

Brock on Global Justice and Choosing Principles

Jon Mandle

University at Albany, SUNY
Department of Philosophy
mandle@albany.edu

KEYWORDS

John Rawls, original position, principles of justice, global justice

Over the last decade or so, philosophers have increasingly addressed issues of global justice. The publication of John Rawls's *The Law of Peoples* in 1999 seems to have been a turning point.¹ To be sure, there were scattered earlier discussions, but since its publication, that book has served as a focus of debate. In this regard, it seems to be playing a similar role to that played by *A Theory of Justice* decades earlier with respect to domestic justice. In *Global Justice: A Cosmopolitan Account*, Gillian Brock takes her initial orientation from *The Law of Peoples*, and draws on some of the literature that has developed in reaction to it.² However, in contrast to some of the recent philosophical literature, Brock is not mainly interested in taking sides in theoretical debates. In addition to identifying "what an abstract model of global justice might look like," she is primarily concerned to show "how we progress from where we are now ... towards what are identified as the key goals of global justice." (vii) Her account includes many specific proposals that would make tangible contributions to the cause of global justice. These proposals vary in their likely effectiveness as well as their political feasibility. Indeed, Brock's endorsement of some of them is quite tentative. Still their cumulative force is powerful. She gives a credible account of what a "feasible public policy that makes progress toward global justice" (4) could look like. Whatever one thinks about the details of her specific proposals, she establishes that the continued existence of serious global injustices is not due

¹ John Rawls, *The Law of Peoples* (Harvard, 1999).

² Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford, 2009). References to this work will be made parenthetically in the text.

to a lack of ideas or strategies for reforms and improvements but to a failure of political will.

The subtitle declares that hers is “A Cosmopolitan Account,” but although she discusses the label in the first chapter, it is only near the end, after many of the details and implications of her view have been presented, that she considers the sense in which it is a form of cosmopolitanism. It is clear that she is more concerned to get the substance of the view right than she is with sticking to orthodox labels. On a number of points she diverges from what has arguably become the orthodox cosmopolitan view of global justice. Brock’s version “takes seriously the equal moral worth of [all] persons, yet leaves scope for a defensible form of nationalism along with other legitimate identifications and affiliations.” (4) Similarly, she describes her position as “egalitarian,” but her view does not require an equal distribution of wealth, income, resources, or opportunities. Her egalitarianism operates at a higher level than most familiar egalitarian accounts of distributive justice. What is important, she argues, “is that people should have a *decent* set, of opportunities rather than an *equal* set, strictly speaking... The real concern is surely not with equality at any cost.” (62) The goal should be to free individuals from domination and to allow them to “stand in relations that embody equality of respect, recognition, and power.” (298)

To identify principles of global justice, Brock develops a thought experiment modeled on Rawls’s original position. Assuming a world of diverse communities – not only political entities, but also overlapping “national, religious, cultural, or linguistic groups” (48) – Brock considers which principles would be chosen by individuals behind a veil of ignorance to establish “a fair framework for interactions and relations among the world’s inhabitants.” (49) In *The Law of Peoples*, Rawls imagines an original position in which the parties represent *peoples*, not individuals. Brock departs from Rawls himself and follows authors such as Beitz, Pogge, and Moellendorf who argue that the original position that Rawls designed to identify principles of domestic justice should be extended to address global justice. They argue, accordingly, that Rawls’s principles of domestic justice should be applied globally. Along with these critics, Brock charges that for Rawls, protecting individuals “takes a back seat to treating *peoples* as equals. In so far as the building blocks for his theory involve strong commitments to respective peoples as ultimate units of equality, his view is still better described as statist than cosmopolitan.” (318)

