



10-25-2013

Reproductive Choices and Unilateral Obligations: A Problem for Globalists

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/transnationalism_series

Recommended Citation

"Reproductive Choices and Unilateral Obligations: A Problem for Globalists" (2013). *Legal Philosophy between State and Transnationalism Seminar Series*. 57.
http://digitalcommons.osgoode.yorku.ca/transnationalism_series/57

This Article is brought to you for free and open access by the Seminars at Osgoode Digital Commons. It has been accepted for inclusion in Legal Philosophy between State and Transnationalism Seminar Series by an authorized administrator of Osgoode Digital Commons.

**Reproductive Choices and Distributive Justice:
A Problem for Globalism**

- I -

At the heart of some of the most heated recent controversies about international justice is the question whether sharing political institutions makes a principled difference to our duties of distributive justice. Do we have more exacting duties toward fellow citizens than toward foreigners?¹ Or do we have fundamentally the same obligations toward all persons regardless of where they are? Many writers defend the latter alternative. They concede that there are pragmatic reasons for helping fellow citizens above foreigners—doing so is often easier and hence a better use of our limited resources. But as a matter of *principle*, they insist, shared citizenship makes no difference whatsoever to our duties of distributive justice: these are owed equally to all human beings as such. Call this outlook *globalism*.² Other writers maintain that at least *some* duties of distributive justice are essentially dependent on the presence of full-blown political institutions.³ Some believe that this is the case for all our duties of distributive justice—that no such duty obtains outside the state—but most adopt a more nuanced stance.⁴ They grant that we have some minimal duties of distributive justice toward all

¹ Here and throughout I use the term “citizen” in the broad sense that has become customary in the literature on international justice, to refer to all those who live regularly under common political institutions (and thus to include permanent residents).

² Globalism, it should be clear, is one of the views that go under the banner of *cosmopolitanism*. But cosmopolitanism comes in different flavors. Some cosmopolitans think that the presence of institutions makes a difference to our duties of distributive justice, but deny that we should focus on *full-blown political institutions* such as characterize the modern state (see e. g. Beitz 1979; Pogge 1989 and 2002). Others—the ones I call globalists—think that duties of distributive justice in all their forms follow from the demands that individuals place on one another independently of any institutional setting. I am mainly concerned with the latter view.

³ By “full-blown political institutions,” I simply mean the kind of institutions that make up the modern state. There are also political institutions at the international level, but the extent of their power is much more modest.

⁴ Proponents of the more extreme view include Thomas Nagel (REF) and Samuel Freeman (2007, chap. 8 and 9). Proponents of the moderate view include Michael Blake, David Miller and Richard Miller (REFS).

human beings—*duties of humanitarian aid*, demanding that we help a person whose situation is exceptionally dire, regardless of where or under what institutions she lives. But they hold that more stringent duties of distributive justice have a restricted scope. The exact content of these *duties of equality* is a matter of contention—the demand may be to maximize the prospects of the least well off, for instance, or perhaps to equalize everyone’s life prospects—but these writers agree that such stringent duties can only obtain between those who live within the borders of a state.⁵ Call this outlook *statism*.

Globalism seems to be the majority position in international justice circles these days. In a way, this is surprising. It’s a deeply revisionist view, implying that our duties of equality have a much broader scope than common sense suggests. Why does it exert such an attraction on the contemporary philosophical mind? The explanation has much to do, I suspect, with a strikingly simple line of reasoning thought to expose a fatal flaw in the statist outlook: the *argument from the moral arbitrariness of birthplace*. Its outline has become extremely familiar. We start from a seemingly uncontroversial thought: that inequalities due to differences in natural talent or social class are to be eradicated because, as Rawls famously said, factors that are “so arbitrary from a moral point of view”⁶ shouldn’t be allowed to determine an individual’s life prospects. We then make a crucial observation: that inequalities tied to a person’s country of birth are *just as morally arbitrary* as inequalities linked to talent and social class.⁷ From this, we conclude

⁵ My terminology here differs from Thomas Nagel’s, who seems to think that humanitarian duties are not duties of justice (see REF). I take the crucial question to be whether we are speaking of duties that are properly enforced by the state and that have to do with the allocation of resources broadly construed. Duties of humanitarian aid and duties of equality both belong in that category.

⁶ REF.

⁷ As Nagel puts it: “The accident of being born in a poor rather than a rich country is as arbitrary a determinant of one’s fate as the accident of being born into a poor rather than a rich family in the same country.” (Thomas Nagel, “The Problem of Global Justice,” *Philosophy & Public Affairs* 33 (2005): 113-47, at p. 119)

that a person's country of birth shouldn't be allowed to determine her life prospects, and hence that our duties of distributive justice toward a given person must be independent of her country of birth. In short, we conclude that *statism cannot be true*. To affirm the contrary is to claim for birthplace a moral importance that it simply doesn't have.

This is not a conclusive argument for globalism, but it does present statist with a challenge: explain what makes a person's birthplace nonarbitrary from a moral point of view (or perhaps what other considerations outweigh the appeal to the moral arbitrariness of birthplace) or go home. In response to this, statist have worked hard to show that sharing political institutions has a significance that the argument overlooks. Some have argued that the kind of *cooperation* that obtains within a country generates special duties of justice among citizens; others, that the *coercion* to which a state subjects its citizens can be justified only if particularly stringent distributive requirements are met.⁸ These are insightful suggestions, but it seems fair to say that they have failed to sway the field. Here I approach the challenge from a different, slightly less direct angle. I argue that, if we combine the argument from the moral arbitrariness of birthplace with certain obvious facts about human reproduction, we run into a problem concerning the *unilateral imposition of duties*. In a nutshell, the thought is that the argument focuses exclusively on the life prospects of newborns, without considering that newborns don't simply appear in our midst, but rather are born as a result of people's reproductive choices. Once we take account of this fuller picture, a problem arises about whether, and how, a person's reproductive choices should be allowed to impact the duties of others. Solving this problem is more complicated than it looks. I argue that it requires a way to make the obligations that individuals create for one

⁸ For the cooperation view, see Freeman, REF. For the coercion view, see Blake, REF. For a critical discussion of both arguments, see Caney 2008 (REF).

another suitably reciprocal. This can be done, I propose, by ensuring that the obligations are mediated by institutions instantiating what John Rawls calls *pure procedural justice*. This requires a kind of institutional structure that states can (and often do) provide, but that doesn't currently exist at the international level. This lends support to the statist's contention that our most stringent duties of international justice only obtain toward our fellow citizens, although I believe that my argument also supports more radical conclusions about how we should reform the current world order.

