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THE GLOBAL ORDER AS A POTENTIAL CASE OF  
BACKGROUND INJUSTICE

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## **Abstract**

Is the global order unjust? And if so, why? The paper argues that the central question to be asked within the debate on global distributive and economic justice is not whether the global order is characterized by the presence of an (unjust) global institutional structure, but rather whether the conditions that trigger the requirement to *establish* one obtain.

I argue that Rawls's concept of background justice can be helpful in this respect, for it can show when and under what circumstances the interaction between different agents requires institutional regulation in order to be justified. I contend that, in the global as in the domestic case, there might be a problem of justice when agents (individuals and states) interact against background conditions that are not justifiable (or instance, when their power and bargaining positions are not balanced), and that in such scenarios institutional regulation is required to maintain background conditions fair. The paper then briefly discusses three potential examples of global background justice between state and non-state actors: tax competition, escalating tariffs, and company relocations.

## **Keywords**

Social and global justice, Rawls, cosmopolitanism, practice-dependent thesis.

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## Introduction

Is the global order unjust? And if so, why? Because it imposes unjust institutions on the world's citizens, or rather because it badly lacks much needed regulatory institutions?

This paper examines the connection between social practices, political institutions, and the obligations of socio-economic justice<sup>1</sup> at the supranational level. Its aim is to answer the question: what role, if any, does the concept of basic structure – namely “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”<sup>2</sup> – play in explaining whether and how the current global order raises problems of socio-economic justice? It argues that the basic structure has a very important role indeed, but one that is significantly different from what cosmopolitans and anti-cosmopolitans alike have so far taken it to be.

In particular, I shall put forward the view that the most pressing question regarding the current global order is not whether there *is* such a thing as a *global basic structure*,<sup>3</sup> but rather whether the relevant conditions that trigger the obligation to *establish* one actually obtain. However, affirming the moral necessity of establishing a supranational basic structure need not entail such a structure and its institutions being as rich and complex as our domestic ones, let alone implementing the same conception of socio-economic justice.<sup>4</sup>

The main point of the paper is that, if certain empirical conditions hold true, a problem of *background justice* may arise at the global level. If inter- and trans-national interaction is sufficiently intense and complex, it might well be the case that the global order raises problems of background justice that are structurally, though not necessarily substantively, similar to those that we find at the domestic level. If the problems are structurally similar, then we have a duty to end global background injustice which is just as stringent as in the domestic case. However, if the problems are substantively different, what count as just background conditions between the relevant global actors are different from the just background conditions in the domestic scenario. Thus, arguing that we might need supranational institutions with effective regulatory power in order to maintain background justice need not mean that we need a world-state.

A crucial advantage of this view is that it is defensible vis-à-vis the so-called *practice-dependent* approach to justice;<sup>5</sup> indeed, it provides a promising re-interpretation of this approach. The practice-dependent view holds that the appropriate principles of justice for specific practices depend on the nature of those very practices. I shall argue that it is perfectly coherent, for a practice-dependent approach, to recommend the establishment of *new practices* under certain circumstances, namely when this is the only way of preserving the justice of other, already existing ones.

The paper contributes to the literature on global socio-economic justice in three further ways. Firstly, the view proposed in it allows us to identify the global order as a problem of justice proper without necessarily entailing that the same principles of justice apply in both the domestic and the

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<sup>1</sup> I use the term “socio-economic justice”, rather than “distributive justice”, because some potential problems of transnational justice concerning socio-economic issues are not directly of a distributive nature. I am referring, in particular, to *relational* problems raised by potentially problematic power and bargaining-power relationships. One might say that, whereas distributive justice concerns the allocation of burdens and benefits of social cooperation, socio-economic justice is a broader category, roughly equivalent to what is more commonly called “social justice”, and regards the *fundamental terms* of social cooperation – which in turn include both distributive and non-distributive factors, such as empowerment, status, decision-making power, and bargaining positions.

<sup>2</sup> John Rawls, *A Theory of Justice, Revised Edition* (Cambridge, Mass.: Harvard University Press, 1999), p. 6; henceforth TJ.

<sup>3</sup> I have expressed my view on the matter in M. Ronzoni, “Two Concepts of the Basic Structure, and their Relevance to Global Justice,” *Global Justice: Theory Practice Rhetoric* 1 (2008), pp. 68-85.

<sup>4</sup> For the distinction between a concept and a conception of justice see TJ, p. 5.

<sup>5</sup> Aaron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo”, *Philosophy and Public Affairs*, 33 (July 2005): 281-316; Samuel Freeman, “Distributive Justice and *The Law of Peoples*,” in *Rawls's Law of Peoples: A Realistic Utopia?*, ed. Rex Martin and David A. Reidy (Oxford: Blackwell 2006); Andrea Sangiovanni, “Global Justice, Reciprocity, and the State”, *Philosophy and Public Affairs* 35 (2007): 3-39; and “Justice and the Priority of Politics to Morality”, *Journal of Political Philosophy* 16 (2008): 137-164; Saladin Meckled-Garcia, “On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency”, *The Journal of Political Philosophy* 16 (2008): 245-271.

international case, thus overcoming the sterile dichotomy between cosmopolitanism and statism. Secondly, and relatedly, the main argument of this paper sheds light on the potential *interdependence* between domestic and international socio-economic justice. The view I shall put forward is that, under certain conditions, tackling problems of global background justice is a necessary condition for allowing societies to achieve justice internally. Thirdly, and finally, the paper exposes the over-emphasis that the issue of *redistribution* has enjoyed in the global justice debate so far, and points out the need for normative theory to pay more attention to problems of *empowerment* in global interaction.

The issue of whether the global order actually does raise concerns of background justice, and if so which, is to a great extent empirical. Indeed, one of the aims of this paper is to point out that the question “Is the current global order unjust?” cannot be answered at a purely theoretical level. The paper makes (1) a conceptual and (2) a conditional argument: (1) problems of background justice are *possible* at the supranational level, and (2) *if* they arise, they require the establishment of appropriate supranational institutions. It does not take a direct stand on whether the global order is in fact a case of background injustice, let alone on the issue of which specific global institutional reforms would be needed in order to respond to it if it were; for both questions would require inter- and multi-disciplinary work to be answered. The paper does, however, prepare the ground for such work, by offering guidelines as to what kind of empirical research would be needed to establish whether the global order raises problems of background justice, and by singling out several interesting candidates for examples of global background injustice.

