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On the Very Idea of Cosmopolitan Justice:
Constructivism and International Agency
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“There is no attempt to formulate first principles that apply equally to all subjects.”¹

Rawls’ *The Law of Peoples* (*LoP* from now on) was not only received with perplexity and critical rejection, it also provoked a whole industry in ‘cosmopolitan’ writing.² A number of recent defences of Rawls’ account of international justice have attempted to reappraise that work by appeal to his commitments regarding the appropriate subject matter of justice.³ What such defences have not done, however, is to justify the two features of Rawls’ view which make it a theoretically distinct view in the first place. It is precisely these two features of *LoP* which have most readily drawn accusations of ‘double standards’ from cosmopolitan critics.⁴ The first is that *LoP* unjustifiably concerns itself with justice between states, rather than justice for individuals.⁵ The second is that, even in a world of states, the same principles of justice as in the domestic case can and should apply to international rules and institutions, and to the agents which uphold and produce them. In *LoP* they do not. These objections define cosmopolitanism. The first represents its moral stance: that the relevant object of moral concern for international justice is the individual person. The second corresponds to its practical stance, in terms of principles for a just ‘world order’.

The defenders of Rawls remind us of procedural commitments in Rawls’ theory that define his position in the face of these cosmopolitan alternatives. Thus it has been mentioned that there is no full equivalent authority in the form of a political state at the international level.⁶ It has also been argued that Rawls’ method of constructing principles of justice proceeds by developing the principles for specific spheres or domains, rather than developing principles that apply uniformly.⁷ But these observations concerning constructivism fail to provide adequate arguments in the face of the cosmopolitan challenge. There is huge suffering-inducing inequality across the globe. That, or the relations that produce it, seem easily describable in the same terms of justice and injustice we use for the domestic sphere. So why accept a restriction of principles to different domains of justice, with the demands of the international sphere seeming to express less than the concerns for equal treatment owed to citizens? Even if constructivism does employ a ‘domain-restriction’ for its principles, what is missing is an argument for that restriction—especially in the case of international justice.

In what follows I supply such an argument. I do so by firstly giving an account of constructivist methodology for elaborating moral principles.⁸ Part of that account is an argument for the ‘domain-restriction’ of principles, against cosmopolitan claims of double standards. The argument stems from what I take to be a central requirement on any theory of justice framed as a set of principles; a requirement that constructivism takes more seriously than its cosmopolitan critics. That requirement, call it the subject-specifying requirement, is that a

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¹ J. Rawls. ‘The Basic Structure as Subject,’ in *Political Liberalism*, p. 258
⁵ Even Thomas Nagel, who partially defends the Rawlsian approach, finds this feature indefensible, op cit., pp. 134 ff.
⁶ Nagel, op cit., pp. 115 ff. and 137.
⁸ I take constructivism to be a methodology for developing moral principles whilst contractualism—inessential to constructivism—is a way of modelling constructivist concerns in specific cases. I explain below how this constructivist methodology differs from Aaron James’ interpretation, *op cit.*
theory of morally just action must specify for which agent, and in which sphere of action (which subjects, in Rawls’ terminology) its principles are designed to be action guiding. It must specify this as a matter of perfect, rather than imperfect, duties. That is, there must be a clear agent responsible for the duties, with no general agent-directed discretion as to what constitutes an adequate performance of the duty. A purported principle that does not specify such an agent (even implicitly) is incomplete, and not really a principle at all. My contention is that, unlike the domestic sphere, no plausible candidate agents, subject to corresponding perfect duties, can be specified for the international sphere. The argument for this I call the ‘background adjustment’ argument.

Of course, I do not deny that there are moral duties, which apply across domains and agents, not just within them, to observe fundamental rights for example. However, these are not strictly speaking duties of justice, for reasons I will explain. Furthermore, trying to reformulate cosmopolitan claims in terms of human rights duties, I argue, also suffers from flaws in terms of plausibly specifying a relevant agent.

I tackle two possible cosmopolitan responses to the domain-restricting argument. The first is that there is indeed a basic structure at the international level. The second is the view that, even in the absence of a basic structure properly speaking, international institutions can nevertheless be better or worse, just or unjust, and there are agents whose actions can affect this institutional order. Thus, there are subjects of justice for the international sphere. In response to the first cosmopolitan line I argue that, given the relevant moral powers required by a basic structure, no such agency exists outside of domestic states. Using these same criteria, I argue against the second cosmopolitan line, that no agents are able to affect international institutions in a way that makes attributions of just and unjust action, and responsibility, possible in the requisite sense.

In the absence of appropriate agents of justice, putative cosmopolitan principles of distributive justice cannot be considered complete. I also tackle the response that there are justice based reasons to reform existing institutions so that an appropriate agency comes into existence. I conclude by indicating why this has consequences for the moral stance of cosmopolitanism, and favours instead Rawls’ state-based approach.

I: Constructivist Methodology

Constructivism is a method for elaborating moral principles that apply to a given sphere of human action. That method, together with the claim that there are, morally speaking, significantly distinct spheres of human action implies the further claim that different moral principles are applicable in each sphere. I want first to sketch this approach before focusing what I take to be the key component of the methodology: its focus on appropriate agency. It is by focusing on this component that we can advance arguments in favour of the methodology, and explain its application to international justice.

Any principle-based account of justice must propose principles of justice defining moral duties for specific agents, and the sphere of action in which those agents have those duties. This is because principles must be action guiding, and to be action guiding they must aim to direct the actions of specified agents or agent types. Let us call a type of agent to which a principle applies, within their sphere of action, the subject of the principle. A key question for any theory invoking moral principles, then, is who should act and in what capacity. Some theories, ‘fully general moral theories’, are indiscriminate in terms of which agents their principles apply to. All agents, if they are indeed moral agents, are subject to them, and in every capacity. An example of this would be a very simple natural rights theory which had a single set of principles, which all agents are required to observe, whether they are doctors, parents, or governments. Utilitarianism is a fully general moral theory par excellence, as it only has one principle, and applies this principle (at least ultimately) to the behaviour of all agents. Non-general theories would be theories that had more than one principle, and more than one subject, in such a way that different subjects were guided by different principles.

Constructivists, such as Rawls and Scanlon, explicitly take their projects to be non-fully general. Instead they attempt to develop different principles for different agents acting in distinct spheres. Distinct principles they have actually worked out, for example, include those for interpersonal relationships, governing the behaviour of private individuals; for the key institutions of a political community; and for states in international relations. It is

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10 For example, Scanlon, in developing the first kind of principle, and explicitly rejects the difference principle as appropriate for the sphere he is concerned with (T. M. Scanlon, What We Owe Each Other, Cambridge Mass.: Harvard University Press, 1999—WFOEO from now on—pp. 228, 245); Rawls’ principles of justice apply to the institutions of political community, but not to international relations, and he justifies this on the basis of there being different subjects to
also clear, from the view, that moral principles for a political community will differ in their imperatives from, say, moral principles relevant to citizen’s associations, religious congregations, and universities. In constructivist approaches to moral principles, none of these agents are under an imperative to govern the different spheres of their lives according to the same principles which govern the institutions of the political community.

