

## The Scope of the Global Institutional Order: Can Pogge Survive Cohen's Critique of Rawls?

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*In this paper, I develop a critique of Thomas Pogge's attempt in Realizing Rawls to expand the scope of the Original Position. I argue that Pogge is guilty of assuming the same arbitrary boundary between public and private behaviours made by Rawls. To actualize this critique, I take G. A. Cohen's critique of John Rawls, found in its fullest form in Rescuing Justice and Equality, alongside Thomas Pogge's attempt, in Realizing Rawls, to expand the scope of the Original Position. Cohen argues that the boundary Rawls wishes to draw between the public and private cannot be coherently maintained in the application of the Difference Principle. I argue that if this claim is true, then Pogge's attempt to expand the scope of Rawls' Theory of Justice to the international arena is actually considerably more radical than Pogge intended. Not only do we need to worry about the justice of institutions in international law, but we now need to worry about the justice of individual actions inside a system of global justice. I conclude by considering some objections against Cohen's, and thus, my position.*

Thomas Pogge has recently and powerfully argued for the existence of stringent, individual obligations owed to the global poor.<sup>1</sup> Yet, those who might otherwise be most sympathetic to Pogge's attempt to globalize Rawls have often been puzzled by his reluctance to challenge the distinction between public and private actions that figures so prominently in Rawls' work on domestic justice.<sup>2</sup> In this paper, I take a position largely inspired by the work of G. A. Cohen and suggest that if we take Cohen's argument seriously, it threatens Pogge's attempt to justify a limited regime of international assistance and entails instead much stronger international obligations. This paper is part

<sup>1</sup> I am indebted to value feedback I received on this paper from audiences at the ECPR in Reykjavik in 2011, at the IIS in New Delhi in 2012, the APA Eastern Division Meeting in December 2012, and from the Faculty Colloquium at Marist College in November 2011. In particular, I wish to thank Andrei Buckareff, Henry Pratt, and Jeffrey Epstein for their helpful comments on early versions of this paper. Naturally, any errors remain my own.

<sup>2</sup> For criticism of Pogge, and also Rawls, on this point, see G. A. Cohen, 'Where the Action Is: On the Site of Distributive Justice', *Philosophy & Public Affairs*, 26:1 (1997) ['Where the Action Is'], pp. 3-30, which I discuss below, and Liam Murphy, 'Institutions and the Demands of Justice', *Philosophy & Public Affairs*, 27:4 (1999), pp. 251-291.

of a larger attack on Pogge's theory of global justice as well as being a partial (and incomplete) challenge to the divide between public and private the figures so prominently in much contemporary political philosophy.

In his writings, Pogge advances two (not necessarily unrelated or incompatible) arguments in favour of augmented obligations of justice in the international arena: an earlier critique of Rawls' *A Theory of Justice*, and a later, more minimalist theory, which is inspired by an analysis of the negative duties of all actors in a global economy.<sup>3</sup> As to the latter, not only do states have humanitarian obligations to help each other in emergencies, Pogge argues, but, because state actors are also responsible for much of the poverty in other countries, they owe, at a minimum, a negative duty to other states.<sup>4</sup> However, it is the consequences of the former argument that interests me in this paper.

It is to Pogge's credit, from a cosmopolitan perspective, that in his earlier work he attempts to improve Rawls' theory. He recognizes, for instance, both in *Realizing Rawls* and in the subsequent 'An Egalitarian Law of Peoples', that Rawls had no answer, in *A Theory of Justice*, as to why we should conclude that the principles of justice stop at the border of the nation-state, or why historically arbitrary boundaries should be taken as final.<sup>5</sup> Even if we were to believe that these historically contingent facts were important, or in some way made it difficult to extend the scope of justice beyond the nation state, those difficulties would not, *ex ante*, justify refusing to extend the Original Position (OP) beyond the border of the nation state.<sup>6</sup>

<sup>3</sup> This second argument, which is at its heart a mercantilist approach to global justice, comes out clearest in Thomas Pogge, *World Poverty and Human Rights [World Poverty]* (Cambridge: Polity, 2002).

<sup>4</sup> For criticism of this position, see Magnus Reitberger, 'Poverty, Negative Duties and the Global Institutional Order', *Politics, Philosophy & Economics*, 7:4 (2008), pp. 379-402; Mattias Risse, 'How Does the Global Order Harm the Poor?', *Philosophy & Public Affairs*, 33:4 (2005), pp. 349-376, and Uwe Steinhoff, 'Why "We" Are Not Harming the Global Poor: A Critique of Pogge's Leap from State to Individual Responsibility', *Public Reason*, 4:1-2 (2012), pp. 119-138. Risse argues that the global order does not in fact harm the poor (relative to any reasonable baseline); Reitberger argues that Pogge confuses the global institutional order and the actions of individual countries; Steinhoff argues that Pogge's conception of collective responsibility is untenable.

<sup>5</sup> Rawls later provides an answer in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999) [*LoP*], *albeit* in a form which is suggestive at best. In *LoP*, Rawls 'imagines an international "original position" in which all reasonable peoples are represented. He emphasizes that peoples, not persons, are the units of representation' (Charles Beitz, 'Rawls's Law of Peoples', *Ethics*, 110:4 (2000), pp. 669-696, at p. 673). In keeping with that view, he does not argue for a duty of distributive justice between peoples, but instead argues that peoples owe merely a duty of assistance to disadvantaged peoples (*LoP*, p. 37). Those disadvantaged peoples, comprising he calls burdened societies, should be assisted in developing just institutions (Beitz, p. 676; *LoP*, p. 34). This view has come under harsh criticism as enshrining what Pogge calls an academic 'rationalization of double standards of economic justice' (*World Poverty*, p. 108).