Yet Brock departs dramatically from these critics when she argues that the parties in the original position would not choose Rawls's familiar two principles of domestic justice to apply globally. Instead, they would choose more modest requirements centered around "two primary guidelines of roughly equal importance – namely, that everyone should enjoy *some* equal basic liberties and that everyone should be protected from certain real (or highly probable) risks of serious harms." (50) More specifically, "we should all be adequately positioned to enjoy the prospects for a decent life, as understood to include what is necessary to be enabled to meet our basic needs and those of our dependants (but with provisions firmly in place for the permanently or temporarily disabled to be adequately cared for), and certain protections for basic freedom." (52) Although Brock favors a model based on satisfying human needs, she argues that this approach converges with recent literature on capabilities. The capabilities that Nussbaum argues are requirements for a life with dignity, for example, correspond to Brock's human needs. On both approaches, "what matters is what one is able to do and be (and not one's income or resources, *per se*)." (71) Similarly, Brock argues, there is a convergence between her account of needs and accounts of human rights. In fact, "A plausible list of human rights must be informed by an account of human needs. A needs-centered account is more basic than – and so makes plausible – an account of human rights." (72)

The distributive principles that Brock thinks would be chosen are considerably less demanding than Rawls's second principle of domestic justice. Brock argues explicitly against both fair equality of opportunity (as a positive ideal) and the difference principle. She concedes that there is a powerful intuition that "it is unfair if some are significantly disadvantaged in life because of morally arbitrary features." (58) Yet, she claims that efforts to formulate this intuition in terms of a positive ideal for global justice have failed in part because of the difficulties in making cross-cultural comparisons of advantage. Attempts to specify a positive ideal of fair equality of opportunity face the following dilemma: "Either we must articulate a version of equality of opportunity that mentions particular social positions that are favoured and opportunities to occupy these positions are equalized, or we allow much cultural variation about what counts as a favoured social position and it is now the standards of living or levels of well-being that they enable that are to be equalized." (61-62) The first option is insufficiently sensitive to cultural differences, while the second fails to identify certain objectionable forms of discrimination. Brock doesn't rule out the possibility

of eventually formulating a positive account, but she recommends focusing on obviously objectionable discrimination rather than attempting to achieve an ambiguous ideal of equal opportunity.

Against the difference principle, Brock cites the empirical work of Norman Frohlich and Joe Oppenheimer, who found that in a variety of experiments modeling impartial choice situations, “By far the most popular choice in all countries was the principle with the guaranteed floor constraint.” (55) Many individuals apparently reject a more egalitarian standard because they fear that such a standard would undermine the incentive to work. Instead, they sought a “balance between needs, entitlements, and incentives.” (57) Although she recognizes that “the recommendations of the difference principle might converge with those of a needs-based minimum floor principle,” (58) Brock still holds that the empirical evidence “tells rather dramatically against the difference principle.” (57)

I’m dubious that these empirical considerations should carry much weight against the difference principle. First of all, the original position requires us to judge what would be *rational* to choose given its various constraints. The fact that a majority of individuals would make a certain choice is perhaps some evidence concerning which choice would be rational, but it is far from decisive. Second, and more importantly, there seems to be a misunderstanding – if not Brock’s, then the individuals surveyed – about how the difference principle operates. The difference principle recognizes the potential importance of incentives since it allows inequalities when they act as incentives that ultimately benefit the least advantaged social position. Furthermore, as Brock recognizes, because of the difference principle’s focus on the least advantaged, it is very likely that it will also ensure that everyone’s basic needs are satisfied.

The more serious confusion concerns entitlements. Rawls intends the difference principle to inform the design of basic institutions. It compares institutional designs by focusing on the least advantaged social position likely to emerge from an institutional choice. But it is only against an institutional background that individuals come to have particular entitlements. Without legal and economic institutions, individual entitlements are simply indeterminate. The laws associated with an economic structure specify the rules and procedures that individuals must follow in order properly to claim particular ownership rights. Given its proper institutional focus, the difference principle cannot conflict with individual

entitlements since it evaluates the institutional arrangement within which individual entitlements are determined. It is a fundamental confusion to suggest that an emphasis on entitlements is somehow in conflict with endorsing the difference principle. The difference principle is misunderstood when it is thought that it must be balanced against needs, entitlements, and incentives.