There are two caveats to add to this methodology which makes it more systematic than it might first seem. The first is about the unified procedure. The same basic procedure, incorporating the value of reciprocity, is applied in each case, whilst the goods, values and agents are different. The second is about consistency of spheres and their order of priority. All subjects must be under imperatives to behave in a way that is consistent with the requirements of justice for the appropriate agent of justice, and so there will be justice-regarding or justice-supporting principles which they must follow. However, consistency is not the same as identity. Having the duty to uphold, support, or contribute to, the operation of another agency which is acting justly, does not amount to the same thing as being bound by the principles of justice which apply to that agency. Nor does it amount to acting justly oneself. The duty to uphold a just order does not reduce to being bound, or guided by, the principles of justice which define that order. It would only do so if one rejected the idea that different principles apply to different subjects (agents in their respective spheres), for then citizens would have a duty to advance the same ends as state institutions. I haven’t yet argued against this proposition, or in favour of the constructivist view, as I have merely been sketching that view so far. In what follows I give some prima facie reasons for the ‘distinct spheres’ approach before moving onto a central argument in its favour in the case of political justice.

If we find reasons to accept the ‘distinct spheres view’ then we can make an important distinction. That is the distinction between primary principles of justice and secondary, or justice-regarding principles. The former are principles which apply centrally, and define justice (in ‘ideal theory’), for a particular agent or type of agent. The latter define the actions of other agents which are required if the primary agent is to be able to act justly. For example, if the morally just political institutions of a community act according to a given principle, then non-members will have duties not to interfere with the just operation of those institutions. Both types of principle are moral principles. But on a constructivist methodology, only the former are principles of justice proper, for it is those principles that determine distribution.

Why partition the moral world?
There are some prima facie reasons which give plausibility to this approach. They are supplied by reflection on the values expressed by an agent acting in a certain sphere. It is conceivable, say, that the principles individuals should follow in governing their private relationships will be different from those that institutions are subject to in governing individuals. Applying, for example, Rawls’ difference principle to peoples’ pursuit of family relationships, or in determining one’s life plans, or in organising a religious association, is not an obvious requirement of justice, even if those relationships must be limited, or circumscribed, by requirements of justice. It is not obviously the governing concern, or governing value, of a person’s life pursuits, of friendship, of family relationships, or in determining one’s life plans, or in organising a religious association. Whereas for other agents, such as political and legal institutions, justice is more plausibly their central (moral) governing concern. For such institutions, acting in accordance with the requirements of justice should not compete with other, non-political, values. It is therefore more reasonable to expect individual’s behaviour to be consistent with the operation of appropriate agents of justice guided by principles of justice, without making those principles the central moral imperative of people’s behaviour in all capacities. Thus, whilst Universities, Churches, and clubs may not themselves be governed on the basis of primary principles defining how social justice should be produced and imposed, they will be subject to secondary principles making their actions compatible with the operation of primary principles for political institutions. For individuals, these will include principles to support morally just institutions or bring them about where they do not exist, and it is not too costly


12 Rawls, ATJ, p. 108; PL, pp. 258 ff.

13 I avoid Liam Murphy’s terminology of ‘dualism’ vs. ‘monism’ of principles. The view I am considering is not limited to two principles. Furthermore, it is a unified view, but not unified at the level of first principles, but unified at the level of the method of construction of principles, a possibility that Murphy doesn’t discuss. Liam Murphy, ‘Institutions and the Demands of Justice’, Philosophy and Public Affairs, 27(4), Fall 1999, pp. 251-291.

14 Although it may at times compete with political values, such as social stability.
to those in a position to do so (the “natural duties” of justice). Individuals are also subject to primary principles, for example to assist others and keep promises. The fundamental idea behind differentiating spheres, and agents, is that moral principles express specific values discoverable in different domains of human relationship. They do so by defining the morally appropriate behaviour of an agent in a domain. The view further, plausibly, proposes that the morally important aspects of all human relationships do not obviously reduce to a single value, or set of values, and so are not obviously expressed by a single principle or set of principles, such as a principle for fairly distributing the benefits and burdens of productive cooperation. Whilst such a principle will be pertinent to the value in cooperative social life, the value expressed by the principle can be seen as best served when its obligations are regarded as limited in scope. Conversely, it is plausible that certain moral imperatives are appropriate for individuals but not institutions. For example, imperatives relating to assisting others—which differ from imperatives to set background conditions of fairness. At the same time, what values get expressed depends in an important way on which goods and burdens are available in a distribution. Different spheres are defined in terms of the different goods the distribution of which agents can affect. The goods available to those participating in relationships of friendship are very different to the goods available as a result of social cooperation. In the latter case, to just mention one feature, the goods relate to the prospective trajectory of a human life. In friendship, the principal goods defining the relationship include intimacy, loyalty, reliability, constancy, and so forth. Goods which by their nature (their partiality, for example) cannot be distributed on the kind of impartial basis required by maximin, equalising, or sufficientist principles.

What gives focus to these considerations of value expressed by a principle for the distribution of benefits and burdens, is precisely the powers an agent has to effect such a distribution. These we can call an agent’s ‘moral powers’. They combine a consideration of what an agent should be expected to do and what they are capable of doing in respect of such a distribution. This gives plausibility to the differentiating approach because, plausibly, different agents have different moral powers, and are consequently bound by different primary principles. States can hardly distribute the goods of personal concern and partiality central to friendship, and we would think it inappropriate for them to do so: it is not within their moral powers. Constructivist principles are in this important sense ‘deontological’. They do not simply look to the consequences (outcomes) of adhering to a principle, nor do they treat principles as descriptions of desirable outcomes. Rather they focus on the values expressed in the relationships of duty—of specified agents towards recipients—a principle describes.

This focus on the subject of moral principles is crucial. Other attempts to outline the constructivist methodology, have focused on the notion of a practice, claiming that constructivist principles are practice-dependent. However, such an account fails to accommodate principles that are not obviously practice-based, and which constructivists have also sought to develop, such as those for interpersonal relationships between private persons. Practices are relevant to constructivism in so far as they make certain kinds of goods available, and certain kinds of agency possible. By focusing on agency, that is on the moral powers of particular subjects to affect distributions of benefits and burdens, we also get a clearer grip on the values that are at stake in the discussion.

Before defending this differentiating approach with regard to the specific case of political justice, it is worth drawing out its components. There are five elements the approach distinguishes, when designing moral principles. The last of these is necessary (though not sufficient) in determining whether we are talking about justice, or a different type of moral concern. For I am taking it that primary principles of justice define perfect duties for agents of justice. These elements can be drawn out in the form of questions which all theories dealing in moral principles need to answer (even if they only do so implicitly):

I. For which subject (agent) acting in which domain are principles to be developed? (Examples of subjects include: human persons in a private capacity, a university, the central institutions of a political society).