### Background Justice and Patterened Principles

In Rawls’s view, the basic structure of society constitutes the “primary subject” of social justice.<sup>6</sup> Discussions concerning the primacy of the basic structure have been central to two important debates. The first concerns whether the basic structure is the only subject of social justice, that is whether the presence of a just basic structure is a *sufficient* condition for a society to be just;<sup>7</sup> the second concerns the issue of whether the existence of a basic structure is a *necessary* condition for obligations of socio-economic justice to arise in the first place. This paper engages in the latter debate, and argues that a relatively unexplored concept in Rawls’s work, that of *background justice*, offers the most promising tool for settling the dispute. In particular, this section argues that obligations of socio-economic justice arise from engaging in specific forms of interaction, but do not require a pre-existing basic structure. Indeed, the justificatory chain operates the other way around: interaction of the relevant kind raises problems of background justice, and these in turn trigger the obligation to establish an appropriate basic structure if one is not yet in place.

An important aspect of the account that I shall defend is that its premises are in line with what has recently been called the “practice-dependent account of justice”, but subverts some of its conclusions. Proponents of the so-called practice-dependence thesis – including such authors as Aaron James, Andrea Sangiovanni, and Saladin Meckled-Garcia – argue that “the content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern”<sup>8</sup> – where a practice is taken to be, in a Rawlsian perspective, a “form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure”.<sup>9</sup> Practice-dependent theorists hold the view that conceptions of

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<sup>6</sup> TJ, p. 6.

<sup>7</sup> See G. A. Cohen, “Where the Action is: On the Site of Distributive Justice”, *Philosophy and Public Affairs* 26 (1997): 3-30. For the debate that Cohen’s article contributed to starting, see Andrew Williams, “Incentives, Inequality, and Publicity”, *Philosophy and Public Affairs* 27 (1998): 225-247; David Estlund, “Liberalism, Equality, and Fraternity in Cohen’s Critique of Rawls”, *Journal of Political Philosophy* 6 (1998): 99-112; “On the Site of Distributive Justice: Reflections on Cohen and Murphy”, *Philosophy and Public Affairs* 29 (2000): 137-169; A. J. Julius, “Basic Structure and the Value of Equality”, *Philosophy and Public Affairs* 31 (2003): 321-355. The list is by no means exhaustive. I shall not enter this debate in this paper; for a discussion of some of its aspects, see M. Ronzoni, “What Makes a Basic Structure Just?”, *Res Publica* 14 (2008), pp. 203-218.

<sup>8</sup> A. Sangiovanni, “Justice and the Priority of Politics to Morality”, p. 138. I take Sangiovanni’s view to be a good approximation of the methodology of the whole practice-dependent camp.

<sup>9</sup> J. Rawls, *Collected Papers*, ed. S. R. Freeman (Cambridge, Mass.: Harvard University Press 1999), p. 20.



justice depend on the nature of the practice that they should regulate, and therefore no state of affairs can be judged just or unjust unless we refer to a specific practice within it. This leads them to conclude that *the very existence* of a full-blown basic structure is a necessary condition for some or all the requirements of socio-economic justice to arise in the first place. Andrea Sangiovanni, for instance, argues that the *egalitarian* demands of distributive justice only arise as *obligations of reciprocity* between citizens and residents within the basic structure of a state<sup>10</sup> because of its role in producing and allocating goods that are necessary for pursuing a decent life.<sup>11</sup> Sangiovanni, however, acknowledges that the global order could be structurally unjust in other ways, for instance, by systematically leading to a human rights deficit;<sup>12</sup> even in this case, however, it is the presence of global practices with clearly specified systems of rules that would trigger global human rights obligations. More radically, Saladin Meckled-Garcia claims that any demands of socio-economic justice proper, whether egalitarian or not, can only arise within an existing basic structure, for such demands must be articulated in terms of *perfect* duties and entitlements, and this can only take place within existing institutions with specified rules and assigned responsibilities.<sup>13</sup> But what unites them is the identification of the existence of a basic structure as a *necessary* or *existence* condition<sup>14</sup> for the relevant obligations of socio-economic justice to apply.

Therefore, when it comes to transnational socio-economic justice, the practice-dependence view seems to allow for only two positions. One can either endorse a fully cosmopolitan position, but only at the cost of supporting the (empirically controversial) view that, *pace* practice-dependent theorists, the world at large is characterized by a *global basic structure* proper. Alternatively, one can accept that global practices – strictly speaking, forms of activity with clearly specified systems of rules – only govern legitimate interaction between states in issues of war, diplomacy, trade, and human rights, and do not amount to a basic structure. If one takes the latter view, however, one also has to accept that problems of international justice or injustice only concern those practices.<sup>15</sup>

This dual picture, I shall argue, is incomplete. By expounding the importance of the concept of background justice, this paper shows that a practice-dependent account of justice must also be concerned with social scenarios where full-blown socio-economic practices with clearly identifiable systems of rules are not in place, but where their establishment is *required* in order to preserve the justice of other existing practices. Thus, I shall contend that the proponents of the practice-dependence view are right in claiming that conceptions of justice vary according to the practices they regulate, but wrong in assuming that scenarios with no existing basic structure raise no or few concerns of socio-economic justice.

In “The Basic Structure as Subject”,<sup>16</sup> Rawls argues that one of the main reasons why basic structure is of special importance is its role in securing background justice:

Suppose we begin with the initially attractive idea that social circumstances and people’s relationships to one another should develop over time in accordance with free agreements fairly arrived at and fully honored. Straightaway we need an account of when agreements are free and

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<sup>10</sup> Sangiovanni talks about states and not about basic structures, but what he identifies as morally salient in states are their goods-allocating institutions – namely their basic structures.

<sup>11</sup> Sangiovanni, “Global Justice, Reciprocity, and the State”.

<sup>12</sup> *Ibid.* p. 4, n. 5.

<sup>13</sup> Meckled-Garcia, “On the Very Idea of Cosmopolitan Justice”.

