decide how far it should be concerned with the welfare of outsiders, may have seemed plausible.²⁴ Whether it is defensible now in an epoch when the possibility and incidence of transnational harm is growing is a crucial ethical question facing theorists of state sovereignty.

The earlier reference to the Grotian tradition brings to mind Bull's contention that the state can play a 'positive role in world affairs' by maintaining domestic and international order and by acting as 'the local agent of a world common good'.²⁵ Interestingly, similar expectations of the state run through several of the articles in this issue, and particularly in the article by Higgott and Devetak.²⁶ What is striking about this analysis, and paradoxical to many, is the belief that the state should be regarded as a potentially progressive actor, as an agent of global reform, at the very moment when states appear to be losing several of their traditional powers in the context of geo-economic liberalism. Critics will argue that the state's will and capacity to promote global reform is in steep decline and its resurgence seems improbable.

Further empirical analysis is needed to decide whether or not the progressivist position is tenable. It is certainly the case that two of the most important theories of the state—realism and Marxism (with qualifications)—reject progressivist theories of the state. For realism, the inability of the state to act as anything other than a self-help organization is a theoretical a priori: there has been little empirical research which treats this proposition as a hypothesis awaiting independent proof.²⁷ Marxism has a more complex position since it argues that

²⁴ For an argument that it was not plausible, see my *Men and citizens in the theory of international relations* (London: Macmillan, 1982).

²⁵ Hedley Bull, 'The state's positive role in world affairs', *Daedalus* 108, 1979, pp. 111–23 and *Justice and international relations: the Hagey lectures* (University of Waterloo, 1983).

²⁶ See also Paul Hirst and Grahame Thompson, *Globalization in question: the international economy and the possibilities of governance* (Cambridge: Polity, 1996).

²⁷ A partial exception is Stephen Krasner, *In defence of the national interest: raw materials investments and US foreign policy* (Princeton, NJ: Princeton University Press, 1978), which nevertheless hardly succeeds as a test of realism. See my *Beyond realism and Marxism: critical theory and international relations* (London: Macmillan, 1990), ch. 7.

states have limited powers to alter global capitalism although, with progressive forces in control, they could proceed to transform the world capitalist system. In their heyday, Marxist theories of the state analysed the capitalist nature of the modern state in considerable detail. Most were found guilty of paying too much attention to the state–capital relationship and of neglecting the realm of geopolitical interaction in which the autonomy of the state apparatus was most evident. With the demise of geopolitical competition in the core areas of the world economy, the question is whether the state–capital relationship has regained the importance that Marxists imputed to it, and state autonomy has declined as a result. With the exception of the neo–Gramscian approach to international relations, there has been little effort to re–examine this territory.²⁸ A reassessment of Marxist theories of the degrees of state autonomy in the light of recent writings on globalization is now seriously overdue.

One response to the apparent paradox that some look to the state for innovative policy at the very moment when the innovative policy of the state seems to be trapped within global capitalism, is that international non–governmental organizations create new pressures for states by challenging the dominant power structures and the prevailing neo–liberal economic orthodoxy. Whether they are powerful enough to cajole states into playing the role of local agents of a world common good is an intriguing question. The more pessimistic will turn to realism and Marxism to cast serious doubt on this possibility: a more optimistic view will note the reformist foreign policy stances taken by the Nordic states over many years while stressing the more general failure to meet international aid targets.²⁹ Suffice it to add that there has been remarkably little empirical work on the state’s potential to act as ‘a local agent of a world common good’. There is ample scope here for innovative research in the years ahead.³⁰

Cosmopolitan national and international law

Notions of the world common good may seem so nebulous to many that little can be added to the current foreign policy debate. Means of judging the state’s foreign policy behaviour from some external moral point may be suggested but

²⁸ See, *inter alia*, Stephen Gill, ed., *Gramsci, historical materialism and international relations* (Cambridge: Cambridge University Press, 1993).

²⁹ A position argued by Peter Lawler as discussant on the article by Richard Devetak and Richard Higgott at the Warwick workshop.

³⁰ Nicholas Wheeler and Timothy Dunne have explored this area in their ‘Good international citizenship: a third way for British foreign policy’, *International Affairs* 74: 4, October 1998, pp. 847–70. One further point is worth making in the light of the recent exchange between William Wallace, Ken Booth and Steve Smith (see William Wallace, ‘Truth and power, monks and technocrats: theory and practice in international relations’, *Review of International Studies* 22, 1997, pp. 301–21, Ken Booth, ‘Discussion: a reply to Wallace’, *Review of International Studies* 23, 1997, pp. 371–7 and Steve Smith, ‘Power and truth: a reply to William Wallace’, *Review of International Studies* 23, 1997, pp. 507–16). Wallace argues that theoretical research should be more concerned with the issues confronting policy–makers whereas Booth and Smith argue for analyses which work with the progressive forces in civil society. The approach suggested here argues for an analysis of the interplay between the state and civil society which explores the extent to which they can act in unison to reduce global injustices.

there are no obvious clues as to how commitments to global justice might be fed through the policy process. Too large a gulf therefore remains between the two worlds of theory and practice. There is always the danger that this challenge will be read as an argument for the superiority of concrete policy analysis over abstract theoretical inquiry. Those who make this challenge need to clarify whether or not they share the ethical standpoint of the more theoretically inclined; they need to clarify whether they are in effect avoiding the larger debate over the normative ends of foreign policy by requiring that theorists demonstrate their relevance for policy. Yet those who believe that fundamental change in world politics has somehow to be thread through the needle of the state must take this request for policy relevance very seriously, even though they may believe that the empirically inclined could have done more in the past to answer their own question about the relationship between theory and policy.