<sup>6</sup> It may even be the case, as Pogge argues, that behind a veil of ignorance,

[d]elegates of liberal societies as Rawls conceives them would therefore not merely *prefer*, but would *choose*, my [Pogge's] more egalitarian law of peoples over his [Rawls'] inegalitarian alternative. In doing so, they would also envision a more democratic world order, a greater role for central organizations, and, in this sense, more world government than we have at present. ('An Egalitarian Law of Peoples', *Philosophy & Public Affairs*, 23:3 (1994), pp. 195-224, at p. 224)

In this paper, I will go one step further than Pogge, and claim that Rawls cannot merely be criticized for failing to extend the OP, but also for presupposing an arbitrary boundary between public and private. I will develop this critique in four steps. In the first two steps, I will summarize Cohen's critique of Rawls and then develop Pogge's extension of Rawls' theory to the global arena. In the next step, I will draw the two together in order to argue that Pogge's theory is ultimately vulnerable to Cohen's critique of Rawls. In the final step, I will address several potential criticisms against my arguments and suggest solutions. In particular, I will argue that Pogge's early work commits him to a view of global justice that is incompatible with his latter criticism of Cohen.

### Cohen's Critique of Rawls

In several places in his writing, G. A. Cohen co-opted the feminist slogan 'The personal is the political' to argue that much of contemporary political philosophy took for granted what was ultimately an arbitrary line between the realm of personal freedoms and the sphere of political activity.<sup>7</sup> Taking on Rawls, Cohen argued, both in his response to Joshua Cohen's 'Taking People as They Are' and in the better-known *Rescuing Justice and Equality (RJE)*, that Rawls assumes an artificial cleavage between institutions and persons.<sup>8</sup> Cohen's central point in that work is that Rawls hangs too much on the justice of institutions without taking into account the ways in which people act as a result of religion, culture, ethics, or economics.

Cohen's argument is effectively that Rawls' Difference Principle (DP) is not merely a claim about the relations of justice that should exist in a just society, but also a factual claim about the prevailing ethos inside capitalist society.<sup>9</sup> Only once we know the nature of the ethos that exists in a particular society are we able to actually apply the DP. Thus, Cohen claims that Rawls was blind to the relationship between the selfishness of individuals, and what this meant for the possibilities for equality and justice.<sup>10</sup> In a series of debates with Joshua Cohen, Ronald Dworkin, Thomas Pogge, amongst others, Cohen argues against the typical understanding of the DP (viz. that the DP properly understood is a claim about the basic structure of society in a minimalist sense) and instead claims that the DP cannot be separated from debates surrounding what would constitute a just social ethos.<sup>11</sup> In so doing, Cohen is not attempting to overthrow the DP's focus on the so-called basic structure of society, but, as he puts it, to bring social facts back in.<sup>12</sup> Cohen

<sup>7</sup> 'Where the Action Is', p. 3.

<sup>8</sup> At some level, this should be no great surprise: Rawls famously argued in *A Theory of Justice* [ToJ] (Cambridge, MA: Harvard University Press, 1971) that justice is the first virtue of institutions, and not of other social arrangement amongst people.

<sup>9</sup> G. A. Cohen, *Rescuing Justice and Equality [RJE]* (Cambridge, MA: Harvard University Press, 2008), p. 120.

<sup>10</sup> *RJE*, p. 122.

<sup>11</sup> See also Thomas Pogge, *Realizing Rawls [Realizing]* (Ithaca: Cornell University Press, 1989) and Joshua Cohen's 'Taking People as They Are?', *Philosophy & Public Affairs*, 30:4 (2001), pp. 363-386. For a feminist critique of the problems of defining the scope of the DP, particular as it relates to the family, see Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989).

<sup>12</sup> *RJE*, pp. 375-377.

maintains that any attempt to construct a society must not be content to create a just basic structure, but also to create a just social ethos, which individuals in that particular society should uphold in aspects of their life.

The relationship between the DP and contingent facts about the social ethos in place are relevant, on Cohen's view, in order to explain the ways in which the DP might be applied. To illustrate with a plausible real world experience: a government might plausibly choose to raise taxes on the wealthiest individuals in society in order to be able to increase welfare benefits for the least well-off members of society. However, whether or not raising taxes will actually lead to increased benefits, and therefore to increased benefits, will depend on contingent facts about the morality prevailing in a specific country.<sup>13</sup> If by raising taxes on the wealthiest members of society, fewer of them will continue to work hard – and net revenues will decline and thus welfare benefits will fall – then raising taxes on the well-off would not be permitted under the DP. It is not necessarily the case that people will react in this way, or that they will act similarly in all societies or at all times. How people will react under different institutional arrangements is a feature of the political community that cannot be blind to the prevailing social *ethos*.

In work published shortly before his untimely death, Cohen moved beyond emphasizing the blindness of Rawls' theory to social facts to arguing that democratic theory makes it too easy for the powerful to advance arguments in favour of their own positions by relying on an artificial divide between public and private, between behaviour which we judge acceptable and that which generates opprobrium. In *RJE*, Cohen considers the case of an individual or a class of actors who might be disinclined to act in a certain way if the government made a decision different from the one that the individual or collective actor recommends. In the example Cohen gives, the relevant assertion is the threat by the talented not to work hard unless they are granted preferential tax rates or some other privilege. They can make such a threat because the private actions of individuals are separated from those public acts that are properly regulated by a theory of justice.

