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**Article (Published version)  
(Refereed)**

**Original citation:**

Ypi, Lea (2008) Political membership in the contractarian defense of cosmopolitanism. [The review of politics](#), 70 (3). pp. 442-472. ISSN 0034-6705  
DOI: [10.1017/S0034670508000569](https://doi.org/10.1017/S0034670508000569)

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Available in LSE Research Online: September 2012

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# Political Membership in the Contractarian Defense of Cosmopolitanism

*Lea Ypi*

**Abstract:** This article assesses the recent use of contractarian strategies for the justification of cosmopolitan distributive principles. It deals in particular with the cosmopolitan critique of political membership and tries to reject the claim that political communities are arbitrary for the scope of global justice. By focusing on the circumstances of justice, the nature of the parties, the veil of ignorance, and the sense of justice, the article tries to show that the cosmopolitan critique of political membership modifies the contractarian premises in a way that is both unwarranted and unnecessary. While failing to establish principles of global distributive justice, existing cosmopolitan adaptations of the social contract device simply weaken the method's justificatory potential.

## Preliminary Remarks

Effective political theory marries “why” and “how,” desirability and feasibility.<sup>1</sup> To provide normative guidance to institutional reform, it must fulfil the following two requirements. First, it must identify the principles according to which institutions ought to distribute the benefits and burdens of social interaction. Call this the justificatory task. Second, it must analyze incentives: the reasons particular agents support political arrangements applying those principles to practice. Call this the motivational task.

The present article assesses one recent attempt to cope with both requirements in connection with *global* institutional reform: the cosmopolitan-contractarian defense of distributive justice.<sup>2</sup> It illustrates its flaws in

Earlier versions of this article were presented at the University of Essex Political Theory Conference and at the conference on “The Social and the Political” at the European University Institute. I am grateful to participants at these events, as well as to Renato Caputo, Bob Goodin, Katrin Flikschuh, Peter Wagner, Jonathan White, the editors and referees of *The Review of Politics* for their excellent comments and suggestions.

<sup>1</sup>See Robert Goodin and Philip Pettit, eds. *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 2007), 1–6.

<sup>2</sup>Some relevant contractarian defenses of global justice, upon which I focus more specifically in the following pages, may be found in Charles Beitz, *Political Theory*

undertaking the justificatory and motivational task described above, and it ascribes such flaws to that project's disregard of the normative relevance of particular political communities. It advances an alternative view of the polity's role which, far from weakening the cosmopolitan-contractarian case in favor of global justice, lends support to it.

The article's critique of existent cosmopolitan-contractarian accounts of global justice particularly targets two features of that theory: (1) its commitment to a noncomparative ideal of equality<sup>3</sup> and (2) its insistence that membership in particular political communities is arbitrary for the scope of global justice. That equality is "noncomparative" means that it is possible to determine globally what kind of valid claims for the distribution of primary goods individuals may have, without reference to particular schemes of cooperation or to one's membership in a political association. That political communities are "arbitrary" means that they play no relevant role in the normative analysis of global distributive principles and that they would have no special status if the current global order were reformed following specific principles of justice. Briefly put, cosmopolitan contractarianism claims that it is possible to abstract from membership in particular political communities from both a justificatory perspective (determining what kind of distributive shares parties are rightly entitled to in the world at large) and from a motivational one (focusing on the way in which the justified distribution of resource allocation is endorsed by particular agents and further institutionalized). This essay tries to illustrate where cosmopolitan contractarianism goes wrong

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*and International Relations* (Princeton: Princeton University Press, 1999), 127–83 and 198–216; Charles Beitz, "Cosmopolitan Ideals and National Sentiments," *Journal of Philosophy* 80, no. 10 (1983): 591–600; Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon Press, 1973), 128–32; Darrel Moellendorf, *Cosmopolitan Justice* (Boulder, CO: Westview Press, 2002), 6–67; Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), 211–80 and Thomas Pogge, "An Egalitarian Law of Peoples," *Philosophy and Public Affairs* 23, no. 3 (1994): 155–224; David A.J. Richards, "International Distributive Justice," in *Ethics, Economics, and the Law, Nomos XXIV*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1982), 275–99. Despite his emphasis on some limits of the argument, Simon Caney is also broadly sympathetic to this approach in his *Justice Beyond Borders—A Global Political Theory* (Oxford: Oxford University Press, 2005), 107–115. Some of the claims to which I refer in the following pages, in particular those regarding the distribution of natural resources, are endorsed by Tim Hayward, "Global Justice and the Distribution of Natural Resources," *Political Studies* 54, no. 2 (2006): 349–69 and by Brian Barry, "Humanity and Justice in Global Perspective," in *Ethics, Economics and the Law, Nomos XXIV*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1982), 219–52.

<sup>3</sup>For a first reference to the distinction between comparative and noncomparative ideas of justice, see Joel Feinberg, "Noncomparative Justice," *Philosophical Review* 83, no. 3 (1974): 297–338. My use of the term here is related but not identical to Feinberg's.

with regard to both issues and to explain why. It also emphasizes that it is unnecessary to criticize political communities within a cosmopolitan reconstruction of the contractarian strategy. A strong case in favor of cosmopolitan-contractarian justice could be made even if one conceded the normative relevance of political membership.

To emphasize what this article does not aim to do is also important. It does not try to extend its critique to other defenses of cosmopolitan justice, such as duty-based, rights-based, or consequentialist, to mention but the most prominent ones.<sup>4</sup> It also does not attempt to restate familiar communitarian or particularist objections to contractarianism as such, nor does it emphasize the non-arbitrary standing of political communities in order to undermine the validity of global principles of distributive justice. Its main claim is more restricted, more constructive—and has not been made in the present form. I do not deny the general possibility of using the social contract device to justify global distributive principles; I only argue against present contractarian accounts that consider political communities arbitrary for that purpose.<sup>5</sup>

<sup>4</sup>For a duty-based approach, see Onora O'Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), and "Agents of Justice," *Metaphilosophy* 32, no. 1 (2001): 180–95. The most prominent consequentialist views can be found in Robert E. Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities* (Chicago, IL: University of Chicago Press, 1985) and "What Is So Special About Our Fellow Country-Men?," *Ethics*, 98, no. 4 (1988): 666–83 and Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006). For the rights-based perspective, see Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press 1996) and Charles Jones, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 2001). Although starting with a contractarian strategy of justification in *Realizing Rawls*, Pogge's book *World Poverty and Human Rights* also defends global justice from a rights-based perspective. See Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002). Pogge's apparently shifting position is due to the attempt to develop what he calls an "ecumenical" case in favor of global justice, which appeals to defenders of different strategies of justification. See the clarification in Thomas Pogge, "Real World Justice," *The Journal of Ethics* 9, (2005): 25–53; 36–37. In this article I am only concerned with Pogge's contractarian arguments.

<sup>5</sup>This is also the main difference between my defense of political membership and that of Rawls in *The Law of Peoples*. Indeed, the original position advocated by Rawls in this latter work starts with representatives of states (or peoples) but rejects the possibility of justifying global distributive principles. See John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 118–21. I take Rawls to be right in stressing the relevance of political membership in the global application of the contractarian method but wrong in using this argument to deny the plausibility of global distributive principles. Since I only focus on cosmopolitan applications of contractarianism, I cannot go into the details of Rawls's *global* theory of justice in this paper. Instead I shall discuss some key features of his *domestic* theory of justice as they are endorsed by various cosmopolitan contractarians and emphasize some of the flaws deriving from this endorsement when combined to the cosmopolitan claim for the

What I try to show, therefore, is (1) that contractarian-cosmopolitan critiques of the normative status of political communities are flawed and (2) that such critiques modify the contractarian premises so as to weaken unnecessarily that method's own potential of justification.

In order to illustrate these points I examine a number of contractarian assumptions regarding both the choice situation and the background conditions required to develop cosmopolitan principles of justice. More particularly I focus on some features of the contractarian original position with regards to (1) the circumstances of justice; (2) the nature of the parties; and (3) the use and function of the veil of ignorance. In the following three sections, I endorse the cosmopolitan version of the original position and try to illustrate some of its flaws in facing the justificatory and motivational task discussed above. The principal cause of these flaws is the requirement to abstract from political membership in analyzing the objective circumstances of justice and the subjective constraints of the parties. Exposing some internal inconsistencies of this particular way of applying the contractarian model will serve to refute the argument that political communities are arbitrary for the scope of justice and to illustrate some weaknesses in present cosmopolitan-contractarian defenses of global distributive principles.

### The Circumstances of Justice

Rather than a historical hypothesis on how human beings have come to agree throughout time on specific norms of justice, the fiction of a "social contract" represents in contemporary political theory a methodological device for investigating on the principles according to which the benefits and burdens of social cooperation ought to be distributed. Most famously associated to Rawls's *A Theory of Justice*, the method has recently been deployed by various cosmopolitan scholars trying to extend the findings of Rawls's domestic theory of justice to global political institutions.<sup>6</sup> The idea of an original

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arbitrariness of political communities. For a more detailed discussion of Rawls's *global* theory of justice, see my "On the Confusion between Ideal and Non-Ideal in Recent Debates on Global Justice," paper presented at the *European Consortium for Political Research, 35th Joint Session of Workshops*, Helsinki, May 7–12, 2007, accessible at <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/helsinki/ws17/Ypi.pdf>.