The fundamental disagreement between globalists and statist concerns the scope of our duties of equality. It may therefore be useful to fix ideas by adopting a specific interpretation of the duty of equality. I'll assume here that our duty of equality demands that we equalize the life prospects of children. This is not a view to which I am otherwise committed, but it has the advantage of being simple and of having been defended, in one form or another, by some prominent globalists. I should stress, however, that the worries I raise here also apply to other interpretations of the duty of equality. My main claim is that it is implausible to think that the problem of unilateral imposition does not affect the stringency of our duties of distributive justice. This claim doesn't depend on the exact content of our more stringent duties of distributive justice.

I proceed as follows. I begin (Section II) by providing a more precise statement of the globalists' main argument. I then articulate (Sections III-IV) the problem of unilateral imposition to which it gives rise, and I explain why I believe that we should take the problem seriously. I then consider how the problem might be solved. I draw a parallel (Section V) with a problem that is at the heart of classical discussions of property rights. I claim that Locke's well-known solution is of little help, but that Kant's view gives at least the shape of the solution we need. I then argue (Section VI) that we can give definite content to the solution by ap-

pealing to the idea of pure procedural justice. This means that addressing the problem of unilateral imposition demands a robust institutional setting. The link between duties of distributive justice and political institutions is thus much more intimate than globalists are willing to concede. I end (Section VII) by raising a number of questions about what conclusion we should draw from all this.

- II -

The argument from the moral arbitrariness of birthplace comprises two main claims. First, that we should be concerned with inequalities tied to talent and social class *specifically because these are morally arbitrary facts about a person*. Second, that a person's birthplace is *just as morally arbitrary* as these other facts, and hence that it cannot justify any restriction on the scope of our duties of distributive justice. Let me begin with a few words about the role of appeals to moral arbitrariness in recent political philosophy. This will help situate our two claims, and also bring out some features of the globalist position that partly account for its appeal.

The idea that we shouldn't let morally arbitrary factors influence a person's life prospects is often traced back to the writings of John Rawls. It appears in *A Theory of Justice* when Rawls considers libertarianism as a possible alternative to justice as fairness. In a passage that has launched a thousand philosophy papers, Rawls berates the view for allowing natural talents and social class to create significant inequalities, thus permitting "distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view."⁹ Many readers saw in this a powerful form of argument, especially when combined with the idea that the justification of our political institutions should be particularly re-

⁹ TJ, 63. To be exact, Rawls considers a specific version of libertarianism which he calls "the system of natural liberty".

sponsive to the life prospects of *children*. Again, Rawls is taken to have articulated the main idea:

[M]en born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities . . . yet they cannot possibly be justified by an appeal to the notions of merit or desert.¹⁰

The final phrase is key here. It articulates how *any* inequality in the life prospects of children seems particularly hard to justify. After all, the thought seems to go, a newborn has done nothing and is responsible for nothing. What about it could possibly justify its facing much worse prospects than another newborn—who also has done nothing and is responsible for nothing?

It's hard to deny the attractions of this kind of reasoning. You can even see why some writers see it as an exceptionally potent weapon against any number of conservative theories. Take Nozick's views on property, for instance. However seductive his arguments might be at times, his contention that massive inequalities have to be allowed out of respect for property rights meets with an obvious rejoinder: how can any scheme of property rights justify massive inequalities in life prospects from the point of view of a child who was born *just now*? Doesn't the child have a valid complaint if our system of rights leaves her destitute just because, through no fault of her own, she happens to be born to lazy or prodigal parents? Surely, this captures *something* of what's wrong with libertarianism.

Note that Rawls himself relies on this kind of reasoning at most in a highly restricted manner. He never suggests that we should be concerned with rectifying moral arbitrariness wherever it might be found; he only worries about a specific

¹⁰ TJ 7.

case in which our political institutions allow certain morally arbitrary factors to impact people's life prospects in ways that strike us as unacceptable. What is more, as Samuel Scheffler has persuasively argued, the appeal to moral arbitrariness doesn't constitute Rawls's "official" argument against libertarianism: in the context of his contractualist approach, such an argument would have to be presented in terms of what would be chosen in the original position.¹¹ At most, it is just one consideration in a complex argument invoking a number of other, more fundamental notions. This is an important point: Rawls never says that we can jump from our intuitions about what is morally arbitrary to conclusions about what distributive justice requires in specific cases. If anything, his entire approach entails the reverse.

The globalists' argument depends on the idea that, at least in some cases, we can draw definitive conclusions from appeals to moral arbitrariness. In this respect, the view has clear affinities with an outlook whose ability to generate sweeping conclusions from appeals to moral arbitrariness has recently taken political philosophy by storm—what Elisabeth Anderson has memorably dubbed "luck egalitarianism."¹² But it is important to note that globalism is not a mere offshoot of luck egalitarianism; it is (or at least, it can be) a far less contentious view than luck egalitarianism. Let me explain.

On a luck egalitarian view, there is nothing merely intuitive about our judgments of morally arbitrariness. These aren't rough placeholders for what our best theory of justice may establish, nor preliminary judgments to be eventually reassessed in light of a more worked out conception of justice. Such appeals have a definite content that can be established rigorously, a content that provides the foundations for the entire edifice of distributive justice. What is this content?

¹¹ See Samuel Scheffler, "What is Egalitarianism?" *Philosophy & Public Affairs* 31 (2003): 5-39, at p. 9.

