

Global Justice and indeterminacy – the boundaries of the cosmopolitan premise

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Introduction

Global Justice has emerged as a popular subject in political philosophy. Perhaps its main attraction is that “justice” appears to many as a powerful and universally recognised moral concept. If this is so, a theory of global justice might provide a “strong” moral language to make effective moral claims on the global (i.e. international) field that had, over the last decades, been held hostage by *realist* views based on power-relations in which moral considerations were said to be unhelpful at best or inapplicable at worst (Morgenthau 1951; Mearsheimer 2001; Waltz 1959).

The discourse around global justice can thereby be understood as the attempt to re-introduce a moral imperative untainted by power politics, self-interest or parochial convictions, based on minimalist premises that are or could be shared by everyone. This commitment has been taken most seriously by theorists of global justice who describe themselves as “cosmopolitan“.

Following Barry, cosmopolitanism is a moral position that “[...] combines three elements: that individual human beings have (ultimate) value; that each human being has equal moral value; and that the first two clauses apply to all human beings” (Barry 1999: 35-6, as quoted by Miller 2005: 65). A similar account is offered by Pogge (2008: 169-170). This *cosmopolitan premise* assures that global justice will be impartial, not guided by special interest or unfair privileges to some individuals over others and constitutes the minimalist foundation on which global justice is supposed to be based. The cosmopolitan premise, then, is the cornerstone for constructing a cosmopolitan theory of global justice that is not only *shared by everybody* (cosmopolitan) but also *applicable to everybody* (global).

Yet, against any specific theory of cosmopolitan global justice very diverse, and even contradictory, criticisms were levelled. They were charged for assuming far more than they grant to do, being eurocentrist, incohesive, overly specific, not specific enough or all of them together (Nagel 2005; Robinson & Tomez 2009), so that a decade into writing on the subject, surprisingly little progress has been made on creating any set of consensus from which to build, as Robinson and Tomez (2009) have noted. Instead, article after article is written, discussing the shortcomings and criticising the individual theories of global justice any particular theorist is suggesting, and then replacing these theories with the author's very own cosmopolitan theory of global justice, or his own argument about why-justice-doesn't-apply-on-the-global-realm.

One could interpret this fierce debate and ongoing disagreement as part of a perhaps necessary process of refinement that will eventually lead to a complete theory of cosmopolitan global justice, based on the cosmopolitan premise, and many indeed hold this view (Valentini 2011a, 2011b; Ronzoni 2009; Pogge 2008; Brock 2008; Caney 2005 et cetera).

In this dissertation I challenge this notion. I argue that these debates about the *right* theory of cosmopolitan global justice are essentially misplaced as few scholars have been observant enough about the nature and implications of the cosmopolitan premise. Rather than supporting a unitary theory of global justice, I suggest that the cosmopolitan premise leaves the shape of justice essentially under-determined, in ideal theory (section 1), non-ideal theory (section 2) and with respect to political legitimacy (section 3).

In my first section, I point at the difficulties of moving from the cosmopolitan premise to a unitary theory of justice in ideal-theory by demonstrating the compatibility of the cosmopolitan premise with a wide range of conceptions of justice and highlighting the problems that any mechanism of selecting between those rivalling principles of justice will bring.

In my second section, I argue that even if these concerns could be overcome and a unitary ideal-theoretical account of global justice could be found, the cosmopolitan premise cannot provide guidance on the application of this set of ideal theoretical principles in non-ideal circumstances, thereby leaving the concrete shape of justice indeterminate in non-ideal theory.

While the first two sections are exercises in analytical philosophy, emphasising difficulties in establishing consent on the nature and duties of justice in ideal and non-ideal circumstances, in my final section I argue that the cosmopolitan premise does not contain an inbuilt justification for political authority and cannot rely on either liberal or realist defences of political authority to enforce moral ideals in general and global justice in particular. Therefore, the cosmopolitan premise remains indeterminate about the possibility of legitimately enforcing global justice or what an effective implementation without coercion would look like.

Having shown the indeterminacy of the cosmopolitan premise as a basis for cosmopolitan global justice on the ideal theory, non-ideal theory and political level, I conclude by spelling out the implications of this argument for both global justice and cosmopolitanism. I suggest that the thrust of my argument is against cosmopolitanism rather than global justice. While this rules out cosmopolitanism as the premise for a theory of global justice, global justice

might be constructed around different moral premises and cosmopolitanism might still provide an effective language of *critique*, in spite of its insufficiency to support a fully-fledged theory of justice.

1. Indeterminacy and ideal theory

Many theories of (global) justice are based on or compatible with the cosmopolitan premise. In fact, many such theories have been suggested, that all share the “minimal” moral preconceptions (Pogge 2008) stated by the cosmopolitan premise, yet define justice in widely diverging terms: it was suggested that cosmopolitan global justice would mean global equality of opportunity (Caney 2005), global equality of outcome (Singer 2002), enforcing minimalist human rights (Shue 1996), providing a guaranteed minimal income (Van Parijs 1995), a duty not to harm others (Pogge 2008), world government (Nielsen 2003), multilevel-governance (Schaber 2011), or a democratically organised society of states (Bull 1984), as well as less obvious ideas such as the reduction of evils (Ophir 2005). Even very sophisticated accounts of how the cosmopolitanism premise can be combined with a rejection of justice on the international realm (McKim and McMahan 1997; Miller 2005, 2008; Sangiovanni 2007, 2008) were suggested as *the* principle of global justice, encapsulating the “essence” of justice as originating from the cosmopolitan premise (also compare Rawls 1996, 2001).

This multiplicity is indeed unsurprising and, as Rawls argues, can be explained from a “general fact” of (modern) life (2001: 36). It is, he contends, perfectly possible and likely for two reasonable persons to come to very different conclusions about moral matters, without any of them committing an error in moral reasoning about the position each holds. This is

because neither moral intuition nor considered moral judgements can be deduced directly from correct moral reasoning only. Due to the complexity of evidence, vague conceptualisation, normative considerations, individual experience and diverging rules of weighing evidence, or simply because premises in thinking about justice are *different*, it is “extremely unlikely that conscientious and fully reasonable persons [...] arrive at the same conclusions“ (Rawls 1999: 478; Rawls 2001: 35-6)¹. While this does “not [necessarily] mean that objective values do not exist or are subjective”, it does emphasise and take seriously “the many difficulties in reaching agreement arising with all kinds of judgements”, especially in normative questions. For Rawls, these “burdens [...] alone can account for the fact of reasonable pluralism” (2001: 35-6).

