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## THE SOCIAL AND INSTITUTIONAL BASES OF DISTRIBUTIVE JUSTICE

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Abstract: I argue that distributive justice is based in cooperative institutions of a particular kind. Central to society and social cooperation is the system of laws and other rules of the basic social institutions that secure possession and make economic production and consumption, and transfers and exchange possible, as well as political institutions that enable a society to change existing rules and legislate new ones, adjudicate disputes, and administer and enforce these rules and decisions. Primary among economic background institutions are those that specify and allocate economic rights and duties, opportunities, powers and privileges of office and positions of responsibility in productive processes, and that distribute its output in the form of income and wealth. These background economic institutions—including the laws and conventions governing property, markets and sales, gifts, bequests and other transfers, and contracts and agreements of all kinds—are politically specified and enforced. Distributive justice concerns the correct principles for defining, regulating, and critically assessing the complicated system of rules that make economic activity possible, and distributing the benefits and burdens of basic economic institutions. Since these basic cooperative institutions are for the most part social institutions, distributive justice, I contend, is socially based. The argument relies in large part on the role of reciprocity in social cooperation and citizens doing their part to contribute to economic production and maintain cooperative social institutions. It also relies to a degree on the profound influence of society and social cooperation, and the role of basic social institutions in structuring and regulating people's daily lives. The social bases of distributive justice I contend for does not exclude the application of standards of economic justice to international and global economic institutions. There are such standards, but there are not as yet international or global institutions that require standards of distributive justice.

The basic claim of this paper is that distributive justice is institutionally based.

There are certain cooperative institutions which are necessary to economic production and division of labor, trade and exchange, and distribution and consumption. These cooperative institutions call for principles of justice to specify their terms and determine the distribution of benefits and burdens. Primary among these basic institution is the legal institution of property; also laws and conventions enabling sales, exchanges, gifts, bequests, inheritances, and other transfers of goods and services; and the legal system of

contract and agreements of all kinds that make transfers possible and productive.

Political institutions are normally necessary to specify, interpret and enforce the terms of these institutions and render them effective. As such, these background institutions are primarily social in nature; they are realizable only within the context of social and political cooperation--this is a fixed empirical fact about cooperation among free and equal persons. Given the nature of social cooperation as a kind of reciprocity, distributive justice, I conclude, is primarily a question of social justice too.

The institutional account of distributive justice I contend for implies that requirements of justice apply to actual or potential international and global institutions, as they do to any social, political, or economic institution or arrangement. Among these are not only procedural and fairness requirements, but also substantive requirements of economic justice. Distributive justice however I regard as a distinct form of economic justice.<sup>1</sup> Whether there are, among the international and/or global requirements of economic justice, also demands of distributive justice is not a question that can be addressed without investigating the particular nature and complexity of international/global institutions and their role in economic production, trade and consumption. But even if there are distributive requirements on global economic institutions, they still would not replace, but would supplement and remain supervenient upon the social and institutional bases of distributive justice.

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<sup>1</sup> I understand economic justice as a broad range of moral requirements that should structure and regulate cooperative economic relations among persons and societies. Distributive justice is a part of economic justice. Its primary subject concerns the basic institutions that both (1) distribute the economic goods of income and wealth that are the product of economic cooperation, including means of production and also (2) distribute powers and prerogatives of offices and positions of responsibility in economic activity, and (3) the opportunities to occupy these positions and exercise these powers. See Section IV for further discussion of the distinction between economic and distributive justice.

Finally by way of introduction, on the institutional account I contend for, distributive justice ultimately concerns not only the distribution of income and wealth but also the division of opportunities and economic powers and prerogatives of office and positions of responsibility among those who take part in and contribute to production and cooperative output. Individuals acquire claims to these benefits, I contend, by taking part in and complying with the rules of cooperative institutions and doing their fair share towards contributing to economic output.. Distributive justice should not then be confused with norms of redress for alleviation of poverty or norms that remedy people's disabilities and compensate for misfortunes. Distributive justice is not compensatory justice. This is an important point since many arguments for global distributive justice are driven by concerns for alleviating desperate poverty and compensating people for misfortunes of birth or accidental circumstance. Poverty and compensation for disabilities and accidental misfortunes require different principles of just remediation that apply when needed to correct for the specific unfavorable conditions and circumstances they address. Some of these remedial principles may be global in reach. But in an ideal world where poverty is eliminated and all disabilities redressed there would still be a need for principles of distributive justice to design basic cooperative institutions and determine the fair division of benefits and burdens among those complying with their terms.

### **I. Alternative Accounts of the Social Bases of Distributive Justice**

There have been several recent accounts of the “domestic” or “state” bases—I prefer the terms “social bases”—of distributive justice. First among these is the *coercion view*, which says that distributive justice extends its scope only to those who are subject to a

state's coercive laws. Second is Nagel's *political contractualist view* which maintains that being jointly authors of and subject to a system of laws delimits the scope of arbitrary inequalities and defines the range of distributive justice.<sup>2</sup> A third position is based in an idea of reciprocity. It says that we owe obligations of egalitarian reciprocity to fellow citizens and residents in the state who provide us with the basic conditions and guarantees necessary to develop and act on a plan of life, but not to noncitizens, who do not. In this first section, I'll briefly discuss these alternatives, in order to distinguish them from, and provide background for a fourth view, the *institutional view*.

(A) The Coercion View;

One frequent argument for the domestic bases for distributive justice relies upon the fact of coercion of legal systems. Thomas Nagel and Michael Blake<sup>3</sup> both make this argument, and they both invoke a contractualist requirement to ground their argument to the social bases of distributive justice.<sup>4</sup> Blake contends that coercion is a *prima facie*

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<sup>2</sup> Nagel says, "I submit that it is this complex fact—that we are both putative joint authors of the coercively imposed system, and subject to its norms, i.e., expected to accept their authority even when the collective decision diverges from our personal preferences—that creates the special presumption against arbitrary inequalities in our treatment by the system." "The Problem of Global Justice," *Philosophy and Public Affairs*, 33 (2005): 113-47 at 128-9

<sup>3</sup> Michael Blake, 'Distributive Justice, State Coercion, and Autonomy,' *Philosophy and Public Affairs*, 30 (2001): 257-96.

<sup>4</sup> Both Blake and Nagel refer to Rawls's claim that political power is always coercive power, and that as such it must be justifiable to citizens on terms they can reasonably accept. As Blake indicates, Rawls himself in his later works lends some indirect support to the coercion view.. In discussing, not distributive justice, but the legitimacy of political power Rawls says, "Political power is always coercive power backed by government's use of sanctions, for government alone has authority to use force in upholding its laws." (*Political Liberalism* 136) Rawls goes on to argue that in order for the coercive power of governments to be legitimate, it must be justifiable to citizens in light of reasons and principles that they can reasonably and rationally accept in their capacity as free and equal citizens. Cf. PL 217 He does not argue however, as Blake does, that it is government's coercive power that underlies the limited domestic scope of distributive justice. On my understanding, Rawls has other reasons for this.

violation of individuals' autonomy, and as such must be justifiable to them. "The liberal principle of autonomy requires that coercion be justified through hypothetical consent." (Blake, 284) All those who share liability to a coercive government are owed a justification of the laws that regulate their conduct on the basis of reasons and principles that they can accept. Unlike Rawls, Scanlon, Gauthier and other recent contractarians, Blake sees contractarian justification as relevant *only* within a state, since its role is to justify the use of coercion. As liability to coercion justifies (he contends) equal ability to influence the laws (id), so too does it justify an egalitarian principle of distributive justice among people who are members of the same political society. And since the people of one country while residing in their own country are not members of or subject to the jurisdiction or coercive laws of another, they have no claim to distributive justice.

"Coercion, not cooperation, is the sine qua non of distributive justice." PPA 289.<sup>5</sup>

In response to the coercion view, cosmopolitans argue that there is coercion in the international domain as well. Nations coercively enforce their borders against immigration, for example, not to mention the international laws affecting trade, patents, etc.<sup>6</sup> I will not discuss their arguments, since I find the coercion view inadequate on

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<sup>5</sup> Thomas Nagel makes a similar argument based on coercion for the domestic nature of distributive justice. But he emphasizes not just subjects' shared liability to coercive government, but also their role as citizens in authoring the laws. For reasons I discuss in the next section, Nagel's view can be detached from the coercion view. It relies upon a different idea, namely the non-voluntary nature of laws.