¹² See REF.

There are small variations among proponents of the view on this point, but the main idea to which they jointly subscribe is simple. If an inequality results from a person's choice to take on a certain risk—if she chose to smoke, say, and developed cancer as a result—then she has no complaint: she has made her bed, she must lie in it. She can't expect others to pay for her foolish choices. By contrast, if an inequality isn't traceable to the person's choices in this way—if it results from the person's circumstances rather than from her choices—then it *is* morally arbitrary and justice demands that it be eradicated.

This conception of moral arbitrariness is meant to be perfectly general. It is the input for a complete theory of distributive justice, a theory whose single principle is that all inequalities resulting from factors that are arbitrary from a moral point of view should be ironed out.¹³ The globalist thesis is a natural implication of this viewpoint: any difference between the life prospects of newborns is problematic on a luck egalitarian view, since such differences cannot possibly be justified in terms of choices that the newborns have made. It is thus trivial that differences in life prospects based on the fact that two children were born across the border from one another must be morally arbitrary.

But if luck egalitarianism plausibly entails globalism, the reverse isn't true.¹⁴ Globalism's central commitment is much more modest than that of luck egalitarianism, and does not have the same counter-intuitive implications. Take for instance the worry that luck egalitarianism is excessively harsh. On a luck egalitarian view, a person who willingly takes on a risk that turns out badly *must* be made to bear the full cost of that risk, since it would be unfair to allow her to impose on others the cost of a risk she willingly undertook. This seems highly

¹³ REFS to Cohen, Arneson, etc.

¹⁴ Although certainly some globalists see luck egalitarianism as the best foundation for their view. See most notably Tan 2012.

implausible.¹⁵ But globalists don't have to accept this claim. Denouncing the moral arbitrariness of allowing a person's life prospects to be determined by where she is born entails nothing about whether those who take on risks are entitled to help or not.

Likewise, globalists needn't accept the exceedingly capacious view of political philosophy's subject matter that characterizes most luck egalitarian views. Luck egalitarians typically hold that justice is concerned with eradicating morally arbitrary inequalities wherever they can be found. Ultimately, this means that no aspect of human life escapes the purview of distributive justice. A person who is born with an unusually gloomy disposition, or with an unfortunate appearance, has a claim of distributive justice on this view.¹⁶ This doesn't just threaten to make the approach unworkable; it seems to denote a slip from thinking about distributive justice to thinking about something different, a kind of search for cosmic balance that has little to do with human institutions. Globalists are making a much more restricted claim. Their position is consistent with the claim that political philosophy should be concerned with moral arbitrariness only when it is closely tied to the operation of certain types of institutions, not with moral arbitrariness wherever it may be found. After all, their central claim can be seen as concerning most fundamentally the operation of borders, since being born in one country rather than another makes a significant difference to a person's life prospects primarily because borders restrict movement between countries. In this respect, the view stays comparatively close to Rawls's own use of the idea of moral arbitrariness, which is also meant to apply to how "the institutions of society favor certain starting places over others," not to inequalities in the abstract.¹⁷

¹⁵ See Anderson, Fleurbaey.

¹⁶ REF to Cohen, etc.

¹⁷ REF to Blake and Risse.

There is one crucial point of overlap between globalism and luck egalitarianism: the idea that we can draw definitive conclusions about distributive justice by asking what is morally arbitrary. However, once again, globalists needn't endorse the most sweeping version of this commitment. They can say that appeals to moral arbitrariness allow for definitive conclusions only in a restricted range of cases, which include the operation of borders. This is not obviously implausible. The idea that *some* facts about a person—her gender and her race, for instance—shouldn't affect her life prospects because they are morally arbitrary clearly resonates with some of our most deeply entrenched convictions; it's hard to see what other argument (from the original position or elsewhere) could override our thoughts on such matters. Appeals to the moral arbitrariness of birthplace may be thought to be similarly unimpeachable. If we accept that the life prospects of children raise special concerns for political justification, then differences in life prospects that are tied to a child's country of birthplace are bound to appear particularly shocking. After all, these are undoubtedly the most egregious inequalities of our time. Justice may or may not demand that we be concerned with ironing out inequalities wherever they occur, but who can deny that the differences in prospects between children in poor countries and children in rich countries are morally outrageous, or that they call for political action?

All this to say that globalism's appeal to the moral arbitrariness of birthplace can't be summarily dismissed by invoking the shortcomings of luck egalitarianism. I still think that the argument from the moral arbitrariness of birthplace is problematic, however. I now turn to the argument for that point.

- III -

There is much to be said for the idea that our thinking about justice should be particularly sensitive to the prospects of children. Indeed, this touches on one of the defining features of the problem that a theory of justice is intended to solve:

the fact that political associations can't be voluntary, among other things because members are constantly born subject to their rules without having a say about the matter. This idea should inform all our theorizing about justice. But, as I said, the argument for globalism demands that we accept more than that. It rests on the assumption that we can look at the life prospects of two children living in different countries and, from the *mere fact* that these life prospects differ significantly, draw definitive conclusions about what distributive justice demands. This is not simply to say that the life prospects of children matter greatly; it is to imply that nothing else does.

This suggests a way to tackle the globalist argument. We might try to show that it rests on an incomplete picture and that, once we fill it out, we see that determining the justice of a situation is a complex matter resting on a richer set of considerations than globalists allow. An argument of this kind can be found (at least in schematic form) in Rawls's *Law of Peoples*.¹⁸ Rawls wants to show that a significant difference in wealth between countries needn't raise any questions of distributive justice. He asks us to imagine two countries choosing radically diverging policies about the administration of their resources. Both countries have just institutions, and hence make their decisions in accordance with democratic principles, and both enjoy a level of development allowing them to maintain these institutions. But one country aims resolutely for industrialization, while the other chooses policies that favor a "more pastoral and leisurely" lifestyle.¹⁹ We assume

¹⁸ See LP 117-18.