For cosmopolitanism, this *reasonable* multiplicity is problematic as the cosmopolitan premise's commitment to attributing “equal moral value” to each person and their moral convictions is usually taken to require *consensus* on the theory of justice enunciated (Barry 1999; Rawls 1971, 2001; Beitz 2005 and many others). If there are, however, several theories that seem compatible with the cosmopolitan premise, in order to find a valid cosmopolitan theory of global justice, it is necessary to find a strategy that allows one to select *one* principle or theory of justice, so that everyone could in fact consent to it, ruling out all the others. Differently put, the challenge is to overcome this plurality without doing away with reasonable moral dissensus, i.e. to create a theory of justice that could reach the global *consensus* reflecting the condition of universal acceptability without discarding (reasonably) different moral judgements. Cosmopolitans have attempted this through mainly two strategies: reflective equilibrium and contextualisation.

¹ This idea goes back to Berlin (2003).

One (and arguably the most famous) such mechanism to weigh and choose between principles of justice is Rawls' reflective equilibrium (Rawls 2001: 29-31)². Beginning with a “considered judgement” about justice, a moral position that is “given under conditions in which our capacity for judgement is most likely to have been fully exercised and not affected by distorting influences” (Rawls 2001: 29), one moves to less and less clear situations, re-aligning and adapting both moral intuition, moral principles and considered judgements until they are all in line to “uncover” the moral position that is consistent with first principles and creates outcomes that align with one's moral intuition. This method, according to Rawls, can not only be used to balance between principles and concrete situations *within* the individual (narrow reflective equilibrium) but also as a conflict-resolution tool *between* individuals (wide or, if successful, full reflective equilibrium): if only both individuals reason properly and manage to agree on some common cases of justice, they could reach reflective equilibrium for all other cases by providing justification that can convince the other (Miller 2002: 21-22). Differently put, inter-individual moral reasoning and reflection is to close the gap between diverging conceptions of justice.

So if one person argues that justice requires access to healthcare to be distributed *equally*, while another person argues it should be based on *need*, they were able to think of a different situation in which both thought need or equality were the appropriate principles of justice, i.e. their judgements about justice were the same. By comparing the characteristics of the situation they agree on, as far as they are relevant for the choice of principle of justice, to the dispute about healthcare access, they could reflect about the reasons behind their moral judgements, at the end of which process one of the parties realised that they “made a mistake” in moral reasoning and that they, these mistakes corrected, did in fact agree, i.e. that both now

² See Daniels (2013) for an excellent overview.

thought justice in healthcare should be based on e.g. *equality* (compare Miller 2002: 21-22) and that the initially held conviction that it should be based on need was merely the result of mistaken reasoning.

However, while this strategy might indeed be successful at resolving a number of *prima facie* clashes of principles, it is based on an assumption that denies pluralism. Miller (2002: 23) summarises this best himself, when claiming that “very often when we look at other societies, past or present, and discover practices that we regard as radically unjust [...] what we find is not so much that they understand justice itself in a quite different way from us as that they hold beliefs of a broadly empirical kind that we know to be false”. Thus, he concludes that “the distortion of justice [...] does not go all the way down” (Miller 2002: 23)³. Yet with this claim Miller attributes all differences in moral judgements to mistaken moral reasoning only. Thereby, he illegitimately changes the terms of the problem he was setting out to solve and does not take the “reasonable pluralism” introduced above seriously. Reflective equilibrium, then, cannot help to select between multiple equally plausible conceptions of justice.

The second strategy used to unite diverging accounts of justice is contextualism. If there is no consensus on global justice being equality of opportunity *or* human rights, maybe there is consensus on global justice being equality of opportunity *and* human rights, depending on the context. According to Miller, those defending theories of justice based on one principle only have been “generalising illegitimately from a limited class of cases” (2002: 15). Indeed, it seems that most people's considered judgements on justice do not consist of any single principle of justice but that they see justice to be conceptualised as containing *several* principles, depending on the situation at hand. As Miller puts it: “the problem [...] here is not

³ This phrase is also in Rawls (2001: 32), who traces it back to Nozick (1974: 225).

just that people seem to be invoking a plurality of conflicting principles when asked about concrete issues of justice, but that they are applying different principles to different cases.” (2002: 15) So rather than *equality of opportunity* (or any other principle) being the "right" principle of global justice and *human rights* being a wrong one, both might be legitimate principles of justice, *depending on the context*.

Miller (2002: 21) argues that this contextualisation can be used to overcome the problem of limited pluralism. According to him, disagreements could be overcome by being more specific and once “the context is properly defined” such (only seemingly plausible) pluralism about principles would not occur. If “access to healthcare” was split into “non-lethal” and “lethal” situations, the right principle of justice could be equality in one and need in the other context and the seeming disagreement could be resolved (Miller 2002: 21). What we take as clashes of principle, then, would in reality be merely (solvable) misunderstandings elicited by imprecise speech.

However, this approach is problematic, too. Miller assumes that there is one “proper” context, which is definitive and on which there *is* consensus. But if there are equally plausible principles of justice, it is implausible that there was any consensus on one “proper” context for the very same reasons. Thus, Miller merely replaces the problem of finding consensus on justice (which is undercut by pluralism) with the problem of finding the “proper definition of context” (which is equally undercut by pluralism) and pushes it out of sight, rather than actually solving it.

If this strategy was to be successful it would have to come with instructions on how to establish this “proper context”. Differently put, one would require a mechanism for negotiating, balancing or weighing the different principles according to context, as well as

rules on which principles to apply in which situations – which is merely a reformulation of the task he set out so solve. As Miller does not provide any such strategy and moral reasoning alone cannot work (see above), his contextualist strategy fails.