<sup>6</sup> Blake gives several reasons why international law does not have the same consequence. First, he says that it does not directly apply to citizens. By this he seems to mean that it is coercively enforced not by any international political body, but only by the governments who demand allegiance from their members. Second, Blake suggests there is no "ongoing coercion" in the international domain of the kind that constantly affects individuals' lives domestically. Finally, he says that only state coercion is necessary for individuals to live autonomous lives. (Blake, p. 280) Cosmopolitans have taken issue with each of these arguments, insisting that they apply only to a lesser degree in global relations.

different grounds, namely it provides the wrong kind of reasons for the social grounding of distributive justice.

A guiding thought behind the argument from coercion seems to be that being the subject of coercion entitles one to a kind of pay-off, and that among the benefits included in this pay-off is a claim to the benefits of distributive justice. This makes distributive justice seem a matter of compensation for coercive restrictions on individuals' freedom. The problem I find with the coercion view is that it puts the cart before the horse. If distributive justice, however conceived, requires certain rules of distribution of rights, powers, duties, and the like, why should people have to be subject to the coercive power of the state to be under a duty to comply with these rules and respect others' rights and claims? People in one society, even if not directly subject to the coercive power of other societies, are nonetheless under a duty also to respect the holdings and people in other societies and not undermine other societies' laws, assuming they are not too unjust. But (contrary to cosmopolitans such as Pogge et.al) foreign persons or societies do not deserve compensation for doing what justice requires, nor (I contend) do they have claims of distributive justice against members of other societies. It is not the presence or absence of coercive enforcement that underlies our own and foreigner's duties to respect other peoples' rights and claims. The same duty should apply among members of the same society, without regard to the presence or absence of coercive enforcement.

It is true that coercion is normally needed to enforce and maintain distributive justice. But imagine an ideal but nonetheless feasible society which is "well-ordered" (in Rawls's sense) in that it is a society whose institutions satisfy principles of distributive justice that everyone accepts, and everyone has a willingness to do what justice requires

of them. In such an ideal social world, coercive enforcement of justice would not be needed, or at most would have a minor role. Even in this ideal society where there is a (near)absence of coercive enforcement, there still will be questions regarding the scope and requirements of distributive justice. The presence or absence of coercion is not relevant to deciding these issues in such a society, and if not, why should it be relevant in our non-ideal world? The argument from coercion does not provide the right kinds of reasons for the social grounding and scope of distributive justice.

#### B. Nagel's Contractualist View

The Hobbesian positivist idea that coercion is necessary to political and legal systems is contested in H.L.A. Hart's *Concept of Law*. Hart maintains that what is distinctive about legal systems is not coercive enforcement of legal rules, but that there exists a system of higher-order rules—including a “rule of recognition” and legislative “rules of change”—that make possible the identification, legislation, and interpretation of rules of law. It is the fact that they have secondary or higher-order rules for identifying, making, and interpreting primary rules of law and other higher-order rules that distinguishes legal (and hence political) systems from primitive pre-legal societies. Coercive enforcement power, while normal and instrumental to its effectiveness, is not necessary to the existence of law, and by extension to governments and their primary functions.

It is in effect this legislative element of political/legal systems that characterizes Nagel's contractualist approach to distributive justice: What makes us subject to the law is that we are (ideally or hypothetically) joint co-authors of the law. One way to interpret

this contractualist aspect of Nagel's position is as a basically Hobbesian requirement.<sup>7</sup> Hobbes maintained (*Leviathan* I, ch. 16) that we are all authors of the law in so far as we *authorize* the Sovereign (or the State) to be our sole legal representative, giving him the authority to make laws on our behalf. But Hobbesian authorization of the Sovereign requires alienation of our original political jurisdiction and even our rights to question and judge the Sovereign's laws and decrees. This is a very different kind of contractarian co-authorship than is suggested by Nagel's reference to the general will.<sup>8</sup>

The main idea of Nagel's political contractualism, as I understand it, is that laws must be justifiable by the Sovereign (or the government) to all society's members. If we construe this requirement democratically rather than in Hobbes' way—which does not run contrary to Nagel's intentions--then the contractualist requirement is that laws must be reasonably acceptable to *democratic citizens*, as if they were the product of their (general) will. To meet this requirement the bases of the laws should be justifiable to reasonable and rational persons in terms that they could not reasonably reject in their capacity as free and equal citizens. (In effect, this is Rawls's principle of political legitimacy.) This sense of democratic 'authorship of the laws' is directly at odds with the Hobbes's contractarian requirement that we authorize the sovereign not just to rule on our behalf, but to judge and decide the reasonableness of the laws without our advice or

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<sup>7</sup> This is how Andreas Sangiovanni construes the contractarian aspect of Nagel's account. See Sangiovanni, PPA, p. 16.

<sup>8</sup> Nagel says that a necessary condition of the "egalitarian requirement" of justice "comes from a special involvement of agency or the will that is inseparable from membership in a political society. Not the will to become or remain a member, for most people have no choice in that regard, but the engagement of the will that is essential to life inside a society, in the dual role each member plays both as one of the society's subjects and as one of those in whose name its authority is exercised. One might even say that we are all participants in the general will." Nagel, 'Global Justice, PPA p. 128-9)

consent, and even without questioning his judgment. On Hobbes's contract view, in alienating our "right of private judgment," we alienate any claim we have that the laws be justifiable to us as citizens, and make ourselves subject to the Sovereign's absolute will.

Underlying Nagel's political contractualism is the inescapability, or (as he says) "quasi-involuntariness" of laws.<sup>9</sup> By "quasi-voluntariness" Nagel seems to mean that, even if laws were not coercive and we all accepted them, still we must all be socialized and live within a mandatory system of social rules. It is because laws are inescapable in this sense, even if not necessarily coercive, that their bases must be acceptable and justifiable to us. Otherwise laws have no legitimacy or claim upon our obedience.<sup>10</sup>

In response to Nagel's contractualist argument that distributive justice does not extend beyond the borders of each state because of the "quasi-voluntariness" of laws, Joshua Cohen and Charles Sabel contend that many international economic arrangements are involuntarily imposed upon less advantaged countries, on terms that are not acceptable to them. Opting out of these international economic treaties and conventions, such as WTO, IMF, GATT, etc., and their pervasive influence is not a real option for most nations, since they would not be able to export their products and engage in trade. International or global conformity to these arrangements is nearly as non-voluntary as (national) subjects' conformity to the laws of their land. Hence, Cohen and Sabel

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<sup>9</sup> It is "in virtue of the [contractualist] idea of quasi-voluntariness which legitimacy aims at." (Nagel, *Justice and Partiality*, p. 37)

<sup>10</sup> Nagel says that, for laws to meet this condition of legitimacy with a claim to our obedience and support, they must be such that we could not reasonably reject them, as a basis for informed "enforced conformity" (which Nagel substitutes for Scanlon's "general agreement"). And this means, Nagel says, that everyone "must" be able to accept them—"rather than the weaker 'everyone could accept'." (*Equality and Partiality*, p. 36). This stronger condition resembles, Nagel says, Kant's categorical imperative, that we must be able to will rules as a universal law. (id p. 37)

contend, Nagel's appeal to the non-voluntariness of laws is not sufficient to ground distributive justice domestically.<sup>11</sup>

I think we can accept Nagel's "quasi-voluntariness" condition as a necessary if not sufficient condition of social justice; it is a feature of laws and other norms of social justice that they are the kind of (cooperative) rule whose jurisdiction and constant sway is inescapable--unlike rules of voluntary associations which one may exit at any time. We cannot voluntarily exit living in some society—there is no state of nature to escape to. But if the jurisdiction of legal and other social rules of justice is inevitable and inescapable—and assuming that direct coercion is not a necessary feature of laws--then we may also have to accept Cohen's and Sabel's non-voluntariness argument—which is that global treaties and regulations have a non-voluntary element just as domestic laws too, that also raise claims of justice, perhaps even distributive justice. But accepting Cohen and Sabel's argument does not undermine, I believe, the case for the social bases of distributive justice. For that case is largely institutional, based in the non-voluntary nature of certain basic social institutions that do not exist at the global level, where these social institutions structure, regulate and suffuse citizens' daily lives (unlike the lives of foreigners) and have a profound effect on the kinds of persons we are. It is not simply the non-voluntariness and inescapability of laws and other regulative norms that underlies my claims for the social bases of distributive justice. Rather it is the particular nature of these institutional norms as providing the basis for social and economic cooperation, and the kind of influence they have on our development as free and equal persons and citizens.

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<sup>11</sup> Joshua Cohen and Charles Sabel, "Extra Rempublicam Nulla Justitia," *Philosophy & Public Affairs* 34 [2006]: 147–75.