¹⁹ LP 117. Rawls considers an alternative scenario in which one society particularly stresses the rights of women, as a result of which its birth rate drops, while the other retains a higher birth rate; again, this leads to a significant difference in material well-being between the two societies. The scenario I mention in the text seems to me purer, since neither the policy of industrializing nor that of retaining a pastoral lifestyle need involve any injustice. By contrast, I am inclined to think that not particularly stressing the rights of women, for any existing human society, is a serious injustice. Since the scenario I present in the text suffices to make Rawls's point, I leave aside that other case.

that, as a result of these different trajectories, over the course of a few generations, inhabitants of the first society becomes significantly better off than those of the second.²⁰

Now, it seems hard to deny that each country has chosen an acceptable course: it should be open to a people to decide, through appropriately democratic institutions, whether to pursue a more or less intense process of industrialization. That being the case, why would the sheer fact that one country ends up much richer than the other give rise to any claims of distributive justice? If the poorer country's chosen trajectory involves no injustice—if it remains a just society at every point—then how is the presence of the richer country even relevant?

The lesson to draw, it seems, is that we can't focus exclusively on the comparative life prospects of children born into different societies. A society's decisions over time also matter. But a true globalist won't be convinced. She can retort straightforwardly that whether you are born to a society that previously made good or bad decisions about economic matters is *itself* a morally arbitrary fact about you, and that if these decisions have made you significantly worse off than children born in other countries, then you have a valid complaint—even if your standard of living doesn't fall below the minimal bar set by our duties of humanitarian aid. After all, you weren't party to any of the decisions your forefathers made. How could they justify your being born to much worse prospects than others (who also weren't party to the decisions their forefathers made)? It is one thing to say that a person has to live with the decision she has made, but to

²⁰ Note that we shouldn't assume that it's just as good to be born in the poorer of the two countries (as if the two countries offered incommensurable versions of the good life). If Rawls's argument is to make any sense, we have to assume that, due to their forefathers' greater diligence, those who are born in the richer country have genuinely better life prospects (although not necessarily prospects that are better in every respect). Those who find this implausible because the pastoral lifestyle seems obviously preferable can read the example *mutatis mutandis*.

say that she has to live with the decision that her country has made, without any input on her part, is far less obvious.

Rawls suggests that the disagreement stems from the fact that globalists are fundamentally concerned with individual well-being, while he is concerned with a society's being "fully just and stable for the right reasons."²¹ More straightforwardly perhaps, the conflict might be characterized as between an outlook that takes the moral arbitrariness of birthplace to be a definitive and overriding consideration and one that takes the demands of justice to rest on a broader set of considerations, among which the prospects of children have considerable but not paramount importance. You may take Rawls's diagnosis of the two countries' situations—and his claim that comparative inequality need not entail an injustice—to count in favor of the more complex outlook. Or you may not, depending on how the example strikes you. It would be good to have a more direct argument, one that brings out a specific problem with the globalist outlook. I now want to propose such an argument.

- IV -

Assume that globalists are right: any child born anywhere is owed the equalization of its life prospects with those of children everywhere else.²² This places a stringent requirement on the rest of us. I submit that some difficult questions arise about how we come to be subject to that requirement—or, more precisely, about how it comes to be *imposed* on us. Now, obviously, the worry isn't that the *child* imposes this duty on us; it hasn't done anything. But children are typically born as a result of *someone's* choices. Shouldn't we ask whether it's acceptable for those choices to create stringent duties for the rest of us?

²¹ LP 119.

²² Once again, I assume a specific content for our duties of equality, but nothing turns on this. Other ways of specifying the duty would yield similar problems, so long as they generate comparably stringent duties.

Start by noting that, as a rule, we think that persons should have the power to create at least some moral obligations for themselves, but we find it much less obvious that they should have the power to create obligations for *others*. The way we think of promising suggests as much. If I promise to you that I'll cut your hair, and you are foolish enough to accept, then I have created an obligation for myself to cut your hair. On any plausible conception of the practice, however, I can't normally promise to you that my friend Jules will cut your hair and thereby create an obligation for him. Presumably, this reflects the fact that, although we have an interest in being able to grant others certain rights over our actions (provided that certain conditions obtain) and in their being able to grant us certain rights over their actions, we all have an equally fundamental interest in being able to control when and in what respect we become obligated to do something. This kind of consideration also explains why coerced promises seem so problematic: as Scanlon argues, a principle according to which such promises are binding "would not give agents sufficient opportunity to avoid unwanted obligations."²³

Reproductive choices don't appear to be similarly restricted in their normative impact. Choosing to have a child is an almost unbelievably effective way of creating obligations for yourself, of course (if being subject to obligations was, somewhat perversely, your life's chief goal, it would be hard to counsel a better course of action than having a child). But it can also be a surprisingly successful way to create obligations for *others*. If I have a child and am unable, or simply fail, to take care of it, then others are on the line. They can't get off just by saying that they didn't choose to have the child, or that they weren't given a fair chance to avoid this new obligation.

In this way, human reproduction is, morally speaking, a remarkable phenomenon. It is normally brought about by deliberate choice—people choose to

²³ WWO 286.

(try to) conceive children or not, to carry them to term or not, and so on. Yet these choices can lead to the creation of obligations for others *without any input whatsoever on their part*—entirely unilaterally, it seems. Now, you may think that all sorts of choices have the potential to create new obligations for others in this way. But I want to stress a feature that is particularly striking in the case of reproductive choices, and that gives worries about their consequences a particular bite. If I choose to climb a difficult mountain, I may make it the case that others have an obligation to rescue me. But my claim to help will plausibly depend on the wisdom of my choice to climb the mountain in the first place. If my choice was utterly foolish—if I climbed the mountain in the face of repeated warnings that doing so was extremely unsafe and entirely at my own risk—then others may have no obligation at all to rescue me. I took a stupid risk, I have to bear the cost.²⁴

This kind of reasoning has no analogue in the case of children. However foolish or ill-advised my decision to have a child might have been, my child's claim to help remains unaffected.²⁵ Indeed, even if my aim in having a child was explicitly *to create obligations for others*, this does not affect my child's rights in any way (compare a situation in which I climb a mountain just to force others to rescue me). The explanation, I take it, is that the source of obligation here is the child itself—its rational nature, if you prefer—rather than anything I did or didn't do. My choice to have a child is morally significant, of course—it is a choice that has obvious moral consequences. But once the child exists, it is a separate source

²⁴ It may be that a person whose life is in danger is entitled to some help however foolish her choices were. But note that we still think the duty is qualified by the choices the person made; if the choices were particularly foolish, then it seems clear that no rescue should be attempted if it puts the rescuers at great risk.