In fact, Miller and Rawls conflate two problems here: the first is the problem of *poor moral reasoning*, the second one is the problem of (reasonable) disagreement about *moral premises*. While reflective equilibrium and contextualism are a good way of addressing the former, they cannot deal with but only deny the latter: When disagreeing about (legitimate) moral premises, “convincing” the other by extrapolating one's own (narrow) reflective equilibrium or changing the definition of context cannot bring consensus as, epistemologically speaking, both positions are equally plausible. So while setting out to reach consensus, i.e. to choose between several plausible principles under conditions of (reasonable) pluralism as required by the cosmopolitan premise, both Miller and Rawls effectively do away with (reasonable) moral pluralism and tacitly assume a underlying harmony of moral convictions, merely hidden by moral error but accessible through tools of inter-personal reasoning and contextualisation.

Given the difficulties of this problem, it has been attempted to solve it from another angle: instead of devising strategies to select *one* principle, some have challenged the need for consensus on a unitary theory of justice and argued that in “over-determined” situations, it is possible to identify what justice requires even if the individuals hold very different understandings about what justice means, as Miller points out (2005). Admitting that contextualising and reasoning might not solve *all* clashes of principle, he argues that it is possible to agree that justice requires e.g. to feed starving children in Africa from a great many principles, and for very different reasons: either because the child is *equal*, because the child *deserves it*, because one *feels responsible* for the child starving, because the child has

got a *right* for food or because the child *needs* food and so on: “our moral responses to the global status quo are over-determined, and so we can agree in practice about what needs to be done most urgently to promote global justice without having to formulate explicitly the principles that lie behind this judgement” (Miller 2005: 63-4). If this held, the difficult reconciliation between consensus for a unitary theory and the existence of several plausible theories might be unnecessary.

However, this seeming agreement is not sufficient to infer what justice requires or what justice *is* as both the duties to address the injustice and the very nature of the state of justice to be achieved vary significantly between such theories in detail. If, following Pogge (2008), institutionalised human rights form the basis of our duties to help the global poor, a resource transfer that “eradicates world hunger” would be sufficient to address the injustice of global poverty. If, however, the principle of justice applied is global equality of opportunity, as e.g. Caney (2005) suggests, such a solution would not be sufficient, as the problem is not the poor being *hungry* but the poor being comparatively worse off than the rich in the Western world⁴.

More problematically, according to others (Hardin 1974; Badhwar 2006), there is not necessarily an injustice in children in Africa starving if there are limited supplies of food, at least not from a global perspective. For them, it might still be tragic to see them die, but not unjust. There might still be humanitarian reasons of charity or benevolence to supply them with food, but such issues and the related duties, for them, fall outside the realm of justice.

As a consequence, such “over-determination” is not only far more limited than what Miller assumes but also does it, should it exist, not imply agreement on a (coherent) solution for such wrongs, as it remains disputed what the desirable state would look like. Therefore, this “over-

⁴ Caney uses the example of the comparatively smaller chance of a child in Africa to become the director of a Swiss Bank compared to the director's son.

determination” is unhelpful both in identifying *injustice* in cases of ambiguity between theories and in identifying *solutions* and the *corresponding duties* in all others.

Rawls expresses a similar idea as an “overlapping consensus”, arguing that “a comprehensive doctrine” of justice is both unfeasible and unnecessary. Instead of consensus, he suggests that all that is needed is merely the “overlap” between various “comprehensive doctrines” (of morality) that all accept a “basic structure” of society. Although they might accept this structure for different reasons, it nonetheless presents a “a shared point of view from which they can resolve questions” of fundamental justice as required for a “fair” society (Rawls 2001: 32-33).

Yet, this strategy remains equally unsuccessful: while Rawls claims that “consensus” on a “comprehensive doctrine [of justice]” is no longer necessary, what he still does require is a consensus on his “basic structure”, i.e. precisely what we are yet to establish. This is because if the basic structure pre-determines the outcome of the “political” conception of justice following from it, the consensus Rawls assumes is actually not any less comprehensive than the consensus on a fully-fledged theory of justice in the first place (See Rawls 2001: 22-23; 189-194). Differently put, “the general point is that any over-lapping consensus requires agreement on the priority of some set of substantive value” (Dryzek & Niemyer 2006: 635-6), which is more than the cosmopolitan premise can provide.

If, on the other hand, the “basic structure” does *not* determine the outcomes of justice but leaves it to an (elusive) political process, the concrete content of justice remains *indeterminate* and the problem of consensus is displaced merely into the realm of non-ideal theory and the “political process”, where it reappears and remains unsolved.

In consequence, neither over-determination nor an overlapping consensus “offer a general solution [...] for the management of pluralism because [...] a shared set of values [which they require] [...] may not always be available” (Dryzek & Niemyer 2006: 635). Moreover, even if Miller and Rawls *were* right and no *practical* problems through the ambiguity of justice would emerge from an overlapping consensus or over-determination, “we have reasons to care about getting the argument right, even when no practical policy difference will thereby emerge”, as Blake (2011: 557) points out. This is because the meta-ethical pursuit of identifying the nature of justice in ideal-theory can be thought of as analytically independent from the practical requirements of addressing and mitigating wrongs in the real world and therefore deserves an inquiry in its own right.

My analysis shows that selecting *one* theory that follows unambiguously from the cosmopolitan premise has proven an irresolvable challenge: it seems that the difficulties in singling out one theory from the range that are compatible with the cosmopolitan premise are not random or due to a lack of intellectual effort but a direct consequence of the cosmopolitan premise's commitment to consensus in the sight of a multiplicity of theories equally compatible with it. Therefore, if pluralism and consensus can indeed not be reconciled, selecting between principles might be incompatible with the very commitments of the cosmopolitan premise itself and it seems more plausible to assume that the cosmopolitan premise does indeed point only towards a multiplicity of theories of justice, rather than towards a unitary theory of justice. This leaves justice indeterminate in ideal-theory.

2. Indeterminacy and non-ideal theory

Even if it were possible to overcome the difficulties outlined in the section above and develop a unitary theory of justice in ideal theory, such a theory alone would not be of much worth. This is because, in the words of Lamont and Favor (2013): “If it is uncertain or indeterminate how a particular [...] principle might in practice apply to the ordering of real societies, then this [...] is not yet a serious candidate for our consideration”. The point they are trying to make, is that although ideal and non-ideal theory are analytically separate, any credible theory has to provide guidance in non-ideal situations, too. This applies particularly to justice as “justice is not an area where we can say an idea is good in theory but not in practice. If it is not good in practice, then it is not good in theory either” (Lamont and Favor 2013).