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16 Natural duties for example, *ATJ*, pp. 108 ff; also, Scanlon for assistance and promise keeping in *WWOEO*, pp. 224, 295 ff.
20 I am extending Rawls’ use of this term which he uses to describe the powers attributed to citizens, *PL*, pp. 104. Cf. p. 202 on the person; p. 108 on political society.
II. Which distinct values or goods are served by this subject’s proper operation in this domain? (E.g.,
respectful and reliable interaction with other persons, advancing knowledge and understanding,
establishing conditions for reciprocal cooperation).

III. What do principles applying to this subject describe? (E.g., justified claims on other persons in a
private capacity, justified self-organisation for the advancement of knowledge, fair background
conditions of cooperation).

IV. What is the relationship of those principles to principles for other subjects? Are they compatible? (E.g.,
what are the—priority—relationships between principles governing my choices as a private person, a
university director, and my obligations to institutions applying background justice in a political society).

V. What kind of duties do the principles describe: perfect or imperfect?

One view, such as the utilitarianism described above, would say that the answers to (a) and (c) are the same for
all subjects. This would be a fully general, monocratic, moral view. Similarly, utilitarianism would answer the
question of which values are served by appeal to a single value (human wellbeing understood in terms of some
kind of utility maximisation). Utilitarianism might find it imprudent that agents follow its primary command as
principles of individual action. Nevertheless, prudence will itself be understood in terms of this primary
command and practical circumstances (such as agent capacities) in every case.

In devising principles of justice, then, it is indispensable to decide which powers, exercised by which agent, a
principle is to govern. It is also important to decide, given the nature and features of this agent, if there are
distinct values its rightful actions are best seen as serving. If there are, then these will form the context for
devising principles of justice. Without these specifications, the principles would fail to be action guiding or
plausible. If we said justice requires that the situation of the least advantaged be maximised, yet no indication
was given, or could be meaningfully given, of which responsibilities fell on whom in this regard, then we would
not really have a principle.

It is sufficient that this methodological requirement be made explicit for us to see that there is no ‘default’ subject
a principle is directed at. Instead any stance on the subject of principles is itself in need of justification when
elaborating the principles. A purported principle, then, that does not specify a relevant agent must be said to
be incomplete—not really a principle at all, but at most a description of a desirable state of affairs. I have given
prima facie reasons for adopting the less uniform, less monocratic, methodology of constructivism, based on
reflection about the moral powers of agents. There is certainly no a priori reason to presume that values for
agents reduce to that. Rather, it constituted by institutions, practices, rules and principles, that are generally accepted and
followed by citizens which allow for decisions regarding the assignment of specific rights and duties.

II Justice: The ‘Background’ Adjusting Argument

In the case of justice, the constructivist view takes the subject of primary principles to be the basic structure,
understood as key social institutions, and makes individual citizens subject to secondary principles in relation to
that structure. An obvious question here, then, is why individuals could not be subject to primary principles of
justice. Of course, there are other domains of human relationship each with their values, but what prevents
individuals being subject to different primary principles in different domains (in the family, friendship, and wider
society, say)? Reflection on what political justice requires supplies an argument as to why they cannot play this
role.

Let us assume that a subject of justice for citizens is under an imperative, a perfect duty, to secure justice for
those citizens. I use justice as fairness as an example, but this can be run with any conception of justice which
requires redistribution. An all-encompassing system of cooperation, such as a political society, distributes the
benefits and burdens of social cooperation. Justice concerns the fair distribution of these. If we take the
innocent, but unregulated, interactions of persons to lead to potentially unfair consequences, such as unequal
life prospects, then we can ask what kind of agency could alter these consequences. There are two types of
reason why individuals, or institutions like universities, (in the absence of a basic structure) are unsuited to this
task in contrast with an authoritative structure of institutions, both have to do with the need to adjust for
accumulated inequality. The first type has to do with the burdens of responsibility, given the kind of agent in

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22 Rawls, *PL*, p. 262. Also: “the correct regulative principle for anything depends on the nature of that thing…”, *ATJ*, p. 29.
23 Although some, but not all, politically relevant principles apply to all agents, given they apply to persons irrespective of
institutional affiliation, *ATJ*, p. 115.
24 I shall take it here that, whilst the basic structure is composed of persons and can involve citizen representation, it does
not reduce to that. Rather, it constituted by institutions, practices, rules and principles, that are generally accepted and
followed by citizens which allow for decisions regarding the assignment of specific rights and duties.
question, for adjustment, and the second with the capacity to alter the consequences of accumulated, individually reasonable, actions and choices.

**Type 1 Reasons: Conflicting Responsibilities**

Any one person, or persons in combinations, can affect the life chances of others in a multitude of ways. They can, for example, affect the life chances of a friend with advice which convinces her to change her career, or by helping her out with a loan, or by taking her on as a business partner. It is not clear how far any individual’s justice-based responsibilities could reach in this respect. Do I have an obligation, as a matter of justice, to advise all and every person in ways that, when they interact, will have fair consequences all things considered? Could I fulfill such an obligation and still have a recognisably individual human life?

Let us assume that all such actions are innocent in themselves—not done with any intention to harm or undermine others—i.e., that agents are disposed to be just. The accumulated effects of actions, agreements, associations, transactions, and even well-intentioned advice, can significantly undermine overall fairness. Call such effects ‘**horizontal impact**’.

Only two types of principle are available here: either individuals would have to hold themselves responsible (under perfect duties) for adjusting for negative horizontal impact which was due to them individually, or they would have to hold themselves responsible for contributing towards adjusting for everyone’s horizontal impact. Yet in either case, the responsibility seems overly demanding (I deal with the possibility of setting up institutions below).

Were individuals to exhibit enormous capacities of foresight regarding the horizontal impact of their actions, it would be implausibly demanding to require every individual to pursue their life plans and goals, perhaps each of their actions, in terms of its effects on overall distribution.

One would have to determine as far as possible into the future how any and every action impacts upon the life chances of others, and to adjust their actions to produce the best results in this respect. It is unclear how individuals could organise their lives coherently towards this end, whilst maintaining a sense that their lives were indeed their own, and whilst incorporating other values and imperatives. Judging every single transaction, in terms of its consequences for overall distribution of prospects would be an immense task, as would the alternative of trying to determine what compensation any person might make which would in fact rectify the negative consequences of their actions, re-establishing a fair distribution. Performance of such duties, assuming for now there is a coherent way of establishing one’s horizontal impact, would squeeze out values other than fairness, such as friendship and family responsibilities, making individual lives hardly human in shape.

The alternative of making contributions towards correcting inequalities that have arisen is also problematic. For citizens themselves would have to take on responsibilities for determining, collecting, and appropriately redistributing, contributions. In the absence of an authority whose central role it is to carry out these activities, individuals would be under a duty to take on this role. But that would require a principle that individuals could follow which expressed the correct balance between their duties to actively realise social ends and their imperatives to advance other values, aims and responsibilities—including self-regarding goals. Necessarily such a principle would involve agent-centred discretion: a choice left to agents themselves as to when to perform duties and how frequently. In such a case we would hardly be operating with the concept of justice, given that principles for individuals would effectively imply only imperfect duties.