<sup>14</sup> Arash Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice”, *Philosophy Public Affairs*, 35 (2007): 318-358; pp. 3-4.

<sup>15</sup> It is not my intention to lump together three different and sophisticated views such as those put forward by James, Sangiovanni, and Meckled-Garcia respectively. The authors differ in their interpretation of the practice-dependence view, and in their normative recipes for the global order. In particular, James is more sympathetic than both Sangiovanni and Meckled-Garcia to the idea that there are global practices which raise problems of distributive and socio-economic justice, and Sangiovanni more than Meckled-Garcia. However, the conceptual elements which unite them is the identification of existing practices with clear structures and systems of rules as the only sources of claims of justice – and the rejection of the idea, supported in this paper, that the establishment of new practices might be required by justice.

<sup>16</sup> I will here refer to the version published in *Political Liberalism* (New York: Columbia University Press 1993), pp. 257-288; henceforth PL.

the social circumstances under which they are reached fair. In addition, while these conditions may be fair at an earlier time, the accumulated results of many separate and ostensibly fair agreements, together with social trends and historical contingencies, are likely in the course of time to alter citizens' relationships and opportunities so that the conditions for free and fair agreements no longer hold. The role of institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place.<sup>17</sup>

This is a recognition of the fact that, independently of the motivations of individuals or other non-institutional actors in their various transactions, there is no feasible set of rules that can be applied to them directly and succeed in preventing the erosion of background justice. For the effects of accumulated, overlapping and criss-crossing transactions are "so far in the future, or so indirect, that the attempt to forestall them by restrictive rules that apply to individuals would be an *excessive* if not an *impossible* burden".<sup>18</sup> There are tasks that individuals simply cannot fulfil. Due to problems of collective action and epistemic limits to how much one can foresee the consequences of one's actions, no society can be just if no suitable institutions protecting background justice are in place.

A crucial element that is often overlooked in this discussion<sup>19</sup> is that Rawls is here defending the very point of *having* a basic structure – namely institutions regulating the fundamental terms of social cooperation – with special principles applying to it, in the first place.<sup>20</sup> Rawls's claim here is that, in a complex social setting such as society, background justice simply cannot be maintained without relevant institutions with the effective regulatory power to tackle background conditions. His main target in these passages is Robert Nozick's account of a minimal state, in which the only task of political institutions is to protect a minimal bundle of rights and duties – most importantly, those related to property and property exchange – that individuals have *independently* of their interaction with one another or their life under common institutions. Nozick famously argues that Rawls's principles of justice are *patterned*, in that they aim to preserve certain relationships between members of society by maintaining some significant social pattern.<sup>21</sup> He then criticises patterned principles for violating what he believes to be the most fundamental demand of justice, namely that un-coerced transactions between free individuals be not interfered with. Since "freedom upsets patterns",<sup>22</sup> a patterned conception of justice, if implemented, will inevitably lead to unacceptable interference with free individual transactions. Rawls's argument from background justice is meant precisely to show, *contra* libertarianism, the necessity of patterned principles in socially complex settings. Rawls here explicitly engages with Nozick's libertarianism. He observes how libertarianism, being grounded in the idea that free agency should be respected, is committed to the idea that "no one can be compelled to enter [the "social contract" agreement in order to become a member of the state]",<sup>23</sup> and everybody has "the *choice* of being [or not being] one of the state's *clients*".<sup>24</sup> Against such a framework, Rawls

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<sup>17</sup> PL, pp. 265-266.

<sup>18</sup> *Ibid.*, emphasis added.

<sup>19</sup> With the important exception of Abizadeh, "Cooperation, Pervasive Impact, and Coercion".

<sup>20</sup> I am grateful to an anonymous reviewer for pressing for clarification of my interpretation of these passages.

<sup>21</sup> Nozick's narrowest definition of patterned principles identifies as patterned those principle which specify that the distribution of goods in society "is to vary along with some natural dimension" (*Anarchy, State, and Utopia*, p. 156). However, he often uses the term more broadly, to identify those principles which are not purely historical, but which rather aim at maintaining a certain distribution or a certain system of social relationships within society. The issue whether Rawls's principles of justice are truly patterned principles is contentious. Whereas some Rawlsian and other egalitarian theorists embrace the label and try to defend the moral justifiability of patterned principles, especially with regard to respect for rights (see in particular G. A. Cohen, *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press 1995), pp. 19-37; Cheyney C. Ryan, "Yours, Mine and Ours: Property Rights and Individual Liberty", *Ethics* 87 (1977): 126-141, p. 133; Thomas Pogge, *Realizing Rawls*, pp. 29-30), others argue that Rawls's principles of justice do not qualify as patterned (Alexander Kaufman, "The Myth of the Patterned Principle: Rawls, Nozick and Entitlements," *Polity* 36 (2004): 559-578). I shall remain silent with respect to this dispute. I only adopt Nozick's jargon for the sake of simplicity, in order to refer to principles of justice that may or may not be purely historical, and do not take a stand as to whether Rawls's principles are patterned in Nozick's narrower sense.

<sup>22</sup> *Anarchy, State, and Utopia*, p. 161-4.

<sup>23</sup> PL, p. 265.

<sup>24</sup> *Ibid.*, emphasis added. Admittedly, Nozick believes that a minimal state (the "dominant protection agency") may force independent individuals, who insist on protecting their rights by themselves, to join in, thus acquiring monopoly over the

argues that free agency – in the form of “free agreements fairly arrived at” – can only be exercised against just background conditions, and only the institutions of the basic structure can preserve them. Hence, pace libertarianism, “a system of common public law”<sup>25</sup> is indeed an imperative, for only this can guarantee background justice.<sup>26</sup> Moreover, such a system will not only protect, secure and enforce pre-existing “natural rights”, as in traditional Lockean social contract theory, but it will also implement *patterned* principles in order to preserve just background conditions, thus constituting a basic structure proper. Socio-political institutions constitute a basic structure in which they not only legally coerce rights and duties that are believed to pre-exist civil society, but also set the fundamental terms of social cooperation, allocate its burdens and benefits and regulate the relevant social relations among the members of society. Rawls’s point is that we need institutions not only to enforce and protect principles that already independently apply to individual conduct (like protecting individuals from physical assault), but also to impose external constraints on those very principles, by preserving certain relevant patterns, and just background conditions through these patterns. For instance “whether wage agreements are fair rests [...] on the nature of the labor market: excess market power must be prevented and fair bargaining power should obtain between employers and employees”<sup>27</sup> – where both not excessive market power and fair bargaining relationships are two relevant social patterns that have to be maintained to guarantee just background conditions. The basic structure therefore has a special role, and special principles applying to it.