Non-ideal theory is more than mere “implementation” of ideal theory but deserves attention on its own right as it poses its own challenges and difficulties. When it comes to guidance in real circumstances, both the abstract set of principles as well as the reality they are applied to need to be interpreted. What cosmopolitan global justice would look like in practice, is therefore shaped not only by the principles chosen but depends on other premises outside of and additional to the principles of justice themselves. Those are (1) epistemological assumptions about the real and the possible, (2) normative assumptions about the relationship between justice and other values and (3) ontological assumptions about the width of the moral realm.

I argue that for all three there is a plurality of answers compatible with the

cosmopolitan premise. The cosmopolitan premise cannot help us choose or provide us with any means for making such a choice as the pluralism introduced above applies in non-ideal theory, too, and consensus is therefore implausible. Hence, the cosmopolitan premise is indeterminate towards the concrete shape of global justice in non-ideal circumstances.

(1) The epistemological criteria that determine the application of agreed principles of justice are first, whether the abstract situation in which a specific principle of justice was agreed to apply does actually *exist* in a specific situation⁵, and second whether it is possible to change this situation to the better, i.e. whether there is a “more just” solution possible. This is because morality cannot demand things which are impossible as: “ought' appears between the real and the possible” (Ophir 2005: 411), or ought implies can, as Kant supposed. In consequence, any assessment of (in-)justice in practice is based on an epistemological position about both, what *is*, and what is *possible*.

So when e.g. Pogge (2008) argues that global poverty was *unjust in practice*, his argument depends on both, global poverty existing today in the way Pogge assumes, i.e. having emerged through the causal involvement of the western world *and* that this poverty was neither *impossible to prevent* nor *necessary*, i.e. that a better way of organising the international economy is feasible and poverty could be cured without incurring other inappropriate (moral or economic) costs.

It goes without saying that there is no consensus on either what is, or what is possible and Pogge has been attacked on both grounds⁶ as there is no “correct” answer to either of these questions. This is because no depiction of reality can be entirely descriptive or inform us

⁵ See Sangiovanni (2008) for an excellent account of that idea.

⁶ See Hardin (1974) and Badhwar (2006) for impossibility to change; Brock (2008) on how to improve it; Kukathas (2006) for justice inapplicable as (just) alternatives are worse. Also and especially Hardin (1974): “the concept of pure justice produces an infinite regression to absurdity”.

about what the world *is really like*, without already implicitly telling us how to act or interpreting this reality. As David Estlund (2008: 263-4) points out, every observation deviates from reality to a certain degree and even the strictest empirical observation always implies a normative bias, through measuring one factor rather than another in one specific way and not another, thereby implicitly attributing higher meaning to this than to other factors which have not been taken into account or by the language used that comes with value-laden connotations of several kinds. Therefore, every description and every analysis is interpretative.

In a similar way is the distinction between the impossible and the improbable/possible often blurry, hard to draw or does not exist at all; this is even more so as both realities and limits to the possible have shown to be historically unstable: slavery, for example, seemed to be part of the *conditio humana* for most of history and abolishing it must have appeared as “impossible” as flying or travelling to other planets. Today, however, slavery is (almost) universally regarded as an unbearable cruelty – and both flying and travelling to other planets have not only become “realistic” but in fact part of contemporary reality (Bell 2010: 9; Geuss 2008: 17-23).

Even though the line between the possible and the impossible is difficult to draw *correctly* but both subject and object of social interpretation and manipulation (Ophir 2005: 339-40), in order to make *any* normative assessment in practice, a position has to be taken. The conceptions used to identify what *is* and what *can be* require the same attention (and have a similar import) as the initial choice of the principles of justice. This holds even more so as the ambiguity about the real and the possible does not only influence the identification of cases of injustice but also the right means of addressing them, once they have been identified. As

Ophir (2005: 339) illustrates, any position taken carries its own moral hazards: The (epistemic) utopian “is cynical about what is and naïve about the relation between the proper and the possible”, while the (epistemic) “benevolent [...] is naïve about what is and cynical about the relation between the proper and the possible”.

Accordingly, whether the “just” solution to address a wrong is „[...]a pill of aspirin or a root canal treatment“, does not only depend on the principle of justice selected but also on the epistemic perspective taken. When Ophir argues that “[...] the right balance between these two poles must be found anew time and again” (2005: 339) he might well be right, but the cosmopolitan premise does not tell us anything about how to make this choice and how this balance is to be achieved: it does not tell us how to interpret the world, what is real and what is possible but remains indeterminate about these issues, stuck between a variety of answers compatible with it. The cosmopolitan premise does not commit to any specific epistemic perspective and realising the “moral value” of equal moral agents (Barry 1999: 65-6) can take many plausible forms. Indeed, it is hard to see how the cosmopolitan premise is incompatible with *any* epistemic perspective as long as it is applied consistently: if a consensus on epistemological perspective is required to make any claims about justice in non-ideal theory, the cosmopolitan premise cannot provide it.

(2) Another challenge to bear in mind is that even if justice could be identified in ideal theory and a clear route of action to realise said justice could be established, it is unclear that the cosmopolitan premise demands that justice is the value that *should* be realised in any particular situation (Kukathas 2006; Hardin 1974, Robinson & Tomez 2009). Ophir (2005: 16), for example, suggests that reduction of “superfluous evil” is an aim superior to justice,

arguing that “questions such as what justice is, how to found a coherent theory of justice, and how to reconcile freedom and equality are marginalised, if not discarded altogether” and Badhwar (2006) more explicitly challenges the often-implicit assumption⁷ that justice automatically trumps all other moral values. Such a position, he claims, is “misanthropic” as it disavows the “pursuit of happiness”, i.e. the chance to have a meaningful and enjoyable life, and underplays the import of creativity, benefice or other values one might hold dear (Badhwar 2006; Hardin 1974).

There is a whole range of moral values other than justice that can be based on the cosmopolitan premise and it is unclear that justice should always be the value to be chosen. In the words of Isaiah Berlin (2003: 12): “Justice, rigorous justice, is [...] an absolute value, but it is not compatible with what may be no less ultimate values [...] – mercy, compassion – as arises in concrete cases”. Differently put, realising the cosmopolitan premise through *justice* might conflict with realising the cosmopolitan premise through other values (say *liberty* or *autonomy* (see section 3). Disregarding this, many scholars such as Singer (2002), Unger (1996), Caney (2005) or Pogge (2008) have simply assumed that *justice* is necessarily both the most important and the most fundamental moral value.