### C. The Reciprocity View

An integral feature of social cooperation according to Rawls is *reciprocity* in the distribution of benefits and burdens that make cooperation possible and productive. Reciprocity is to be distinguished from mutual advantage, which can be explicated entirely in terms of a person's good and what is rational for her or him to do.. Whereas mutual advantage suggests that all parties to a joint endeavor benefit in some manner, reciprocity adds to this a moral component--namely the idea that terms of cooperation are fair, reasonable, and to some degree acceptable and perhaps justifiable to those engaged in cooperation. People who are engaged in social cooperation normally are not focused exclusively on their own benefit in the sense that they are ready to take advantage of others whenever circumstances permit and free-ride on others' cooperative contributions. People do not have to be altruistic to cooperate with others but they normally do have a sense of fairness or of justice—including a willingness to comply with fair terms of cooperation, and do their part, even on occasions when it is not to their benefit (so long as others manifest a similar disposition). A willingness to do one's fair share in return for enjoying the benefits of cooperation exhibits an attitude of reciprocity.

Andreas Sangiovanni rests his case for the state-bases of distributive justice on an idea of reciprocity. Starting with the luck egalitarian assumption that justice requires the equal distribution of the consequences of arbitrary natural and social inequalities, he summarizes his view as follows:

“[A]s a demand of justice. . . equality is a relational ideal of *reciprocity* among those who support and maintain the state's capacity to provide the basic collective goods necessary to protect us from physical attack and to maintain and reproduce a stable system of property rights and entitlements. We owe obligations of egalitarian reciprocity to fellow citizens and residents in the state, who provide us with the basic conditions and

guarantees necessary to develop and act on a plan of life, but not to noncitizens, who do not..”<sup>12</sup>

I agree with Sangiovanni that an idea of reciprocity is integral to the social bases of distributive justice. There are, however, different kinds of cooperation--social, international, global, familial, cooperation within many different kinds of voluntary associations-- and each of these carries its own standards of reciprocity in the distribution of benefits and burdens that make that kind of cooperation possible and productive. What is peculiar to social cooperation that demands that its own kind of reciprocity be specified in egalitarian terms, while other forms of cooperation—particularly international and global-- make no such egalitarian demand? According to Sangiovanni, egalitarianism is grounded in the luck egalitarian premise that arbitrary and undeserved inequalities in the distribution of resources are to be rectified. He then delimits the scope of the egalitarian requirement by emphasizing the singularity of “reciprocity in the mutual provision of the basic collective goods necessary for acting on a plan of life” that attends membership in the State. (Sangiovanni, PPA p.22)

This is a risky strategy since Sangiovanni endorses the selfsame luck egalitarian premise that global egalitarians rely upon to argue against the social bases of distributive justice and in favor of an egalitarian global distribution principle. (See Beitz, Barry, Pogge, Tan, etc.) Global egalitarians contend that all undeserved inequalities require rectification; and because no one deserves to be born into one country (rich or poor) rather than any other, geographical boundaries are just as arbitrary and irrelevant to distributive justice as natural and social differences of birth and (mis)fortune. But if *all*

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<sup>12</sup> Andreas Sangiovanni, ‘Global Justice, Reciprocity, and the State,’ *Philosophy and Public Affairs*, 35 (2007): 4-39

undeserved inequalities warrant rectification, why should Sangiovanni's appeal to "reciprocity in the mutual provision of the basic collective goods necessary for acting on a plan of life" be sufficient to *totally* overcome this presumption, leaving foreigners with no claim at all? Moreover, cosmopolitan egalitarians will reject Sangiovanni's claim that we "do not ultimately rely on [foreigners] for the basic goods necessary to pursue and develop a plan of life" (p.35) and will insist that reciprocity in this regard is purely a matter of degree. Nations are largely dependent upon a few resource-privileged countries for meeting their needs for fossile fuels; and Southern Californians are more economically and culturally dependent upon Mexico than they are with the citizens of, say, Mississippi, with whom they have fewer economic and cultural connections. If so, cosmopolitans will argue, then Sangiovanni's case for stopping the moral consequences of arbitrary inequalities at the border is jeopardized.

Since it is an essential feature of cooperation, the idea of reciprocity is a significant feature of the institutional position I advocate. Most institutions are cooperative, and as such require reciprocity among those who actively participate in those institutions. But by itself Sangiovanni's reciprocity view does not imply institutional bases for distributive justice. For all that Sangiovanni says, the reciprocity view can be satisfied by a non-institutional allocative principle of justice (such as "To each equally" or "To each so as to maximize utility") that makes the design of institutions incidental to distributive justice. [Explain allocative vs procedural conceptions of distributive justice] An allocative conception of distributive justice may well be a natural consequence of Sangiovanni's luck egalitarian premise. If we begin with the assumption that what justice requires is the equal or fair allocation of the consequences of arbitrary natural and

social inequalities, then it is hard to see why distributive justice should address, in the first instance, the structure and design of basic economic institutions. A problem with Sangiovanni's approach is that he cedes the playing field to global egalitarianism from the outset by conceding its luck egalitarian premise; he then is put in the position of having to find some way to delimit this premise's scope. But the idea of reciprocity he invokes—reciprocity in the provision of primary social goods needed to lead a good life—is not adequate to respond to the cosmopolitan objections that (1) reciprocity is insufficient to overcome the presumption of equalizing arbitrary inequalities and that, (2) even if it were, there is sufficient global reciprocity to underwrite the global scope of egalitarian distributive justice.

## **II. The Social and Institutional Bases of Distributive Justice:**

### Basic social institutions

The three positions I've discussed all rely upon an egalitarian premise to argue that distributive justice has a social basis, from which they all conclude that distributive justice is egalitarian as well. I want to try a different approach, which does not require egalitarianism, or even a specific conclusion regarding requirements of distributive justice. I think there is an argument for an egalitarian principle to be made, which I'll briefly discuss later, but that argument is better kept separate from the institutional argument for the social bases of distributive justice. My primary focus is the justice of *cooperative institutions*. By 'institutions' I mean (following Rawls) the many practices of various kinds that are defined and regulated by public systems of rules which specify procedures and rules of conduct, offices and positions of responsibility, and impose upon

participating individuals various rights, liberties, powers and privileges, opportunities, duties, liabilities, and so on.

There are many different kinds of cooperative institutions—political, social, legal, religious, international, global, etc.. Most if not all have rule-and-decision-making and dispute-resolution procedures, along with sanctions to enforce decisions, and these are normally subject to standards of fairness of various kinds. Also cooperative institutions engage in the distribution of benefits and burdens of various kinds (rights, powers, duties, liabilities, etc.), and again substantive standards of distribution are normally relied upon (by participants and observers) to assess the justice of these assignments of institutional benefits and burdens. Standards of fairness and justice may differ depending upon the kinds of institution at issue, and taking into account their different purposes and roles, and the kinds of rights, powers, duties, etc. involved. Thus we might expect equality of certain rights, powers, and privileges within some institutions, particularly political ones, whereas in others, such as armies and churches and families and educational institutions, equal rights and powers of many kinds may be inappropriate to the institutions' purposes and roles.

David Hume contends there are four basic 'conventions' that make social and economic cooperation possible and productive. First, rules of property are needed to secure exclusive possession of goods and productive resources, and specify and assign the incidents of property, including the kinds of rights, powers, duties and liabilities regarding the permissible uses, control, enjoyment, and disposal of resources and other things. Second, rules of transfer by consent make markets, sales and exchange, trade and the division of labor possible, as well as gifts, bequests and inheritance, and other means

of transferring property in possessions. Then finally economic production, trade, and distribution presuppose rules and conventions regulating promising, contracts and agreements of all kinds. Hume called these three systems of rules, the “conventions of justice.” Hume also saw government as a fourth “convention” necessary for social and economic social cooperation. Government is needed not simply to enforce the conventions of justice and resolve disputes, but also to legislatively specify and judicially interpret the many procedures and rights, powers, duties, etc. constituting economic institutions or “conventions.”

Hume argued against Locke that none of the conventions of justice (property, markets and other transfers, agreements of all kinds, and governments) are “natural” or self-evident; rather they are “artificial,”-- “artifices” of reason, habit, and imagination. Being conventional, the basic institutions that make cooperation according to these rules possible and productive can be specified in different ways. Clearly there are different ways to allocate and define political power, which result in several forms of government--monarchical, oligarchical, democratic, and all sorts of mixed constitutions in between. Perhaps not as clearly (because we take our property so much for granted) the many rules and incidents of property can be specified in multiple ways, so that rights and powers of possession, including “ownership” rights, also are conventionally defined relative to the institutional rules of each society. Since property and the other conventions of justice are not “natural,” some general method or principle is needed to specify and assess the rights, powers, and duties that constitute these institutions. To try to enforce a rule of equality, Hume contends, would not be to anyone’s benefit; for it would result in universal poverty. Instead, the conventions of justice should be designed to achieve public utility.

This justifies he claims such rules as a right of first possession, free exchange of goods and services, the right to possess the fruits of one's efforts and contributions, rights of bequest to one's offspring, and other rules familiar in private property market economies.