²⁵ My claim to help may be diminished, depending on your view. That is, you could think that, although taking care of a child puts exceptionally hard demands on me, given my material circumstances, I have only myself to blame and have to put in the extra effort. The point in the text is that none of this can affect the claim that my child can make against others.

of obligation—separate at least in the sense that, as all sane people allow, a child can't be responsible for her parents' faults. It didn't ask to be born, it hasn't done anything; *a fortiori*, it hasn't done anything that could in any way diminish its claim on other people's help.

How worrying this all seem will depend in part on the kind of obligation that you take a person to create for others by having a child. At one end of the spectrum, there is nothing particularly worrying about the thought that, by having a child, I bring into the world a being who calls for your respect—a being you can't kill or torture. This isn't worrying because obligations of this kind don't impose any new demands on you. You can't go around killing people, and that command doesn't change—it doesn't ask anything more from you—when it holds with respect to one more person. It's slightly more troubling if I bring into the world a being toward whom you have *positive obligations*—a being who is entitled to your help, and whose situation could make it the case that you have to give up part of your resources, or to carry out specific actions. *That* doesn't leave everything as it was. Being on the line to help one more person is a significant new obligation, and obligation that you might reasonably (if perhaps not laudably) prefer to avoid.

Now, you may want to object that I'm just hitting my head against the wall of our cage here. We all enter the world in a hopelessly vulnerable condition; is it any surprise if that inescapable aspect of human life has to factor into our moral deliberation, and if in some cases it makes substantial demands on us? Perhaps this thought should reconcile us, at least in part, to the fact that others can create moral obligations—even positive moral obligations—for us through their reproductive choices. But it doesn't address the specific worry that arises in the present context. What globalists claim is not simply that *morality* demands that I take it upon myself to equalize the prospects of children everywhere—they are not sim-

ply making a claim about my imperfect duties toward the world's poor. They take the duties they describe to be *enforceable*, at least in the minimal sense that it would be appropriate for a state to levy additional taxes for the fulfillment of these duties.²⁶ This seems to me to add a significant new dimension to the inescapable aspects of human life I just mentioned. The idea that others can, through their reproductive choices, make it the case that I have enforceable obligations of distributive justice toward more persons, and hence potentially more demanding obligations, seems to me particularly troubling. The implication is that others can create duties for me that I have no choice—not just morally, but *in any meaningful sense*—about fulfilling, duties such that, if I fail to fulfill them, force can ultimately be used against me. This gives them a disturbing kind of control over my normative situation—a control that is admittedly limited (I am not required to give up *everything* to help other people's children), and that is mediated by the state in some minimal sense, but a control that seems deeply troubling nonetheless.

Let me be precise about the claim I want to make. I don't deny that we have enforceable obligations of distributive justice toward children in poor countries. Such a denial would clearly strike the wrong balance between my interest in having control over my obligations and the interest of poor children in having their basic needs met. I am granting (along with all moderate statist) that we have minimal duties of humanitarian aid toward all human beings regardless where they are. What I find implausible, however, is that the problem of unilateral imposition should make no difference at all to our obligations of distributive

²⁶ Perhaps globalists can retort that their thesis is actually much more abstract than I suggest here—that they are merely saying that the world is more just to the extent that it is more equal, without committing themselves to any specific ascriptions of duties of justice. That is, they could say that it is one question what would make the world more just, and a separate question who can be asked to do what to make the world more just. If this is the case, the view is much more wishy-washy than I took it to be.

justice—that is, that we should fundamentally have the same obligations, regardless of whether they are imposed unilaterally.

Now, whether all this bears on the disagreement between globalists and statistes depends on a further claim: that I don't stand in the same relation to the reproductive choices of my fellow citizens as I do to the reproductive choices of people in other countries. In short, it depends on the claim that shared political institutions can provide a solution to our problem. I believe that this is indeed the case. Before I get to this, however, I should say a few words about the general shape that I think our solution must take. For this, it will be helpful to think back to a problem that is at the heart of classical political philosophy, and that also has to do with the unilateral imposition of enforceable obligations: the problem of *acquisition*.

- V -

Think of what happens when I acquire an object. If I succeed—if I become the object's legitimate owner—then I make it the case that you are under an enforceable obligation to refrain from using it without my consent. In short, by acquiring the object, I create a new obligation for you. I change the normative landscape, and the result is that, now, if you attempt to use the object without my consent, you can justifiably be stopped. The question, then, is very much the one I raised in the previous section: how could I have the power unilaterally to change your normative situation in this way?²⁷ Now, what kind of answer you are inclined to give to this question will depend on what you think the problem is exactly. In this section, I want to contrast two very different ways of understanding the problem—and two very different kinds of solutions—that are associated with the works of John Locke and Immanuel Kant. Famously, Locke defends a purely

²⁷ For an articulation of the idea of acquisition that stresses its unilateral nature, see Jeremy Waldron, *The Right to Private Property* (REF), pp. 262-66.

private solution to the problem of acquisition, while Kant denies that such a solution is possible. I'll explain briefly why I don't think the kind of solution Locke proposes can help with our problem, and why Kant's solution seems much more promising, even if it needs a good deal of filling out.