To show the relevance of such cases, Cohen reconsiders Rawls' DP. As is standard in the literature, Cohen takes the DP to permit policy decisions if the following condition holds true: (1) there is no alternative distribution that will make the least advantaged better off. However, Cohen believes that this underdetermines just acts, as it depends, tacitly, on social facts. If Cohen is correct, (1) will not necessarily entail a just distribution (and will tolerate unjust behaviour on the part of the talented). Instead, Cohen wishes to add another condition, which he believes must underlie Rawls' application of the DP: (2) there is no alternative distribution that is unavailable simply because the more talented, the well-off, etc., act (or threaten to act) in such a way as to prevent such an alternative distribution.<sup>14</sup>

<sup>13</sup> There is some anecdotal evidence to suggest that higher rates of taxation are more palatable to the wealthy in some European states, such as the Netherlands and Germany, than they are in the United Kingdom or the United States. I discuss the importance of this evidence below.

<sup>14</sup> Kasper Lippert-Rasmussen, 'Inequality, Incentives and the Interpersonal Test', in *Justice, Equality, and Constructivism. Essays on G. A. Cohen's Rescuing Justice and Equality*, edited by Brian Feltham (London: Wiley-Blackwell, 2003), pp. 55-73, at p. 63.

Cohen's example for this argument comes from post-war British history.<sup>15</sup> He speaks derisively of what he calls 'Nigel Lawson's Tax Cut', when, in March 1988, Her Majesty's Chancellor of the Exchequer lowered the top income tax rate from 60 % to 40 %, with the goal, partially at least, of encouraging capitalist accumulation, reinvestment and entrepreneurialism, and thus economic and job growth, all created by relying on the richest and presumably most-talented members of society's self-interest.<sup>16</sup>

Assuming that by cutting the tax rate dramatically, the government of Great Britain successfully stimulated the economy and improved the lot of the worst off in British society – an unlikely proposition, admittedly, given what we now know of the change in income distribution in 20<sup>th</sup> century Britain, which resulted in increased inequality, etc. – Lawson's actions seem perfectly permissible under the DP (in that it satisfies (1)).<sup>17</sup> And yet, there is something deeply unsettling about it.

Cohen's objection to those who would agree that such a tax cut was a reasonable application of Rawls' theory is that they suffer from a tendency to frame the debate in largely abstract terms, concerning themselves only with institutional arrangements under a pre-existing *ethos*. Rawls and his defenders allow this argument to be made about the actions of individuals while abstracting them from their cultural milieu. Instead, Cohen wants to know how arguments for certain political arrangements are advanced in concrete situations, how such arguments depend on underlying ethical beliefs (held by individuals in that society), and what effect membership in political communities might have on our ability or willingness to make these arguments.

The problem, Cohen argues, is that Rawls' approach risks conflating two separate things: the values of the talented classes and the interests of the poor. To get at the problem, consider the following case. It is non-trivially true that the poor (appropriately defined) would be better off and inequality would be less if the talented (also appropriately defined) would simply, out of the kindness of their hearts, hand the poor some percentage of their income at the year's end, instead of keeping it for themselves, as a way of reducing inequality. Now imagine that, instead of being an act of charity, the government were going to enforce such an act by instituting a system of taxation designed to accomplish the same thing.

Of course, knowing that they were going to do without this income, the rich and talented might simply decide not to work as hard, to take more vacations, spend long weekends with the family, etc., and in that case, the poor, being deprived of the effects of the talented, might be substantially worse off. Thus, the rich might act in a self-interested

<sup>15</sup> However, one could easily imagine similar examples from the United States (e.g. the lowering of income and inheritance taxes rates under George W. Bush)

<sup>16</sup> *RJE*, p. 27. These members of society have come to be called 'job creators' in contemporary American political discourse. The term is misleading. As Paul Krugman argued recently in the *New York Times* the marginal tax rate on the ultra-rich could be something like 70% without diminishing government revenues (Paul Krugman, 'Taxing Job Creators', (2011), online at <http://krugman.blogs.nytimes.com/2011/11/22/taxing-job-creators> (accessed 2013-03-03)); see also Peter Diamond and Emmanuel Saez, 'The Case for a Progressive Tax: From Basic Research to Policy Recommendations', *Journal of Economic Perspectives*, 25:4 (2011), pp. 165–190.

<sup>17</sup> This ignores the sketchy economic justification. For discussion of how the argument appears to have failed on empirical grounds, see, for example, Francis Jones, Daniel Annan, and Saef Shah, 'The Distribution of Household Income 1977 to 2006/07', *Economic & Labour Market Review*, 2:12 (2008), pp. 18-31.

way that would deprive the poor of any benefit. (In effect, this is Nigel Lawson's argument in reverse, which said: cut the taxes of the rich, they will work harder and the poor will benefit; here, if we do not cut the taxes of the talented, the talented work less, and the poor lose out.)

However, the rich need not act in this way; they could pitch in and work harder for the sake of their fellow citizens. At first glance, Nigel Lawson's argument for inequality seems in concordance with Rawls' DP (and should satisfy social liberals, who might otherwise be sceptical of arguments for inequality). However, it hides a deeper problem with Rawls' philosophy: Rawls had proposed a division of labour in moral theory between the political considerations of what would constitute a just government and the actions of individuals within the supposedly just state. The former was properly the subject of a theory of justice; the latter not.