<sup>6</sup>Because of its influence on the cosmopolitan version of the social contract, this article focuses on the adaptation of Rawls's domestic contractarianism to the circumstances of international society. It does not either consider other versions of it such as David Gauthier's account or attempt to redress Rawls's premises where they do not seem quite compatible with classical contractarian theories such as Rousseau's or Kant's. What it tries to do instead is to point at the tensions that the attempt to apply Rawls's domestic theory of justice at the international level generates when

position in which reasonable contractors discuss a number of competing conceptions of justice and determine by overlapping consent the principles that should regulate public social interactions is thus extended to the basic institutions of the world society and deployed to justify global distributive principles.<sup>7</sup>

One of the fundamental premises of contractarian theories is to treat the principles of justice as necessitated by a specific choice situation. This situation is characterized by “circumstances of justice” understood as background conditions that give rise to the necessity of coordinating the claims of conflicting parties with regard to the distribution of certain primary goods. The domestic theory of justice that contractarian cosmopolitans take as a starting point specifies these conditions by endorsing Humean circumstances of justice whereby certain subjective and objective factors make human cooperation both possible and necessary.<sup>8</sup> So, for example, sharing the same geographical territory, scarcity of resources, and human vulnerability to attack, are objective circumstances. The presence of scarcity means that resources are not so abundant as to make human cooperation superfluous, yet scarcity is moderate in that it does not destroy all possibilities for a common venture. On the other hand, subjective circumstances refer to the motivational background of parties considered roughly equal in mental and physical powers: there is a complementarity of needs and interests that makes possible assessing a cooperative venture, and there is a diversity of life plans that gives rise to conflicting claims on the best scheme of distribution. Furthermore, the parties consider their conceptions of the good as worthy of recognition but suffer from several limits, moral and natural, to the full exercise of their human capacities such as knowledge, thought, and judgement.<sup>9</sup>

It is important to examine the global circumstances of justice upon which the cosmopolitan original position relies and to assess the role that the abstraction from particular political communities plays at this point of the

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combined with existing cosmopolitan arguments for the arbitrariness of political communities.

<sup>7</sup>See Pogge, *Realizing Rawls*, 254; Beitz, *Political Theory and International Relations*, 129; Caney, *Justice Beyond Borders*, 107; Moellendorf, *Cosmopolitan Justice*, 7; Richards, “International Distributive Justice,” 278–82.

<sup>8</sup>Rawls’s domestic argument featured in Beitz, *Political Theory and International Relations*, 130–31, and in his “Justice and International Relations,” *Philosophy and Public Affairs* 4, no. 4 (1975): 366–67; as well as in Pogge, *Realizing Rawls*, 242–54. The relevance of being in circumstances where resources are scarce and individuals have an interest to frame principles of justice jointly is emphasized also by Moellendorf, *Cosmopolitan justice*, 20–23.

<sup>9</sup>John Rawls, *A Theory of Justice*, rev. ed (Cambridge, MA.: Belknap Press of Harvard University Press, 1999), 110; Beitz, *Political Theory and International Relations*, 130–31.



argument. Let us consider first the objective circumstances and start with the requirement that parties interact in a defined geographical territory under conditions of vulnerability and moderate scarcity. Several cosmopolitan scholars have suggested that we understand as territory the whole world and emphasize that the global original position abstract from political membership.<sup>10</sup> In circumstances of justice such as these, cooperation under conditions of scarcity would be affected by two main factors: first, the human and social efforts contributing to economic development and influencing the parties' different endowments of primary goods, and second, the "natural" component of human cooperation, those material resources or "utilities derived from any portion of the earth" due to would-be arbitrary factors such as the parties' geographical location.<sup>11</sup>

It is precisely on this second element that the cosmopolitan original position relies in order to justify the need for a global principle distributing natural resources. Cosmopolitans argue that since political communities simply happen to find themselves in resource-poor or resource-rich regions of the earth, political membership is irrelevant in determining to what individuals are entitled in global circumstances of justice. Charles Beitz has considered this claim analogous to Rawls's account of natural talents in the domestic version of the contract and claimed that "citizens of a nation which finds itself on top of a gold mine do not gain a right to the wealth that might be derived from it."<sup>12</sup> Resources must be present in nature before they are

<sup>10</sup>See, for example, Barry, *The Liberal Theory of Justice*, 128–32; Beitz, *Political Theory and International Relations*, 129–36, 143–53; Moellendorf, *Cosmopolitan Justice*, 30–40; Pogge, *Realizing Rawls*, 247 ff. For a similar critique of Rawls's limitation of the original position to domestic societies see also Thomas M. Scanlon, "Rawls' Theory of Justice" in *Reading Rawls: Critical Studies on Rawls' A Theory of Justice*, ed. Norman Daniels (New York: Basic Books, 1975), 202–3.

<sup>11</sup>The expression is taken by Sidgwick and appears in Beitz's characterization of the circumstances of justice in *Political Theory and International Relations*, 136–43. See also Beitz, "Justice and International Relations," 366–67. It must be noticed that Beitz presents two versions of the contractarian argument and that in one of them, while discussing the issue of natural resources, he concedes that the addressees of distributive claims may be representatives of states. This, however, complicates rather than makes more straightforward his position. Indeed, the answer to the general question we are interested in—whether political communities are arbitrary for determining individual entitlements to natural resources and Beitz's claim that they are—remains unchanged in both versions. On the difficulty for states to accept a resource distribution principle on the basis of this latter assumption, see Hayward, "Global Justice and the Distribution of Natural Resources," 352–53 otherwise sympathetic to some of Beitz's claims and David Miller's critical remarks in "Justice and Global Inequality" in *Inequality, Globalization, and World Politics*, ed. Andrew Hurrell and Ngaire Woods (Oxford: Oxford University Press, 1999), 191–98.

<sup>12</sup>See Beitz, *Political Theory and International Relations*, 141. Compare the almost identical statement in Beitz, "Justice and International Relations," 368–69.

appropriated, and “no one has a natural *prima facie* claim to the resources that happen to be under his feet.”<sup>13</sup> Thomas Pogge also emphasizes how “the natural assets in a state’s territory are not a reflection of the moral worth of—are not deserved by—either this state or its citizens.”<sup>14</sup> Brian Barry goes on to make a similar claim when he argues that “the economic prospects of a country depend on something for which its inhabitants (present and past) can take absolutely no credit and lay no just claim to its exclusive benefits, namely its natural resources—including in this land, water, minerals and so on.”<sup>15</sup> Since the members of particular political communities have done nothing to deserve the natural resources lying under their soil, the parties in global circumstances of justice are entitled to an equal portion of the earth’s natural resources, regardless of their political membership.

This argument is problematic.<sup>16</sup> In the following pages, I try to show how it is both difficult to argue that political communities are arbitrary for the distribution of natural resources and also unnecessary to a contractarian-type of case in favor of cosmopolitan justice. From the point of view of the former, I will try to clarify what it means for resources to be available in nature and what role political communities might play in the claims of individuals to an equal share of them. From the point of view of the latter, I shall argue that focusing on the arbitrariness of political communities for the distribution of natural resources unnecessarily weakens the use of contractarian strategies to justify cosmopolitan distributive principles.

### *Where the Arbitrariness-Argument Goes Wrong*

Let us start with the first objection. Let us suppose that particular citizens of particular countries have done nothing to deserve the wealth that could be derived from the gold mine lying under their feet. Now the example of the gold mine that Beitz provides to illustrate what one finds in nature is already problematic since it is obvious that mines are not usually “found”

<sup>13</sup>Ibid.

<sup>14</sup>See Pogge, *Realizing Rawls*, 225–250. A similar desert-based argument has led Pogge to justify a global resource dividend. See his “An Egalitarian Law of Peoples,” 155–224.

<sup>15</sup>See Barry, “Humanity and Justice in Global Perspective,” 219–52.

<sup>16</sup>The argument has been articulated at greater length by Charles Beitz. However, my remarks apply not only to Beitz but also to the other authors mentioned above, as well as to those scholars who have endorsed Beitz’s claims on natural resources without questioning their coherence and indeed necessity from a contractarian perspective. See, for example, Hayward, “Global Justice and the Distribution of Natural Resources,” 349–69 and Caney, *Justice Beyond Borders*, 107–15. Although Caney does recognize some limitations of the cosmopolitan contractarian argument in delivering a complete theory of global distributive justice, he fails to see the role played by the critique of political membership in determining those limitations and is otherwise sympathetic to Beitz’s argument on natural resources.



but constructed, in which case it may not be entirely arbitrary that those who constructed the mine are also entitled to its product. I will not comment more on this point but simply assume that Beitz has wrongly used the word “mine” where he perhaps intended to refer to gold “reserves.” The difficulty even with this latter assumption is that it is not the arbitrary fact of being out there, ready for use, that makes gold reserves amenable to the production of wealth. Gold reserves would not produce any wealth unless those potentially profiting from this wealth knew that it would be possible for it to do so. Whether given resources are needed and for what purpose does not depend on their availability in nature but on the social meaning they acquire and the use that is made of them. So while it may be true that the simple location of natural resources is arbitrary from a moral point of view, this arbitrariness is also irrelevant. What matters here is not determining whether individuals are justly entitled to an equal share of resources that *could* produce wealth but whether they are justly entitled to those that do. And in order to answer this latter question, one has to establish whether the significance for use and potential value of such resources are everywhere the same regardless of community membership.