What worries Locke about acquisition doesn't seem to be so much the creation of obligations for others as how excluding them from the use of a certain object threatens to make them worse off than they otherwise would be.²⁸ Certainly, his solution seems to be motivated by this worry. He starts by saying that acquisition seems unproblematic if you have everyone's consent—if you have their permission to make them worse off, then you do no wrong. But, of course, this can't really be the solution, since seeking the consent of all others for every act of acquisition would effectively render acquisition impossible. So he proposes a different solution. If the worry is making others worse off, then we can at least say that unilateral acquisition is perfectly acceptable—it is as legitimate as can be—*so long as it doesn't make others worse off*. In such cases, you might say, it doesn't *matter* whether others consent or not; they simply have no valid objection. This is the insight that Locke articulates in his famous proviso, which states that acquisition in the state of nature is valid so long as there is “enough, and as good, left in common for others.”²⁹ If the proviso is fulfilled, the thought goes, then

²⁸ See John Locke, *Second Treatise of Government*, ed. P. Laslett (Cambridge University Press, 2nd ed. 1967), REF. It has been suggested to me that the problem of acquisition takes a different form than I suggest for Locke, because he starts from the assumption that God gave the earth to humankind in common, so that the problem is not plain acquisition but the turning of common property into personal property. I don't think this matters for our purpose. Even on that reading, acquisition entails the unilateral creation of new enforceable obligations for others: force can now legitimately be used against them in a way that it previously couldn't. If I put my hammer down and others try to take it, they can be pushed away, which wasn't the case before; common original ownership changes nothing to *that* part of the story, although it may make acquisition easier to explain in other respects (and perhaps even beg some important questions, as some of Locke's detractors would maintain).

²⁹ *Ibid.*, §27. For a modern formulation of the proviso that brings out the underlying assumption, see Nozick.

acquisition leaves everyone in as good a position as they were before, hence no one can complain.

It is important to note that this is a strictly private or *non-institutional* solution to the problem of acquisition: as Locke would put it, acquisition can be fully legitimate in the state of nature. No state is required, except perhaps for pragmatic reasons (to ensure that property rights are protected more effectively, for instance).³⁰ It would be good news for the globalist if something like Locke's solution was available for our problem. But it should be clear that this is not the case. Like Locke, we have to conclude that obtaining everyone's explicit consent can't be the solution. Partly for the kind of reason he mentions: it would effectively make reproduction impossible. But also, no less crucially, because reproductive choices are so eminently personal; having to ask everyone for permission before having a child would be particularly humiliating. In addition, we can't call on anything like Locke's proviso. The approach simply won't work, since we're concerned precisely with cases in which others are *not* left in as good a position by my having a child—cases in which, because of my decision, they will have to pay higher taxes, say.³¹ We can't say that no one has grounds for complaint. Clearly, we need a different kind of solution.

Kant starts from a different understanding of the problem of acquisition. His concern is not that unilateral acquisition might make others worse off, in the sense of taking options away from them, but rather, more formally, that it gives one person the power unilaterally to create obligations for another. Very broadly, I take the thought to be that, if you get to determine my enforceable obligations through your private choices—if your choices determine when and how force can

³⁰ On the practical problems that the state solves, see Locke REF.

³¹ It may seem implausible to present the influence as so direct. If that seems a problem, consider a counter-factual case in which there are only two countries, so that the reproductive choices of individuals in the poorer country have a direct impact on the obligations of individuals in the richer country.

be used against me—then my standing as an independent rational agent is undermined. This means that the Lockean proviso is neither here nor there for Kant. The question is not whether others make you worse off by their acquisitions, but rather how they could have the power to change your rights and obligations in the first place.

At least in its outline, Kant’s solution is simple enough. I take it to comprise two main theses. First, that the power to change the normative situation of others cannot be legitimate if it is unilateral, and hence that *it must somehow be made reciprocal*. Second, that making the power reciprocal demands that its exercise be mediated by suitable political institutions. Kant’s is thus a resolutely public or *institutional* solution to the problem of unilateral obligation. By contrast with Locke, he doesn’t think that acquisition can be made unproblematic in a state of nature.

How do political institutions make acquisition reciprocal? This is a difficult question, and one on which Kant provides very little guidance. The general idea seems to be something like what Arthur Ripstein articulates in the following passage:

[M]y appropriation can only change your legal situation if everyone, including you, has conferred a power on me to appropriate. My act of appropriation is thus a unilateral exercise of an omnilateral power, rather than a unilateral act. . . . [M]y act genuinely binds [others] only when the general will has authorized it.³²

The suggestion here is that the power to acquire objects will be reciprocal only when the power in question has been “conferred” by “everyone” in some relevant sense—when the power is one that has been granted to each by all. Only then, the reasoning goes, will the apparently unilateral act of acquisition actually constitute the exercise of a power that is “authorized” by all, and hence not unilateral.

³² *Force and Freedom* (REF), p. 157.

I take this to be a more detailed statement of the shape that a solution must take. But it doesn't give us a precise articulation, since it leaves too many crucial questions open—what does it mean for a power to be conferred on each by all? What kind of authorization are we talking about? How do we know what the general will authorizes? To be fair, this is usually what happens when the idea of a general will enters the picture. The expression conveys the idea of a will whose decrees represent everyone, or that everyone must accept in some sense. But what should count as our general will is an elusive question, to put it mildly. For our purposes, it's best to put the idea of a general will to one side and ask more directly: what could make our obligations reciprocal? That is, what kind of institutional arrangement could plausibly count as making obligations reciprocal? Kant sometimes seems to suggest that *any* legal system makes obligations reciprocal, but that's hardly plausible. What more can we say?

I want to explore the following idea. Obligations are made reciprocal when they are mediated by something like a common decision—that is, something that makes it the case that *we decide together* how one person's actions will affect another's normative situation. One way to do this, I submit, is to have obligations arise in an institutional context ensuring that each person's exercise of her power to create obligations will turn out to be consistent with the interests of all. In short, I think that the obligations can be made reciprocal by a legitimate state that realizes conditions of pure procedural justice. I now turn to explaining that idea.