This would also mean each agent would be weighed down not only with the responsibility for the long term effects of all her actions, and the attempt to rectify them, but also with the burden of judging when her life balance between fairness-regarding, friendship-regarding, family-regarding, and self-regarding, imperatives was appropriate. The result of this would be that individual exercises of responsibility fall short of the social aims of justice, aims relating people’s prospects to each other according to a given pattern (such as the difference principle). Because of the weight of her responsibilities and given her other imperatives, an agent could only be required to make a **reasonable** contribution, in terms of action and resources, towards that goal. The imperative would not be to fulfil the goal, whatever the consequences for other imperatives. In which case, there is no guarantee that fulfilment of an agent’s reasonable obligations would result in achievement of the social end of fair distribution.

Similarly, if one considers the internal aims and values served by educational institutions, such as schools or universities, the horizontal impact of these agents might be considerable. But to expect a school to take on the
task of adjusting for life chances, whether among all its pupils or among all persons affected, is to give it a burden that would squeeze out the other values that define the point and purpose of a school. Excellence in education and scholarship would be swamped by requiring it to focus on the potentially limitless task of producing a fair distribution of life prospects. Once again, any reasonable balance between social ends and educational imperatives, would mean social ends would be under-determined. Because of the scope responsibility, then, the central aim of such an agency cannot be the production of social justice. 25

Consider by contrast, authoritative institutions, whose primary aim is social justice, and which are capable of assigning duties and rights in a scheme. Because they have the moral power to impose duties and assign rights, they can continuously adjust for the unforeseen impact of persons' actions, and the foreseen impact of coordinating the practices of educational institutions, by assigning contributory and regulative duties to these agents. In this way a clear agent, with a principal duty of adjusting for unfair distributions unburdens these agents from an extreme form of consequence sensitivity, and consequence responsibility, in the pursuit of their life plans. As the agent's central duty, social fairness will also not generally get traded off against any other demands on the agent. It will not itself be subject to other demands than social fairness in its activities. Whilst other agents will be subject to this agencies requirements, they will not be charged with devising, balancing and executing the system of requirements.

Type 2 Reasons: Capacity to adjust for negative consequences

A more fundamental reason for not attributing responsibility to individuals for a fair distribution is that, to borrow a term, authoritative institutions can preserve patterns of distribution and individuals cannot. They are able to do this because they can assign duties and responsibilities that are not assignable in the absence of an authority. No individual agent can preserve patterns of distribution in a situation where they cannot control the actions of other agents.

Consider citizens who engage in activities such as giving monetary gifts to their children. That can lead to a worsening situation for the least well-off in society. Each individual action is not by itself efficacious or significant in terms of the outcome, so no individual agent is actually capable of affecting the outcome. Furthermore, the activity in question can, considered in its own right, be a positive thing. It can, say, advance and express familial care and concern. However, the accumulated consequences can produce dire inequalities in life chances.

A principle of action which individually adjusts for these consequences seems implausible. The principle will either be so abstract as to be vacuous, or, if it aspires to be a clear rule accommodating all the factors, and incorporating adjustment in light of all the possible changes in circumstances, it seems inconceivable. Take the problem in foreseeing the long term consequences of actions. An action which today seems to aim at fairness might have the long term consequences of producing more unfairness. Well-intentioned donations to a group who are disadvantaged might lead to their economic domination of another group, or to market effects which disadvantage others. Without a background agency, agents can only act on the basis of short term (foreseeable) consequences, rather than establishing, through continual adjustment, long term distributive patterns. At a given point in time, a certain contribution might appear sufficient to adjust for current distributions, at another point the necessary contribution to adjust might increase. The amount and type of contribution which correctly adjusts for inequalities might itself vary across agents. Without an agent capable of assigning, and adjusting, duties to contribute accordingly, there is a further problem of continuously coordinating actions towards a fair distribution.

A further problem arises from the agent sensitivity of distributions. The fact that Johnny achieves N in the distribution can only be considered fair on unfair in relation to what others achieve, or could achieve. But consider any one agent trying to adjust their behaviour to achieve N for Johnny. Their own actions will affect the status of the consequences. The very burden of the person in acting to adjust for Johnny will need to be factored-in as a consequence. This presents an imposing epistemological problem. The very acts of agents trying to adjust for fairness will affect what counts as a fair distribution. Such agents must factor-in their own burdens, then, into the calculation of their appropriate moral goals. Yet they cannot know what the moral goals are until they have factored-in these burdens.

It is worth noting how deep the problem of capacity to adjust goes. For adjustment will require an ability to alter such factors as property ownership, taxation, construction permissions, education and health provision, and more, in order to produce and maintain fair distributions. Yet individual actions and judgements cannot by

25 Thus, Rawls’ proposal that different principles be developed for universities and churches, ‘Law of Peoples’ cit. n. 10, LoP, p. 85ff.
themselves give rise to such alterations, for they involve the distribution of rights and duties that individuals do not have the power to assign.

Only an authoritative body with the power to impose duties on all agents, and assign rights, with the aim of adjusting for the accumulated effects of horizontal impact, can maintain a fair distribution. When such an agent does exist, then individuals will have secondary duties in respect of its functioning. In its absence they will at most have secondary duties to bring it about, if they can do so at not too great a cost to themselves. Note too that acting to create such an agency is a goal that will be subject to the same kind of coordination, judgement, and responsibility problems for individuals as trying to adjust for fairness. The duty to bring such an agency about, then, cannot be a perfect primary duty of justice.

**Background Conditions vs. Horizontal impact**

In sum, the requirement for continual adjustment, together with the unforeseeable effects of any action, long term, means that the horizontal impact of individual actions cannot coherently be judged in terms of a principle of distributive justice. It is radically unclear what coherent principle, primary or secondary, describing perfect duties individual agents could follow that continually adjusts for fairness in distributive consequences. It is also important to see how this is true for individual agents even when authoritative institutions are present. While there will be a requirement to support such institutions and the duties they impose, in all their interactions individuals will face the same problems of determining the status of the consequences of their actions and their responsibility.

Using these considerations we can distinguish and contrast the moral character of the actions of persons, and the moral character of an agency setting *background* conditions which constrain those actions and adjusts for their cumulative effects. The latter is done by the imposition of rights and duties in line with fairness, by institutions. This usually implies a public system of law. We can call this capacity, which individuals do not have, the ‘authority condition’. Both institutions and people attract duties in regard of this condition, because for institutional authority to operate fairly people must make it so. That, however, does not mean that the same principles apply to each. Background conditions achieved by institutions are of a different order to those created by the actions of persons affecting each other’s lives. Political institutions are invested with the power to impose rights and duties on all and every agent, and their proper operation is to serve the value of establishing fair settled conditions of cooperation between citizens. No individual as such has that power, nor can any person’s life, if it is to be their own and human in shape, be understood as living according to this moral imperative. Instead individuals are morally constrained to act according to imperatives compatible with, and supportive of, the operation of these cooperative conditions. Thus, the distinction between horizontal impact and background conditions, is not one of degree or of practicality, but of order of responsibility. The distinction relies on an authority condition which can be expressed in terms of moral powers (I shall say more on the normative requirements for possessing such moral powers below):

**AC:** A set of institutions constitute an authority in a domain where those institutions have the moral power to assign rights and duties and assure compliance (for example through a system of public law) equally over agents in that domain.