In order to understand that they are not, and that community membership constitutionally affects the social meaning of natural objects, consider the following anecdote that Marx tells when explaining the fetish character of commodities:

No divinity was so deadly to the savages as gold, which they believed certainly to be the Fetish of the Spaniards, judging the type of the Spaniards belief according to their own and according to the profound veneration they saw in the Spaniards for this metal. The barbarians of Cuba, knowing that a flotilla from Castille was going to descend on their land, judged that they had better conciliate first to the God of the Spaniards, and then distance it from themselves. They gathered all their gold in a basket. Behold they said the God of these foreigners; let us celebrate a festival in its honour in order to obtain its protection; in this way we will make it depart from our island. They danced and sang according to the way of their religion around the basket, then threw it in the sea.<sup>17</sup>

The Cubans are thus unaware of the value of gold; they have simply observed that the Spanish adore it and have assumed that it must therefore constitute their god. It is not a natural resource they lack—the Cubans dispose of plenty of gold, but they ignore the use that could be made of it. If their

<sup>17</sup>The note is found in an unpublished manuscript in the Institut für Sozialgeschichte in Amsterdam. Marx seems to have taken the anecdote from the book *Du Culte des Dieux Fétiches ou Parallèle de l’Ancienne Religion de l’Egypte avec la Religion Actuelle de Nigritie*, 1760 by the French writer Charles de Brosses. My quotation is taken from Kevin MacLaughlin, *Writing in Parts: Imitation and Exchange in Nineteenth-Century Literature* (Stanford: Stanford University Press, 1995), 13–14.

understanding and that of the Spanish naturally converged, they would have perhaps hidden the gold, exchanged it for other benefits, or traded it to their own advantage. Instead, interpreting the behavior of the Spanish according to their specific cultural categories, they think it more appropriate to dance and sing around gold, throw it into the sea, and hope that this will suffice to expel the Spanish.

It seems clear that the kind of society to which both the Cubans and the Spanish belong is not indifferent to the way gold is valued and the use that is consequently made of it. The difficulty with accepting the cosmopolitan claim on the arbitrariness of political communities resides in its assumption that the value given and, consequently, the use made of primary resources do not depend on their social meaning and on collective efforts to render them valuable. This argument, as one can see, wrongly focuses on individual entitlements in *natural* circumstances but underestimates the role of collective *social* and *political* factors.

Here two possible objections might arise.<sup>18</sup> The first one is that even though one might agree that community membership plays a relevant role in shaping the social meaning of natural objects, it is not clear why the boundaries of such a significance-conferring community ought to be specifically *domestic* political boundaries. The example above, one might argue, obscures the fact that the interest of Spain for gold was common to all European states at the time, thus inviting us to consider that the boundaries of the significance-conferring community might be wider than those of particular states.

Before we attempt to respond to this objection and clarify how specifically domestic political factors might have an important role to play in the valorisation of natural resources, let me emphasize that such an objection does not contribute to strengthening the individualist cosmopolitan case in favor of the arbitrariness of political communities. It does not, in other words, show that it is possible to determine what natural resources individuals are entitled to if we completely abstract from community membership. Indeed the objection above grants that community membership matters but asks us to show why it is that domestic, political boundaries are more relevant than additional social or cultural ones. Notice, however, that in so doing such an objection implicitly undermines the cosmopolitan case for an individualist distribution of natural resources with which we started. The objection, that is, does not prove the correctness of the cosmopolitan arbitrariness argument; it does not show that it is possible to determine what individuals are entitled to if they are considered *as such*. It simply tries to extend the relevance of political communities to take into account additional collective features and requires

<sup>18</sup>I am grateful to the anonymous reviewers of this journal for inviting me to consider them.

clarifying the specific role of state institutions in determining different ways of relating to natural resources.

By focusing precisely on the case of Spain in the sixteenth century, I try to show below that even in the presence of a general awareness on the relevance of natural resources (such as that shared by European elites at that time) domestic institutions mattered tremendously for understanding the performance of, for instance, Spain, France, and Holland with regard to the optimization of natural resources. Before I go into the details of such claims, let me emphasize what an objector would have to show in order both to prove the arbitrariness of political communities and to strengthen the case for an individualist approach to natural resource distribution. In order to succeed with both tasks, a critic would need to argue for a global overlap in individual judgments with regard to which natural resources ought to be considered valuable. This is precisely what the second objection attempts to show.

The second objection emphasizes that even though social meaning might have mattered in the past in relation to conventionally precious metals, this does not seem to be the case under current global circumstances of injustice where all actors involved seem to know what counts as relevant and scarce resources. Gold may not have been valuable for Cubans a few centuries ago, just as oil may not have been considered valuable by the citizens of Kuwait when it was first discovered. But when everyone is exposed to the pressure of the same international markets, as in current global economic practices, it seems hard to concede that people will fail to converge on their judgment of what natural resources produce wealth.

This objection targets only the idea that it seems difficult in a globalized world to abstract from community membership, as far as epistemic considerations determining which natural resources are likely to produce wealth are concerned. It does nothing to discredit the thought that those who have tried to transform potential wealth into actual wealth are entitled to the benefits of their work or should be held responsible for its loss. Products are not “found” in the state of nature, and individuals do not enrich themselves by bumping into inherently valuable natural resources. Instead, even natural resources must be analyzed, extracted, exchanged, traded, and so forth. Human labor, scientific and technologic expertise, background infrastructures, and societal, cultural, and political circumstances are essential to the production of wealth. But how do we move from here to the fact that political boundaries and domestic political factors have a relevant role to play in this process?

Re-examining the case of Spain and its incredible rise and fall between the sixteenth and seventeenth centuries might help us illuminate the issue at stake here. Early sixteenth-century Spain was one of the largest political hegemonomies in Europe, influenced by Erasmian thought and in close contact with the rest of the Continent’s cultural centers. Ambitious monarchs, such as Ferdinand and Isabella of Castile, approved the Navigation Acts, invested resources in maritime enterprises, and together with Charles V played a major role in determining the success of colonial enterprises. All the treasure

entering Europe during the sixteenth century passed through the ports of Spain. No other state had access to the American mines, and the Spanish were the first to perfect amalgamation processes for extracting precious metals such as silver and gold.<sup>19</sup>

Within only one century—roughly after 1598—large parts of the Spanish population were on the verge of famine, maritime investments had practically ceased, and following several naval defeats, the Spanish flag is said to have disappeared from the seas.<sup>20</sup> Historians claim that the cause of this failure of the Spanish culture was “hidalguia,” the dissolute habits of the aristocracy, their avid expenditures on castles and jewelry instead of investing in technological advancements, and the absence of an administrative reform for tax collection. In addition to these factors, the persecution of Jews and Moors led to the migration of some of the most industrious and entrepreneurial members of the country. Also the prevalence of Catholic bigotry and the consolidation of the Inquisition prevented students from attending foreign universities, impeding any intellectual exchange and rendering scientific and technological innovation improbable.<sup>21</sup>

It is not necessary to focus on further historical details or to dwell on the morality of the colonial enterprise as a whole. Suppose colonized states were not violently deprived of their resources but rather agreed to concede the use of their territory for some other benefit, say, because the Spanish promised to build schools in return. The point is that the mere availability of resources in nature seems irrelevant for determining how much Spain was able to profit as opposed to other European countries. Failure to adapt Spanish techniques to the French and Dutch standards of shipbuilding, to update technological expertise, and to advance scientific inquiry seem to have been among the primary causes of the decline in extraction and trade standards, leading to the decline of the country’s shipping industry. The nearly exclusive access to gold reserves that Spain enjoyed in the New World was unable to prevent the economic misery caused by a sinister development in its political system and by the obtuse choices of its narrow-minded leaders. Out of fear for the contagion of heretic thought, Spain was unable to compete with its neighbors and keep pace with the political and cultural reforms that were taking place in Europe, thus losing the advantage it initially had in natural resources. The causes behind the rise and fall of Spain in the sixteenth and early seventeenth centuries and its inability to compete with other European nation-states seem ascribable to domestic factors: factors which differ from country to country, including the state’s class structure,

<sup>19</sup>Earl J. Hamilton, “Imports of American Gold and Silver into Spain, 1503–1660,” *The Quarterly Journal of Economics* 43, no. 3 (1929): 436–72, 437.

<sup>20</sup>Earl J. Hamilton, “The Decline of Spain,” *The Economic History Review* 8, no. 2 (1938): 168–79, 170.