The principle of utility in its several varieties is but one way to specify the rules of property, transfer, contract, and other institutions that make economic cooperation possible and productive. Other feasible alternative principles for designing these economic background institutions include classical liberal market principles, libertarian entitlement principles, or the difference principle, and there are other possibilities. The general point is that, even if (as conservatives contend) economic background institutions were to evolve largely unplanned, some standard is at work and is needed to socially specify and critically assess the allocation of economic opportunities, powers and positions and distribution of the many rights, liberties, duties, liabilities, and so on that make economic production, exchange, distribution, and consumption possible. The fundamental question of distributive justice (as I use the term) is, What are the principles and standards that are to be applied to decide/assess the manner in which rights, powers, positions, opportunities, duties, liabilities and the like are specified, allocated, transferred, and distributed by basic economic institutions?

Now, what role does society and social cooperation play in enabling economic cooperation and its necessary institutions? Economic cooperation is the greater part of social cooperation among the members of a society. Even though most people in a society are complete strangers to one another and do not regularly cooperate in any other way, they regularly engage in economic cooperation in so far as they respect and comply with norms of property, markets, contract, and other terms of basic institutions and form

their expectations accordingly. Economic cooperation is fundamentally grounded in and made possible by basic social institutions. Margaret Thatcher said there is no such thing as ‘society,’ there are only separate individuals. Societies indeed consist of separate individuals, as do churches, governments, families, teams, and other social groups. But what makes separate individuals members of a society, or lesser social group, is that each of its members occupies one or more positions of responsibility with (specified or implicit) powers and duties (citizen or subject, manager, foreman, or day-laborer, pastor, priest, or layperson,) and enters into cooperative relationships with others defined and regulated according to the rules of the relevant institutions. Primary among the institutions that are distinctive of society and social cooperation (as I use those terms) are basic social, political and economic institutions.

Societies are intrinsically political in nature in that they have a political constitution (written or unwritten) and legal institutions that enable the society to change existing laws and other social rules and introduce new rules to respond to changing circumstances; judicial procedures for resolving disputes that arise under the laws and social rules and for interpreting their requirements, and executive powers and procedures enabling the administration and enforcement of laws, regulations and decrees. Equally basic to social cooperation are the complex system of rules and institutions that Hume saw as necessary to fruitful economic production, markets, distribution and consumption among members of society, including the legal institution of property; the system of laws that enable sales, exchanges, bequests, and other transfers of goods and services; the legal system of contract and agreements of all kinds; also the myriad laws and conventions defining and enabling corporations, labor unions, legal partnerships, and other joint

ventures; securities laws, negotiable instrument laws, patents, copyrights and many other institutional mechanisms that make economic cooperation possible. Finally (as Rawls claims) the family in some form is also a basic social institution, in so far as it is needed to raise and educate the young, so that society may reproduce itself in perpetuity.

G. A. Cohen and others contend that the Rawlsian idea of a basic social institution is ambiguous, and that the list of institutions said to be basic seems arbitrarily selective. For example, basic institutions are said by Rawls to have a profound influence on peoples' lives. But says Cohen there are other institutions characteristic of societies that also exercise enormous influence over peoples' lives—such as religious institutions. Another basis that might be used for distinguishing the basic institutions is that they are, unlike religious institutions, coercive. But this won't do either, says Cohen, since the family is non-coercive in so far as familial norms are not enforced by the State, but are largely conventional and legally a matter of free association (among participating adults at least).

Let's set aside a point Cohen overlooks regarding the family, namely that government clearly does legally enforce parental control over children before they mature, and also enforces parents' duties not to neglect but to adequately care for their children and have them educated. Nonetheless, suppose Cohen's points are conceded. What then is so distinctive about (Rawlsian) basic institutions? The answer is that basic institutions are those cooperative institutions that are needed to make cooperation among individuals in any society possible and productive. This is perhaps obvious in the case of political and economic institutions. As for the institution of the family, even if it may not be coercively enforced in the same way that the terms of other basic institutions are, still

it is a precondition of any ongoing society that it have an institution for nurturing and socializing its young, so that society can reproduce and perpetuate itself over time. Religions, universities, and other (now voluntary) institutions, however necessary they may be to the peaceful cooperation and stability of particular societies, are nonetheless non-basic, since they are not necessary to cooperation among the members of a society in general—for many societies exist and thrive without them. When necessary to cooperation in a particular society, the function of influential institutions such as religion is largely “ideological” (to borrow Marx’s term)—among other things, they may provide the motivations needed for members to comply with the basic terms of cooperation specified by its basic social institutions.

Each society has its own set of basic political and economic background institutions, and these basic institutions (along with cultural traditions) largely distinguish one society from another. Compliance with the rules of these basic social institutions, even if generally voluntary, is unavoidable for the members of a society, since these rules are inescapable and structure, regulate, and suffuse their daily lives in innumerable ways—unlike members of other societies, whose lives are structured and regulated by their own system of basic social institutions. Even when emigration is a real option for people (for the vast majority of people it never is) they still must reside within the social framework provided by some system of basic social institutions. Conditions resembling a “state of nature,” even if they exist somewhere, are themselves social and political arrangements.

Of course societies are not separate and self-sufficient-- they and many of their members normally have direct cooperative relationships with other societies and their members, and these can be quite complex. But cooperation among members of different

societies presupposes and is supervenient upon the basic institutions of their respective societies. What primarily characterizes a society, at least for purposes of justice, are its basic political and economic institutions, and these institutions are independent from those of other societies in that they have different sources of authority and are discrete systems of rules that are legislated, interpreted, applied and enforced by a society's own political institutions. The rules defining a society's basic institutions largely define the basic terms of social cooperation among members of that society. They specify not just constraints on their conduct, but also the rules and institutions that define legitimate actions and transactions that are a precondition of socially and economically productive activity. These institutions provide the basis for legitimate expectations that political and economic agents form and rely upon in undertaking cooperative activities. Individuals participate in these basic institutions, and a large part of their lives are structured and regulated by them. They form beliefs and expectations based on the institutional rules, and then contribute their labor or possessions and undertake risks in light of these beliefs and expectations.

Any organized group activity involves the creation of benefits and burdens. . . . What distinguishes cooperation from efficiently coordinated group activity is that cooperation involves an idea of each person assuming his or her fair share of the burdens of cooperation, and being rewarded in turn with one's fair share of the benefits. Cooperation then normally involves an idea of *reciprocity* in the distribution of benefits and burdens. Some idea of fair contributions to benefits and fair assumption of burdens condition any cooperative groups' standards for fair distribution. A fundamental question of justice (if not the fundamental question) is, what are the standards of reciprocity that

any society is to use to determine the fair division of benefits and burdens that result from cooperation among members of society *with one another*. According to the institutional view, distributive justice involves the standards that are to be used to specify, structure, and assess the institutional rules and procedures of the basic institutions that make economic production, trade and consumption possible among the members of a society. These institutions specify the rules against which society's members engage in socially productive economic activities and relationships with one another, and form their expectations accordingly regarding their duties and rewards for cooperative compliance. In so doing the principles regulating cooperative institutions determine the fair distribution of economic benefits and burdens among society's members who do their part in social cooperation.

Now comes the global cosmopolitan who avers that however the terms of basic political and economic institutions regulating society's members' cooperative relationships and expectations are defined, they must distribute a sizable portion of the benefits of a society's cooperative endeavors, if not their burdens, to members of other societies. Global egalitarians go further and contend that the benefits of a society's cooperation are to be equally distributed or at least distributed on equal terms to the members of other societies. This is so, even though members of other societies have their own basic institutions defining and regulating their cooperative expectations and socially productive relations, and do not participate directly in any substantial way in the political or economic institutions of other societies.

Straightaway the question arises: why should the basic institutional rules that define the cooperative activities and expectations and socially productive relationships

among members of one society extend on *equal* terms the benefits created by members within that society to members of other societies? The strongest version of the cosmopolitan argument contends that any and all benefits of social cooperation by members of one society are subject to (re)distribution to the members of other societies. Here global egalitarians contend that social cooperation is an artificial distinction, especially in this age of globalization, and that people in one society cooperate--socially, culturally, and economically—almost as much with people in other societies as they do among themselves. But the institutional argument for the social bases of distributive justice does not rely simply upon facts of cooperation and reciprocity in general. For there are all kinds of cooperative relationships among members of the same or different societies—religious, cultural, even economic--that do not give rise to relationships and claims of distributive justice. The argument for the social bases of distributive justice rests upon society's members doing their fair share in contributing toward socially productive cooperation according to the rules of the basic social institutions that regulate the political and economic relations of, and claim jurisdiction over and allegiance from, all members of the same society. People in other societies, no matter the extent of their cooperation with members of one's own society, do not actively participate in the basic institutions of one's own society, nor are they subject to its jurisdiction or responsible for contributing their fair share to social cooperation. Of course people in different societies engage in economic cooperation across borders, but the institutions that make this possible presuppose and are supervenient upon the basic institutions of social cooperation within each society. Property laws and other basic social institutions within each society

provide the grounding and the “stuff” for economic treaties that coordinate and harmonize economic relations among different societies.