Let us now look more closely at how the argument of background justice is supposed to work. We begin with an account of when agreements between individuals or other non-institutional actors are free, and when the social circumstances under which they are reached are fair. Moreover, all we care about normatively is freedom of agreements and the fairness of the relevant background social circumstances – that is, *we do not think that the content and outcome of those agreements should also be assessed through an independent account of substantive fairness*. We are, hence, in a regime of pure procedural fairness. Rawls’s point at this juncture is that, in the absence of regulatory institutions of the right kind, the conditions for free and fair agreements will be eroded over time through the uncoordinated interaction of agents. I shall make an example, taking the case of contracts, in order to make the point more vivid. Let us assume that a contract counts as a free agreement when it is uncoerced and does not involve any deception, and that the social circumstances under which the agreement leading to the contract is reached are fair when both contracting parties have some effective freedom to refuse or renegotiate the deal – that is, they (1) enjoy sufficiently adequate material conditions (2) and/or an adequate range of alternative options available to them (3) and/or have sufficient bargaining power, in such a way that (a) signing the contract is not the only reasonable thing for them to do to survive or live under socially acceptable circumstances (that is, each contractor has some reasonably effective freedom to refuse to sign), and (b) each of them has some reasonable power to affect the terms of the contract. Note that defining some threshold or baseline for 1-3 and a-b is not necessary for our purposes here; what matters is that some such baseline exists which is sufficiently thick to make a difference from a scenario where only the absence of coercion and deception matters, but also sufficiently thin to allow for a plurality of different agreements with substantially different terms to be reached (it has to be a case of pure procedural justice, after all). Note, moreover, that one does not need to agree that these are the right background conditions under which agreements are free and fair in order to accept the *structure* of the argument of background justice. The point here is of a

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legitimate use of force (*Anarchy, State, and Utopia*, pp. 10- 53). However, the right of the minimal state to do so is grounded in its obligations to protect its existing “clients” from random and unjustified punishment – that is, the birth of the state is justified within an entirely *voluntaristic* framework, unlike in the Rawlsian argument of background justice.

<sup>25</sup> *Ibid.*

<sup>26</sup> The idea that background justice offers a *justification* for the idea of a basic structure, rather than presupposing its existence, can already be detected in TJ. Here Rawls connects the concept of background justice to that of pure procedural justice – the latter being an account of justice where a just outcome is defined entirely on the basis of being the result of a just procedure. In some cases, such as the allocation of income and wages in a free society, pure procedural justice is the appropriate criterion of justice: we should not judge the outcome (such as wage inequalities), but only the procedure according to which it was generated. However, Rawls remarks, “if the notion of pure procedural justice is to succeed, it is necessary [...] to *set up* [...] a system of surrounding institutions” (p. 268, emphasis added).

<sup>27</sup> PL, p. 267.

methodological/structural, rather than substantive, kind: what matters is that, *given* a certain account of when agreements are free and fair, *that very account* cannot be sustained in sufficiently complex social settings unless institutions with the power to maintain background conditions are in place. The account only needs to be sufficiently plausible, and I submit that it is, because conditions 1-3 and a-b try to model the idea that contractors are provided with the *effective* freedom to make agreements. So, imagine that free and fair contracts according to the normative criteria 1-3 and a-b outlined above are signed. Rawls's observation is that the accumulated and uncoordinated consequences of such contracts will create new states of affairs where those very conditions for free and fair agreements (namely, 1-3 and a-b) no longer hold. This can occur in a variety of ways. The accumulated outcomes of several contracts may lead to scenarios where some of the interacting agents are so destitute that they no longer enjoy conditions 1-3 and a-b. Alternatively, contracts may have similar unacceptable consequences for third parties, consequences which cannot be fully appreciated by the two contractors but can adequately be evaluated from an institutional perspective. Hence, in order for the conditions under which contracts can be made in a free and fair way to be maintained over time, institutions must be set up and provided with the effective regulatory power to maintain background justice by preserving certain social relationships among individuals or among other kinds of actors.<sup>28</sup> It should be clear by now that principles capable of providing a solution to the problem of background justice will necessarily be patterned principles. This can either be done by implementing a certain distribution of goods (and thus making sure that no individual falls below the baseline where she no longer enjoys 1-3 and a-b) and/or by maintaining certain power and bargaining relationships among actors through measures other than material distribution. Rawls's two principles of justice entail elements of both courses of action and constitute *an interpretation of how institutions could maintain background justice in one specific and very important case, namely that of the closed society of a state*. The analysis conducted so far, however, shows that the *existence* of the basic structure of a state is not the factor which triggers problems of background justice. On the contrary, the argument of background justice is meant to show precisely the *point* of the basic structure – why we *need* it, and not what obligations derive from its *existence*. Indeed, when the socio-economic interaction between agents is so complex and intense that it is bound to erode just background conditions in the long run, “there are no feasible and practicable rules that it is sensible to impose on individuals that can prevent the erosion of background justice.”<sup>29</sup> In such scenarios, we can no longer rely on a libertarian account of the state as a private and optional service provider, but must rather recur to a system of unifying public law and *establish the appropriate institutions* which will maintain just background conditions.<sup>30</sup>

Hence, the implications of the argument of background justice are twofold: 1) under certain circumstances, justice requires the establishment of specific institutions; 2) such institutions will have special principles applying to them. However, before we move on to the implications that the background justice argument may have for supranational socio-economic justice, a clarification is necessary. The analysis conducted so far has shown that a Rawlsian perspective is fully compatible with the requirement to establish as yet inexistent background institutions. But is it possible for a coherent practice-dependent view to accept this conclusion? In other words, is the background justice argument compatible with a practice-dependent approach to justice? I believe so. Indeed, the background justice argument exposes the over-simplicity of the practice-dependence thesis as it is

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<sup>28</sup> An unregulated market with no anti-trust and no mechanisms of protection against cartels or monopoly will, for instance, create problems of background justice for enterprises.