<sup>21</sup>John H. Elliott, “The Decline of Spain,” *Past and Present* 20 (Nov., 1961): 52–75.

its particular legal system, specific minority policies, its dominant religious tradition, and so forth.<sup>22</sup>

Membership in a particular political community need not entitle citizens to the primary resources that just happen to be territorially available, but the same does not hold for the product of their use once they are made accessible through collective human labor.<sup>23</sup> Yet it is this and only this latter feature that seems relevant for distinguishing, of all the resources present in nature that could potentially produce wealth, those few that are able to do so as a matter of fact. The claim that “the citizens of a nation which finds itself on top of a gold mine do not gain a right to the wealth that might be derived from it” is true so long as we are clear that “might be” is very different from “is.” But what “might be derived” from natural resources is also irrelevant. Indeed as soon as that abstract possibility becomes a matter of fact, those contributing to the actual conversion of natural resources into wealth may, by virtue of their efforts, have a justified claim to that wealth just as they may, by virtue of their misdeeds, be considered responsible for its loss.

Notice that I have explicitly left aside the empirical discussion on whether access to natural resources is, indeed, the most important variable determining economic growth, all things considered. This question is controversial and requires much more empirical work to be settled.<sup>24</sup> Instead I have tried to show that even if we grant that natural endowments play a primary role in influencing material development, it would be impossible to abstract completely from community membership in determining how various agents value accessibility to natural resources, what use they make of it, and consequently who is entitled to what.

That membership in a particular community is essential to determine how one uses particular resources does not mean that any cosmopolitan attempt to search for globally distributive principles is inevitably bound to fail. It only shows that if cosmopolitans choose to pursue contractarian strategies in justifying global distributive principles, such strategy should avoid desert-based claims on political membership.

Of course, one might object here that even if it is impossible to abstract completely from the input of human labor and collective political responsibility in determining who is entitled to what, we might still consider unjust

<sup>22</sup>For a different critique of the natural resources argument, see David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 58–62. I believe, however, that Miller’s claims do not prove the impossibility of justifying a global, distributive principle but only a specific way of applying the principle which seeks to equalize the position of individuals worldwide.

<sup>23</sup>A referee suggests that one might reach the same conclusion by applying a Lockean labor theory of value. For reasons of space, I regret not being able to explore the implications of such suggestion in further detail.

<sup>24</sup>See the discussions in Dani Rodrik, ed., *In Search of Prosperity: Analytical Narratives on Economic Growth* (Princeton: Princeton University Press, 2003).

an uneven allocation of natural resources in the presence of equal amounts of effort. So, for example, if both Spain and the Netherlands were characterized by a very similar political system, very similar social conventions, and the same population size, but the Netherlands fared worse as a result of their inability to access natural resources, we might consider it an injustice that Dutch citizens have to work harder to compensate for not having been blessed by nature in the distribution of natural resources. This objection does not, however, challenge the relevance of political communities in determining entitlements to the product of collective efforts; it merely shows that political membership is an irrelevant factor in the distribution of initial endowments. Something may be irrelevant without being morally arbitrary. But if the defense of political communities is irrelevant (not wrong) for that initial process of endowment-distribution, so is the cosmopolitan critique that usually accompanies it.

### *Where the Arbitrariness-Argument Becomes Unnecessary*

This realization leads us to the second, more serious, objection to the cosmopolitan-contractarian critique of political communities. As I will attempt to show, not only is such a critique misleading, but it is also unnecessary to the cosmopolitan case for global distributive justice. To understand this point, it is important to consider how the argument on the arbitrariness of political communities implicitly modifies the assumptions made in contractarian circumstances of justice. Recall that according to the contractarian premises with which we started, all that is required for given circumstances to qualify as objective circumstances of justice is for them to be characterized by a conflict over scarce resources and by a common interest in solving that conflict. The contractarian perspective on the circumstances of justice is skeptical about the roots of this conflict and does not attempt to ascribe causal responsibility to any of the parties involved or examine who was or could have been justly entitled to possess what, prior to the conflict in question. The contractarian account is silent on how the parties found themselves in those specific circumstances of justice, and desert-based considerations are alien to the deduction of specific principles of justice.

This point is particularly clear in Rawls's domestic theory of justice, which, as it has been pointed out, inspires several cosmopolitan-contractarian reconstructions of the original position.<sup>25</sup> Indeed, as Rawls puts it, "the principles

<sup>25</sup>The focus on Rawls's claims is important since the authors we are considering have no wish to depart from Rawls's contractarian assumptions in *A Theory of Justice* while reconstructing a cosmopolitan original position. Beitz for example emphasizes that "if one is inclined to reject Rawls's theory in the domestic case, then the case for a theory of global justice like the one suggested below is correspondingly weakened" (*Political Theory and International Relations*, 129). Thomas Pogge argues that his defense of



of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it."<sup>26</sup> What matters is neither how the conflict came about, nor who is entitled to what, but in what way it continues to affect the parties' life in common and what kind of consequences it has for our fundamental social institutions.

This means that the principles that will eventually guide the re-allocation of scarce resources are not historical principles trying to identify at which point in time a presumed just process of appropriation was interrupted. They are instead "end-result principles" according to which the justice of a distribution is determined by "how things are distributed (who will get what) as judged by some structural principle(s) of just distribution."<sup>27</sup> In the contractarian account, the principles determining the distribution of resources are pure procedural ones resulting from an agreement among parties in the original position.

How does the cosmopolitan argument on the arbitrariness of political communities implicitly modify the contractarian account of the circumstances of justice? It does so by introducing an entitlement-based conception of justice that shifts focus from the social consequences of a specific allocative process to its initial starting point.<sup>28</sup> By asserting that membership in a political community is arbitrary with regard to what natural resources citizens deserve, cosmopolitans substitute the need for patterned principles of just distribution with a query into the historical principles of just acquisition.<sup>29</sup>

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contractarianism "is meant to show that Rawls offers a sound basis for progress in political philosophy as well as for political progress" (*Realizing Rawls*, 1). Simon Caney also believes that "Rawls's domestic theory of distributive justice ... impels us to apply this theory globally" (Caney, *Justice Beyond Borders*, 116).

<sup>26</sup>Rawls, *A Theory of Justice*, 275. It is only too unfortunate that Rawls himself appears to have abandoned this important claim in his further discussion of global distribution in the *Law of Peoples*, where he introduces desert-based claims in assessing the causes of national economic development.

<sup>27</sup>For the distinction between historical and patterned principles of distribution, see Robert Nozick, *Anarchy, State, Utopia* (Oxford: Blackwell 1974), 153–54.

<sup>28</sup>Cosmopolitans make precisely this move when they focus on the "entitlements" of individuals and inquire on the causes of the wealth of particular societies. Simon Caney, recalling Brian Barry on this issue, argues that "there is no ground for saying that the member of the prosperous society can claim to be entitled to more" (*Justice beyond Borders*, 112). As I try to show below, he is too quick to make this statement. There may be such grounds, but if one consistently embraced the kind of contractarianism that cosmopolitans initially claim to embrace, they would not bear the weight that an entitlement-based perspective assigns them.

<sup>29</sup>Beitz acknowledges this point when he claims, in response to critics, that his ideas "would lend support to an argument for some global redistribution to compensate for the uneven distribution of natural resources or to rectify past injustices" (Beitz, *Political*

Yet this process implicitly assumes that the solution to the conflict over resources in given circumstances of justice is the identification of the unjust causes of the initial process of resource allocation. The kind of principles to which such an analysis leads is contained in the Lockean proviso requiring that parties leave “enough and as good for others” in the original process of acquisition. Many cosmopolitans seem to sympathize with this approach.<sup>30</sup> Yet they fail to recognize the tension between such principles and the contractarian premises with which they start. Let us see why.

Suppose we wanted to show the arbitrariness of political communities in determining entitlements to the wealth produced by natural resources. We would first need to distinguish between human input and raw natural resources, and while granting that political communities play a role in the former, we would have to abstract from them with regard to the latter. We would then presumably identify some kind of historical principle in order to distribute equally natural resources in accordance with the Lockean proviso. But it is not clear how this would help to resolve the conflict in existent circumstances of justice with which the contractarian account starts. Even more unclear is how it could justify the selection of “distributive” principles, requiring a continuous re-allocation of primary goods, say, in the “difference principle” form. A historical analysis of the circumstances of justice would lead, at best, only to rectifying past injustices in acquisition. Following an entitlement-based conception, once the process of rectification is over, one is free to ignore the further consequences of specific interactions, however great the inequalities produced by them.<sup>31</sup> The logic underpinning an attempt to identify the historical patterns of resource acquisition is such that only the original processes of acquisition and transfer, not their outcome, matter. This rules out the possibility of identifying end-state principles of distributive justice of the kind made necessary every time—for whatever reason—the parties find themselves in specific circumstances of justice.

One could of course argue that cosmopolitan contractarianism may reconstruct the circumstances of justice in a way that ascribes conflict to an initial injustice in the process of acquisition. Once that conflict is over, cosmopolitan contractarianism might be satisfied with whatever

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*Theory and International Relations*, 169). He doesn't seem to realize that the kind of principles one obtains starting from these premises are very different from the ones he initially tries to justify on contractarian grounds.

<sup>30</sup>See, for example, Beitz, *Political Theory and International Relations*, 139; Hayward, “Global Justice and the Distribution of Natural Resources,” 360–61. Pogge explicitly uses the Lockean argument in justifying a global resource dividend in his “An Egalitarian Law of Peoples,” 200–201.