It is only by distributing rights and duties and assuring others that these will be observed by key agents, that adjustments for accumulated inequality can be made, and a system of reciprocal fairness can operate. As argued above, principles of action related to certain outcomes become radically compromised if the agent they are directed at cannot translate those principles into clear instructions. An important thesis of Rawlsian constructivism is that no agency can truly set background conditions unless it itself satisfies this authority condition. We can then observe that whilst individuals’ actions have horizontal impact, citizens as such cannot

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27 And indeed it is not in Rawls, *ATJ* p. 115.
28 Rawls uses this same requirement to show that Nozick’s view of justice does not give a special role to the basic structure, *Political Liberalism*, pp. 262 ff. See also, pp. 264-65, on common public law applying to everyone. Also *PL* pp. 108-109 on imposing obligations.
29 The moral powers of political society lie in the system of rules citizens recognise and adhere to, *ATJ*, p. 4; *Political Liberalism*, p. 108.
30 It is in respect of this assurance condition that we should understand the ‘publicity condition’ *ATJ*, p. 56.
31 Rawls sets out the authority condition at various places in *PL*: “The Basic Structure as Subject”, p. 258 (assigning of rights and duties, shaping the division of advantages in social cooperation); p. 265 (public law and political authority, applying to all citizens equally); ‘Political Constructivism’, in *Political Liberalism*, p. 108-109 (imposing genuine
satisfy this condition. For citizens do not have these moral powers. Individual citizens, then, cannot be the
subjects of primary principles of justice. They can, nevertheless, be the subjects of other imperatives some of
which are imperfect, allowing for agent discretion on performance, and others which are perfect, such as those
eemanating from basic, non-distributional, rights (more on which below). However, it is clear that as far as
distributional principles are concerned, justice requires perfect duties for specified agents. This gives plausible
support to the following, general, methodological constraint:

M: Principles of justice must a) set out perfect duties regarding distribution, b) specify a clear agent who must
perform the duties, c) specify the agent’s sphere of action, and d) serve an appropriate value/s by guiding the
right action of that agent.

This distinction between background adjustment and horizontal impact also helps us to understand a distinction
between two types of moral responsibility. The first is responsibility for causing negative effects and impacts on
people’s lives, call this causal responsibility. The second is responsibility in terms of what contributions one
ought to make to, or within, a fair scheme, call this ‘contribution responsibility’. In the case of principles for
distribution, responsibility to contribute as part of a scheme, or an agent’s responsibility to impose a fair
scheme, may have nothing to do with being causally responsible for any of the specific unfairness the scheme
rectifies.

Fundamental Rights
None of the above denies the existence of perfect duties that individuals are under irrespective of the presence
of a background adjusting structure. Some of these, based in interpersonal relations of respect, do not belong to
the sphere of political justice, but are constrained by its background adjustment. Others constrain all agents,
and are related to non-assigned rights. That is, rights which constrain all agents’ actions towards each other
because they define a set of harms to persons which are not understood in terms of distributive patterns.
Whether they are called natural rights, or human rights, they define direct relationships between agents and
those affected by their actions, rights holders and duty bearers.

Such duties exist when some key interest of a person would be harmed as a result of not observing the duty;
when identifiable agents would cause the harms; and where these agents have a direct intention to cause that
harm, or have a suitably negligent intention which is likely to cause the harm. When such a right is present the
action itself, collective or individual, is characterised as a wrong, and the wrong is not reducible to the negative
nature of consequences that follow from the action. The wrong lies in treatment which constitutes lack of
respect rather than in the mere results of the treatment. It is this that makes such rights deontological, rather
than consequentialist, constraints. In the case of collective action, mere accumulation of undesirable or harmful
effects is not a sufficient condition for there to be the violation of such a right. It would have to be shown that
somehow the aims of the collective, or of its members, showed either intention to harm, or a negligent intention
likely to lead to harm. Thus these rights are a form of moral responsibility framed in terms of causal
responsibility.

Respecting such rights is of a different order to securing a fair distribution of benefits and burdens. There is no
fundamental distinction, as far as such rights are concerned, between horizontal impact and background
adjustment. Primary duties for these rights apply to all agents in a position to intentionally or negligently harm
the key interests of persons. Such rights, whilst implying perfect duties for individuals, do not comprise the
substance of social justice (though they certainly comprise a basic condition for it).

III: Cosmopolitanism and the Subject of International Justice
Using the terms of the above discussion we can characterise what would be a distinctively cosmopolitan
approach to international justice. The approach would require that agency, and responsibility, in the

obligations). The distinction between citizens and institutions of social cooperation as distinct subjects in this way, is
explicitly made at ATJ, pp. 54-55.

32 Scanlon calls these ‘causal’ and ‘substantive’ responsibility. WWOEO, pp. 248 ff.

33 C. Kutz, Complicity, Cambridge: Cambridge University Press, p. 122, links responsibility to having a participatory
intention.

34 Note, Onora O’Neill distinguishes between “liberty rights” and “rights to goods and services”, depending on whether
institutional assignment of duties is present. Her distinction, however, is not based on any notion of ‘background
adjustment’. See for example, O. O’Neill, The Bounds of Justice, Cambridge: Cambridge University Press, pp. 101-105,
esp. p. 105.
international context be directed at the same values (and expressed in the same principles) as in the domestic case.\textsuperscript{35} It would require that those principles be fulfilled internationally, even if all states were already committed to fulfilling them domestically. The only differences that such an approach might concede between the two cases is a practically necessitated division of labour in implementing the principles, and some limits on how fully the principles can be implemented given the absence of a world state. Outside of those constraints, and in contrast to constructivism, no distinct international sphere, with a distinct type of moral responsibility in terms of ultimate principles, is admitted by cosmopolitan theory.\textsuperscript{36}

In the terms of this paper, then, the key methodological question for cosmopolitans is whether there is an equivalent subject of international justice to which principles of justice apply (as per methodological constraint M). That question revolves around another, which is whether there is an agent for the international sphere with the requisite moral powers of duty assigning authority (condition AC).

It is notable, in this vein, that cosmopolitans have continually expressed their views in terms of principles with no explicitly specified subject—no defined agent and sphere for the principles.\textsuperscript{37} In fact this is quite evident in the insistence of most cosmopolitans to discuss aims and principles in the passive voice.\textsuperscript{38} As I have argued, there is no default position on this matter, and any theory of justice must specify, and justify, which subject has the relevant responsibilities. Without a plausible subject any putative principles are in fact incomplete. In what follows it will become clear that only by avoiding this question does cosmopolitan justice seem more consistent than, say, constructivist approaches such as Rawls.