- VI -

I now want to say more specifically how I think our problem *can* be solved by the state—indeed, how I think it *is* partly solved by states. What matters for our purposes is primarily that the structure of the solution makes essential reference to political institutions, not as pragmatically necessary, but as part of

what allows obligations to arise. Hence I won't go into as much detail as might otherwise be needed, although I hope that what I say suffices to convey the main idea.

So far, I have mostly emphasized the worry about unilateral imposition that arises in connection with people reproductive choices—how it seems problematic to say that, by having a child, a person can unilaterally create new enforceable obligations for others seems problematic. But there is another important consideration that we must take into account, a more intuitive worry that tends to dominate our thinking about reproductive matters. I alluded to it briefly above: it concerns the special importance that decisions about reproduction have in human lives, and the interest we have in being allowed to make these decisions with as little interference as possible from the outside. Think of this as a worry about *reproductive privacy*.³³

What we need, then, is a way to reconcile these two types of considerations. This points to how we might fill out the Kantian shell. We need a system that allows individuals to make their own choices, but in such a way that the outcome of those choices is acceptable to all. In other words, as I have hinted already, we need a system that instantiates what John Rawls calls *pure procedural justice*.³⁴ The idea should be familiar. A system of pure procedural justice is one in which justice is determined by the actual carrying out of a procedure, and in which the procedure has the property of ensuring that the outcome is just. The canonical illustration is a series of fair gambles. If each gamble is fair, the thought goes, then the outcome of a series of gamble will be fair whatever it turns

³³ We are often tempted to stress only this second kind of consideration—to speak as if having children were a fundamental right, on a par with freedom of expression or freedom from arbitrary arrest. I see no reason to accept that view, especially given that our resources are finite.

³⁴ See Rawls, *Theory of Justice*, §14.

out to be. So long as the procedure is carried out, it bestows justice on its outcome.

This idea plays shifting roles in Rawls's presentation of his theory, but the one that is most closely aligned with what I have in mind here is the answer it provides to Nozick's charge that a liberal state, in order to achieve its egalitarian goals, would have to intervene incessantly in our lives to restrict "capitalist acts between consenting adults."³⁵ Nozick isn't explicit about this, but the way he puts the matter is clearly meant to conjure up images of *unpredictable* state interventions. You try to engage in an innocent transaction with your neighbor and lo, the state knocks at the door and tells you that you have to hand over a certain sum. Rawls's commitment to pure procedural justice ensures that this isn't how things would go in the kind of society he advocates. The rules that constitute the basic structure should be publicly known and predictable. The idea is that we should select these rules to ensure that individuals can make their choices, given the expectations they form in light of these rules, and still jointly generate outcomes that are acceptable to all.

Now, if there is one area in which constant and unpredictable state intervention would be particularly worrying, it has to be reproductive choices. The ideal of pure procedural justice is thus particularly attractive in this context. We want people to have the freedom to decide whether to have children or not, when, how many, and so on, in light of what they can expect the consequences of their choice to be. But we also want to select rules for our society that ensure that the joint outcome of everyone's reproductive decisions will be acceptable to all.

Can something like this be done? I believe that it can. Indeed, I am inclined to think that many states already do it (or, at least, come reasonably close to

³⁵ Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), p. 163. The idea of pure procedural justice also appears in Rawls's discussion of the original position (see REF), but the two uses of the idea aren't linked in any obvious way.

doing it), in a way that seems innocuous. States that have the administrative capacity tend to have a *population policy*, by which I mean that they put in place incentives aiming to ensure that the aggregate decisions of individuals regarding reproductive matters turn out to be acceptable to all. For the most part, this is the form that pure procedural reproductive justice takes in this context.

What does it mean for the results to be *acceptable to all*? This is a hard question. Let me make two points that shouldn't be contentious. First, we don't know, as a society, how to function without population renewal. That is, leaving aside how horrible the prospect seems to us, we don't know how to phase things out. And even if we did, it's unclear that there would be a way to do so that could preserve a just society until anything close to the end. In that sense, renewal of the population is a condition of the existence of a just society. So one thing the state has to do—and this is clearly, on any plausible conception, a legitimate state purpose—is to maintain the birth rate within the range at which just institutions can continue to operate.

Now, this will require the birth rate to fall within a certain range, but there is no reason to expect the range to be particularly narrow. This brings me to my second point. Population policy is clearly a point on which we take democratic input to be relevant. That is, we think that, within the range set by justice, specific policies should be subject to democratic decision-making. Thus, most of us think that the citizens of a country can legitimately choose a more stationary route or a more growth-oriented route, and set the population policy accordingly. (Think again of Rawls's two societies.) This goes back to my suggestion that the imposition of obligation has to be mediated by a common decision in some sense. We need a conception of what constitutes (for lack of a better word) our shared will concerning how the burdens and benefits of reproduction are to be shared. The most plausible conception we have, I believe, is that our shared will is consti-

tuted by the decision reached in accordance with our legitimate democratic procedures, so long as this decision is consistent with the demands of justice.

As things stand, many countries have population policies that are barely noticeable. Mostly, they provide tax incentives to encourage their citizens to have more children. This should not surprise us: given the way things are set up—and especially given the way our pension system is set up—the threat to the smooth functioning of our institutions is most likely to come from an insufficient birth rate. But the fact that a country has a policy whose content is barely noticeable does not change the fact that it *has* a policy—nor the crucial fact that, if need be, the policy could be made more stringent. What matters, in short, is not so much the *content* of the policy as the fact that an appropriate institutional framework is in place: we have institutions that *can* (they have the power and the bureaucratic wherewithal to) take measures to ensure that aggregate decisions yield results that are within the desired range. And these institutions are democratically accountable in some suitable sense, so that the power to decide about such matters is distributed in accordance with the requirements of democracy (or some reasonable approximation thereof).