<sup>31</sup>See the justification of this point in Nozick, *Anarchy, State, Utopia*, 162–63.

inequalities arise as a result of successive interactions and ignore the need for further distributions of primary goods. Yet this statement would be incompatible with the cosmopolitan commitment to distributive equality as an end in itself: the idea that everyone is entitled to equal standards of well-being that constitutes the moral core of the theory. Equality in an entitlement-based conception of justice constitutes merely a starting point, not a goal to realize each time a distributive conflict threatens the stability of society. However, it is precisely this conflict, whatever its origin and the material deprivation to which it leads, that seems to preoccupy cosmopolitan contractarians at the global level.

In summary, arguing that political membership is arbitrary in determining an individual's entitlement to a portion of the earth's natural resources is irrelevant for resolving conflicting claims in contractarian circumstances of justice. Showing that the citizens of particular political communities do not deserve the wealth they have acquired is difficult, but it is also unimportant. For even if those individuals or communities did deserve that wealth (as they indeed may), we would, true to our contractarian premises, assess the circumstances of justice from the point of view of their consequences on fundamental global interactions, not from the point of view of how it came about. And here the argument on the arbitrariness of political communities would become superfluous. Indeed, even accepting that political communities are not arbitrary in determining entitlements, one might argue that relevant international circumstances of justice override desert-based claims of both communities and individuals and require us to rethink the principles promoting global equality.

Consider the case of migration or the pressure of environmental threats. These are only two examples of globally pervasive conflicts: they affect every political community in the world, and everyone has good reason to seek principles that resolve the tensions they produce. But it is not clear how desert-based considerations on the arbitrariness of political communities help us to identify the principles needed. For example, even if companies had a legitimate claim to the wealth derived from their activity, we would not think it inappropriate to tax them for the sake of a cleaner environment, given the potential impact of environmental disaster on everyone's life. Or even if some countries had deserved some additional wealth drawn from the use of natural resources, we would not think it inappropriate to require they sacrifice part of such wealth to accommodate the claims of refugees fleeing from starvation or genocide. But the principles drawn from desert-based considerations, grounded on the arbitrariness of political communities, give us no normative tools for dealing with such issues.

For standard contractarians, valid principles of justice in given conflictual circumstances—no matter how they arise—are those that no one could reasonably reject. But it is not clear how the argument on the arbitrariness of political communities contributes to their identification. Only the impact of a particular conflict in given circumstances of justice and the reasons

agents might have to solve it must be taken into account while reconstructing the contractarian perspective on global justice.<sup>32</sup> Anything existent cosmopolitan accounts add to this loads the argument with unnecessary claims turning contractarianism into a weak, justificatory strategy.

### The Nature of the Parties

Having illustrated some weaknesses in the cosmopolitan reconstruction of the contractarian account from the point of view of the circumstances of justice, I now examine its critique of political communities by analyzing the nature of the parties involved in the original choice situation. The previous section emphasized how the cosmopolitan account of the circumstances of justice modifies the contractarian premises in a way that, even if justified, would lead to a different set of principles from the ones originally required. This section tries to show how abstracting from political membership and relying on a cosmopolitan account of the original position is unwarranted and renders those principles unnecessary.

First, the section argues that the cosmopolitan reconstruction of the original position modifies and ultimately weakens the contractarian account of the subjective circumstances of justice. Second, it emphasizes that even if one accepts it hypothetically, the degree to which it moralizes the parties is so considerable that it becomes difficult to understand why principles of justice are needed in the first place. Finally, it suggests that a cosmopolitan-contractarian need not ground his case in favor of global distributive justice on dubious assumptions about the arbitrariness of particular political communities. One can instead start with an idea of agents embedded in particular social and political relations and consider political membership an important factor for establishing principles of distributive equality.

### *Where the Arbitrariness-Argument Goes Wrong*

Let us first clarify the nature of the subjects in cosmopolitan circumstances of justice. Without rejecting Rawls's domestic account on the circumstances of justice, Pogge starts with an idea of the global original position in which the

<sup>32</sup>For a further discussion of how one could justify global distributive principles, starting from circumstances of justice that do not need to abstract from the parties' political membership, see my "Sufficiency, Equality and Power: A Statist Defense of Global Egalitarianism" (Paper presented at the Social and Political Theory Seminar, Research School of Social Sciences, Australian National University, December 2007). For alternative interpretations that only justify principles of assistance to burdened societies, see David Miller, *National Responsibility and Global Justice*, 163–200. Thomas Nagel, "The Problem of Global Justice," *Philosophy and Public Affairs* 33, no. 2 (2005): 113–47 and John Rawls, *The Law of Peoples*, 106–118.

“parties are representatives of persons, never of associations or states.”<sup>33</sup> Other cosmopolitans pursue this argument further. According to David Richards, since “one’s membership in one nation as opposed to another and the natural inequality among nations may be as morally fortuitous as any other natural fact,” all individuals are entitled to be included in the global original position as such.<sup>34</sup> For Charles Beitz, “if the original position is to represent individuals as equal moral persons for the purpose of choosing principles of institutional or background justice, then the criterion of membership is possession of the two essential powers of moral personality.”<sup>35</sup>

The cosmopolitan original position, although claiming to start with a roughly analogous account to the domestic circumstances of justice, modifies its assumptions with regard to the nature of the parties in a way that makes it impossible to deliver the required principles of distributive justice. In standard contractarian accounts, Rawls’s domestic contractarian theory of justice relates to Hume’s account of society where parties are engaged in conflict, as well as agreement, of interests. Cooperative interactions are due to the interdependence of needs and interests, rough equality of power, and the limited natural and intellectual abilities of the parties. As Hume puts it: “By the conjunction of forces our power is augmented: By the partition of employments our ability encreases [*sic*]: By mutual succour we are less expos’d to the fortune of accidents.”<sup>36</sup> The need for principles of justice arises when equally motivated parties are willing to work together to resolve conflicting claims and to identify institutions that distribute fairly societal benefits and burdens.<sup>37</sup>

But how does the cosmopolitan original position reframe the subjective circumstances of justice? And what role does its critique of political communities play at this point of the argument? The first relevant difference concerns the presupposition of the rough equality of individuals in the global original position. While we can, indeed, assume that within particular political communities human beings are more or less equal in power due to their development in similar cultural circumstances and to their joint involvement in framing collective social institutions, it is obviously not so if we

<sup>33</sup>Pogge, *Realizing Rawls*, 247.

<sup>34</sup>See Richards, *A Theory of Reasons for Action*, 290.

<sup>35</sup>Beitz, “Cosmopolitan Ideals and National Sentiments,” 595.

<sup>36</sup>David Hume, *A Treatise of Human Nature* (Oxford: Oxford University Press, [1739] 1985), 486. Rawls in *A Theory of Justice* underlines how his own account of the subjective circumstances of justice “adds nothing essential” to Hume’s “much fuller discussion.” As already emphasized, the contractarian cosmopolitans we are considering are also keen to emphasize that their account of the original position is simply an extension of Rawls’s domestic contractarian account. For this reason, I assume that the relevance of circumstances of justice in constructing a contractarian-type of argument in favor of global distributive justice remains the same.

<sup>37</sup>Rawls, *A Theory of Justice*, 109.

consider how very different social environments, standards of education, and cultural backgrounds shape different life expectations. The construction of a global original position cannot ignore how particular social, political, and linguistic boundaries might exert a deep impact on the claims people make on each other and on the strategies chosen to pursue specific ends. Those differences in cultural, educational, or religious backgrounds are so relevant that they might ultimately affect the very possibility of identifying a common set of primary goods subject to distributive requirements.

Consider the following example that cosmopolitan contractarians often suggest to show the relevance of global circumstances of justice where the parties coincide with individuals and political membership is deemed to be irrelevant. Suppose we start with a global original position where, for example, individuals from Papua, New Guinea, and individuals from Sweden are represented. It would be difficult to see how membership in each could be considered an arbitrary feature and how cultural, linguistic, and educational backgrounds would not affect the bargaining capacity of such individuals. It is absurd to assume that the citizens of Papua have roughly equal needs and interests to the citizens of Sweden and to conclude from this that they would also converge on the primary goods to be distributed worldwide. At least in the present stage of human development, the needs and interests contributing to make certain social goods desirable do not arise merely in response to natural motives but are mediated by cultural and historical factors, the organization of labor, standards of education, and so on. As the collective social and political environment that shapes the character of individuals as well as their social preferences, political communities cannot simply be ignored. Reducing membership to an arbitrary feature or pretending that one can abstract from it without affecting the way in which the parties will interact to choose specific distributive principles turns contractarianism into a much weaker justificatory strategy.

Of course such cultural and educational differences between individuals matter even in domestic circumstances of justice. However, sharing a public political culture and being aware of the general facts of social cooperation that influence an individual's position within domestic institutional structures mean that the chances of converging on a set of primary goods are much greater in domestic circumstances. I will return to this point when discussing the "veil of ignorance" and its relation to political membership. Here it is important to be clear that the argument I have put forward does not oppose the idea of an original position but only those defenses of it that ignore political membership.