Now, it has been argued that no international equivalent to a basic structure exists, and that consequently justice does not apply as a concept to the international sphere.\textsuperscript{39} There are two possible responses to this. The first is to claim there is such a structure. The second is to claim that one does not need a basic structure at the international level for justice to apply, either because standards of justice apply to current institutions, or because there are justice based obligations to bring about an agency with basic-structural powers. I deal with these in turn.

The first cosmopolitan reply is that an international basic structure, equivalent to a domestic one in its essential features, indeed exists.\textsuperscript{40} This response, however, is based on a particular definition of a basic structure, putatively found in Rawls: that being a system of cooperation for mutual (fair) advantage.\textsuperscript{41} They add to this the observation that agents affect each other across and beyond state borders in ways which can have detrimental or positive effects on individual life prospects. Such agents include states themselves, international institutions regulating trade and finance, and trans-national corporations. From these observations they conclude that there is a subject of international justice to which principles apply: this system of interactions.

It is undeniable that there is horizontal impact at the international level. The far reaching economic effects of trade transactions, relations, and agreements, are not limited to domestic borders. There is, too, a system of institutions which has significant effects on the lives of diverse individuals. In this respect cosmopolitan liberal theorists are right to insist that a world of truly separate states does not exist, if it ever did. That, however, is not sufficient to show that a global basic structure exists. That would require an international power capable of assigning rights and duties, equally, to all agents capable of horizontal impact, in a way that satisfies the authority condition (set out above), and thereby setting fair background conditions.\textsuperscript{42} There are many and varied agents participating in the international sphere and with varying but significant horizontal impact. These include

\textsuperscript{35} Caney, Pogge, \textit{WPHR}, pp. 92, 170  
\textsuperscript{36} E.g., Pogge, \textit{WPHR}, pp. 105 ff.  
\textsuperscript{38} As in “How should the international system be structured?…” Caney, \textit{Justice Beyond Borders}, p. 1.  
\textsuperscript{39} Nagel op cit.; Freeman, op cit.  
states, their alliances, and consent-based international finance, trade and development institutions like the World Bank, IMF, OECD, WTO, as well as non-state actors including individuals, and private enterprises and their associations. However, international institutions do not have the authority to assign duties and rights, rather those states signing up to them accept duties. States themselves only have authority to impose duties on their citizens, or those within their territories. The reliance on state agency, and state consent, then, means that there is no unified agency satisfying the authority condition.43

It is also the case that all current legal and political practice, whether international or domestic, takes the state as the principal source of authority (in the terms described by the authority condition AC). Whilst some restrictions exist in international law which are arguably not state-based, the ability to assign rights and duties for any purpose, and certainly for distributive aims, is only available to states.44 The authority states have individually is not the moral power to equally effect each and any relevant agent through the assignment of rights and the imposition of duties, in the equivalent of a public system of law.45 So, given no other candidate for authority of this kind, the idea that there is a global basic structure in the relevant sense is mistaken.

However, this need not present an immediate problem for cosmopolitanism. The cosmopolitan can respond that, even in the absence of a full equivalent to a domestic basic structure, characterisations of justice can still apply. This is because justice-advancing actions on the part of the agents that do exist, are still possible, even in the absence of an overarching authority. Whilst the system of international institutions, the ‘Global Economic Order’ (GEO from now), might not be an agency in itself, it nevertheless imposes conditions which affect the lives of persons throughout the world. It does this, for example, by imposing trade rules which have disproportionately bad effects on poor economies, causing massive inequality and poverty across the face of the globe. That order is itself imposed by agents, states, especially economically powerful states, on the rest of the world. If that is true, then there seems to be responsibility for distributinal unfairness, and so injustice, in state decisions regarding the GEO.

In sum, the cosmopolitan response would have to be that actions by non-basic-structural agents can transcend mere horizontal impact and in fact offer up cross-national consequences on a par with those of domestic justice. State action, for example, is responsible for failure to promote a fairer set of trade rules. Effectively what this means is that cosmopolitans can accept the methodological constraint (M) whilst nevertheless rejecting the need for a single authority in the international sphere.

The justice or injustice of the rules is, I take it, to be understood simply in terms of the distributional consequences of the rules, especially in terms of life prospects. This, in turn, helps us to characterise the justice or injustice of agent actions in respect of the rules. So, whilst the authority condition is not strictly satisfied, moral agency (and responsibility) still exists. The structure that exists may indeed be one subject to horizontal impact, rather than a background structure representing an authoritative agency in its own right, nevertheless some horizontal impacts are more just than others.

States do not have the power to impose duties and assign rights to individuals or institutions in other states. Agreements on international trade, for example, are not an assignment of duties and rights by any independent authoritative body. Rather, they represent agreements to take on certain duties, by states themselves. They depend on agreements to act by those involved (whether the agreements are achieved in procedurally virtuous ways or not). So the only real moral powers any state agent has at the international level, in contrast to condition AC, is to agree to certain rules, or not agree, and to seek to get others to agree or disagree. Any attempt to arrogate authoritative moral powers beyond these represents a threat to the states system. I will discuss the alternative of deep reform of international moral powers (which I call ‘reform cosmopolitanism’) in the conclusion. For now, I assume a system where the moral power to assign rights and duties is only possessed, ultimately, by states.

It is clear that in the absence of a unified authority the only alternative available to cosmopolitans is to posit a set of rules or principles that if each agent were to act on them, the effect will be a just background adjustment.

43 One might refer to international (public) law as having a supra-authoritative or background function. Yet, the limits of international law, and certainly the ability to create and assign new duties, are statist and voluntarist. The principal sources of international law is treaty-based (i.e., based on state consent which can be withdrawn), or customary international law (i.e., based on voluntary state practice).
44 International criminal sanctions, jus cogens, and a subset of human rights obligations have complicated relationships with state consent.
The rules must either direct agents to adjust for their own negative horizontal impacts, and maximise their positive impacts, in a targeted way, or they must act to ameliorate overall horizontal impact, in a way that will continually adjust for accumulated distributive unfairness. Let us assume, for the sake of this discussion, that all states are committed to domestic justice of an egalitarian kind, so part one of any principle is to establish and maintain domestic justice. What further rules can states follow that will produce a just background adjustment across the globe—between individuals across state boundaries?

**Type 1 reasons: conflicts of responsibility**

Either type of measure is problematic for similar reasons as we found in the domestic case. Even before we ask, as we will do, whether states have capacities to affect background adjustment, there is a tension in between different responsibilities. The central imperatives of domestic state and government structures include securing justice for their citizens, preservation of the state’s integrity, and economic growth or development. The third of these is in fact a pre-condition for the first, as weakening of an economy can have serious consequences for investment and employment, the value of the money in people’s pockets, the availability of goods and so forth, and the best way to offset against crises is through growth. Failure in these duties implies either injustice or illegitimacy. Claiming states have responsibilities for international background adjustment, as a matter of perfect duties, will conflict with these domestic responsibilities. It is unclear what formula, for example, a state should use to determine whether to direct a resource towards maintaining domestic justice versus adjusting international distributions in favour of fairness for persons. Whether it be through trying to determine the distributional impact of its own actions, or by contributing to some global project to continuously maintain a fair distribution across all persons.  