Because Rawls intends the difference principle to apply to the political, legal and economic institutions, it is designed to be a principle for evaluating domestic, rather than global, institutions. At a global level, he endorses a “duty of assistance” that well-ordered societies have toward what he calls “burdened societies.” These are societies that “lack the political and cultural traditions, the human capital and know-how, and often, the material and technological resources needed to be well-ordered.”³ Well-ordered societies have a duty, as a matter of justice, to assist burden societies to become well-ordered so that eventually they can “manage their own affairs reasonably and rationally.”⁴ Crucially, what is required is to ensure that “people’s basic needs are met.”⁵ So, while Rawls endorses the difference principle domestically, he endorses something quite similar to Brock’s basic needs principle globally. What is somewhat unclear is whether Brock would endorse Rawls’s difference principle with regard to domestic institutions. Her arguments against it would seem to apply to both domestic and global applications. I am unsure whether Brock thinks that stronger egalitarian principles would be chosen domestically, and if so, why, exactly, there is a principled difference between the principles of domestic and of global justice.

This raises the question of whether there are special duties toward compatriots. Brock holds that there are. This would seem to put her in agreement with liberal nationalists, though Brock considers and rejects the positions of several prominent liberal nationalist theorists. She believes that “liberal nationalists have not yet offered an adequate account of our obligations to non-nationals. For instance, their views on the priority we may give co-nationals’ interests over non-nationals’ are unhelpful, unclear, ad hoc, and show significant tension.” (249) For example, she interprets Yael Tamir’s theory to require that “what we can be asked to do to help others gets attention only after we have attended to what we owe co-nationals.” (256) Similarly, she rejects David Miller’s contention that “We owe obligations to

³ Rawls, *The Law of Peoples*, p.106.

⁴ Rawls, *The Law of Peoples*, p.111.

⁵ Rawls, *The Law of Peoples*, p.38.

compatriots that are more extensive than those we owe to outsiders.” (263) Given the extent of global poverty, and our unfulfilled duties relating to it, Brock maintains, it is not at all obvious that our duties toward compatriots are more extensive. While the liberal nationalists that she discusses seem to take duties to compatriots as primary and attempt to build outward in the direction of cosmopolitan duties, Brock takes the opposite view: “Questions about the kind of special regard we may show to co-members of our group can be addressed only after there is commitment to the basic framework with all its protections.” (265) She follows Nussbaum in insisting that our “primary allegiance” is to “the worldwide community of human beings.” (315)

It would help Brock’s cause, I believe, if she were to distinguish more clearly between two different questions. First, there is the issue of the *content* of a duty – for example, whether one is required to promote an equal distribution of resources or merely a threshold conception in which everyone is entitled to a certain minimal share. Second, there is the problem of the *strength* of a duty – for example, how one is to resolve conflicts among particular duties and other moral ideals. Too often discussions of nationalism and cosmopolitanism fail to attend to this distinction. Brock comes close, but does not quite make this point explicitly. For example, she points out that “While we can have different kinds of obligations, my analysis shows that our *basic* obligations to others cannot diminish with distance.” (275) At the same time, however, she concedes that “our strongest obligations may generally be to those family and friends with whom we have close personal relationships.” (275) What is merely implicit in the second quote, but perhaps suggested in the first, is that we have different kinds of obligations to our family and friends than we do to others. This opens the possibility that we could also have different kinds of obligations to our compatriots while at the same time insisting that the cosmopolitan duties that we owe to all do not vary in strength with distance.