But consider the following objection. A critic might say that if the parties in the original position did not know to which country they belonged, if they did not know whether the subjects in circumstances of justice were Papuans or Swedes, for example, they would converge on global principles of justice satisfying Papuan and Swedish people alike. Such principles would reform the world-political institutions in a way that provided individuals with



equivalent opportunities worldwide, thus designing a system of international cooperation that benefits all of them, regardless of the country of their origin. But if we accept this suggestion, we encounter the well-known difficulty of identifying what exactly equal principles of justice consist of.

This problem may be summarized as the “metric problem.”<sup>38</sup> The metric problem emphasizes the difficulty, culturally and politically, of identifying a unique measurement or metric of distribution that equally suits every individual in the same way. The issue at stake here is not merely an empirical difficulty but also, as often emphasized, the difficulty of determining what “equality of opportunity means in a culturally plural world in which different societies will construct goods in different ways and also rank them in different ways.” As one author points out, “we can only make judgments with any confidence in extreme cases, and in those cases, what seems at first sight to be a concern about inequality may well turn out on closer inspection to be a concern with absolute poverty or deprivation, a concern which suggests a quite different understanding of global justice.”<sup>39</sup> Thus, the difficulty of introducing the arbitrariness claim on political membership in contractarian defenses of global justice is that it leads to an unwarranted defense of individual equality of opportunity.

### *Where the Arbitrariness-Argument Becomes Unnecessary*

The cosmopolitan critique of political communities is not only problematic but also unnecessary for a contractarian case in favor of global justice. In order to understand this issue, it is necessary to examine in further depth how the moral constraints cosmopolitans put on the parties in the global original position inadvertently depart from domestic contractarian assumptions. While embracing a Humean account of the subjective circumstances of justice, Rawls emphasizes two human features that create a special necessity for justice: individual selfishness and moderate generosity. He then goes on to argue that this presumption ensures that “the principles of justice do not depend upon strong assumptions.” Indeed, “the original

<sup>38</sup>This objection to the cosmopolitan argument on the arbitrariness of political communities has already been made by David Miller, so I will not reassess it at great length here. See his *National Responsibility and Global Justice*, 62–68.

<sup>39</sup>*Ibid.*, 68. Miller is wrong to think that because it is difficult to identify a metric for equalizing opportunities between *individuals*, this defeats any alternative cosmopolitan argument for global distributive principles. What he fails to realize is that the issue of who is affected by specific distributive principles may be separated from the issue of whether there are global distributive principles at all. Indeed it is possible to solve the metric problem by simply substituting equal opportunity for individuals with equal opportunities for states. I have explored this issue in my “Equality, Sufficiency and Power: A Statist Defense of Global Egalitarianism.”

position is meant to incorporate widely shared and yet weak conditions."<sup>40</sup> Justice then constitutes the outcome of a shared agreement on common interests; it is the virtue of practices where "there are competing interests and where persons feel entitled to press their rights on each other."<sup>41</sup> As Hume reminds us, "[E]ncrease to a sufficient degree the benevolence of men, or the bounty of nature, and you render justice useless, by supplying its place with much nobler virtues, and more valuable blessings."<sup>42</sup> Were moral feelings reliable enough in every human being, justice would become superfluous.

The cosmopolitan original position inadvertently modifies this account of the nature of the parties. The model of international association proposed in this case is based not upon "free bargaining" but upon "some values that are genuinely shared."<sup>43</sup> In the cosmopolitan account, the subjects of the original position are to be viewed as "moral persons" who assess the rationality of global distributive principles "with reference to a baseline of equality."<sup>44</sup> Clearly, the subjects involved in this choice situation are quite different from those interacting in Humean circumstances of justice. While in Hume's and, more ambiguously, Rawls's case the parties of the original position are strategic and selfish human beings interested in maximizing their interests, in the cosmopolitan one they represent moral subjects, committed to some basic principles of equality and justice.

The difficulty with such an account is that by moralizing the subjects of the original position, cosmopolitanism relies precisely on that for which justice is required. Indeed, what differentiates the global original position from the domestic contractarian one is that for the latter, the social contract does not constitute the outcome of moral agreement on a specific conception of justice but of the overlapping convergence of mutually disinterested parties. Rawls's contractarianism here echoes Rousseau's question on whether there can be "a legitimate and reliable rule of administration in the civil order taking men as they are and laws as they can be." As Rousseau puts it in the beginning of *The Social Contract*, "I shall try always to reconcile in this research what right permits with what interest prescribes so that justice and utility are not at variance."<sup>45</sup>

Far from starting with parties which naturally possess a sense of justice, this type of contractarianism justifies the necessity of external authority precisely in the case of the absence of agreement on general moral principles.

<sup>40</sup>Rawls, *A Theory of Justice*, 111.

<sup>41</sup>*Ibid.*, 113.

<sup>42</sup>*Ibid.*, 494.

<sup>43</sup>Pogge, *Realizing Rawls*, 227.

<sup>44</sup>Beitz, *Political Theory and International Relations*, 203.

<sup>45</sup>Jean Jacques Rousseau, "Of the Social Contract," in *The Social Contract and Other Later Political Writings*, ed. Victor Gourevitch (Cambridge: Cambridge University Press, [1772] 1997), 40.

Rather than creating ex nihilo a particular political union, one needs to presuppose it. Normative theory starts with a given set of political institutions—as in Rawls’s well-ordered society—and enquires on the principles needed for their reform. Rousseau also makes this point very clear while discussing the necessity of a legislator: “[I]n order for an emerging people to appreciate the healthy maxims of politics... the effect would have to become the cause; the social spirit, which should be the result of the institution, would have to preside over the founding of the institution itself, and men would have to be prior to laws what they ought to become by means of laws.”<sup>46</sup>

Hence, one cannot expect natural moral duties to ground political agreements, since it is precisely because of their unreliability that justice is required. Kant also insists on the issue while discussing the role of political legislation in promoting human moral progress. Indeed, as he puts it, “we cannot expect the moral attitudes of people to produce a good political constitution; on the contrary, it is only through the latter that they can be expected to attain a good level of moral culture.” In fact, Kant adds, by relying on morality alone “nothing will be achieved.”<sup>47</sup>

This understanding of moral capacity not as an original property shared by all individuals but rather as a disposition of humanity that needs to be historically developed marks an important, though little noticed, difference with the contemporary cosmopolitan account.<sup>48</sup> Far from raising obstacles to the emergence of moral personality, as in the cosmopolitan theories we are examining, membership in a political community contributes to its full emancipation. As Kant claims in his early essay on universal history, it is only by entering into a civil constitution that “all the germs of humanity could be unfolded.”<sup>49</sup> This also explains why, in Kant’s theory of international relations, the conflict among different political communities cannot be considered quite analogous to the condition of individuals in an anarchical state of nature. Indeed states, unlike individuals, “already have a lawful internal constitution,” and a republic is “by its very nature disposed to perpetual peace.”<sup>50</sup> The public recognition of a collective authority that limits and constrains individuals’ claims constitutes the first step toward a process of human emancipation by virtue of

<sup>46</sup>Ibid., 80 ff.

<sup>47</sup>Immanuel Kant, *Toward Perpetual Peace: “A Philosophical Sketch,”* in *Political Writings*, trans. H.B. Nisbet, ed. Hans Reiss (New York: Cambridge University Press, 1991), 109.

<sup>48</sup>For an excellent analysis of the difference, emphasizing the metaphysical requirements of Kant’s *Doctrine of Right*, see Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000), 185–89.

<sup>49</sup>Kant, *Idea for Universal History*, in Immanuel Kant, *Political Writings*, proposition VII.

<sup>50</sup>Kant, *Toward Perpetual Peace*.

which political subjects agree to obey the laws that they have given to themselves.<sup>51</sup>

If in this standard contractarian account of justice individuals in the state of nature are considered to be strategic maximizers and political communities provide the most relevant associative context in which humanity's potential moral powers are fully realized, the opposite occurs in the cosmopolitan account. The two relevant starting points for a cosmopolitan interpretation of the original position are the concept of individuals considered as "free and equal moral persons" and a bargaining situation from which all "morally arbitrary" factors should be excluded.<sup>52</sup> The parties in circumstances of justice are individual moral units whose natural inclination to justice leads them to favor specific global distributive principles.<sup>53</sup> This issue is controversial: if we were to rely on individuals' altruism and ability to comply spontaneously with specific moral laws, one would have difficulty understanding the emergence of conflict and explain how claims of justice could arise.

One response might be that justice is required for reasons of coordination in order to support the parties' distribution of benefits and burdens and prevent unjust, unintended consequences of social interactions. But if this were indeed the case, what is gained by declaring political communities arbitrary from a moral perspective? If anything, they might contribute to a partial resolution of the coordination dispute by making available a set of institutional mechanisms through which the claims of members (at least) are accommodated. This thought animates Kant's account of international justice where far from being considered arbitrary entities, collective political agents who have internally realized public right subject themselves to external non-coercive agreements serving a common interest in peaceful and just intercommunity relations.<sup>54</sup>

Cosmopolitans need not prove political communities arbitrary in order to build a convincing case for international circumstances of justice. Showing that a conflict between subjects may give rise to specific claims of justice is possible even starting from standard contractarian premises that recognize the relevance of political membership. Following Rousseau and Kant, one might argue that existing tensions among states and a global conflict over the distribution of scarce resources threaten the stability of the

<sup>51</sup>Ibid., 104. For a more detailed exploration of this issue, see my "Sovereignty, Cosmopolitanism and the Ethics of European Foreign Policy," *European Journal of Political Theory*, no. 7 (2008): 349-64.