In domestic terms, for example, employment insurance or unemployment benefit payments can be seen as an adjustment in line with justice—they improve the position of a portion of the worst off. In global terms they can be seen as a domestic subsidy which advantages domestic labour of some economies, compared to those of other economies, when negotiating wages. Similarly, how much education or health provision should be directed to the domestic least advantaged, versus the internationally least advantaged? If the state were charged with both responsibilities, as perfect non-discretionary duties, the conflict would be irresolvable, because the responsibilities imply two incompatible instructions: “continue to dedicate resources to improving the position of the worst off relative to domain A (domestic society)” versus “improve the position of the worst off relative to domain B (globally)”. To abandon the first imperative would imply states had no special justice-based responsibilities to their own members, which negates the central point of states, as establishing just relations between their citizens.

**Type 2 reasons: Capacity**

Responsibility clashes and burdens aside, there are reasons to think that states do not even have the capacity to continuously adjust for unfair distributions. Firstly, the long term effects of actions, which do not in themselves violate rights, are beyond prediction. This is because their consequences will depend on the accumulated decisions of market agents. Encouraging a particular import, for example, from a developing economy may, indeed, increase that economy’s growth in the short term, but it may also lead to a long term loss of diversity in that economy, meaning vulnerability should consumption trends change, as well as unforeseen effects for other economies.

At the same time, states, even collectively, do not have control of the overall outcomes of their agency. While states may be able to control some aspect of trade, they cannot control the effects of that trade on international prices, production, the strength of currency, direct investment, or employment opportunities. Consider a group of states raising taxes on oil imports from producers—with the aim of raising revenue for development projects. That levy might have the effect of raising the cost of oil-related products all over the world, and consequently differentially disadvantage those economies, or parts of economies, reliant on oil-fuels for economic activities. This could potentially increased transport costs for those who can least afford it and cause unemployment. Most vulnerable would be transport networks in developing economies where there is high reliance on petroleum fuelled transport.

The general point here is that the effects of some internationally directed actions will be felt by whole economies, or whole sectors of an economy, rather than a select group. Devaluing the currency of one economy may benefit some of the globally least advantaged, for example, by making products from their economies more competitive. Yet the effects of this for the devaluing economies will be wholesale, and

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46 Which is different from maintaining agreements on fair terms between societies, or ‘peoples’, through an ‘analogy’ to the basic structure, different in form from the domestic case. Rawls, LoP, p. 115.
potentially generate a crisis. The desire for growth by affluent states can be seen as, at least partly, fuelled by a fear of crises. No government wants to be responsible for an economic downturn or vulnerability to its overall consequences in terms of employment and its citizen’s standard of living, which can plummet in a crisis. Nor is internal allocative redistribution sufficient to offset an economic crisis or its effects.

The alternative idea that redistributing money is sufficient for producing just distributive patterns, globally, is simplistic. Movements of funds into economies, if significant and over prolonged periods, can cause inflation and all its associated problems. That tends to be the effect of increases in money in a system without corresponding increases in production, and the two do not necessarily go together. In fact one can envisage money redistribution undermining local production and employment, with imports taking over, and fomenting dependency. Furthermore, distributive justice cannot be reduced to money holdings. Access of its citizens to productive activity has to be an underlying aim of any society seeking a just order. Yet access to productive activity has, as a prerequisite, economic development. Money transfers do not translate into economic development and may, in the long term, impede it if they distort local economies and priorities.

Unless states can effectively control significant aspects of the world economy, such as prices, exchange rates (the strength of each currency), capital flows and investment, which sectors of the economy get developed, speed of development, property ownership regimes, employment patterns, they will not be able to continuously adjust for the consequences of global horizontal impact. That is, even assuming that all states (and their citizens) are committed to seeking internally fair distributions, the external distribution (relative to other states) is subject to economic factors states cannot control for, even acting in concert.

Whilst markets can be regulated to a degree according to state agreements, the tools are not in place to affect economic factors at will to produce or continuously adjust distributive patterns. That is, regulation is not an appropriate tool for achieving allocative distributive aims. The relationship between individual positions across economies, and in response to cross-economy market effects, is extremely complicated, and extremely changeable. So much so that the particular consequences of any international action for individuals cannot be isolated in the long term.

Of course, one can point to particular examples of apparently stark unfair behaviour, such as where affluent states protect sectors of their economies with subsidies other states cannot afford, and then dump cheap products on their markets, driving poor local farmers out of business. But saying that this is unfair, and wrong, is different from saying that it is so because states are failing to make the position of the least advantaged as best off as it could be, or to secure equality for all. The unfairness lies in rules which discriminate in favour of one economic sector over another for non-economic reasons, and it would be unfair even if the consequences did not relate to the very poor—for this creates economic threats for anyone disadvantaged by such discrimination.

In terms of overall consequences, however, like all examples of horizontal impact, it is not clear that removing the subsidies would necessarily imply continuous benefits for the least advantaged in developing economies, given potential changes in behaviour. For example, it is possible their end would encourage export oriented, low product-diversity, low employment, agri-businesses, to move in, rather than helping small scale poor farmers; a definite possibility due to lack of agrarian reform in developing economies. Local markets could also be flooded by the products of local large agri-businesses. At the same time, there are questions about the long-term benefits of the focus on small scale agricultural production, rather than modernisation. There are all sorts of questions here about short term benefits of cheaper imports, long term benefits of local agricultural development and diversity, and longer term benefits of modernisation. Whilst states can refrain from unfair double standards, they cannot globally regulate these short, long, and longer, term developments in each sector of the globe.

Furthermore, even if we thought there were some continuous measures, and prioritisations, that states should take to maintain a fair global distribution across all persons, implementing these measures will require a standing decision making body the decisions of which will be adhered to even in the face of disagreement in judgements about priorities and policies. Otherwise problems of coordinating judgement as to the correct measures will arise. This in turn requires an authority to make executive decisions, assigning duties that it can

47 Cf. Pogge, WPHR, p. 205.
48 A good example of this effect is prawn production in Bangladesh. Barraclough, Solon L., and Andrea Finger-Stich, 1999, Some Ecological and Social Implications of Commercial Shrimp Farming in Asia, UNRISD Discussion Paper No.74.
command effectively, as well as possessing the authority to raise revenues. Effectively this means an international authority with state-like powers, which would mean a fundamental reconfiguration of the moral powers of global political agents.

Given the problems we have identified, the idea of a perfect duty on the part of states to produce and continuously maintain a fair distribution, not domestically, but internationally, over-estimates their moral powers. Thus, even the most plausible agents available in the international sphere are in no position to carry out the kind of continuous background adjustment necessary for domestic principles of justice to be equally applicable to them in their international affairs. This means that putative, properly cosmopolitan principles, demanding background adjustment in line with a domestic conception of justice, are incomplete due to inability to identify a relevant agency and its specific duties.