This division of labour, Cohen objects, gives the rich and talented too much leeway. It allows those individuals who might benefit from some arrangement in the real world to act in such a way, or to threaten to act in such a way, inside a society as to make that arrangement, beneficial to the upper-class, the only practical solution to a problem and thereby influence the creation of laws. The rich, the most talented, etc. might simply claim that it is a fact about human nature that higher rates of income tax produce less energetic members of society, and that in the long run, the poor will lose out. It is simply an (unfortunate) fact, they might say, that we cannot tax the rich heavily because if we do, we will worsen the lot of the worst off in society.

However, to accept such an argument from the rich would be to permit them to justify their actions using the sort of selfish reasons that we would reject if they were made in a different context by a friend, a family member, or a member of our community. Understood in terms of the example I gave earlier about the need for lower taxes, individual members of the upper-class are effectively black-mailing the poor when demanding lower taxes to work harder and create more jobs. Thus, Cohen suggests as a corollary to the DP, his so-called Interpersonal Test (IPT), which asks:

[h]ow robust a policy argument is, by subjecting it to variation with respect to who is speaking and/or who is listening when the argument is presented. The test asks whether the argument could serve as a justification of a mooted policy when uttered by any member of society to any other member.<sup>18</sup>

Put simply, Cohen argues that we would only accept arguments under the DP if they were not coming from members of our community. However, if they were, such arguments would be condemned immediately as selfish and immoral, and unacceptable in a just community, where no one would be allowed to make such self-serving arguments in any public forum without immediate challenge.<sup>19</sup>

<sup>18</sup> *RJE*, p. 42.

<sup>19</sup> Elsewhere, Cohen gives as an example a group of friends who decide to go camping together. In principle, there are at least two different ways that a group of people could act together on a camping trip (or in some other similar activity). Every individual could assume a different job – one person could fish, another person could cook, etc. – and all could share the fruits of their labour. Or, each person could work entirely for herself – the person who brought the fishing equipment could claim the spoils of her labour, the person who peeled and cooked the vegetables could keep them for herself, etc. (G. A. Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009),

### **Pogge's Attempt to Globalize Rawls**

In his critique of Rawls, Cohen considers only the domestic case of the IPT: for instance, the claim that by lowering taxes we will encourage the richest to invest more in economic production or the most talented to work harder and thereby to better the lot of the poor, which turns on the (supposed) proclivity of these members of society to work harder only if taxes are sufficiently low. This claim, however, depends not merely on the justice of institutions, but on contingent facts about culture, etc. In what follows, I shall ask if there are special facts about the international community such that we should apply only the DP beyond national borders, as Pogge suggests in his earlier work, or if we instead should also apply IPT beyond those boundaries.

As Pogge has remarked, most of us do not bother to consider the question of the justice of borders or of the global order on a day-to-day basis:

My impression is that most people in the rich countries think of our global economic order as basically just – although this order does not meet [the] important minimal requirements we place on any national economic order.<sup>20</sup>

And yet, *pace* the intuitions of many people, there are many reasons to doubt the justice of the global order. As has been well-rehearsed elsewhere in Pogge's writings, the global order suffers from two principle flaws. First, the global order cannot be changed by the majority of the population (i.e., it is beyond their reasonable political control), and second, it does not fail to prevent enormous poverty. To the latter, the extent of world poverty is well-known – for instance, in 1998, one quarter of the world's population lived below the poverty line.<sup>21</sup> Furthermore at the beginning of this century, 14 % of people worldwide were undernourished, 16 % lacked access to clean drinking water, 40 % lacked basic sanitation and close to 1 billion people were illiterate.<sup>22</sup>

As to the former, there are serious problems with four aspects of the global order: (1) governments are allowed to exercise in power in the global arena regardless of how they came to power, (2) they are allowed to profit from the international borrowing privilege (i.e. the right of sovereign borrowing, from global institutions such as the IMF, the World Bank, etc.), (3) they are granted the right to use land and resources as they see fit, and (4) they may make decisions binding on future generations.<sup>23</sup>

If we accept that international boundaries suffer from a great deal of arbitrariness, how should we apply Rawls' theory, Pogge asks in his early work? There are two ways that we might apply the OP at a global level. One possibility is that we might apply the OP first at the national level and then at the international level, keeping at all times the focus of the DP on individuals (R1). The second possibility is that we

pp. 4-5). It is not unreasonable to think that we would hate the latter situation, and condemn as selfish any person who insisted on keeping all the products they produced for themselves, or who bargained for special privileges as a result of their superior talents (e.g. at fishing) or superior starting situation (e.g. ownership of a fishing rod).

<sup>20</sup> *World Poverty*, p. 95.

<sup>21</sup> *Ibid.*, p. 97.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, pp. 112-114.

apply the OP at the national level and then apply it between countries at the international level (R2) taking countries (rather than individuals) as the primary agents.<sup>24</sup>

Now, it would seem that this second possibility (R2) is incompatible with Rawls' original intuition: countries cannot be actors behind the veil of ignorance.<sup>25</sup> Rawls specifically states that only people 'count' in the appropriate way in his theory.<sup>26</sup> Adopting a two-tiered approach and applying the veil of ignorance twice – once at the domestic and then once at the international law with states as actors behind the veil – would be incompatible with Rawls' original intuition. However, the first possibility (R1) is equally problematic. After all, voters behind the veil of ignorance are supposed to be blind to incidental considerations (e.g., race, religion, etc.). Presumably they must also be blind to citizenship and country of origin.