<sup>52</sup>Beitz, *Political Theory and International Relations*, 203; Moellendorf, *Cosmopolitan Justice*, 32-33, 37-38; Caney, *Justice Beyond Borders*, 115.

<sup>53</sup>How the individual moral sense of justice arises is a separate issue that I assess in the following section.

<sup>54</sup>See Kant, *Toward Perpetual Peace*, 114.

international system and affect the life-prospects of citizens in each political community.<sup>55</sup>

On this view the state could be considered a cultivating ground for cosmopolitan morality. Taking part in collective processes of decision-making already limits the arbitrary wants of individuals, teaches them to live in common, and educates them to a sense of the collective. Once individuals have learned to live in a political association, it is easier for them to see the advantages of collective deliberation and consider the interactions between them and outsiders from a less narrow-minded perspective. International anarchy would be just as unattractive as the anarchy of the state of nature, and having enjoyed the benefits of abandoning the latter, they might be more motivated to exit from the former.

The advantage of such a view is that it need not start from dubious assumptions about the degree of moral awareness individuals must already possess. It is sufficient to argue that the members of the international society have reasons to want to avoid the potential harms of a perpetual condition of international anarchy and may jointly contribute to the establishment of a collective and cooperative institutional regime.<sup>56</sup> Of course one might retort here that considering political membership in this light is as implausible as the assumption of moralized parties we are trying to challenge. Some implications of this idea are considered more in detail in the following section.

### The Veil of Ignorance and the Sense of Justice

To justify the assumption of moralized parties and the shift away from the postulates of mutual disinterest and limited generosity, cosmopolitans might underline the “hypothetical” character of the social contract. Such an interpretation would be in line with an interpretation of the original position as an “idea of reason” that allows us to think of the choice situation in ways “similar to the point of view from which noumenal selves see the world.”<sup>57</sup> The idea is operationalized in *A Theory of Justice* through the device of the “veil of ignorance.” This section examines the demands of the veil of ignorance in the global original position and illustrates some of its shortcomings in bracketing political membership and generating support for a cosmopolitan conception of distributive justice.

<sup>55</sup>See for example Jean-Jacques Rousseau, “Abstract and Judgement of Saint Pierre’s Project of Perpetual Peace,” in *Rousseau on International Relations*, ed. S. Hoffman and D. Fidler (Oxford: Clarendon Press, [1756] 1991) and Kant, *Toward Perpetual Peace*, 104. For a more detailed historical reconstruction of Rousseau’s and Kant’s analysis of the circumstances of international justice, see my “Sovereignty, Cosmopolitanism and the Ethics of European Foreign Policy.”

<sup>56</sup>The English School analysis of international society relies precisely on these assumptions; see, for one example, Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977).

<sup>57</sup>Rawls, *A Theory of Justice*, 225.

In *A Theory of Justice*, Rawls clarifies that the idea of a veil of ignorance is introduced in order to eliminate the effects of specific contingencies that would tempt people to exploit the choice situation to their own advantage. Thus “the veil of ignorance deprives the persons in the original position of the knowledge that would enable them to choose heteronomous principles.”<sup>58</sup> The parties in the original position are unaware of their class and social status, or do not know their particular natural talents or social skills; they ignore their life-plans as well as their psychological disposition to specific opportunities.<sup>59</sup> The informational restrictions introduced by the veil of ignorance aim to guarantee fair bargaining conditions, which should lead to principles of justice that could subsequently themselves be considered fair.

### *Where the Arbitrariness-Argument Goes Wrong*

Cosmopolitans suggest that in the global original position, the veil of ignorance should also be extended to the parties’ knowledge of the particular community to which they belong. Beitz has argued that “the parties to the original position cannot be assumed to know that they are members of a particular national society. . . . The veil of ignorance must extend to all matters of national citizenship, and the principles chosen will therefore apply globally.”<sup>60</sup> Pogge has also emphasized how “nationality is just one further deep contingency (like genetic endowment, race, gender, and social class), one more potential basis for inequalities that are inescapable and present from birth.” If one takes seriously the idea of abstracting from all contingent features for the sake of a fair bargaining situation, he claims, “there is no reason to treat this case differently from the others.”<sup>61</sup>

This argument has been criticized for making it difficult to assess which institutions fall under considerations of justice and which ones could be taken for granted.<sup>62</sup> It is emphasized, for example, that, if followed rigorously, the cosmopolitan thought experiment might challenge every institution through which individuals organize collectively, not only political communities but also international organizations, civil associations, the market sphere, and even the family. An indiscriminate extension of the veil of ignorance in the global sphere appears to raise the question of the amount of information that the parties would choose to maintain or reject. If the idea of the veil of ignorance were pursued to its logical conclusion, the parties would not only ignore their citizenship but also the generation to which they

<sup>58</sup>Ibid., 222.

<sup>59</sup>Ibid., 118.

<sup>60</sup>Beitz, *Political Theory and International Relations*, 151.

<sup>61</sup>Pogge, *Realizing Rawls*, 247.

<sup>62</sup>See, for example, Martha Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), 264–72.



belong, the economic and political conditions of the international sphere, humanity's level of civilization, and so on. Martha Nussbaum underlines this point by claiming that "if you do not know that a multinational cooperation exists, you will probably not imagine one as part of an ideal structure of global justice... [I]f you do not know about the Internet, it will not be easy to imagine it; but then you will not be able to address the inequalities created by differential access to it."<sup>63</sup>

This critique seems to neglect one important feature of the veil of ignorance and risks being misleading. While the thought experiment requires individuals to abstract from contingent personal features in positioning themselves in the original choice situation, it does not exclude the knowledge of general facts about society as well as of the basic principles of political organization. One of the most relevant elements characterizing the parties behind the veil of ignorance is that they are assumed to know as little as possible when it comes to specific individuals preferences, talents or social status, and as much as possible on the general rules of the system of cooperation to which their conception of justice applies. As Rawls clarifies, "there are no limitations on general laws and theories, since conceptions of justice must be adjusted to general systems of social cooperation which they are to regulate, and there is no reason to rule out these facts."<sup>64</sup>

The real question raised by the cosmopolitan extension of the veil of ignorance is then whether the parties' political membership is the kind of knowledge that one can afford to ignore without weakening the justification of global distributive principles. Here there are two possibilities to consider. In one version of the cosmopolitan argument, we might imagine individuals abstracting from the existence of any form of collective association and deliberating, in general, whether a global distribution of benefits and burdens should follow territorial lines with a designated authority holding monopoly over the use of force. The parties in the original position, that is, would ignore the existence of states and reflect on whether some kind of state-like form of organization would be appropriate in reforming the basic structure of society.<sup>65</sup>

This argument appears particularly weak. Rawls's conception of domestic justice applies to society understood as a well-established system of practice and is grounded on assumptions considered to be widely shared. From this perspective, ruling out some kind of general knowledge about the existence of a world divided into bounded political communities seems inappropriate.

<sup>63</sup>Ibid., 266.

<sup>64</sup>Rawls, *A Theory of Justice*, 119.

<sup>65</sup>This would be the interpretation more in line with Beitz's statement that "it is not the case that we begin with an actually existing basic structure and ask whether it is reasonable for individuals to cooperate in it. Rather, we begin with the idea that some type of basic structure is both required and inevitable... and work towards principles the structure should satisfy" (Beitz, *Political Theory and International Relations*, 203). For an analogous statement, see also Pogge, *Realizing Rawls*, 139–41.

Indeed, in the domestic case, the parties do not question the *existence* of certain institutional arrangements such as the constitution, courts of justice, or the presence of market interactions—these are all taken for granted as part of society's basic structure. Rather, the burden of decision relies on "what kind of constitution," "what kind of courts," and "what kind of market" are required to accommodate the claims of justice. Analogously, in the international sphere the question is not about arguing whether political communities ought to exist at all but rather how the distribution of benefits and burdens among a given plurality of them could be conceived.

This leads to the second possibility that the veil of ignorance might introduce regarding the parties' information on their political membership. One might imagine that although knowing about the existence of particular political communities and their characteristics, the subjects of a global original position are deprived of knowing how they relate to each other. For example, each subject in the original position might be aware that China, Zimbabwe, and the United States are part of the world's political map, and they might also have access to the general social facts relevant to those countries, yet simply ignore whether (s)he is Chinese, Zimbabwean, or American. According to this second cosmopolitan interpretation, the only relevant feature to take into account while evaluating claims of justice in the global original position would be whether all parties have "a capacity for an effective sense of justice and a capacity to form, revise, and pursue a conception of the good".<sup>66</sup>

The appeal to the parties "effective sense of justice" is, indeed, crucial to building a persuasive contractarian case in favor of specific distributive principles. In Rawls's domestic theory, the sense of justice motivates the parties to act by the principles chosen in the original position, thus illustrating how justice as fairness emerges as the most stable conception. As Rawls puts it, "a system in which each person has, and is known by everyone to have, a sense of justice is inherently stable. Other things being equal, the forces making for its stability increase as time passes."<sup>67</sup>

<sup>66</sup>See Beitz, "Cosmopolitan Ideals and National Sentiments," 595, 593, 596; see also Richards, *A Theory of Reasons for Action*, 278–82, 289–93, and Brian Barry, "International Society from a Cosmopolitan Perspective," in *International Society: Diverse Ethical Perspectives*, ed. David Mapel and Terry Nardin (Princeton: Princeton University Press, 1998), 144–63.