It should be clear that the international order as we currently know it does *not* include institutions with either the power or the mandate to realize global conditions of pure procedural reproductive justice. No shared global institutions ensure that the reproductive choices of human beings across the globe are consistent with the interests of all—that they are consistent with longer-term sustainability, with the responsible development of poorer countries, and so on. Some countries do have reasonable population policies, of course, and perhaps this should count as an approximation of the ideal of reciprocity in some contexts. But it is important to stress that this is *not* the ideal. Obligations are not made reciprocal by one party's unilaterally curbing its demands, or by its doing what it thinks shared in-

stitutions would demand. What makes obligations reciprocal is actual mediation by shared institutions that stand for the interests of all.

What such institutions would look like at the global level is a question that exceeds the bounds of this paper, but I do want to mention two important points. First, these institutions would have to be different from existing states, since their mandate would be to represent the joint interests of people in all countries (or in a subset of countries), rather than to represent primarily the interests of citizens in a specific country, as existing states are structured to do. In short, a new institutional structure, standing above existing states, would be needed. Second, these institutions would need to have the power to make their policies effective. They would need the power to create incentives to ensure that reproductive choices across countries remain within the range that is dictated our joint interests.

Once again, that range can be expected to be fairly broad, so the question arises how more precise policies are to be chosen, and to what extent an ideal of democratic accountability should play a role here. I believe that it should, but probably in a more limited and diffuse way than at the domestic level. The power of global institutions should be traceable to the people they represent. But whether that means that direct democratic representation, or whether it is sufficient for the states that are subject to these global institutions to have a fair say in how they are set up, is not something we need to decide here. Either way, we are talking about an ideal for which there is not even a reasonable approximation in the current world order.

- VII -

(It gets rougher from here on. Apologies. Your comments about these more tentative thoughts are particularly welcome.)

I have argued that a person's imposing enforceable obligations on another through her reproductive choices is problematic unless this is done in an institu-

tional context that realizes conditions of pure procedural reproductive justice. In such a case, the thought goes, obligations don't arise simply by virtue of a person's reproductive choices, but rather by virtue of her having made those choices against a background of public rules that represent the interests of all. Thus, we don't assume that one person straightforwardly has the power to create enforceable obligations on others. The power is mediated by institutional structures that embody a shared will.

That's the ideal. Now, as I have said, in the international context, we don't have anything like the institutional structure that would allow us to realize conditions of pure procedural reproductive justice. As a result, I have maintained, it is implausible to claim that our duties of distributive justice are the same at the international level as they are at the domestic level. Shared political institutions play an essential role in making our duties of distributive justice reciprocal; we should thus expect such duties to obtain at most in a diminished form at the international level. This thought is reflected in the intuitive distinction statisticians make between minimal duties of humanitarian aid, which they take to obtain at the international level, and more stringent duties of equality, which they take to obtain only in the domestic context.

This brings out the problem that my argument presents for the globalist outlook. But I believe that there is a broader and more positive conclusion to draw from all this. What the discussion has shown is that human beings from all countries together face a problem about how reproductive choices can be made acceptable to all. I don't think that we can give that problem a fully satisfactory solution without a shared institutional structure that allows us to address this problem together—an institutional structure that is sufficiently robust to realize global conditions of pure procedural reproductive justice. Absent such a structure, we must settle for a makeshift solution that appeals to the distinction between duties

of humanitarian aid and duties of equality. This makes the best of an imperfect situation, but it doesn't solve the problem. Let me explain.

Here's one way to look at it. As a matter of ideal theory—if we assume full compliance and appropriate institutions—no one can unilaterally impose an enforceable obligation on another person. That is, in an ideal context, all enforceable obligations are (and have to be) suitably mediated by shared political institutions. We might go so far as to say that, as far as ideal theory is concerned, we owe nothing to people in other countries. But we have to be clear about what this means. It just means that we don't have the appropriate institutional structures in place for the obligations to be generated in a way that is consistent with the ideal of reciprocal relations.

What then should we say about our current situation? That is a question for nonideal theory. And this means that we can (and must) invoke more murky considerations—considerations about how to strike a balance among various irreconcilable claims, for instance. This is where we get the thought that some claims of need are sufficiently strong to hold even in the face of the problem of unilateral imposition, thus giving rise to duties of humanitarian aid. The reasoning is something like the following: poor children have a strong claim to our help (after all, it's certainly not *their* fault if they were born outside an appropriate institutional structure). Their claims give rise to minimal duties that are enforceable, because in our nonideal situation these claims outweigh any concern about unilateralism. But these duties only go so far, since there is still a valid complaint about the lack of an institutional structure that address the problem of unilateral imposition.

This fails to solve the problem in two respects. First, as I just said, there is still the complaint about the unilateral imposition of duties. Duties of humanitarian aid hold despite this complaint, but that does not *address* the complaint; it

simply reflects the fact that we must overlook the complaint, given the circumstances. Second, the nonideal framework may very well leave poor children with a complaint. You may think that they have a claim to our help that goes beyond the bare minimum. It's just that, as things stand, that claim can't give rise to an enforceable duty. But then the ideal—the full solution to the problem—isn't to just leave it at that. It's to put in place a structure that allows the full range of our enforceable duties to be reciprocal.

All this to say, I don't think that we can move from the fact that the institutional structure we need is not in place to the thought that we are relieved of our obligations. Rather, what the problem we face calls for is that we put in place the institutions that will allow us to solve it—a shared institutional structure that will allow us to address the problem together. For this, I have suggested, we need an institutional structure that is sufficiently robust to realize international conditions of pure procedural reproductive justice, where this includes something that is recognizable as a democratic procedure. In other words, we need much more involved structures of international governance.

This is a serious problem for globalism and for all other theories that view institutions along strictly instrumental lines—for all theories according to which institutions are tools for the achievement of justice and nothing more. The picture I have painted here suggests that institutions play a much deeper role. They are not simply effective tools for the imposition of enforceable duties we have independently. They are structures through which we relate to each other in ways that make it possible for enforceable duties to arise in the first place.