In fact, I myself think that something like that is correct. We have cosmopolitan duties to help ensure that human rights are protected, including a right to resources necessary to satisfy basic needs. While the strength of this duty may vary with wealth and instrumental considerations of effectiveness, it extends across borders and does not vary with distance as such. On the other hand, we have egalitarian duties toward our compatriots and merely ensuring that their basic needs are met, while necessary, is inadequate for domestic justice. As noted above, it is unclear whether Brock

would endorse this higher standard for domestic justice. The point here, however, is that despite their different content, we cannot yet say which of these duties of justice is stronger in the sense of which should take priority in the event that they conflict (for example, due to limited resources). Brock points out that it is not obvious that we should think of the cosmopolitan duty to protect basic human rights as a positive duty, since, following Pogge, she argues that by imposing an unjust global order, we are “failing to discharge this negative duty appropriately.” (287, cf.122) But even if we do think of it as a positive duty, we cannot assume that it is weaker than negative duties that we might have toward our compatriots. Although it is widely believed that negative duties are stronger than positive ones, that is not always the case. At most we might think that a negative duty is stronger than *the corresponding* positive duty with the same content. For example, it is widely believed that it is worse to actively kill than it is to passively fail to prevent a killing. But it is not at all obvious that egalitarian domestic duties must always be stronger than a positive duty to protect basic human rights globally. Although domestic duties may be more demanding than global duties in the sense that they are more egalitarian, they may not be stronger in the sense of taking priority when domestic and global duties conflict.

While not advocating a global state, Brock argues that strengthening or creating various global institutions would greatly promote the cause of global justice. I will mention some of these proposals below, but one thing that many of them share is that each facilitates collective deliberation. One worry is that such dialogue will simply uncover irreconcilable conflicts among different societies with nothing to motivate concessions, resolution, or compliance. That, a skeptic might argue, is exactly what a shared national identity can provide and why international institutions will always be weaker than their national counterparts. Brock does not dismiss this concern, but argues that there is no reason in principle to think that it cannot be overcome. Identification does not “naturally” reside only at the level of the nation-state, and virtues that are learned locally may be applied more broadly. She writes, “If we had really learned virtues, such as, public-spiritedness, a sense of justice, the capacity to respect others’ rights and moderate claims accordingly, civility, and tolerance, it is hard to see how these virtues would ‘be able to stop themselves’ once the boundaries of nation states had been reached.” (99) The creation of international institutions which facilitate dialogue might themselves help foster international identification and allegiance. In fact, the creation of shared institutions has

arguably been one way in which large multinational states have formed collective identities for themselves.

Although Brock argues that it is important that these global institutions be democratic, she works with what appears to be a rather weak understanding of “democracy.” She defends a model of democracy in which it is less a matter of “allow[ing] more participation in collective decision-making” than a matter of having institutions that are “more responsive to people’s interests and [are] better at securing people’s interests.” (105-106) No doubt she is right that “it is important that some officials have partial independence from popular opinion to allow the integration into policymaking of a more dispassionate and temporally extended view of the public interest.” (107) Furthermore, I believe that such models can be compatible with democracy. Still, such institutions are justified less by ideals of democracy than by broader considerations of justice.

Brock’s discussion of immigration is characteristically subtle and serves as a good illustration of several attractive features of her account. While some cosmopolitans argue for open borders, Brock is skeptical that by itself this would do much to serve the cause of global justice, especially since the “brain drain” from poor to wealthy countries “can have disastrous effects” on developing countries. (198) Brock considers the brain drain among health professionals in detail and argues that “in sub-Saharan Africa basic health care delivery is significantly threatened by this phenomenon.” (199) Obviously, the reason so many health care professionals who are trained in poor countries want to leave is because they seek better working conditions, pay, or professional development that poor countries are not able to provide. Brock argues that wealthy countries should provide compensation to the poor countries in exchange for granting visas to health care professionals. “Compensatory measures could take a number of forms, including technological, technical, or financial assistance, the setting up of training programmes, or instituting (and helping to enforce) compulsory service before departure is permitted.” (202) This obviously would interfere with unencumbered travel across borders, but Brock argues that this would not interfere unjustly with “individuals’ relevant freedoms” since they would still be able to immigrate as long as the relevant conditions are satisfied. (203) Importantly, such arrangements could potentially be attractive to both developing and developed countries.