Instead, it is Pogge's suggestion that just institutions are required when people are forced to interact with one another.<sup>27</sup> This Kantian-inspired intuition, which one would expect Rawls to accept, forms the basis of Pogge's project. He argues, as those familiar with his later work know, that the global institutional order is deeply unjust because people adversely affected by the actions of distant actors have no say in the global institutional order. Not only can unjust rulers bind their populations for generations to come, and not only can corporations wield great influence over governments, but the one supposedly democratic institution available – interstate bargaining – can be, and often is, deeply coercive.<sup>28</sup>

If it is true that the demands of justice attach as soon as people interact, then proceeding from the domestic arena to the international arena, as Rawls does, gets justice backwards.<sup>29</sup> It is certainly true that for a state to function properly, it needs treaties and other international agreements. It is also true that, in general, international agreements can only be established *after* the national institutional order has been secured. However, in the same way that to have a system of property rights, or of capitalist production, one requires a pre-existing state with built in laws and legal protections, in order to establish a state one must first have a just international order.<sup>30</sup>

As the establishment of a just domestic order depends on the existence of a just international order, the conditions under which that order comes to exist are themselves part of a theory of justice. In the modern world, it is largely the rich and powerful countries (and those citizens who buy goods, etc.) which are responsible for the creation

<sup>24</sup> *Realizing*, p. 242. This second possibility is very close to Rawls' approach in *LoP*. Here, Rawls assumes 'an international 'original position' in which all reasonable peoples are represented (Beitz, p. 673).

<sup>25</sup> It is precisely for this reason that Rawls does not include these features of the OP in his application of something like the OP in *LoP*. Instead, his claim appears to be that in the international original position, we will have knowledge of the nature of peoples (e.g. whether they be liberal or not).

<sup>26</sup> *Realizing*, p. 113.

<sup>27</sup> *Ibid.*, p. 241.

<sup>28</sup> *Ibid.*, pp. 243-248.

<sup>29</sup> *Ibid.*, p. 254.

<sup>30</sup> *Ibid.*, 257. This is presumably captured by Rawls, though in a different sense, when he talks about the obligation of states to help burdened peoples establish an internal institutional order (*LoP*, p. 107).



of global institutions.<sup>31</sup> A global institutional scheme is imposed on all states which are new to the international order and who had no say in its creation (e.g. the recently independent or de-colonized states).<sup>32</sup> In other words, in order for all states to be able to properly function, the demands of national justice and the Kantian principle that just institutions should cover all regimes of interaction require something like a global application of the veil of ignorance and the DP.

This is quite a radical conclusion, for Pogge is trying to show that for a just domestic state of affairs to exist, we require a just international state of affairs regulated along Rawlsian lines. Nonetheless, I will argue in the third section, following Cohen, that in spite of the power of this conclusion Pogge still leaves too much leeway to the rich and powerful.

### **An International Cohen**

If we bring Cohen's argument back in at this point, we can see that, at least on a *prima facie* telling, Pogge's argument actually entails far more than Pogge initially thought.<sup>33</sup> What the talented cannot say under Pogge's scheme, or the leaders of those countries where the talented live, if Cohen is correct, is that they will work less hard, or perhaps even not at all, if they are forced to redistribute their wealth on a global level. Were they to say so, they would run afoul of Cohen's IPT, by making an argument that could not possibly be justified. In other words, nothing like the DP is defensible globally if the DP entails, as Rawls would have us believe, a sharp division between public and private.

In a way, what I am proposing is the simple result of transposing Cohen to the international level. However, there are five objections that a defender of Pogge might level against this expansion of the IPT?<sup>34</sup> I will address each objection in turn: First, one might argue that my description of our obligations to the global poor places an impossibly high burden on the well-off. Second, my critic might argue that I am confusing Pogge's discussion of the OP with Cohen's criticism of the DP. Third, my critic might argue that I am ignoring the role external actors might play in our considerations; a case specifically considered by Cohen in *RJE*. Fourth, my critic might argue that as Cohen's argument is premised on the existence of a community at the national level, as no such community obtains on the international level, Cohen's IPT cannot be used against Rawls at the international law.<sup>35</sup> In this section, I will argue that the first four hold no traction against Cohen. In the final section, I will address the one final objection from

<sup>31</sup> The most prominent example is the unequal bargaining power exercised by the United States and the European Union, when they threatened to withdraw from the GATT if developing states did not agree to the new WTO agreement. See, for example, Ilan Kappor, 'Deliberative Democracy and the WTO', *Review of International Political Economy*, 11: 3 (2004), pp. 522-541.

<sup>32</sup> *Realizing*, p. 276.

<sup>33</sup> There is some evidence to suggest that Pogge no longer thinks his initial position is correct. At a minimum, he has de-emphasized the original argument on the expansion of the OP in favour of a discussion of the negative duties we owe the global poor.

<sup>34</sup> Of course, Pogge could just accept my argument as a friendly rejoinder, but he has not done so in his work, as I will discuss in the fifth objection.

<sup>35</sup> I wish to thank the anonymous reviewer who pressed this possible objection against my paper and encouraged me to formulate a response to it.