Yet from the cosmopolitan premise, no such statement follows. It might well be compatible with the cosmopolitan premise to sacrifice justice for liberty, peace, human excellence or individual achievement, as the cosmopolitan premise does not tell us that justice is the most important aim to be realised; at all times and at all costs. The cosmopolitan premise does not tell us when trade-offs between values that are compatible with it are legitimate, necessary or forbidden. Yet, exactly such a principle is necessary to posit justice at its appropriate place in the moral universe.

⁷ See Singer (2002); Unger (1996); Caney (2005); Pogge (2008)

If the cosmopolitan premise is to be taken seriously, it seems implausible that justice is the highest value *by default*. Rather, it is not clear that the cosmopolitan premise has any direct link to or particular preference for justice at all. If the cosmopolitan premise does indeed produce a (limited) form of value pluralism, it does not follow that justice is going to be the core value around which it is based and should be realised, either. The problem of cosmopolitanism, then, is not only an ideal-theoretical concern about the multiplicity of compatible principles of justice (see section 1 and above) but reappears in non-ideal theory as a concern about the multiplicity of values more widely. A cosmopolitan theory of global justice would therefore ultimately require consensus on *all* other values and their *relative import* compared to justice to determine when justice is to be applied.

(3) Independent of the ranking of values and prior to it, there is the question of moral concern more widely and the fields in which it operates. To put this more practically, imagine the following situation: two parties agree on equality as the principle of justice to be applied in the distribution of sporting facilities between two villages. One of the villages has tennis courts, the other football pitches⁸. Yet, the principle of justice alone does not tell them whether this situation is *unjust* or not. Either, football and tennis pitches might be considered *equal* as sporting facilities or not (compare above), depending on the epistemological perspective taken. Or, and this is the point I'm trying to make here, even if the answer to this question was negative, the party holding this belief might be inclined to say: "Yes, but it does not *matter*"; this difference is not *unjust* but morally indifferent, in the same way as drinking coffee instead of tea, or eating apples rather than bananas might be considered morally

⁸ I owe this example to Miller (2002).

arbitrary and justice therefore inapplicable.

Ophir has conceptualised this phenomenon aptly: every moral language ranks any particular phenomenon on a scale between the “unbearable” and the “indifferent”, the former requiring urgent action, the latter being of no moral interest. These two poles delineate the limits of the moral domain, with everything beyond them “remain[ing] beyond the scope of moral discourse, constituting one of its [...] limits” (Ophir 2005: 373). Taking this as a starting point, Ophir argues that there will always be an *a priori* moral blind spot due to the very concept of the “indifferent“. Independent of the language one uses, one will rank situations between the “unbearable“ and the “indifferent“ so whatever moral language one comes to use, one is, at least potentially “morally blind” to the concern of other moral agents, because one does not care about the things one considers beyond “zero interest” by definition (2005).

Ophir (2005: 472) terms such cases of unrecognised evil or injustice, which we have not recognised (because they go beyond our moral discourse or we have simply taken them to be “indifferent”) *wrongs*. This does, of course, not mean that everything we feel “indifferent” about is *per definitionem* a “hidden” injustice. Yet the underlying point is well-taken. If every moral language has some form of “blind spot”, i.e. realms about which it feels indifferent and which are *per definitionem* outside of the realm of the “moral” and the width of these blind spots is both historically and geographically unstable (Ophir 2005: 343-6), then it is indeed legitimate to ask when and how both the “indifferent” and the “unbearable” are determined. Differently put, the selection process used to define areas of *moral concern* and *moral indifference*, i.e. to distinguish areas that are morally important (education, healthcare, poverty) from those that are not (garden snails, soft cheese, hair style products), is crucial for realising a set of abstract principles of justice and is informed by other values as well as

epistemic and ontological convictions.

While Ophir's solution to this dilemma is to elusively “problematise one's moral sensibility threshold” (2005: 347), i.e. to constantly re-examine and challenge one's notions of the morally indifferent and the morally unbearable, the cosmopolitan premise does not provide us with any information on how this is to be done, how wide or narrow our moral concern should be conceptualised to realise “global justice”, where or how this “moral sensibility threshold” should be drawn and which (moral) matters are of prime (moral) relevance in general, and in the case of justice. This is because the cosmopolitan's premise's core ideas are *relative* concepts that lack substantive value. The cosmopolitan premise does not tell us just *how much* concern one should have for other humans and *how much* value we should put on human life, yet requires consensus on any one answer chosen. Consequently, there is a multiplicity of reasonable answers, which all realise “equal moral value” and attribute “ultimate moral value” to each human individual (compare Barry 1999: 65-6), which are compatible with the cosmopolitan premise but between which we cannot select.

In summary, the cosmopolitan premise proves insufficient in providing the consensus necessary for a cosmopolitan theory of (global) justice in non-ideal theory. As shown above, such a consensus would have to extend to (1) an epistemological perspective, (2) the relationship between values and (3) the width of the moral realm and moral concern more general. The cosmopolitan premise does not support any particular position on any of these matters but allows for multiple, diverging answers to these questions as it cannot manufacture the consensus it requires to accept one single answer. Therefore, the cosmopolitan premise alone is insufficient to guide us towards implementing an ideal-theoretical account of justice but points towards a multiplicity non-ideal theoretical interpretations of (ideal-theoretical)

cosmopolitan theories of justice.

3. Indeterminacy and political legitimacy

Cosmopolitan global justice is and has to be political. This is true as justice in this sense is not a question of private morality but of institutional design (See Rawls (1971); Lamont and Favor (2013)) and thereby a concept applied in systems that, ultimately, enforce compliance. Thus, merely stating a (internally) cohesive moral theory in its own terms is not enough. For cosmopolitan justice to be enforced, it is not only to show that the theory of justice is morally *plausible* but also that it is *politically legitimate*. Therefore, cosmopolitan justice needs to be backed by an argument about the relationship between politics and morality, and have a conception about legitimate forms of political justification. I argue that the cosmopolitan premise does not have such an inbuilt defence of political authority and therefore remains indeterminate about the possibilities of implementing the moral theories stemming from it, particularly global justice.