Rights Revisited

This is not to deny that the capacity to influence other’s lives imposes moral duties on agents in terms of their horizontal impact. As I said above, fundamental rights describe some of the limits on horizontal impact. And these rights imply perfect duties. So a natural strategy to avoid the problems of finding a background adjusting agency is to claim that global distributive outcomes are on a part with violations of these kinds of rights. This would silence the problem of balancing responsibilities: human rights obviously trump other responsibilities. One would also thereby solve the problem of capacity, for if it can be shown that an agent is violating a right, then that agent is responsible for addressing the violation, either through stopping the activity, or through remedy. And indeed Pogge frames global, severe poverty as a violation of the human right to basic necessities by the GEO, those that ‘impose’ the GEO, and the citizens of affluent states complicit in its imposition.48 This is a way of rejecting the distinction between international justice proper and fundamental rights, because of the weighty redistributive component implied.50

There is an important assumption here. That is that the following conditions are sufficient for an agent A to violate a right: a) A’s action is involved in a causal chain that has harm as a consequence (e.g., poverty), b) A can foresee the consequence, and c) A can avoid the action. That this is insufficient for A violating a right can be shown with two examples. First, consider two companies, A and B, that merge in a market system, knowing they will thereby drive a third, C, out of business and that will lead to unemployment and impoverishment of those working for C. In such a case it is not obvious that A and B are violating any rights, because it is not obvious that they are responsible for those kinds of consequences (rather than the company that goes out of business, or the state, say). Or consider a person who knows that if they publish an image deemed offensive by a particular religious group, members of the latter will riot, causing injury to life and property. That person will not obviously have violated any rights. For an activity to count as the violation of a right, there has to be an appropriate agent that is responsible for duties, some of them onerous institutional duties, associated with the right. That is, a theory of rights must presuppose a theory of responsibility.51

When it comes to rights, or those aspects of rights, which imply allocative agency, responsibility is of a special kind. Given the disparate nature and participation in the causal network that results in economic disadvantages, to say everyone is responsible for rights violations is problematic because it implies degrees of rights violation: the printer of banknotes (who makes the economy possible) is partly responsible, as is each stock company, currency trader, and stocks transactions regulator (each stock exchange). And shares in causal responsibility are not measurable, as they would not be measurable in a perfect, laissez faire, domestic market. But one is either a violator of a right or not. There are no degrees of violation, nor can agents be said to have a discrete share of a violation, with all the shares adding up to a whole. Nor can we, alternatively, pin a violation on a single agent or set of agents, such as those institutions where world trade rules are negotiated (the GEO). For, the effects of those institutions’ choices presupposes the actions of all the other economic agents, and against that background, they can only be distinctly guilty of rights violation by intentionally carrying out their appointed task in a discriminatory way. But so long as the justification for a policy or price is purely economically decided (not influenced by external, non-economic, discriminatory, factors) the GEO could no more be said discriminate against the global poor than the stock exchange does by not fixing stock prices in favour of poor buyers, or a

49 T. Pogge, ‘Severe Poverty as a Violation of Negative Duties’, Ethics & International Affairs, Volume 19, No. 1, 2005.
51 Pogge’s ‘institutionalist’ conception of rights would seem to supply part of such a theory, however he extends responsibility to all members of a society, without regard to appropriateness of agency. WPHR, p. 64.
local grocer setting a high price for an item. These are the same standards we apply domestically in deciding if an economic agent is acting in a discriminatory way which violates a right.

Imagine, counterfactually, that the rules of global trade were fair in terms of not harbouring double standards or market discrimination against specific economies (or in favour of specific economies), yet nevertheless severe poverty resulted from economic activity under those rules. The problem here would not be a rights violation, but rather the absence of an agency to rectify the negative effects of market economies: the accumulated effects of economic horizontal impact under fair trade rules. Such an agency would need powers to affect allocation through the assignment of rights and duties (macro and micro economic policies); the control of much more than rules or conditions of trade. The GEO does not have that structure, and is not assigned that purpose, and the required authority, so to hold it responsible for such rights is as plausible as taking all grocers to be rights violators for not charging people on an ability to pay basis.

Which is to say, the fact that the GEO has negative consequences is not sufficient to show that it is an appropriate agency of global economic justice. Any responsibilities regarding international economic justice will be of a more complicated kind than the language of rights violation implies. For, as long as we take the ‘relevant agency’ argument seriously, the mere absence of institutions capable of, and charged with, implementing the equivalent of domestic justice is not the same as the perpetration of injustice.

Conclusion:
It is not part of my conclusion to claim that there is, by the background adjustment argument, no concept or conception of justice at the international level. Rather, that argument, and the methodological premise (M) behind it, challenges the idea that domestic principles of justice apply to international relations. What lies in the way is the nature of agency, the moral powers, at the international level—the state and its powers to assign rights and duties domestically whilst seeking agreements internationally. Appropriate agency is a necessary component of principles. Without an overarching authority capable of background adjustment, and given those powers that do exist, there is a conceptual problem with the idea that domestic justice applies internationally.

Now, as I alerted above, there is still the question of international political reform—the creation of a power that can deal with the distributive unfairness and negative consequences of the world economic system. This is the ‘reform cosmopolitan’ position, which should not be confused with the position I have called ‘cosmopolitanism proper’ above. What exactly such reform requires in terms of aims and agency is the subject of a separate paper. However, it is clear that, even if attempted ‘gradually’ or ‘partially’, it would imply fundamental changes in moral powers and authority structures away from the states system. Given the coordination problems, resource allocation and management involved, such an alteration in agency cannot be a perfect primary duty of justice for any existing agent.

In lieu of such reforms, other values than those expressed by principles of domestic justice must come to the fore. Firstly, states exercising their moral powers must be respected in the foreign policy of liberal states. For it is only through those powers that states can seek to domestically implement a conception of justice, and get the opportunity to arrive at a fully liberal conception of justice. This respect is always on the condition that the moral powers of the states in question are genuine, in plausibly representing the self-organisation of a political community. Which is to say they respect fundamental rights and have a system in which the rule of law applies, and common good conception of justice is pursued. Failure to respect such powers is to effectively deny societies the right to find their own way towards the goods of justice. There is currently no alternative type of agency that can have that aim.

It is for these reasons, and because it expresses these values and aims, that the law of peoples concerns how liberal states should treat other states which have basic-structural moral powers. It elaborates principles of association, trade and assistance (and is therefore literally about inter-national, or inter-peoples, justice). Note also the earlier stated condition on any principle of justice (section I): that its being followed must be consistent with the operation of basic-structural justice. It is for this reason that the law of peoples represents an extension

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52 I class Pogge’s proposal for a ‘democracy panel’ giving the legitimacy thumbs up to states for the purposes of loans and trading, as on a par with this kind of reform. _WPHR_, p. 156.
of justice worked out for the basic structure of a just, liberal, society—liberal foreign policy.\footnote{LoP, p. 10.} That means that it answers a specific question: when liberal peoples move their attention from domestic institutions and their fairness, how should their institutions operate in order to be just? It does not provide principles for a global basic structure because, firstly, there is no equivalent international subject with the moral powers of a basic structure, and secondly if there was, the principles that would apply to it would be those that apply to domestic basic structures.