Pogge himself, drawn from his discussion of Cohen's and Murphy's work which, while more difficult to rebut, ultimately also collapses.<sup>36</sup>

First, the easiest objection to make is to say that Cohen is imposing an impossibly high burden on members of wealthy societies, if they are responsible not only institutionally, but with their individual live choices, for helping the distant poor.<sup>37</sup> Quite simply, my critic might say, that it is a psychological fact that people cannot be asked to work so hard, or to sacrifice so much, in order to help people with whom they have little contact.<sup>38</sup> The response to this is fairly simple though.

Even if it is the case that high levels of taxation pose a burden on the talented, that burden is felt differently in different countries and is likely to provoke different reactions (such as altruism on the one hand, or tax evasion, and selective withdrawal from the economy on the other) depending on the citizenship and culture of individuals. Thus, while it is surely a psychological fact that high taxation stirs up different emotions in the Netherlands and in Germany than it does in the United Kingdom and in the United States, how people react to taxation is a contingent fact of national political culture and not a constant feature of human nature.<sup>39</sup> Rawls assumes a hard and fast line between the public and the private without realizing that the location of that line, and how people react to it, is (partially) dependent on culture. Government action (including programs designed to portray taxation and redistribution in a different light), changes in schooling, and the marshalling of the resources of civil society are all likely to change the types of arguments individuals make and how changes in taxation are received. In order to rebut the critic and to show that my call for enhanced individual responsibility does not place an impossibly high burden on the wealthy and talented, I need only show that the response to increased taxation and redistribution is not constant and that the increased taxation and redistribution is not at the maximum level attainable. The former follows from my considerations above. The latter is an empirical proposition which, while unproven, seems likely to be true.

Second, my critic might object that I am playing sleight of hand. Cohen's criticism of Rawls is not a criticism of the application of the OP but instead of the application of the DP. Pogge, conversely, is concerned not with the DP, but with whether or not we should apply the OP on the global level. The critic is likely to ask whether or not I am confusing two separate ideas. However, I do not believe that it is possible to remain loyal to Pogge's original critique of Rawls and advance such an argument.

<sup>36</sup> See Thomas Pogge, 'On the Site of Distributive Justice: Reflections on Cohen and Murphy' ['Site of Justice'], *Philosophy & Public Affairs*, 29:2 (2000), pp. 137-169.

<sup>37</sup> Joseph Heath suggests that, even if we conceived of this as an obligation for governments transfer funds from one country to another, this might require the transfer of amounts in the order of a third of GDP from rich countries to poor countries if even a minimal standard of health and education is to be guaranteed (Joseph Heath, 'Rawls on Global Distributive Justice: A Defence', *Canadian Journal of Philosophy, Supplementary Volume*, 31 (2005), pp. 193-226, at p. 196).

<sup>38</sup> Strictly speaking, this is an argument against Cohen's IPT and not against my argument, but my argument, so the story goes, is more vulnerable to this objection because we are speaking of helping not our fellow citizens, but the distant poor. I address this in my fourth response to my critic.

<sup>39</sup> The current anti-taxation crusades in the United States - a thoroughly recent creation - would appear to speak to this point.

Pogge's argument about the inequality of bargaining in the international arena is meant to demonstrate that if we expand the OP to a global level, we must be conscious of how any international institutional order will allow bargaining to take place amongst states and individuals. That is Pogge's point about the relationship between the state and the international order and about the need for a just system of treaties. No discussion of the OP can be blind to how the DP might be applied by the most powerful, after an international order has been set up. Thus, it is a matter of concern under the OP that the rich and powerful might effectively blackmail the poor. No such international order could be just under Pogge's theory. If an institutional order were to allow such an application of the DP, it would be vulnerable to Cohen's objection.

Third, it might be objected that even Cohen himself considers, in his writings, the case where (unpalatable, anti-egalitarian) policies must be adopted because of the attitudes or potential actions of external agents. For instance, the actions of some foreign individuals (who are not members of our political community and hence not vulnerable to Cohen's critique of Rawls) might negatively affect a country. In the United Kingdom, Harold Wilson oft-spoke, while serving as shadow chancellor, of the so-called 'Gnomes of Zurich' (that is, of international bankers). Wilson argued that the government's hands were tied, so to speak, by these bankers who would react negatively to certain policy decisions. Wilson argued that the government might, in order to placate those bankers, who were foreign citizens and not members of the British political community, have to make anti-egalitarian decisions.<sup>40</sup> However, Pogge cannot fall back on Cohen's defense (on pragmatic grounds) of less than ideal taxation. There can be, *ex hypothesi*, no group of people who fall outside the scope of the OP or the DP. Pogge's extension of Rawls to the global arena expressly precludes it. Any person taking such an action, or threatening to take an action that will harm others, must be able to justify any such selfish behavior in the global arena.

However, my argument might appear that this excludes the possibility that individuals are free to choose their own careers or their hours of work.<sup>41</sup> By characterizing the actions of individuals who threaten to work less hard (or to chose different careers) as blackmail, it would appear that my proposal risks imposing professions, or working hours, on individuals in the name of maintaining equality. However, this objection is premised, yet again, on the idea that individuals' responses to different economic incentives are fixed. And yet, our best social science shows that the response of individuals, including tendencies towards compliance or evasion, to different rates of taxation is dependent on the effects of culture.<sup>42</sup>

<sup>40</sup> *RJE*, p. 45; Nigel Lawson, when in government, argued that the gnomes of Zurich were putting pressure on the British pound; the only solution, he argued, would be to force British labourers to drop their demands for higher wages.