The issue of political legitimacy, for cosmopolitan, arises from concerns about coercion. This is based on the assumption that coercion requires justification or is (at least) *prima facie* morally undesirable: if coercion were nothing that required justification or were undesirable as such, there need be no special case made for coercing people to do things, and therefore no case for political legitimacy, either. Yet, the cosmopolitan premise is sufficiently inseparable from the value of autonomy to solicit the position that coercion *requires* justification.

For Raz (1986: 155), coercion is *prima facie* morally reprehensible because it invades people's autonomy by making them “subject to the will of another” and “reducing their options for fulfilling their own projects”. So the “moral cost” of coercion is *not* (only) caused if coercion “change[s] a person's situation significantly to the worse” (1986: 150) (although it might well do so) but remains even if the coercive action leaves the coerced person better off. According to his account “coercion is wrong primarily because it is an affront or an insult and not so much because of its more tangible consequences, which may not be very grave” (1986: 156). Differently put, coercion “as such, [...] is normally an insult to the person's autonomy. He is being treated as a non-autonomous agent, an animal, a baby or an imbecile” (1986: 156). Because of that, it requires justification.

This argument of course only works if one holds autonomy to be of any value (Raz 1986: 156). A position that does not value autonomy does therefore not have to justify coercion. Such a position is not as implausible as it may at first appear. In fact, one might argue with equal plausibility that having only the “right” option might be desirable as it realises different (more important) moral values. Such a perspective would see autonomy as a vice rather than a virtue. In fact, Raz admits: “Autonomy is, to be sure, inconsistent with various alternative forms of valuable lives” (1986: 395).

But remembering Barry's definition of moral cosmopolitanism, as demanding “equal moral value” for individuals (1999: 65-6), the cosmopolitan premise seems hard to imagine without a commitment to autonomy. It is the very vantage point of cosmopolitanism and the cosmopolitan methodology to understand individuals as “part creators of their own moral world” (Raz 1986: 154) and as “significantly autonomous agents” (Raz 1986: 154) so that a meaningful theory of justice can be built from their considered moral judgements; if their

autonomous considered judgements were not valued in cosmopolitanism, the moral consensus explored in the first two sections would be completely unnecessary.

So if autonomy is indeed, as Raz suggests, a concept that touches upon the moral sphere (and there is no reason why it should not), and it is thus legitimate to speak of autonomy as an ability to "form, to revise, and to pursue a conception of the good, and to deliberate in accordance with it" (Rawls 2001: 72), it follows that the individual the cosmopolitan premise posits is in fact autonomous in the sense relevant for Raz. The cosmopolitan premise, then, implies a commitment to moral autonomy. Therefore, it also follows from the cosmopolitan premise that coercion requires justification and coercion without justification is illegitimate.

This claim is rather uncontroversial and has been tacitly accepted by most who accept the cosmopolitan premise. Blake, e.g. states: "autonomy is incompatible with the existence of coercion" (2001: 268) as "coercion demonstrates an attitude of disrespect, of infantilization of a sort inconsistent with respect for human agents as autonomous, self-creating creatures. [...] Coercion, both in itself and because it demonstrates contempt for the individual coerced, is forbidden by a [...] principle that demands respect for the conditions of autonomy" (Blake 2001: 268)⁹.

Yet, the implications of this problem have not been grasped well by cosmopolitan theorists of global justice. While they seem to accept the argument about autonomy and even link it directly back to Raz¹⁰, they often immediately associate themselves with the liberal tradition, assuming both that political legitimacy is possible and can be given through the form of consent. Blake (2001: 273) suggests also that "justification for such [i.e. legitimate] coercion

⁹ based on Raz (1986: 376-78); see also Scanlon (1995: 39-104)

¹⁰ Compare Rawls (1971, 1999, 2001); Beitz (2005); Blake (2001)

can sometimes arise as a result of consent”, merely by asserting that “consent is a possible way to justify what would otherwise be prohibited.” (2001: 274). In fact, he swiftly moves from *actual* consent to *hypothetical consent*, claiming that this “request for justification”, is and can be phrased “rather, in terms of hypothetical consent – not what is consented to, at present, but what would be consented to, *ex ante*, under some appropriate method of modelling rational consent” (2001: 274).

If this was true, moral cohesion and political legitimacy would conveniently collapse into one: the moral consensus explored in the first two sections would also provide the political legitimacy to enforce it.

However, this does not hold due to a specific objection that can be raised against hypothetical consent arguments: Why should I accept being coerced today, simply because I would agree to such coercion *hypothetically* as a rational or moral (cosmopolitan) actor? Differently put, agreeing that there is a duty of cosmopolitan justice to transfer a (significant) part of one's income to people in Africa or that it was rational for everyone to make such transfers is not the same as accepting the legitimacy of an institution that enforces such transfer payments, even if they align with one's own moral convictions (Geuss 2001; Edmundson 1998: 24-31).

Pitkin (1972: 54) makes this gap in legitimacy explicit by exposing the internal logic of the argument: hypothetical consent, he suggests, is not so much based on one's actual *consent* but on the *characteristics of the theory* one has, should, or could have consented to. In this sense, consent as such can be said to have become completely irrelevant: if the theory is one that *deserves* consent or if it was rational (moral, just, equal, cosmopolitan, etc.) for one to consent to the theory, one *must* consent (i.e. accept coercion originating from it as legitimate).

Suddenly only the consent of “hypothetical, timeless, abstract, rational men” (Pitkin 1972: 54) matters.

Yet, it remains unclear why an autonomous agent should bother with *their* consent, rather than his own. The hypothetical consent that was meant to provide the “rational” or “moral” theory with political legitimacy collapses into a mere assertion of the “rationality” or “morality” of the theory it was meant to legitimise, exposing the circularity of the argument.

Indeed, it is hard to see how such arguments can provide any justification for the coercion taking place: Why *should* I consent to be coerced by a theory of justice that is rational, advantageous or matches my moral convictions? While these arguments tell me that I have good reasons to do so or that it might be rational or advantageous for me to do so, it is not clear why the *obligation* to act to to my own advantage, rationally or morally, follows (Pitkin 1972: 54-60). If Pitkin is right, then, hypothetical consent arguments are hardly more than a reformulation of the rationality of the theory itself.