<sup>29</sup> PL, p. 267.

<sup>30</sup> A natural objection at this point would be that claims of the kind “justice requires x” are ambiguous. In particular, authors committed to the view that only perfect duties are duties of justice proper argue that the statement “justice requires x” means that specific agents are under a stringent (perfect) duty to undertake clearly specified courses of action, and clear agents whose rights are violated if the duty is not discharged (see, for instance, S. Meckled-Garcia, “On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency”). Otherwise, they claim, we are not talking of justice proper, but rather of general moral aspirations. However, in cases of background injustice it is not perfectly clear what kind of action is required by whom for the new practice to be established. I cannot address this important issue here. However, for the sake of clarity, it is worth noting that Rawls does not seem to be committed to the view that only perfect duties are duties of justice, for his natural duty of justice, as “the duty to support and to comply with just institutions that exist and apply to us, [and] to further just arrangements not yet established” (TJ, p. 99) is not a perfect duty under any intelligible account.

currently construed. The thesis claims that the justice of a practice depends on the nature of that practice, that practices are clearly specified systems of rules, and that there are no problems of justice where there are no relevant practices. Therefore, so the argument goes, in scenarios lacking clearly specified systems of rules for the allocation of the burdens and benefits of social-cooperation, no issue of socio-economic justice arises – or at least no comparative or egalitarian requirements. However, what the thesis, in its current formulation, does not envisage is a scenario where a practice is unjust according to criteria that pertain to the very nature of that practice, *but* the only instrument to tackle the injustice consists of *establishing a new practice*. This is precisely what a scenario of background justice amounts to:

Fair background conditions may exist at one time and be gradually undermined even though no one acts unfairly when their conduct is judged by the rules that apply to transactions within the appropriately circumscribed local situation [...]. We might say: in this case the invisible hand guides things in the wrong direction.<sup>31</sup>

As we have seen above, for instance, the practice of making agreements and signing contracts is a practice with its own system of rules, and with internal criteria to establish its justice. However, in contexts of intense and complex socio-economic interaction, these criteria cannot be maintained over time unless a new practice (i.e. a basic structure organized along patterned principles) is established. This new practice, in turn, will engender its own conception of justice, based on specific patterned principles – whether strictly distributive or not – whose exact nature will be based on the nature, point, and scope of the new practice. For even problems of background justice can come in different forms – according to the kind and level of background justice-eroding interaction, thus requiring the adoption of different patterned principles. Indeed, the next section will show how the domestic and the global cases can both be problems of background justice, yet of two different kinds.

Hence, even from a practice-dependent perspective, the absence of a basic structure does not necessarily mean that no demands of socio-economic justice apply, for they may indeed arise under the form of problems of background justice. The background justice argument, therefore, is in line with the motivations and concerns of the practice-dependent approach. For the problem of background justice only arises in the presence of certain practices, when the normative criteria regulating *those very practices* can no longer be maintained. However, problems of background injustice are special cases for the practice-dependent approach, for they require the establishment of new practices for their solution. These special cases are overlooked by the proponents of the practice-dependent thesis: the background justice argument shows that they should not be. The next two sections explore the implications of this point for the problem of global socio-economic justice.

### **What Background Justice?**

The remarks put forward in the previous section have a rather straightforward bearing on debates about global socio-economic justice. It is often argued that, in a Rawlsian framework, the conditions for the application of principles of social justice lie in the *existence* of a basic structure: principles of social justice only apply if and where there is already a basic structure which assigns rights and duties, and allocates the burdens and the benefits of social cooperation.<sup>32</sup> Hence, a significant portion of the theoretical literature on global justice currently focuses on whether the global order is or is not characterized by an identifiable basic structure, which can be predicated as just or unjust.<sup>33</sup> As I noted earlier, whereas some cosmopolitans argue that the current global order is characterized by a global basic structure, several anti-cosmopolitans contend that the system of global governance cannot be described as a basic structure proper, and argue that, therefore, no structurally just or unjust global

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<sup>31</sup> PL, p. 267.

<sup>32</sup> This idea has been most clearly formulated in these terms by S. Meckled-Garcia in “On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency”; see also Freeman, “Distributive Justice and *The Law of Peoples*,” and, for a reconstructive but critical account, Abizadeh, “Cooperation, Pervasive Impact, and Coercion.”

<sup>33</sup> Meckled-Garcia, “On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency”.

order exists. If the account of justice defended in the previous section is correct, however, the most pressing question for a coherent practice-dependent account is not whether we *have* a global basic structure, but whether we *need* one. The absence of a full-blown basic structure at the global level cannot settle the question of global socio-economic justice once and for all in the negative. The burden of proof is heavier than that. For, if problematic background conditions are generated, it is this very *absence* which may constitute an injustice. If interaction between individuals across states, or indeed between sovereign states themselves, is sufficiently intense and complex to produce background justice-eroding effects, we might face problems of global background justice. The most important issue to be tackled is the question of under what circumstances global background conditions would be unjust, and which global dynamics and trends might produce background injustice.

Before I move on to tackle this task in the next section, however, this section will first discuss an argument concerning the role of background justice in the global order recently put forward by Arash Abizadeh, in order to unpack the differences between his account and the one laid out in this paper. Although I find Abizadeh's thesis to be broadly on the right track, I believe it also has some important shortcomings. An analysis of these shortcomings, and how they could be overcome, will lead us to a more promising way of conceptualizing global background (in)justice.