Here it is telling that egalitarian cosmopolitans do not normally contend that *all* of the benefits one society provides its members should be afforded equally to members of other societies (nor do they often argue for the global distribution of all institutional burdens and other social responsibilities). Most often, it is only the global provision of an equal or fair share of income and wealth that are the product of social cooperation among the members of a society. The right of foreigners to vote in another society’s elections is not often demanded, nor are educational benefits required by equality of opportunity, fair access to powers and privileges of office and positions, or the provision of public goods.<sup>13</sup> These benefits are normally regarded even by global egalitarians as properly reserved for the members of a society who take part in its social institutions and assume the burdens of social cooperation. What accounts for the difference in benefits to be conferred upon foreigners? Why simply the demand for an equal or fair share of income and wealth? This difference seems to be an implicit concession by cosmopolitans that social cooperation is important in its own right, and that members of a society have a right to the distinct benefits that are the product of their social cooperation.

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<sup>13</sup> See however Simon Caney, ‘Cosmopolitan Justice and Equalizing Opportunities,’ in T. Pogge (ed.) *Global Justice* (Oxford: Blackwell, 2001), also “Global Equality of Opportunity and the Sovereignty of States,’ in A. Coates (ed.) *International Justice* (Aldershot, UK: Ashgate, 2000); and Darryl Moellendorf, *Cosmopolitan Justice*, (Boulder, CO: Westview Press, 2002) ch.4, who argue that people should have the same life chances (including access to educational and job opportunities and the rewards they bestow) regardless of which society they are members of. Moellendorf says (p. 49): “If equality of opportunity were realized, 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 parents.” For a response, see David Miller, *National Responsibility and Global Justice*, (Oxford: OUP, 2007) p.62ff.

One response that egalitarian cosmopolitans might provide for extending a share of income and wealth but not other benefits of social cooperation to foreigners, is that people within a society cooperate economically but not politically with other societies and people within them, and thus should equitably share in economic, but not political and other social benefits. This still is not sufficient to explain why such economic benefits as fair equal opportunities, and fair access to economic powers and positions, should not be provided on equal terms to members of other societies. (For example, if we economically cooperate with Kenya, then why shouldn't poor Kenyan children have fair equal opportunities to compete for favorable positions of office in the U.S., including publicly funded educational and health care benefits our society does or should provide to resident children?) Suppose it nonetheless be conceded that economic cooperation with members of different societies according to the norms of international or global institutions gives rise to claims of distributive justice only with regard to income and wealth. This is not wholly incompatible with the institutional view I advocate. But on the institutional view it implies at most that distributions extend only to the product of international and global cooperation, as decided by the specific fair terms of cooperation that specify the common institutions regulative of international or global cooperation. Hence, complex international trade agreements such as the terms agreed to through WTO are subject not just to terms of procedural fairness in decisionmaking, and substantive fairness that prevents economically powerful societies from taking unfair advantage in trade of less powerful or poorer societies. It is conceivable that these global arrangements eventually may even give rise to global distributive claims on economic product arising out of the nature of these economic institutions. But legitimate claims to

a fair share of these benefits of international economic cooperation do not entail that members of different societies can come in and also lay claim to a distributive share of the benefits (whether income and wealth, or opportunities, powers and positions of office) that is the product of social and economic cooperation among members of a society different from their own.

Here egalitarian cosmopolitans (e.g. Pogge, Beitz, Tan) have said that the members of different societies not only cooperate with one another according to the terms of international and global institutions, but also are expected to respect and not interfere with the institutional requirements of one another's basic institutions; and this should be sufficient to entitle them to at least a share of income and wealth resulting from those basic social institutions. This follows from the fact that all are under a duty to respect other societies' territorial ("property") claims, and not undermine the integrity of the laws and institutions of other societies, submitting to their requirements in so far as they engage in economic and cultural relations with oneself or one's own society. [Since this argument does not rely specifically on economic cooperation with another society to ground its claim of a right to another society's benefits, but says that one engages in cooperation with another society so long as he or she merely respects its territorial claims, it would seem to imply the position rejected above; namely, that all the political and economic benefits of one society's basic social institutions should be made available to members of other societies who "cooperate" in this way, including the right to vote, fair equal opportunities, fair share of public goods, unemployment assistance, payments to meet disability needs, and so on.]

[Setting this problem aside,] the general problem I have with the argument that respect for another society's territorial boundaries supplies sufficient grounds for claims of global distributive justice is that the argument rests on an extremely diluted conception of cooperation, and particularly of economic cooperation. It says in effect that societies and their members "cooperate" with each other (socially, even economically) so long as they are not in a state of war. But simply because a person (or society) is expected to respect the integrity of others' territory and cooperative relations does not make him or her participants in their cooperative endeavors, far less so an equal beneficiary of those rules and subject to their jurisdiction. Simply because I respect the integrity of your home and family does not mean I am a cooperative member of it, or entitle me to the benefits your family shares among its members, nor does it give you any kind of jurisdiction or authority over my day-to-day activities. Even if we accept Pogge's diluted conception of cooperation--which implies that two parties or societies engage in cooperation so long as they are not in a state of war--this entitles them only to the reciprocal benefits of that particular form of cooperation (viz. respect for one another's territorial boundaries and not undermining one another's laws and institutions). It does not by itself imply a general right to all or even any of the benefits the other party contributes toward and enjoys in his cooperative relations with members of his own society. The duty to respect another society's territory does not imply a right to a fair share of the benefits created by its members' cooperation according to the terms of their basic social institutions.

Reciprocity is a feature of cooperation of all kinds. It is a truism, but an important one, to say that reciprocity in the distribution of benefits and burdens of cooperation

depend upon one's taking part in cooperation itself and complying with the expectations and constraints on conduct which that form of cooperation imposes. Any form of cooperation involves benefits and incentives to engage in mutually beneficial conduct, and at the same time imposes obligations and responsibilities as a condition of conferring these benefits. Reciprocity in the sharing of benefits and burdens is defined by the terms and provisions of cooperation, and these are assessed according to standards of justice appropriate to that form of cooperation. Not all forms of reciprocity are the same, and only few of these require egalitarianism in the distribution of benefits. The kind of reciprocity that social cooperation requires is different from the reciprocities of more local institutions, such as the family, churches, universities, or professional groups, and all of these differ from the reciprocity required by cooperation among members of different societies and their political institutions. Different kinds of cooperative reciprocity require different regulative principles of justice that provide standards for the legitimate expectations and the distribution of benefits characteristic of a particular form of cooperation. To have a claim upon the institutional benefits of, and to be subject to its particular institutional burdens, of a particular form of cooperation, requires membership and participation in that particular scheme of cooperation, and doing one's fair share in making contributions. Hence, social reciprocity in the distribution of income and wealth, as well as opportunities, powers and privileges of office and positions, requires membership and participation in the political and social institutions that constitute the basic structure of society.

As I understand their view, global egalitarian and other strong cosmopolitanisms deny these claims: participation in and contribution towards sustaining the basic social

institutions that make social and economic cooperation among the members of a society possible are not preconditions for having a claim on the benefits of those basic institutions. Reciprocity in social relations is largely if not entirely irrelevant to distributive justice according to global distribution views. It is understandable how some versions of classical utilitarians might argue for such a position, for what matters then is not fairness and reciprocity, but maximizing aggregate welfare summed across all individuals. On that view, territorial boundaries and social cooperation, like other distinctions, are ultimately irrelevant to questions of distribution, except for their instrumental effect in encouraging greater overall utility. It is also understandable how some pure luck egalitarian conceptions of distributive justice might support such a position; for if membership in one society rather than another is a matter of pure luck then, luck egalitarians say, it must be morally arbitrary, and as such should be irrelevant to peoples' distributive claims. But if the idea of social cooperation—doing one's fair share to maintain and contribute towards basic social institutions and receiving a fair share of their benefits—is to carry independent weight in matters of distributive justice, then these positions must be mistaken.