By stepping from *actual* to *hypothetical* consent, Blake has re-introduced a premise of “rationality” or “reasonableness” through the back door, that was not part of the cosmopolitan premise. As he puts it himself: “our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as *rational and reasonable*. This is the liberal principle of legitimacy” (Blake 2001: 287; my emphasis).

Ultimately, (liberal) arguments on hypothetical consent, then, depend on the acceptance of either rationality or some conception of reasonableness that is *not* part of the cosmopolitan

premise. Hence, without adding such a premise, the argument for political legitimacy via hypothetical consent, i.e. the convenient overlap between moral cohesion and political justification, fails for cosmopolitanism.

Making this argument work would thus require one to add a premise of rationality, reasonableness or something of the same effect to cosmopolitanism but it is dubious whether this is compatible with cosmopolitanism in the way envisaged: as any premise dictating (un-)reasonableness invades autonomy, such a premise might undercut the very foundation of cosmopolitan thought. Yet, if such a premise cannot be added, cosmopolitanism cannot rely on the liberal defence for political authority, either.

What Blake confuses and prematurely equates, then, is the role consensus plays as a means to develop a theory of justice and the capacity of (hypothetical) consent to justify coercion to autonomous agents, i.e. he conflates the internal *moral cohesion* of a theory through consensus with the success of establishing political legitimacy via (hypothetical) consent. Given that the concept of justice necessarily implies coercion and coercion cannot be justified from the cosmopolitan premise, cosmopolitanism cannot readily use a liberal defence of political authority (coercion) to realise global justice.

It is important to notice that the failure of this argument does not imply a general rejection of political authority by cosmopolitanism or that cosmopolitanism cannot be combined with political authority at all¹¹. This is because the liberal argument about consent as justification for coercion is often made slightly differently from what Blake's account of it suggests. Compulsory rules do not only threaten and restrict autonomy but also enhance it or make it possible in the first place: traffic rules, such as everyone driving on one side of the road, are in

¹¹ See Simmons' (1993) "philosophical anarchism".

everyone's interest and, uncontroversially, *enhance* autonomy rather than limiting it, as they allow for e.g. quick and safe driving on a public motorway. Such rules bestow individuals with more rather than less autonomy to pursue their life goals autonomously.

This might allow distinguishing between e.g. traffic rules (the enforcement of which would be compatible with cosmopolitanism) and other goals such as global justice, which are not obviously linked to an increase in autonomy (and could therefore not legitimately be enforced, according to the cosmopolitan premise).

Then, enforcement of cosmopolitan global justice remains unjustified *even if* the moral theory itself is sound, pointing towards a tension between the cosmopolitan commitment to autonomy and the realisation of cosmopolitan justice. Thus, the cosmopolitan premise does not equate moral consensus with political legitimacy and it does not follow from the cosmopolitan premise that moral consensus (hypothetical consent) provides political legitimacy. On the contrary, the cosmopolitan premise's demand for autonomy might even *prevent* the imposition of cosmopolitan global justice unless it can be combined with an effective argument for political justification.

Another account of political legitimacy by Williams (2005) manages to avoid some of the problems stemming from the hypothetical consent strand of argument as he strips legitimacy of its “objectivity” and does not become bound up with elusive concepts such as “rationality”, “reasonableness” or esoteric judgements about relative increases or reductions in autonomy. Williams (2005: 2-11) also establishes political coercion as an interaction that *requires* legitimacy, or, more elaborately put, that creates a “basic legitimation demand” (BLD). Williams sets the conditions for political legitimacy rather differently from Blake. Legitimate, for Williams, is whatever “makes sense”, i.e. what people *take to be* legitimate over the course

of history, and this may vary over time: the legitimation demanded by a medieval peasant might be very different from that demanded by a modern citizen in Western Europe, Williams (2005: 6-11, 186-7) suggests. In Williams' terms, legitimacy also allows for deception or illusion as legitimate *modus operandi* of political coercion.

In the extreme, Williams' legitimacy resembles the Weberian understanding of *legitime Herrschaft* (Weber 2002), which is understood to be a merely functional account of whatever the subjects happen to accept. Its concrete form depends on the particular context and the concrete demands for legitimacy made. Hence, different forms of justification might work in different settings: in an absolute monarchy or times of crisis, leaders might not require to aspire for consensus for the policies they try to legitimately implement, as long as they “get away with it” and subjects accept such enforcement: be that the king of Saudi Arabia crushing “blasphemous” opposition or a cosmopolitan Philosopher King enforcing global justice. Therefore, it appears at least dubious to what extent such an approach can provide any legitimacy at all. If “anything [that is accepted] goes”, it seems difficult to see how Williams' theory can distinguish legitimate from illegitimate coercion and avoid to collapse into *might is right* realism.

Leaving these more abstract concerns aside, there is further evidence that Williams' account of legitimacy cannot easily be combined with the cosmopolitan premise. While arguments around hypothetical consent face problems because they assume a unitary notion of reasonableness or rationality by *fiat* which is at odds with the cosmopolitan account of autonomy, Williams' BLD clashes with the other key commitment of the cosmopolitan premise, namely that for equal (moral) value.

The reason is that Williams explicitly acknowledges that his BLD might be historically and geographically unstable. Allowing for different justifications provided to different individuals *according to what they accept* (including manipulation and deception where possible) leads to an effective differentiation in treatment that seems to be very hard to reconcile with the cosmopolitan demand for equality of moral value of those who make these demands. Assuming that the moral value of a peasant who can easily be deceived and that of the scholar who receives a complex justification about any coercive claim made to him would be the same seems highly implausible. Not only would the coercion that could legitimately be imposed on them vary significantly, but the very idea of legitimacy as *what is accepted* implies the re-negotiation of these boundaries through overstepping and testing them. Moreover, an argument about political authority that generates legitimacy *by fiat* is hard to reconcile with the cosmopolitan premise's commitment to consent, as the ensuing mandate for political authority would be wider than the criteria used to establish moral cohesion in the first place, creating an uneasy area of "legitimacy" for political authority that reaches *wider* than the moral realm.

So for the concept of the Basic Legitimation Demand to be successful, one would require some additional premises or restrictions on the cosmopolitan premise that could solve the problems above. I believe these are hard to realise without undercutting the cosmopolitans foundations as a moral theory, of moral equality and ultimate value for human beings.