As we have seen, the question of whether the current global order is unjust can legitimately be asked even if the global order itself cannot adequately be described as a global basic structure. For, if problems of background justice occur, global actors (individuals, non-state actors, and states) may be experiencing injustice not because they are subject to a clear (global or regional) institutional order which coercively imposes unjust rules on them. On the contrary, the injustice of the background against which they act may be due precisely to an institutional *vacuum*, or to the asymmetrical and heterogeneous character of the institutional regulation to which they are subject. And, in a highly interdependent scenario, this very vacuum may be problematic from the point of view of justice: actors may interact intensively enough to erode background conditions over time, but no institutional structure secures the preservation of just background conditions. Arash Abizadeh has recently argued a similar point. He contends that, in what he calls the "cooperation theory" of justice, the proper subjects of justice are the fundamental terms of social cooperation.<sup>34</sup> He then moves on to argue that the cooperation theory supports an *instrumentalist* justification of the basic structure.<sup>35</sup> In this account, the basic structure is not the necessary condition for demands of justice to arise, but an instrument for its realization. When social cooperation or social interaction take place, a basic structure becomes indispensable in order to secure just background conditions. Moreover, Abizadeh claims, if it is true that social interaction takes place at the global level, and thus a problem of global background justice arises, then principles of social justice that we so far thought applied only to national institutions now become global in scope. Abizadeh does not ask the further question of *what kind* of cooperation or interaction triggers concerns of justice. This second question, however, is crucial: showing that individuals or other kinds of agents engage in social cooperation or interaction is not sufficient. What needs to be understood is whether either the kind of interaction they engage in or the context in which they engage in it raise a problem of socio-economic justice by eroding background conditions. Not all forms of social interaction do; the interaction needs to be sufficiently complex, and sufficiently intensive, to have the background justice-eroding effects that Rawls describes in relation to the domestic case. Abizadeh is right in claiming that the basic structure has an instrumental role, but it is an instrument for restoring background justice in particular, rather than for realizing a *pre-given ideal* of justice. Furthermore, the idea that justice is a pre-given ideal, rather than the solution to the problem of unjust background conditions, is strengthened in Abizadeh's account by the claim that the identification of a problem of global background justice is sufficient to declare relevant pre-given principles of justice to be global in scope. But what guarantees that the same principles which we deem appropriate domestically will also be suitable for tackling *global* problematic background conditions?

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<sup>34</sup> Abizadeh, "Cooperation, Pervasive Impact, and Coercion," p. 325.

<sup>35</sup> *Ibid.*, p. 327.

In order to understand what exactly is problematic about Abizadeh's account, let us go back to the central question: when are background conditions unjust? The first thing to point out is that this problem is not specific to the global case. Indeed, it is similarly problematic to answer the question at the domestic level. Rawls himself does not address this issue; he simply points to the intuitive idea that apparently fair and free transactions erode background fairness over time. The point is interesting and controversial, because the absence of an explicit account of what count as unjust background conditions is never perceived to be a problem in the domestic sphere.<sup>36</sup> Indeed, background justice is usually analyzed in the literature from the point of view of an already existing basic structure,<sup>37</sup> and the issue of what it means to maintain background conditions is taken as given: it means implementing the principles of the conception of justice one favours. So, for instance, in a Rawlsian framework background conditions are unjust when they generate outcomes that are at odds with justice as fairness. Thus, problems of background injustice kick in when the accumulation of individual transactions generates patterns of distribution of primary goods that are at odds with justice as fairness, in that they upset a system of equal basic liberties, equal opportunities and the difference principle.

This, however, is not the right way round from a genuinely Rawlsian perspective. If we are to follow the argument of background justice, the principles of justice as fairness are a *response* to the problem of unjust background conditions. There is no conception of justice which pre-exists the identification of the problem of background justice; it is rather the problem of background justice that triggers the justificatory chain, which then delivers a conception of social justice. In the language of the original position, one might say that the problem of background justice is one of the most important social and sociological issues, one which, as Rawls claims, would be obscured by the veil of ignorance, and which the parties are therefore allowed to consider when they establish the right principles of justice.<sup>38</sup> The parties know that the society they are members of will be one with problems of background justice, and the principles they select are, at least partly, a *reaction* to that knowledge. Stating that background conditions are unjust because they lead to the violation of, say, the difference principle, is therefore a form of question-begging: it is precisely the occurrence of problematic background conditions that triggers the necessity of reflecting on what principles could make our impact on each other's life mutually justifiable. Background conditions are not problematic because they move away from, say, justice as fairness; justice as fairness itself is rather offered as a reaction to, *inter alia*, the problem of background justice. This is precisely what makes this account practice-dependent in the relevant sense: principles of justice are not super-imposed on a practice, but rather fleshed out on the basis of the nature of that practice. The question, therefore, still stands: what is the problem? What makes background conditions problematic?

The considerations just raised may sound odd at this point, because they suggest that identifying background injustice is not automatic even at the domestic level, thus making the notion of background justice indeed rather vague. On closer scrutiny, however, it becomes clear that their upshot is the opposite, for they show how there is *no structural difference* between the domestic and the global case. In both cases, we have to establish what the appropriate principles are from a bottom-up perspective, starting from the problems of background justice that we encounter. I shall, therefore, offer an account of background (in)justice which applies to the domestic and to the global case alike, but which can also accommodate the idea that there may be different forms of background (in)justice calling for different solutions (i.e. conceptions, and therefore principles, of justice). Recall how Rawls introduces the idea of background justice: certain transactions can appear perfectly fair according to the normative criteria that apply to individual conduct but still contribute to the erosion of fair background conditions over time. But when do background conditions become unfair? Background injustice kicks in when disparities in power and bargaining capacity have developed to such an extent that relevant transactions cannot be regarded as fair *according to the very normative criteria that apply*

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<sup>36</sup> See in particular S. Meckled-Garcia, "On the Very Idea of Cosmopolitan Justice".

<sup>37</sup> *Ibid.*

<sup>38</sup> "A problem of choice is well defined only if the alternatives are suitably restricted by natural laws and other constraints, and those deciding already have certain inclinations to choose among them. Without a definite structure of this kind the question posed is indeterminate. For this reason we need have no hesitation in making the choice of the principles of justice presuppose a certain theory of social institutions. Indeed, one cannot avoid assumptions about general facts." (TJ, p. 138).

to the morality of that kind of transaction. In perfectly practice-dependent language, problems of background justice arise when a practice can no longer preserve its justice in a stable way, according to the regulatory criteria that *pertain to that very practice*.