I have endorsed the position that the scope of justice, including economic justice, does not depend upon the presence or need for coercively enforced institutions or relationships, nor is the scope of justice limited to members of the same society. (Thus, in so far as Thomas Nagel and Michael Blake adopt the Hobbesian position that outside the state, there is no justice, they are mistaken.) Each institution—whether social, global, or local-- is subject to procedural and substantive requirements of justice and reciprocity that are distinctive to institutions of that kind. The institutional requirements of justice,

including distributive justice, then differ depending upon the kind of cooperation and reciprocity institutions regulate. It is because they are not members of , and do not do their fair share in contributing toward and maintaining the basis institutions of other societies, that members of one society are not entitled to distributive shares of the particular benefits, or are subject to the institutional burdens, of social cooperation created by members of other societies. This does not deny that economic cooperation among members of different societies can raise claims of economic justice, even distributive justice. But these standards are different from the standards applying among members of a single society. And even if they do not differ but are the same distributive standards (e.g. egalitarian standards), still they extend their reach only to the products of economic and cultural cooperation that result from members of different political societies acting according to the rules of international or global institutions; they do not entitle foreign persons to the full benefits or burdens that accompany membership and socially productive participation in the basic economic and political institutions of one another's society.

### **III. Economic and Distributive Justice**

[Note: This section has only been written in the past week. I apologize for needless repetition. The section needs to be integrated better into the rest of the paper.]

I. To clarify the institutional position I advocate, it may be helpful to develop somewhat a distinction between economic justice and distributive justice I have mentioned. I understand economic justice as a broad range of moral requirements that should structure and regulate cooperative economic relations among persons within society and between societies. Distributive justice is a large part of economic justice, but not the entirety. It concerns (as discussed earlier) the principles that should govern the

basic institutions that determine (1) the distribution of the economic goods, income and wealth, including both consumer goods and the means of production, as well as (2) the distribution of powers and prerogatives of offices and positions of responsibility in economic activity, and finally (3) the distribution of the opportunities to occupy these positions and exercise these powers.

II. The distribution of these economic goods is achieved via certain basic institutions, which might be called ‘distributive institutions,’ that are for the most part legally specified and enforced, but also include other social conventions.<sup>14</sup> Once again, these distributive institutions include property of all kinds, in both tangibles and intangibles; the specification and regulation of markets via laws and conventions of sales, finance, negotiable instruments, etc, as well as other legal transfers of property such as bequests, inheritance, and gifts; and finally laws and conventions specifying terms of and enabling contracts and agreements of all kinds. Political institutions are also among key distributive institutions; in addition to their role in legislating, interpreting, and enforcing the rules of the economic institutions just mentioned, they also directly make transfer payments of income and wealth (including wage and other economic subsidies) and exercise economic powers of various kinds.

III. In addition to distributive justice, economic justice involves the standards that should specify and regulate economic activities and institutions that do not directly determine the distribution of income, wealth, and economic powers and positions. For example, monetary policy, or many laws regulating banking and finance (including

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<sup>14</sup> For example, certain market practices or bargaining norms may not be legally specified but are legally permissible; they still are subject to standards of economic and perhaps distributive justice.

capitalization requirements) are governed by standards of economic justice, as are disclosure and other conditions on stock offerings by corporations, or product safety requirements and warranty provisions that cannot be contractually eliminated. Though these laws and regulations have distributive effects in so far as they indirectly influence the distribution of economic opportunities, powers and positions, and income and wealth, they do not by themselves instruct us how these economic goods are ultimately to be distributed among members of a society. For reasons to be discussed, terms of trade among different societies also raise questions of economic justice, but not normally of distributive justice.

IV. On the institutional account, a theory of distributive justice is a theory about how to design the basic cooperative institutions that make possible the distribution of income and wealth, and economic powers, positions, and opportunities. If these distributive institutions do not exist, then the subject matter of distributive justice does not exist. It may be a question of justice whether these institutions, such as global or international institutions, *should* be put into place where they do not exist, but this is not (or not simply) a question of distributive justice. It raises instead the question whether we are under a positive duty to enter into certain complex kinds of cooperative economic relationships with other societies and assume certain duties, in addition to those that are already required by a duty of assistance and other humanitarian requirements of justice (more on this below).

The primary distributive institution is of course the complex system of norms of property, for property ultimately determines who has rights, powers, and other claims, and duties, liabilities, etc. with regard to income and wealth, including the means of

production. The basic institution of property exists in every society and is politically/legally specified, regulated, and enforced. There is no legally or politically recognized global or international institution of property to which the terms of principles of justice might apply to specify the incidents of property, including rights, powers, duties and the like, and regulate their distribution. There are existing agreements among peoples, under the WTO and other treaties and arrangements, to harmonize certain specific institutions of property, primarily patent law and to a lesser degree copyright. But the harmonization of many separate political societies' own separate property and copyright laws does not constitute a basic global institution of property law with respect to these intangibles--not any more than the harmonization and cooperation in enforcing extradition laws or narcotics laws constitutes a global police force or global legal system with global authority and original jurisdiction. Since there are currently no global or international institutions of property, there is no ground at this time for making claims of global distributive justice on this basis.

V. What other bases for global distribution requirements might there then be?

Much has been made of the increasing prevalence of international, transnational, supranational institutions (WTO, IMF, the World Bank, BIS, OECD and so on),<sup>15</sup> and some have argued that these and other institutions, jointly or severally, provide grounds for claims of global distributive justice. These institutions have an important role with regard to cooperative economic activity among societies and their members, and clearly influence the distribution of income and wealth in the world. They raise many issues of

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<sup>15</sup> See Anne-Marie Slaughter, *A New World Order* (Princeton NJ: Princeton University Press, 2004) on emerging “networks” of regulation, adjudication and enforcement, in the world, involving exchange of information and coordinated activities across borders.

economic justice, particularly issues regarding fairness of trade relations, decent working conditions and workplace safety, the powers and responsibilities of multinational corporations, and the duties of nations that sponsor them to regulate these corporations' activities both abroad and at home. Clearly societies and their corporations have a general duty of justice not to exploit or take unfair advantage of poorer countries and their resources or workforce, and there are many other duties and requirements of economic justice that apply to trade and trade organizations. But do these international or global trade and other organizations raise concerns of distributive justice of the kind that advocates of global distributive principles contend for, namely, the transfer of income and wealth from wealthier to less advantaged peoples to fit some distributive pattern (often egalitarian)?

VI. I do not believe they do. One reason is there is no global parallel to the complex system of basic social institutions that enable the production and distribution of primary social goods that are the object of distributive justice—no global scheme of property, contract, sales, finance, corporation, bankruptcy, and other systems of laws that make up the basic institutions that go into the basic structure of a society. In the absence of a system of these distributive institutions, there is no basic structure of global economic institutions to which to apply principles of distributive justice. Those international economic institutions that do exist, such as the WTO, do not have original authority or jurisdiction to enact laws; they are secondary institutions in that they originate by treaty or agreement among distinct political societies, and presuppose and are supervenient upon the basic social and economic institutions of their participating societies. The WTO is a harmonization arrangement that requires nations, as a condition

of participation, to conform their economic policies and laws to certain uniform requirements (eliminating subsidies for industries, for example). There are many different kinds of demands of economic justice that apply to WTO activities. For example, societies that allow corporations chartered under their laws to engage in unfair business practices with less advantaged peoples, or to engage with corrupt governments in business practices that exploit a people's resources or workforce, are guilty of economic injustice. Societies, jointly and severally, have duties of economic justice to regulate and oversee trade and the business practices of all economic agents working from or within their borders. But the requirements of economic justice that apply to trade and other economic relations are not the same as a requirement that final distributions result in some pattern of distribution (maximally benefiting the least advantaged, for example) among participating members, or that require maintaining a global minimum beyond that imposed by a humanitarian duty of assistance.

VII. The WTO is not I believe a basic institution of the kind that requires principles of distributive justice to determine the fair distribution of economic product among participating members. Without conceding this, some cosmopolitan egalitarians (e.g. Tan) contend that societies have a positive duty to establish a framework of basic institutions that enable poorer societies to engage in economic and other forms of cooperation with other societies; and that once these basic cooperative institutions are in place, duties of distributive justice globally apply.

I would agree with the first part of this contention to this extent: advantaged peoples have a duty to assist what Rawls calls "burdened peoples" in economic development, so that they can establish the political and economic institutions enabling

them to become economically independent and able to satisfy the basic needs of all their members. But do we have a general duty to engage in economic cooperation with other peoples? I am not so sure that we have such a duty, in addition to a duty of assistance and other humanitarian duties owed to all peoples, to engage in cooperative economic relations with each and every society, especially not economic cooperation of the kind that would require distributive justice. Suppose economic cooperation with a distant society would not be mutually beneficial and would require assuming a net loss for one or more nations. Is there a duty of justice in this case for a society to engage in cooperative activity contrary to the interests of the members of that society, assuming that its relationships with other societies are just in other respects? I do not think so. What then of mutually beneficial economic cooperation with poorer societies which nonetheless comes at some cost, in so far as a society could have gained more if it had cooperated with a more efficient but richer supplier? Here I am less sure, but would venture that there is no duty of justice to cooperate on these terms (again, assuming the justice of one's own society in other relevant respects).