Brock’s proposals with regard to a carbon tax, a Tobin tax, and greater transparency in economic transactions share this and other important

features. While with any such proposal there will be some costs, it is characteristic of her proposals that the parties often will mutually benefit from them. “We should not underestimate the role self-interest can play in moving us in the right direction.” (329) Each of her proposals would make a concrete contribution toward ensuring that every individual is able to satisfy her basic needs and participate fairly in collective activities. Taken together, they would dramatically improve such prospects. Furthermore, Brock insists that “We can make considerable progress without universal agreement on many issues.” (330) She cites the International Criminal Court (ICC) as an example of a global institution that has advanced the cause of justice without universal participation, most notably the United States which has not ratified the Rome Treaty.

The ICC, created by the Rome Treaty in 1998, serves as an important illustration of international institutions that contribute to global justice without displacing state governance. The ICC limits itself to the most serious crimes such as war crimes and crimes against humanity, and it does so “only when national courts are either unwilling or unable to act appropriately.” (167) Because of its “complementarity” with national courts, the ICC does not undermine national sovereignty. Brock supports this model, and extends it to consider also the possibility of humanitarian intervention in cases of severe human rights violations. International authorization of humanitarian intervention might seem to constitute an even greater and impermissible threat to sovereignty, but Brock argues that sovereignty should not be understood as unconditional. Still, there must be protections against unwarranted interventions, so Brock advocates the creation of a “Vital Interests Protection Organization.” In extreme cases, the VIPO would authorize “the use of force to restore or ensure that relevant vital interests are adequately protected.” (177) The composition and powers of the VIPO, however, are underspecified. At one point, Brock suggests that it would be composed of “representatives of all nations” and that with “a unanimous decision is reached by such a body, fears about abuse of power should be allayed” (178), yet this is obviously unworkable. Brock also leaves unclear whether it would authorize individual countries to intervene or whether somehow military forces would be under a unified command.

One of Brock’s most important goals is to refute those she calls “feasibility skeptics.” She rebuts several arguments that purport to show that “realizing the goals of global justice is so wildly unrealistic in practice that, at best, such models must remain as theorists’ wishes about how the world should

be.” (325) While stopping short of predicting that any of her proposals will actually be adopted, she does believe that “there is reason to be optimistic about our prospects for reforming the system of global governance that already dominates our lives.” (332) Along some dimensions, I share her optimism concerning improved prospects for global justice. While there are still ideologues who insist that only rapid and radical trade liberalization can achieve economic development, it has become clear that while integration into global markets can often act to promote economic growth, “The uniform model advocated by traditional free trade advocates does not always work for all countries in all circumstances.” (237) This realization promises to improve the prospects of the world’s poor. In other dimensions, however, I am more pessimistic. While it is true that “Several countries have already enacted a carbon tax” (132) others – including the two countries that are together responsible for more than 40% of the carbon dioxide emitted into the atmosphere annually, the United States and China – have not.⁶

But Brock’s work should not be evaluated on the basis of its optimism or pessimism. She goes further than most philosophers in suggesting various policy mechanisms that would advance the cause of global justice. It is not her job to predict success. As Rawls points out, showing that a “reasonably just political and social order both at home and abroad is possible ... [itself] suffices to banish the dangers of resignation and cynicism. By showing how the social world may realize the features of a realistic utopia, political philosophy provides a long-term goal of political endeavor, and in working toward it gives meaning to what we can do today.”⁷ Brock’s work shows the direction of global justice and what we can do today. It clearly establishes that our failure to move in that direction is, indeed, our collective failure.⁸

⁶ <http://mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=749>

⁷ Rawls, *The Law of Peoples*, p.128.

⁸ Thanks to Gillian Brock, Kristen Hessler, and Jay Mandle for comments and suggestions.