<sup>41</sup> It was suggested, by an anonymous reviewer, that preventing the rich from exercising this rhetorical option would be to take their choice to choose a career or their working hours away from them. After all, if I prefer gardening to doctoring (at equal pay), then requiring me to work to benefit all people takes away any choice I might have as to career. It is this which produces what Cohen calls the Pareto trilemma (*RJE*, p. 183), whereunder it appears that we must either sacrifice freedom of occupation choice or equality.

<sup>42</sup> For instance, to see the effects of culture on tax evasion and tax compliance, see: Charles W. Bame-Aldred *et al.*, 'National Culture and Firm-level Tax Evasion', *Journal of Business Research*, 66:3 (2013), pp. 390-396, and Ronald C. Cummings *et al.*, 'Effects of Culture on Tax Compliance: A Cross

Fourth, it might be objected that as Cohen's argument is premised on the existence of a community at the national level, and as no such community obtains on the international level, Cohen's IPT cannot be used against Rawls there.<sup>43</sup> Rawls' theory, it may be argued, is premised on the belief that liberal peoples have three basic features – they have just constitutional governments, the appropriate common sympathies to members of their societies, and a moral nature.<sup>44</sup> These latter two features explain, in part, why redistribution is possible at the national level but not at the international level. As Rawls suggests, it is 'a psychological principle that social learning of moral attitudes supporting political institutions works most effectively through society wide shared institutions and practices.'<sup>45</sup>

Rawls is clearly using the notion of community here to discuss a different problem than Cohen, with respect to his use of community with the IPT. Rawls is attempting to show that institutional structures for redistribution can only exist where there exist an appropriate sense of community, whereas Cohen is attempting to show that where a community exists, certain types of arguments become untenable. However, Rawls has not shown that such attitudes obtain uniquely at the national level. The existence of such attitudes has been shown amongst transnational groups (in religious, ethnic and cultural communities), suggesting that institutional arrangements for redistribution will not only obtain traction at the domestic level. Moreover, even if moral attitudes track institutional arrangements, there is no reason to think that those institutions must always precede the existence of the appropriate moral attitudes.

### The Objection against Supergoal Monism

Fifth and finally, Pogge does respond to a similar argument elsewhere which might save the limitations he imposes on the DP.<sup>46</sup> In that work, Pogge challenges Cohen's criticism of Rawls, claiming that it is premised on the belief that individuals in a just society must be motivated by one unique overarching *ethos*.<sup>47</sup>

Check of Experimental and Survey Evidence', Center for Research in Economics, Management and the Arts (CREMA), Working Paper No. 2004-13 (Berkeley, 2004), online at: <https://ideas.repec.org/p/cra/wpaper/2004-13.html> (accessed 2015-08-16).

<sup>43</sup> This was suggested by an anonymous reviewer.

<sup>44</sup> *LoP*, pp. 23-24; Rawls subscribes to the view that peoples (nations) are more willing to cooperate with each other than with other people and generally share a desire that they be governed by themselves and not by others (Beitz, pp. 678-679).

<sup>45</sup> *LoP*, p. 112, n. 44.

<sup>46</sup> 'Site of Justice'.

<sup>47</sup> Pogge calls this belief *supergoal monism*, which

'postulates that there is one goal (or system of goals), which ought to be all-pervasive: exalted and prescribed in conventions and institutional rules, permeating the ethos, inspiring individuals. Persons, in particular, ought consciously to pursue (aim at, strive for) this goal' ('Site of Justice', p. 156).

Pogge treats that *ethos* as a form of act utilitarianism for the purposes of his critique. If Pogge is correct, he would have actually proven something much stronger, which is that act utilitarianism cannot ever provide a theory of justice.

As is well-known, Rawls requires citizens to act so as to uphold the basic structure of society. However, they are required to act to uphold the basic structure only inside those realms governed by the basic structure. But why should citizens only be required to pursue justice with respect to the basic structure while not simultaneously pursuing justice in other realms, Cohen asks?<sup>48</sup> Good Rawlsians should, Cohen suggests, if they are interested in pursuing justice, insist on an 'equality-inspired ethos even if there is an alternative feasible'.<sup>49</sup>

Naturally, it is generally not true that if we aim for justice in one realm, we must aim for it in all of our actions. For instance, if we aim for political justice, we are not required to aim for justice when participating in market-driven (economic) activities, or in the courtroom (where defense attorneys need not aim to see the guilty punished in every case), or in the political system (where we do not expect politicians to aim for content neutrality or to always accurately represent the views of their opponents).<sup>50</sup> The requirement to act to always maximize some goal is likely to lead to undesirable requirements. First, the direct pursuit of a goal may require the well-off, in order to aid the worst off in all spheres of activity (not solely in the political arena), not merely to provide money, but also respect and friendship (the social bases of self-respect) to the worst-off. Second, individuals may be required to violate other important goals, if their goals conflict with the prevailing *ethos* of justice (e.g. it seems likely that we may not be able to advance agent-relative goals, such as the desire to take care of our children, if we could better use our talents to help the distant poor). Third, individuals may even be required to violate the law (e.g. if they may save many lives by harming the innocent, or may improve the lots of the worst off by embezzling) if so doing would aid the worst off. Under some circumstances, individuals may be required to violate the (perfectly) just rules in place.