The study of national and international law offers interesting ways of deciding what states can contribute to the promotion of cosmopolitan justice. As Armstrong argues in this issue, international law has been a law of states, and 'universal international law' has played a secondary role. Yet, as already noted, international law requires states to avoid causing harm to one another, an injunction with potentially radical consequences for the idea of national sovereignty. Its subversive quality is evident in several recent discussions of national and international law that consider appropriate legal responses to transnational harm. A recent House of Lords' ruling that the former South African employees of British asbestos-producing companies may sue these corporations in British courts—and apply for legal aid towards this end—indicates how states can act to promote cosmopolitan justice.³¹ Implicit here is the notion that the interests of co-nationals or fellow-citizens do not automatically take precedence over the interests of the rest of humankind. Moral egalitarianism should therefore be incorporated within more cosmopolitan forms of national law. As the phenomenon of transnational harm has grown in importance, international law has come under pressure to support the same cosmopolitan commitments. This is especially evident in various efforts to create international law that constrains multinational corporations operating in poor societies and in continuing discussions about the role of domestic and world courts in protecting human rights and upholding the laws of war.

To repeat, traditional international law granted sovereign states the right to decide how far to honour universal moral obligations: these were deemed to be imperfect duties (indeterminate and unenforceable) rather than perfect duties (stipulated in law and backed up by force). However much states may wish to continue to privilege the law of states, the fact is that the moral claim that insiders come first is ethically insecure in the context of increasing transnational

³¹ Equally striking is the report that the Lord Chancellor's Office has urged caution on the grounds that foreign companies may be discouraged from basing their headquarters here. See David Beresford, 'Death from the rock', *The Observer*, 31 January 1999, p. 21. For an excellent discussion of the ethical issues, see Henry Shue, 'Exporting hazards'.

harm. The Kantian notion that all those who can affect one another should form a civil constitution has come of age.³² More cosmopolitan forms of national and international law are obvious ways in which the hitherto imperfect rights of outsiders can be made more perfect.

Conclusions

It has been argued that the re-emergence of cosmopolitan thinking in the late eighteenth century was in part a response to a growing awareness of the lengthening chains of cause and effect forged by the expansion of capitalism.³³ Arguably, a similar tendency has occurred with the emergence of a new phase in the development of globalization following the end of bipolarity. Many of the articles in this issue steer the discussion in the direction of universalistic conclusions after several years during which affirmations of the rights of the different often suggested universalism was the problem rather than the solution to the complexities of modern politics.³⁴ Analysts of the politics of identity and difference have forced universalists to reflect carefully on the particularisms which run through their normative commitments and aspirations. Few now need reminding of the importance of the charge that universalists always carry with them 'a clump of (their) native soil';³⁵ few need lessons in the need to ensure that universalism must mean greater justice between different cultures.

More traditional approaches to the question of order and justice in international relations were right to argue that progress in world affairs requires first a radical redistribution of power and wealth from the rich to the poor and second, measures to incorporate non-Western ideas and aspirations in international law.³⁶ The latter of these concerns has moved to the forefront of the debate in recent years as international law has responded, *inter alia*, to demands from indigenous communities that sacred sites should be returned to their original owners along with sacred objects appropriated by Western societies in the age of imperialism. The challenge posed by the different spheres of international injustice is one of balancing the universal and the particular, of finding the point at which obligations to co-nationals coexist with, rather than contradict, obligations to wider humanity. Old questions retain their currency, but they must be answered in an age of uncertainty about whether the new relations between states and civil societies—between the states system and

³² See Charles Beitz, 'Social and cosmopolitan liberalism', in this issue pp.515–529, making the point that policies and institutions 'should be based on an impartial consideration of the claims of each person who would be affected'.

³³ Joan Tronto, *Moral boundaries: a political argument for an ethic of care* (London: Routledge, 1993), pp. 37–8.

³⁴ R. B. J. Walker, *Inside/outside: international relations as political theory* (Cambridge: Cambridge University Press, 1993), p. 77.

³⁵ See Friedrich Meinecke, *Cosmopolitanism and the nation-state* (Princeton, NJ: Princeton University Press, 1970), p. 200.

³⁶ Hedley Bull, *The anarchical society*, pp. 316–17.

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transnational civil society—will shore up existing structures and inequalities or create new opportunities for radical change that can be secured by cosmopolitan national and international law. There are few more challenging questions for the analyst of the modern state.