This way of conceptualizing the problem of background justice allows an understanding of why the domestic and the global case can both be structurally similar *and* call for different forms of regulation. Background conditions are problematic when single transactions cannot be conducted in ways that are morally acceptable according to the normative criteria that apply to those very transactions. This is where the domestic and the global cases are relevantly analogous. However, to preserve background justice in different frameworks of interaction we might need to establish different forms of institutions and regulations. This is where the domestic and the global cases might be importantly different. Thus, for instance, the practice of signing trade agreements can, in a scenario of sufficiently intense trade and deeply unequal bargaining power between states, generate problems of background justice. But both the nature of the social practice of global trade and the nature of trade agreements between countries, as opposed to contracts between individuals, can generate normative criteria that are different from the domestic case with respect to the issues of a) when trade agreements are free and fair; b) what factors threaten the preservation of conditions that make trade agreements free and fair according to (a); and c) which patterned principles are needed to restore background justice when such conditions are threatened.

Hence, identifying a problem of background justice at the global level does not necessarily entail that our domestic principles of social justice now have to apply globally – to coin a phrase, it does not mean that we need to globalize the difference principle. The relevant principles of global justice depend on a careful appreciation of what problems of background justice the global order may raise.

### **Background Justice Revisited**

How is the potential problem of global background justice to be addressed, then? The main question we need to ask is who could be the potential *victims* of global background injustice. Between which kinds of global actors may problems of background justice arise?

At least two forms of global socio-economic interaction are likely to generate problems of background justice:

1. Firstly, problems of global background justice may arise *between states*. This potential form of global background injustice is particularly important because it speaks to both statist theorists and to practice-dependent theorists who wish to emphasize that the domestic model of distributive justice cannot be exported, since it is specific to the specific bundle of social practices embodied in the institutions of the state. A background justice approach need not deny that. On the contrary, it can accept the existing practices of and between sovereign states. However, it can point out how certain global dynamics undermine those very practices, by putting serious obstacles between states and their capacity to deliver social justice within their own boundaries and between their own citizens, and more generally between them and an exercise of state sovereignty that can be worthy of the name.

2. Secondly, problems of global background justice may arise in transnational interaction between individuals and/or other types of non-state actors. Where interaction of this kind is sufficiently intense and complex, and concerns relevant socio-economic aspects, it may raise issues of background justice, for it takes place at a transnational level, and its background justice-eroding effects are thus not controlled by any domestic basic structure.

I shall address the potential issue of global background justice between states first, and then afterwards turn to the issues of whether global background (in)justice may hit individuals or other non-state actors directly. The reason for this slightly counter-intuitive order shall become clear in due course.

1. In *The Law of Peoples*, Rawls claims that our concern in global justice debates ought to be for the “justice of societies” rather than for the “well-being of individuals”,<sup>39</sup> since the latter ought to be the

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<sup>39</sup> LP, pp. 119-120.



concern of domestic societies themselves rather than of the global community.<sup>40</sup> The global background justice view need not deny this point: indeed, it can maintain that what is important is that societies be *internally just* (so that they can take care of the well-being of their citizens adequately), but also suggest that under certain empirical circumstances just global background conditions, implemented through the appropriate global institutions, might be necessary to achieve this goal. A background justice approach may perfectly accept the moral relevance of the *existing practice* of a world divided into states, each of them exercising sovereignty over its territory, and in particular seeing to its internal social justice in the relationships between its own citizens. If we accept such an approach, however, we must ask which conditions may preserve the justice of this existing practice. In order to retain sovereignty, states need to be reasonably free from external interference and to have a reasonable degree of problem-solving capacity with respect to the control of socio-economic trends.<sup>41</sup> In particular, for the practice of social justice being administered by states to be preserved, states need to have enough power to be able to secure internal socio-economic justice. That is, they need to have both effective *control over internal socio-economic dynamics* and *reasonable freedom from external interference*. These are the conditions under which the co-existence of, and interaction between, independent states can be justifiable under a plausible elaboration of the practice-dependent account. Let us call the joint possession of these two conditions *effective sovereignty*.<sup>42</sup> What should be noticed at this point is the structural similarity to the domestic case of agreements and contracts discussed in section 2. As in that case, the account can be framed in terms of pure procedural justice: we start from an existing practice where what matters is not that the relevant actors (individuals or states) be substantively equal, but rather that they interact under certain conditions which, if maintained, will make any outcome of their interaction just. In the case of individuals and contracts we sketched a picture where agreements are free and fair whatever their outcomes, as long as agents have a) some reasonable freedom to reject them and/or b) to renegotiate their terms. We then showed how, from a background justice perspective, in intense scenarios of socio-economic interaction the outcomes of past agreements can erode conditions of pure procedural justice a) and b). Thus, the establishment of a

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<sup>40</sup> An interpretive objection may be raised at this point. Abizadeh claims (pp. 4-5 and p. 41) that an appropriate understanding of the concept of basic structure, and of background justice in particular, necessarily entails a rejection of Rawls's approach in *The Law of Peoples* (Cambridge, Mass.: Harvard University Press 1999), for Rawls rejects permanent global redistributive measures of whatever kind. *Ad hoc* international redistribution, Rawls argues, can be justified in terms of fulfilment of a "duty of assistance" towards "burdened societies." (*The Law of Peoples*, p. 106). Such redistribution, however, would end as soon as burdened societies achieve a sufficient level of wealth and human capital to allow them to be internally just. On the contrary, an on-going international distributive scheme would be disrespectful of the diversity of choices that lead different societies to have different levels of wealth. By concentrating on the necessity to respect the choices of different societies, Rawls seems to suggest that such choices are to be considered as relatively autonomous and self-contained. This very point, however, makes the exportation of the concept of background justice into the international arena *less* problematic, in that it shows Rawls's perplexity towards international patterned principles to be mainly based on *empirical* reasons. Rawls's examples refer to independent societies which take autonomous decisions, as a result of which their levels of wealth end up differing greatly. Hence, he does not claim that no redistribution ought to apply to the global order because there *is* no global basic structure, but rather assumes that there is *no need* for one. Rawls claims that the duty of assistance is a "principle of transition" which assures "the essentials of *political autonomy*:" (p. 118, emphasis added) it is aimed at raising the world's poor until they are reasonably free from distress and can start work at the establishment of their own just domestic institutions. Rawls assumes, therefore, that there is a cut-off point after which a society can be said to be free from extreme poverty and "a people can stand on its own" (*Ibid.*). However, if the global order raises issues of background justice, there is *no* point at which "a people can stand on its own" without a system of just background conditions preserved by international institutions. Hence, if the global order is a case of background justice, this might prove a case of grave political shortsightedness on Rawls's part; for our purposes here, however, this is good news, in that it also shows that the Rawlsian framework offers no *principled* reason to reject the export of the language of background justice into the global justice debate.