Perhaps an analogy may help. In the case individual relationships we have a duty of civility and assistance, but we do not have a duty to make friends with them or to engage in cooperation of other kinds if it is against our interests. Somewhat analogously, with other peoples, we have duties of civility, mutual respect, and assistance in times of pressing need. Hence, we have substantial duties now to come to the economic assistance of billions of people who subsist on less than a few dollars a day, and also assist their governments in making their society politically independent and economically self-sustaining so that it meets all its members' basic needs. This would

involve great costs to ourselves, and perhaps has priority even over increasing the share of income and wealth going to the least advantaged in our own society. But do we as a society have in addition ongoing duties to engage in economic and other forms of cooperation if it is against our economic and other interests to do so, and would come at the expense of our least advantaged (again assuming that our relations with other societies are just in other respects)? Again, I do not think that we do. If I am wrong, and we do have a duty to engage in some forms of economic cooperation with all peoples even if it comes at a cost to ourselves (including our least advantaged), I still do not think that trade and other forms of economic cooperation with all peoples that are morally required of us are sufficient to give rise to duties of distributive justice. And even if I am still wrong about that, and assuming that basic global economic institutions were in place—suppose that various forms of intangible property (such as patents, copyrights, etc.) are globally applicable, and uniformly administered, and interpreted—the priority of basic social institutions with regard to claims of distributive justice would still remain. Economic justice may well require that the benefits, and the burdens, of this global institutional form of property be fairly distributed among all peoples according to appropriate principles (suppose poorer countries were provided with subsidies that come from a tax on patent profits, and/or allowed exemptions that allowed them to produce a restricted amount of patented goods, such as drugs or medical equipment, without having to pay patent fees.) But this requirement of global distributive justice would not extend so far as to nullify or override the social requirements of distributive justice existing among members of other societies. It would not establish a general claim to the social product of other societies of the kind that global egalitarians contend for.

VIII. Global egalitarians and other advocates of cosmopolitan distributive justice often remark on the pervasive influence and unjust consequences of some international economic agreement or arrangement—such as the WTO—and then conclude that the injustice of the current arrangement requires principles of distributive justice. Harmonization of standards and regulations in some regulative domain such as securities, or product safety, or finance and the law of sales, does not by itself seem to give rise to claims of distributive justice. For the basic institutions which are harmonized still have separate sources of authority, and their jurisdiction ranges still only over members of their respective societies. What is bothersome is when more powerful nations, such as the US, exercise their threat advantage to insist on standards that unduly benefit themselves and conform to their preferred practices of doing business. But if such standards are fairly enacted, according to democratic procedures that do not advantage powerful peoples, then much of the current injustice of international trade relations and other arrangements is potentially minimized. The problem with current WTO and other trade norms and practices is not one of distributive injustice, but of economic injustice that gives unfair advantage to richer nations, and that allows them to exploit the position of poorer nations and dictate to them economic policies especially beneficial to richer nations.

IX. Suppose that the correct principle of distributive justice applicable to each society's basic social and economic institutions is the difference principle. As Rawls defines it, the difference principle is to serve not just as a principle of distributive justice, but also and more generally as a principle of economic justice. It is to be used to structure and regulate not only distributive institutions that directly determine the distribution of

the relevant social primary goods—income and wealth, and powers and positions of responsibility (opportunities for powers and positions is covered by the principle of fair equality of opportunity). In addition, the difference principle is also to be taken into account to set monetary policy and regulate banking and finance, securities, sales, the law of corporations and unions, and all other economic institutions and relations—all of them are to be designed so that over time they tend ultimately to the benefit the least advantaged members of society.<sup>16</sup>

X. Now, what standards of economic justice are to apply to international and global economic cooperation? As I contend in the next section, the difference principle is an egalitarian principle that is designed specifically to apply to the basic structure of society and it expresses a kind of strong reciprocity holds only among free and equal persons who are all citizens in the same well-ordered society. As such, the difference principle would not appear to be an appropriate or justifiable bases for economic cooperation among different peoples or members of different societies. What principles of economic justice, (and of distributive justice, if needed) would then be appropriate for

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<sup>16</sup> Note: The distinction between distributive and economic justice might be thought unduly artificial, and that whatever principles apply to one must be the same principles that determine the justice of the other. If this is the case with Rawls's difference principle, or the principle of utility—they apply to questions of economic justice generally, including those that do not directly involve the distribution of primary social goods—why isn't it true generally? In response, a clear distinction between principles is evident with luck egalitarian positions. They contend that income and wealth, however they are produced, are to be equally distributed so long as they are the consequence of arbitrary inequalities; otherwise income and wealth are to be distributed according to individuals' effort (G.A. Cohen) or market contributions (Dworkin) to production. While these principles may function quite well as principles of distributive justice, they cannot serve the complicated role demanded by a more general theory of economic justice. Cohen's account of distributive justice, for example, does not tell us whether a private property or socialist economy is in order, and provides no guidance in deciding many questions of economic justice, such as monetary policy, standards for securities and banking regulations, trade relations, and so on. Other economic and even distributive principles of justice are needed to decide these questions in a luck egalitarian view.

global economic cooperation? Rawls himself does not say anything directly on point, in part because he does not think that distributive justice applies at the global level. But suppose that global basic institutions eventually evolve that do require principles of distributive justice. What might they be? Here we still can follow Rawls's suggestion that any principles or norms of cooperation among different peoples are subject to the same procedural test as the Law of Peoples itself; namely they must be generally acceptable within the original position to the (hypothetical) representatives of all peoples, who are all situated in a position of equality behind the veil of ignorance. Under conditions where representatives of peoples do not know particular facts about their resources, wealth, populations, culture, or relative power and positions, the kind of international exploitation in trade and all other relations that has gone on historically would not be sanctioned by norms of economic cooperation acceptable within the original position.

#### **IV. Social Reciprocity and the Difference Principle**

Before concluding, I briefly discuss here substantive standards of economic and distributive justice. Recall that in Nagel's contractualist account, a precondition for being entitled to claims of distributive justice is that one (hypothetically) "co-author" and have political responsibility for the laws that specify institutional terms of cooperation. Nagel's requirement of political co-authorship limits the scope of distributive justice to members of the same political society. Since there is no global political body that confers citizenship and political authority, this suggests that even international or global economic norms are not subject to standards of economic or distributive justice. On my institutional account, certain standards of economic justice should apply to existing

international norms and economic institutions; moreover, standards of distributive justice at least potentially apply to the distribution of benefits and burdens of cooperation other than those made possible by governments, once the relevant global/international economic institutions have evolved. This position mitigates the need for citizens' political co-authorship of laws as a precondition for making legitimate claims of economic/distributive justice. What role then, if any, might a contractualist standard play in an account of global economic and distributive justice?

The kind of reciprocity involved in social cooperation is political as well as economic. On the Rawlsian contractualist account I contend for, social cooperation (unlike economic cooperation among people in different societies) presupposes political cooperation in co-authoring and assuming co-responsibility to maintain the norms necessary for economic cooperation. The contractualist ideal of social cooperation is that of free and equal persons who are members of a democratic society cooperating on terms of mutual respect and reciprocity that they can all accept and agree to *in their capacity as democratic citizens*. The ideal of persons as free and equal citizens doing their fair share to maintain a system of social institutions that all can jointly co-legislate certifies a strong idea of reciprocity in the distribution of benefits and burdens of social cooperation. It provides grounds for the argument that the terms of reciprocity that are to determine the specification of economic background institutions that distribute the economic benefits of social cooperation—including economic powers and positions as well as income and wealth—do so in ways specified by the difference principle.

The intuitive argument for the difference principles is straightforward: Since the institutional benefits of social cooperation, including economic opportunities, powers and

positions, as well as income and wealth—are the joint social product of cooperation among all citizens, equal distribution of benefits should serve as a baseline of comparison (as opposed to a state of non-cooperation or a state of nature) for claims of distributive justice. Departures from equality are then justified only when they are acceptable to everyone. This requires that those who gain more from an inequality must do so on terms that are justifiable to those who gain less, starting with consent by those who gain the least. In departures from equality that increase the total social product, there comes a point at which further incremental gains in benefits to the more advantaged result in fewer total benefits to the least advantaged. These further gains to the more advantaged would not be justifiable to least advantaged citizens. After all, if a lesser inequality was justifiable to the least advantaged, why should a departure from that distribution to another distribution that creates still greater inequality, *and that gives the least advantaged even less than before*, be justifiable to them? This further departure from equality does not satisfy *any* requirement of reciprocity, for the more advantaged gain additional benefits at the expense of the least advantaged. The strong requirement of reciprocity in each incremental departure from equality suggests the standard that inequalities are justifiable only when everyone benefits in ways that leave the least advantaged class better off than they would be under any other alternative (departure from equality).