In conclusion, the cosmopolitan premise does not have an in-built justification for using political power, nor can it be combined with an convincing argument providing the political legitimacy to enforce any moral theories stemming from it. While this does not mean that it is impossible to provide such a defence and prop the cosmopolitan premise with political

justification, what it does mean is that additional premises are required for such a defence to be successful, and these may not be easily compatible with the cosmopolitan premise itself or cosmopolitan global justice in particular. Whilst cosmopolitan politics is feasible and the cosmopolitan premise is not hostile to political authority as such, the cosmopolitan premise remains indeterminate about the possibility of legitimately enforcing the moral theories it sets out to construct. Yet, if cosmopolitanism cannot make use of political authority to implement global justice, it remains truly *indeterminate* how or whether it can be realised at all.

Conclusion

Global justice turns out to be a more demanding concept than it is often assumed. The consensus required, morally, epistemologically and empirically is far more comprehensive than much of the literature admits, as I have pointed out in the first two sections. Whether it can ever be achieved in theory or practice is seriously to be doubted. On consideration, it is not at all that surprising that a strong moral theory, especially one that necessarily involves coercion such as justice, cannot be built from minimalist premises, especially if they are termed as ambitious as the cosmopolitan ones.

This insight demands a certain caution and modesty in theorising, given the strong moral hazard from not taking those concerns seriously. This is particularly so as much of the literature persistently ignores the problems I have hinted at: premises get changed, weakened and muddled with in the process of theory-construction to the point that the theories resulting from such processes have only a strenuous link to the commitments they had set out to realise. Spelling out what exactly is necessary to create a theory of global justice, what its

implications are in practice, which premises it can still share and which have been eroded or given up on the way, will clarify both what is desirable and also what is possible in global justice theorising.

Nonetheless, it is important to separate the implications of my argument for global justice from those for cosmopolitanism, as the literature often conflates the two. Many objections to (cosmopolitan) global justice (Kukathas 2006; Robinson & Toney 2009) target *cosmopolitanism* rather than *global justice*. If such arguments work, it is not because (but independent of whether) the state is special, the cosmopolitan premise is *wrong* or it requires an unrealistic moral psychology¹². Rather, the weaknesses of cosmopolitan global justice stem from the the cosmopolitan premise itself and the various difficulties in reconciling it with the demands for both consensus (section 1 and 2) and political legitimacy (section 3).

While this might come as a blow to cosmopolitanism, it also shows that many of the (strongest) objections to global justice are actually objections to cosmopolitanism, clearing a space in which global justice based on other premises might be constructed.

This may also help to break up the often constructed dichotomy between global and domestic justice¹³. If my argument shows anything, it is that the seemingly clear-cut boundaries between domestic and global justice are not as obvious as they are often drawn: many, if not all of the problems I have outlined also apply to domestic justice, as the tension between reasonable moral dissensus and coercive institutions exists in *any* group that aspires to some form of autonomy and moral equality of its members, independent of group size.

Thus, many of the more hypothetical objections to justice seem to have been overcome on the

¹² For statist see Miller (2008) or Nagel (2005); for moral relativists see Capps, Lynch, Massey (2009: 413-30).

¹³ For debates about borders and citizenship: Ronzoni (2009); Miller (2008); Beitz (2005); Singer (2002).

domestic realm in practice more than in theory and yield promising outcomes. When some of the more artificial constraints imposed through strict cosmopolitanism are removed, the realms of justice might widen considerably compared to the dichotomy between domestic and international settings; even if global justice should be neither fully global, nor necessarily based on cosmopolitanism. For such questions, the methodology and insights generated from theorising about cosmopolitan global justice can be put into excellent use and help advance understanding about the conditions necessary for justice to emerge and the forms it takes in practice.

However, further research might well indicate that different moral matrices are more suitable to address pressing *global* issues such as poverty, destitution or exploitation. Then, political philosophy's current disregard for charity, beneficence and related moral concepts begins to look increasingly untimely.

For cosmopolitanism, however, the prospects seem gloomy. My argument demonstrates clearly not only that the cosmopolitan premise is unsuitable to construct a unitary theory of justice but also that cosmopolitanism has a difficult relationship with political authority and therefore, ultimately, with justice itself.

The lack of legitimacy in enacting global justice seems to be the gravest objection to cosmopolitan global justice at this point and bears special import as it applies to all other moral theories and arguments based on cosmopolitanism, too. It is a particularly striking issue, as while the problems in ideal and non-ideal theory have been addressed (although as I argue ultimately unsuccessfully or incompletely), there is very little literature on the problem of cosmopolitanism and political legitimacy. This is a serious omission for two reasons. Firstly, because of the hazard it causes when ignored (see Kukathas 2006). Secondly, due to

its potential to render the answers cosmopolitanism could give to issues of justice *literally* irrelevant as far as the imposition of global justice conflicts with its stated premises.

At the same time, for those sceptical of cosmopolitanism, both of these lines of reasoning could present a stronger critique of cosmopolitan justice than restating ominous fears about world government, feasibility constraints and the limits of the human moral psychology will ever represent: while cosmopolitanism might remain interesting in constructing moral theories, for all purposes requiring political authority, cosmopolitanism might disqualify itself.

All this said, research in and thinking about cosmopolitan global justice still fulfils an important function and should maintain a place in political philosophy. This is because cosmopolitan global justice has nonetheless the potential to be a powerful language of critique on the international realm. Cosmopolitan global justice might be elusive and under-determined, it might not be able to provide a unitary definition of the “just” in theory and practice and it might lack a legitimate mandate to enforce the just, but nonetheless, cosmopolitanism *can* identify practices that are definitely *unjust* and criticise them for what they are.

The fact that the cosmopolitan premise might allow for a multiplicity of conceptions of the just does not in fact disqualify it from identifying practices that are unjust by *any* of these possible interpretations. In these cases, Miller is right about the “over-determination” discussed above, and if cosmopolitan theorising can help to identify and pillory such cases, this would be an achievement not to look down on.

If the aim of (cosmopolitan) global justice theory was to re-establish scope for moral assessment in International Relations, cosmopolitanism can deliver, even if this does not take

place in the form of a complete theory of justice. A cosmopolitanism, aware of these limitations and caveats has the potential to become a powerful and *universal* language of critique (but not justice). Surely, many will find these limitations disappointing, but in the search for moral standards in complex, diverse and cross-cultural settings, caution and modesty seem well in place.

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