<sup>67</sup>John Rawls, "The Sense of Justice," *The Philosophical Review* 72, no. 3 (1963): 293. The question of stability is at the heart of the third part of *A Theory of Justice* and was considered by Rawls one of the main issues motivating the reassessment of his first major work in *Political Liberalism*. In the latter, the problem of moral motivation is linked very clearly to the public culture of a particular political association: "[G]iven certain assumptions, specifying a reasonable human psychology and the normal conditions of human life, those who grow up under just basic institutions acquire a sense of justice and a reasoned allegiance to those institutions sufficient to render them stable. Expressed another way, citizens' sense of justice, given their

This emphasis on “time” as a crucial feature for understanding how the sense of justice may develop and strengthen among the subjects of the original position is linked to the moral psychology that *A Theory of Justice*, inspired by Rousseau’s *Emile*, provides. The appeal to the moral force of the “purely conscientious act,” “the desire to do what is right and just simply because it is right and just,” is clearly not enough.<sup>68</sup> Rousseau was among the first to raise the question of moral motivation in the acceptance of contractarian principles when he claimed that “it is not by sumptuary laws that luxury can be successfully extirpated; it is from the depth of the heart itself that you must uproot it by impressing men with healthier and nobler tastes.”<sup>69</sup> For Rawls, as for Rousseau, the willingness to act not merely due to coercion but spontaneously according to the principles of justice is not independent of practices of cooperation in a particular society. It is linked to specific processes of psychological and political emancipation, to the way in which individuals come to form their beliefs, rely upon specific intuitions or discard others, and develop feelings of mutual trust and solidarity. In order for justice as fairness to emerge as the most stable conception in a contractarian procedure of justification, the parties’ sense of justice must reflect the public norms of political communication as rooted in the institutional development of a particular society. Indeed, “what justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations, and our realization that given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us.”<sup>70</sup>

### *Where the Arbitrariness-Argument Becomes Unnecessary*

It is easy to see how the cosmopolitan construction of a global original position modifies the classic contractarian assumptions on the parties’ sense of justice so as to unnecessarily weaken the method’s justificatory potential.

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traits of character and interests as formed by living under a just basic structure, is strong enough to resist the normal tendencies to injustice. Citizens act willingly so as to give one another justice over time. Stability is secured by sufficient motivation of the appropriate kind acquired under just institution.” See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 142. For a more critical appraisal of this question and of the transition from *A Theory of Justice* to *Political Liberalism*, see Brian Barry, “Rawls and the Search for Stability,” *Ethics* 105, no. 4 (1995): 874–915.

<sup>68</sup>Rawls, *A Theory of Justice*, 454.

<sup>69</sup>Jean-Jacques Rousseau, “Considerations on the Government of Poland,” in *The Social Contract and Other Later Political Writings*, 177–260.

<sup>70</sup>John Rawls, “Kantian Constructivism in Moral Theory,” *The Journal of Philosophy* 77, no. 9 (1980): 515–72, 519.

The cosmopolitan extension of the veil of ignorance requires precisely that the history, traditions, and civic life shaping the social expectations and motivation of different subjects are considered arbitrary features and assumes that they play no role in the parties' forming an "effective sense of justice." While imprudently ignoring the criterion of stability in the justification of global distributive principles and ambiguously returning to the doctrine of the "purely conscientious act," the cosmopolitan-contractarian reconstruction of the global original position encounters an even greater obstacle. It places behind the veil of ignorance features that might be crucial for understanding the basis for public agreement and conceals important intuitions that one needs to take into account in weighting alternative views on global justice. Ultimately, it fails to examine the background assumptions that might lead to a widely acceptable account of distributive justice.

By bracketing the parties' attachment to a particular set of collective political institutions, the cosmopolitan reconstruction of the global original position is left with a rather obscure view on the parties' "effective sense of justice" and an extremely weak analysis of what might motivate them to act in accordance with specific principles. Except for a few moral heroes, an "effective sense of justice" does not arise exclusively out of the subjects' attachment to purely moral motives but may be socially and politically constructed as well as specific to each form of collective political association. To claim that an innate, universal "sense of justice" understood as an unconditional compliance with rationally justified principles might be very rare, and that one needs to take into account the way particular societies inform their members' desire for justice, is not to rule out that it might be possible to justify distributive principles on a global scale, all things considered. What it emphasizes is that extending the veil of ignorance on issues of political membership might not be the most appropriate kind of informational restriction to introduce in the global original position. The sort of knowledge that one would be brought to ignore in this case might affect what remains of the parties' sense of justice, thus turning the contractarian account into a very weak justificatory device.

One might, of course, object here that the sense of justice amounts to nothing more than the motivation to comply with living under just institutions. If this were indeed so, the veil of ignorance would not conceal any important information: one may emphasize that people behind the veil have a minimal motivation to comply so that whatever sense of justice we assume domestically we can count on internationally too. In a way, it is undeniable that, with regard to some issues at least, people's sense of justice overlaps worldwide, regardless of political membership. Perhaps one does not need to know where he or she comes from to consider torturing babies wrong and the sense of justice on this particular question would be strong enough to support institutions prohibiting such a practice. Whether this kind of thin, reactive, motivation is also enough to support the more demanding global institutional reforms required by cosmopolitan distributive justice

is a different matter. Domestically, at least, the sense of justice is not due merely to people's abstract respect for a public system of rules but is complemented by other psychological pro-attitudes developed in the process of growing up in a particular political community, of sharing the values of a public culture, of maturing particular attachments to a set of people, speaking the same language, knowing a particular history. But cosmopolitan-contractarians need not consider these features arbitrary or detrimental to their own cause; they may instead approach global political reform by virtue of an internal transformation of political communities compatible with cosmopolitan goals.<sup>71</sup> The veil of ignorance on issues of political membership does nothing to consolidate people's motivation to comply with cosmopolitan principles. It merely succeeds in weakening the sense of justice that they might already have, thus rendering global distributive justice even more difficult to support.

## Conclusion

Assessing contractarian strategies for justifying global distributive principles, with a particular emphasis on the cosmopolitan critique of political membership, I have thus rejected the claim that political membership is arbitrary for global justice. Focusing on the circumstances of justice, the nature of the parties, and the use and function of the veil of ignorance, I have argued that the cosmopolitan attempt to abstract from political membership in justifying global distributive principles is both unwarranted and unnecessary. With regard to the first issue—the circumstances of justice—the cosmopolitan analysis of the role of political communities unnecessarily introduces desert-based claims that, even if justified, would lead to historical principles for the rectification of past justice and not to the distributive ones originally required. With regard to the second issue (the nature of the parties), the cosmopolitan attempt to bracket political membership thoroughly modifies some relevant contractarian premises and moralizes the subjects of the original position to the point of abolishing all instances of conflict and rendering justice unnecessary. In the third case, I illustrated how the demand to extend the veil of ignorance to issues of political membership limits the parties' sense of justice, negatively affects the quest for stability, and fails to indicate what widely shared intuitions might provide a common ground for public deliberation among parties at the global level. Rejecting the normative standing of political communities does not reinforce the case for global distributive principles; it succeeds only in turning contractarianism into a very weak justificatory strategy.

<sup>71</sup>I explore this issue in my "Statist Cosmopolitanism," *Journal of Political Philosophy* 16, no. 1 (2008): 48–71.

Existing defenses of the normative standing of political communities are usually combined with a critique of all cosmopolitan arguments in favor of global distributive justice.<sup>72</sup> This article has separated the two questions, and while forcefully rejecting several cosmopolitan arguments concerning the arbitrariness of political communities, it has remained agnostic about the possibility of justifying global distributive principles once we admit the role of political communities. Elsewhere I have argued that the defense of the normative standing of political communities is compatible with and necessary for cosmopolitan justice.<sup>73</sup> The main aim here has been critical and interpretative. If one takes seriously the need to integrate the moral core of cosmopolitanism with principles regulating the global distribution of benefits and burdens, efforts made to deny the relevance of political membership may be liable to undo the argument.

<sup>72</sup>For a first reference see Rawls, *The Law of Peoples*, and for endorsements of Rawls's claim, David A. Reidy, "Rawls on International Justice, A Defense." *Political Theory* 32, no. 3 (2004): 291–319; Aaron James, "Constructing Justice for Existing Practice: Rawls and the Status Quo," *Philosophy and Public Affairs* 33, no. 3 (2005): 281–316; Samuel Freeman, "The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice," *Social Philosophy and Policy* 23, no. 1 (2006): 29–68; David Heyd, "Justice and Solidarity: The Contractarian Case against Global Justice," *Journal of Social Philosophy* 38, no. 1 (2007): 112–30.

<sup>73</sup>See my "Statist Cosmopolitanism."