The complete argument for the stringent requirement of reciprocity embodied in the difference principle is more complex, and cannot be set forth in its entirety here.<sup>17</sup> It is grounded, not simply in cooperation alone, even social cooperation, for not all kinds of

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<sup>17</sup> See Rawls's *Justice as Fairness: A Restatement*, Part II, for his most thorough elaboration of the argument for the difference principle.

cooperative reciprocity require maximum advantages to the least advantaged. The difference principle rather is also grounded in an ideal of free and equal citizens engaged in social cooperation on terms of mutual respect that can be justified to all in their capacity as democratic citizens. This democratic basis implies that the difference principle is appropriately applied to determine the terms of social and economic cooperation among the members of the same ongoing political society. There are insufficient grounds for applying the difference principle to cooperative relations outside that democratic social and political context.

Assuming then that there are, or may be, standards of economic and distributive justice that apply to international and potential global institutions, the difference principle would not be the appropriate way to design them (contrary to many claims, made at one time or another by Beitz, Barry, Pogge, Tan, and even early Scanlon). For the kind of economic cooperation involved there is not part of social and political cooperation among free and equal citizens who do their fair share in maintaining the conditions of a well-ordered democratic society. The argument for the difference principle makes sense only within that social and political context. If any distributive standard is to apply internationally or globally, it would require a weaker contractualist standard. Rather than the requirement that economic and distributive institutions must be designed so that they are co-authorable among free and equal citizens, a more general non-democratic standard of co-justifiability implicit in Scanlon's version of contractualism might be applied: Terms of international or global economic cooperation must meet the standard that they could not be reasonably rejected by those subject to their demands, or their direct influences. This standard in its effect resembles Rawls's own requirement (in the

*Law of Peoples*), that principles regulating international trade and other global economic arrangements must be such that they could be agreed to among the hypothetical representatives of equal peoples behind a veil of ignorance. While Rawls himself does not endorse international standards of distributive justice, there is nothing about his test for determining the legitimacy of international norms of cooperation that would rule out applying distributive requirements to international institutions if the degree of economic cooperation reached a point that warranted it. I have not ventured a conjecture as to what this point might be—what complex of international and global institutions must be in place to raise demands of international/global distributive justice--since my primary aim has been to argue for the social bases of distributive justice.

#### **V. Concluding Remarks**

I have argued for the social bases of distributive justice by contending that distributive justice largely concerns the principles of cooperation needed to design certain basic social institutions necessary to and typical of any society. I have not sought to rely upon the idea of the “profound influence” of society on our future prospects or the centrality of social cooperation to the kinds of persons we are. It may be that in the absence of these considerations, the argument from basic social institutions I have made is not by itself sufficient to make a convincing case for the social bases of distributive justice. In any case, there may be a family of different reasons that support this conclusion. So I’ll conclude with some brief remarks on this further argument.

Thomas Nagel agrees with the cosmopolitan criticism that appeals to the profound influence of social cooperation are not sufficient bases upon which to justify the social nature of distributive justice, since global cooperation is increasingly making its influence apparent. I take a more modulated view. I agree with the cosmopolitans in the

following sense. Appeals to the profound effects of social cooperation are not sufficient to establish the *exclusive* ground of distributive justice in social cooperation that Nagel and Rawls contend for. International and global cooperation are at least potential sources of claims of distributive justice too. But against egalitarian cosmopolitans I contend that the profound effects of social cooperation are sufficient (if not by themselves then in conjunction with other reasons I've discuss) to justify the social bases of distributive justice with respect to the benefits and burdens that arise from social cooperation according to the terms of basic social institutions. The fact that we or others may be profoundly influenced by cultural and even economic exchanges with other peoples does not mitigate the fact that there is something distinctly and qualitatively different about the effects of membership in a society. Life in the absence of international cooperation would be rather austere. For example, in the US we'd have to curtail significantly our profligate use of energy, and abandon enjoyment of many products that we import (approximately 14% of the goods and services consumed each year.) It would require an extraordinary change in our current living conditions, and for many less advantaged nations its consequences would be even more severe. For that reason and others, autarky is not a desirable situation for any country, especially in the modern age. But the effects of an absence of international cooperation pale when compared to the absence of social cooperation. We are distinctly social beings in the sense that in the absence of society and social development we have but inchoate and unrealized capacities, including our capacities for rationality, morality, sociability, even language itself. As Rousseau says, prior to society and socialization, we are but "stupid, limited animals." This puts into question the main point of the idea of a state of nature in traditional political thought,

which is to distinguish what we bring to society from what we owe to society. We bring to society only our undeveloped and inchoate capacities. Not being members of some society at crucial points in our lives is not then an option for us as civilized beings. It is not simply that social cooperation is inescapable and no longer voluntary for us, since a state of nature to which we could escape to no longer exists anywhere (if it ever did). It is rather that the possibility of voluntary activity itself depends upon our being socialized and educated under the normative influence of some society. In so far as we are rational and reasonable beings at all who are capable of cooperation of any kind, we have developed socially, within the social framework and basic institutions of a society. If our humanity consists in our distinctly human capacities, including our moral and rational capacities of practical reason, then there are profoundly social bases for our humanity. This social bases of our humanity supplies strong reasons, in addition to the institutional reasons I've set forth, for affirming the "profoundly social" (Rawls) bases for principles of justice. But that is another argument that needs a fuller justification than I can provide here.

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## **Appendix**

In criticizing what he calls the “cooperation theory” of distributive justice that I defend Arash Abizadeh says (PPA, Summer 2007 ) that the basic structure of society can be at most instrumental to justice, and not an “existence condition” for it. If this is so, then the existence condition for justice can obtain at the global level and there are global requirements of distributive justice which societies ought to satisfy in designing their own basic structure and setting the basic terms of cooperation among themselves. To support this instrumental view of the role of the basic structure of society, AA cites Rawls’s reply to libertarianism. Rawls says that a reason for focusing on the basic structure, and not simply fair transactions among individuals, is in order to secure and maintain background justice against which individual transactions are made. This suggests, to AA, that justice and just distributions pre-exist economic activity and can be understood independently of the basic structure of society. The role of the basic structure and its many rules and procedures is to instrumentally achieve a fair division according to an independent standard of distributive justice. This distribution might as well, or also in conjunction with social institutions, be achieved by global institutions.

To respond: if we understand principles of distributive justice as purely allocative principles then there may be some reason to accept AA’s claims. An allocative reading of the difference principle—which is common among cosmopolitan egalitarians—says the difference principle applies directly to distributions, unmediated by the rules of basic social institutions. Hence, justice requires a distribution of any pre-existing fund of income and wealth in ways that maximizes the share that goes to the least advantaged members engaged in cooperation (over an extended period, or a lifetime). Conceived in

this way, it is understandable how global egalitarians might contend for expanding the scope of the difference principle to the least advantaged members of the world. Each society presumably would then have a duty to design its economic institutions so that they distribute wealth in a way that maximally benefits the least advantaged people in the world.

The problem with this reading is that it ignores the fact that (for Rawls) distributive justice is not a matter of allocating a pre-existing sum of income and wealth to fit some preconceived pattern. It is rather a matter of pure procedural justice. This means that distributive principles are to be applied to set up and specify the rights, powers, duties and incidents of the economic and social institutions that are necessary for economic production, trade and exchange, and eventual distribution and consumption. Once these institutions are appropriately designed, then a just distribution of income is whatever distribution that results from people correctly observing the requirements of the complex system of social and economic institutions.

Now if distributive justice for Rawls concerns the correct design and specification of certain basic institutions and then economic agents' acting on and actually carrying though with the requirements of these institutions and procedures, then it is difficult to see how these institutions could themselves be simply instrumental to a just distribution of income and wealth. For we cannot say when a just distribution is independent of economic agents actually engaging in economic activity according to the rules of this complex system of institutions and procedures. That's what "pure procedural justice" means. There is no correct pattern of distribution of income and wealth independent of economic agents' cooperation with one another according to the terms of basic economic

institutions designed to satisfy the difference principle. This implies that the basic structure is not instrumental to distributive justice. The difference principle is a rule for designing and specifying the requirements of just institutions. Just institutions are not institutions that are designed to realize a just distribution that is definable independent from those institutions—that would be an instance of imperfect procedural justice. But this is how AA appears to conceive of the role of the basic structure. As such, he misunderstands what he calls the “cooperation view.”