[A] basic structure designed optimally to promote D will include a property regime shaped to support the incentive toward productive work through laws against theft and embezzlement. But citizens who can do more for D in some particular case by violating these laws are nonetheless morally required to do so. This requirement is hard to swallow: It entails that citizens are morally required to violate even just laws produced by a just political system and that the worst-off, in particular, are never morally permitted (let alone required) to pass up maximizing opportunities to embezzle money for themselves.<sup>51</sup>

In other words, to eliminate the sort of behavior that Cohen objects to, individuals may be required to engage often in extraordinarily burdensome (and potentially illegal) activities. Can this problem be solved? Pogge suggests, wrongly I believe, that it cannot. It is not clear, first of all, that Cohen would view it as a problem that we are required to break the law to help the worst off. But clearly we cannot be good Rawlsians and be required to constantly undermine the basic structure.

To rule out this possibility, we must build into the OP constraints sufficient to prevent individuals from being required to undermine the OP. One of those constraints,

<sup>48</sup> Cohen calls this restriction arbitrary ('Where the Action Is', pp. 22-23). Problematically, it allows unjust practices to continue in institutions not regulated by the basic structure (viz. the family).

<sup>49</sup> Site of Justice, p. 159. In the example above, therefore, they should not blackmail the poor.

<sup>50</sup> The examples are Pogge's ('Site of Justice', p. 159).

<sup>51</sup> 'Site of Justice', p. 162.

however, cannot be, Pogge suggests, a rule that stipulates that we must follow the law (as under the super-goal monist position, law can have no independent value). However, it might nonetheless be possible, Pogge concedes, to construct a monism based on a model of human flourishing, wherein a basket of rights (perhaps even mutually incommensurable rights) are posited. Such a monism need not

[...] make crushing demands on culture and lifestyle and, under favorable conditions, [might leave] plenty of room for the pursuit of agent-centered goals. Understood as supergoal monism, it would also keep infrequent the occasions on which persons are morally required to violate just social institutions.<sup>52</sup>

However, Pogge believes that Cohen could not accept such a monism, because if he did, it would allow for an *ethos* to exist that did not maximize equality. This would return us to Rawls' original problem: either individuals must be forced to possess such an *ethos*, or social institutions would be designed in such a way that individuals might be required to embezzle. This dilemma, Pogge suggests, is why Rawls builds a division of labor into his theory.<sup>53</sup> The theory can set an ambitious goal for the basic structure – minimizing inequality as much as possible, while at the same time avoiding 'the totalitarian implications this goal would have if it also governed *ethos*, conventions, and personal conduct.'<sup>54</sup>

However, Pogge has missed an important counter-argument: he misrepresents Cohen's view when he claims that Cohen cannot say that it is a basic value that we should generally be required to follow the law. Such a claim on Cohen's part would be generally compatible with Cohen's (at least rhetorical) commitment to Rawlsianism. The DP is not free-standing in Rawls' theory – it comes into play only after we have set up a just society wherein: 'Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.'<sup>55</sup>

Cohen does not deny the importance of basic liberties at any point in his writing – he merely denies that they should be granted lexical priority over the DP.<sup>56</sup> Whether or not, therefore, we have a duty to obey the law is not reducible to whether or not failing to do so would maximize equality. After all, there are several other reasons why one might wish to obey the law, all compatible with Cohen's view.

It is unclear why Pogge believes that Cohen cannot simply state that, broadly, there is a good reason to follow the law most of the time. Law, after all, is not only designed to ensure economic equality (for Rawls, for Pogge or for Cohen). It is also designed to preserve a system guaranteeing basic social primary goods, basic rights, to allow for human flourishing, to provide security of the person, etc. However, there may very well be a tension between the various rights and privileges we might wish to guarantee under the OP and the maximization of equality. To the extent that requiring

<sup>52</sup> *Ibid.*, p. 163.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, p. 164. Cohen and Murphy also argue that the exact site of the divide between morals and ethics (or in Rawlsian terms, politics and ethics) is arbitrary in Rawls theory. That criticism however – which I generally find convincing – plays no role in my response here.

<sup>55</sup> *ToJ*, p. 220.

<sup>56</sup> This is at least one of the ways to interpret the argument in *RJE* designed to show that individuals possess freedom to choose their careers as they see fit.

the *en masse* abandonment of the legal order would result in massive rights violations, it would be unjust under the Rawlsian framework.

Thus, we may very well have a duty to obey the law most of the time, but we also have a duty to break it in certain extreme cases, as breaking it occasionally would result in greater justice (for our Cohen-inspired Rawlsian) while breaking it more often would undermine the possibility of a system of laws existing in the first place. While we do not necessarily know *a priori* where this line is, all we need to do is identify one such situation where breaking the law would increase justice – and surely this is not a difficult task – in order to see that a partial duty to obey the law is better than a complete duty (and conversely, no duty at all). Put simply, there is no reason to specify the exact point at which breaking the law or setting aside some goals to help the poor is necessary. We merely need to show that drawing the line somewhere between the abandonment of law in all situations or scrupulous respect for the law is all that Cohen's supergoal monism requires in order to show that Pogge's criticism fails. Pogge may be unhappy with the idea that we should break the law even occasionally, in a well-ordered society. However, there is no reason to think that this would bother Cohen.

### Concluding Remarks

To briefly conclude then, I have argued that Pogge's argument entails a much stronger conclusion than he himself intended. Individuals must act to maximize equality in all spheres of activity, not merely in those regulated by the basic structure. This would of course not necessarily require individuals to give all their monies to the distant poor, or to volunteer their talents in far off communities. However it would prevent individuals from arguing that higher taxation or higher redistribution across national borders would cause them to change their careers or to not work as hard. It would also require governments to put in place the appropriate social institutions to encourage global civil society, a sense of community with distant others, and other mechanisms to support a more egalitarian global community.

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