<sup>41</sup> Of course, states may have such power and use it to uncontroversially implement unjust policies. Indeed, the current international human rights system is taken as having the protections of individuals against the potentially oppressive power of states as its main point. However, whilst *too much* sovereignty may create problems, *too little* sovereignty may too, for it deprives states of their problem-solving capacities, especially when it comes to regulating markets and socio-economic issues more broadly. I do not challenge the need to control and limit the power of the state in this paper, but rather only engage with the opposite issue, namely the problems created by the lack of sufficient power of state institutions against problematic transnational trends.

<sup>42</sup> I am thankful to Christian Schemmel for suggesting this term.

basic structure preserving background justice through patterned principles of some kind is required. Similarly in the global case, acceptance of the existing practice of sovereign states is fully compatible with the identification of potential problems of background justice in their interaction. As in the domestic case, we are not interested in *outcomes* – we do not require states to be equally affluent, possibly not even that they each implement the same conception of domestic social justice. We are instead interested in effective sovereignty as a set of conditions under which the practices of independent and interacting sovereign states can be preserved just. However, under circumstances of intense international interaction and interdependence, the conditions for effective sovereignty, and hence for *international background justice*, may be eroded. If we subscribe to this picture, what we need to ask is the following: in the current global scenario, are states capable of maintaining effective sovereignty in their interaction *without the support of supranational regulatory institutions*? This question shows how our ultimate concern is for what Rawls calls “the essentials of political autonomy,”<sup>43</sup> or, to put it in other words, for the *interdependence between global and social justice*. For, in a situation of sufficiently strong independence, a fair international background might be necessary to allow all sovereign states to have a fair chance of implementing the policies they see fit. Hence, the global order might be (background) unjust in that it might generate problems of background justice under the form of threats to effective sovereignty. Here, interestingly, an argument in favour of the establishment of supranational institutions can be advanced for the sake of *protecting sovereignty* itself. If global economic dynamics play an excessively intrusive role in influencing the domestic policies of developing countries in particular, as Ngaire Woods and Amrita Narlikar<sup>44</sup> point out, then fairer global institutions might be required to give governments *more*, rather than less, freedom – or at least, to re-equalize the amount of discretion that developed and developing countries have over their domestic policies. In other words, global background justice may require states to give up their *formal* sovereignty to some extent in order to protect their *effective* sovereignty.

The remarks made above may sound very abstract and general. Let us therefore briefly examine how two global international dynamics may create problems of background justice between states: tax competition and escalating tariffs. I shall describe them in turn.

a) Tax competition is understood as the phenomenon of competition between states in attracting capital, companies, and skilled labour by offering attractive tax opportunities.<sup>45</sup> In a highly mobile and interdependent world, so the story goes, states are heavily pressurized into making their tax system more regressive, in order to prevent valuable capital and highly skilled labour from leaving the country. However, in doing so, states 1) significantly increase their *internal inequality*, and 2) deprive themselves of public revenues, and consequently of their power to implement the public policies appropriate to realize domestic social justice. In a globalised world, the pressure on governments to keep taxation levels low to attract both companies and skilled labour constantly runs the risk of generating a dramatic race to the bottom which might, in the long run, erode the power of national welfare states, and thus social justice itself. In the absence of global regulation, states might face a dilemma. They could resist global pressure, and thus lose resources precious for the sustenance of a generous welfare system, for they would end up losing the necessary “human resources to realize just institutions”.<sup>46</sup> Alternatively, they could give in to the pressure, thereby moving towards a possibly wealthier, but probably internally unjust, social setting.

The issue of the actual extent and relevance of phenomena of tax competition is extremely controversial and there is nothing like a scholarly consensus on the topic. Some scholars argue that the race to the bottom is already under way, whereas others argue that states are not significantly vulnerable to it. But what matters here is that tax competition, *if* sufficiently relevant from an empirical point of view, constitutes a problem of background justice and therefore calls for the establishment of institutions with regulatory power. Some scholars, moreover, claim that tax

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<sup>43</sup> Rawls, *Law of Peoples*, p. 118.

<sup>44</sup> Ngaire Woods and Amrita Narlikar, “Global Governance and the Limits of Accountability: the WTO, the IMF, and the World Bank”, *International Social Science Journal* 53 (2001): 569-583.

<sup>45</sup> For a better understanding of the empirical phenomena, see Reuven S. Avi-Yonah, “Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State” *Harvard Law Review* 113 (2000): 1573-1676.

<sup>46</sup> Rawls, *Law of Peoples*, p. 119.

competition erodes the sovereignty of states in the area of public policy even if it does *not* generate a sharp race to the bottom. For, even if it does not, it still forces competing states towards a problematic and artificial uniformity of their tax policies and even of their public and social policies more generally.<sup>47</sup> Tax competition might not necessarily push towards a race to the bottom, so the argument goes, but it still tends to produce a uniformity in public policy that is detrimental to the very idea of sovereignty, and that deprives states of the possibility of adopting different welfare state models to fit their different social, economic, cultural and political conditions. If significantly exposed to tax competition – and if tax competition is indeed as relevant as some analysts claim in our current world – states lose their *effective sovereignty*, namely their power to control internal socio-economic dynamics and be reasonably free from external interference. Hence, it should by now be clear why tax competition is a good *prima facie* candidate for background injustice among states – it may undermine effective sovereignty in a structurally similar way to that in which regular interaction among individuals may undermine the conditions under which their agreements are free and fair. If we believe that effective sovereignty expresses the bundles of conditions under which the existence of, and interaction between, states can be maintained fair, we must acknowledge that if effective sovereignty itself is eroded *by that very interaction* then a problem of international background justice arises. Moreover, like all cases of background justice, tax competition, if it exists, cannot be stopped by any rules of conduct that states can adopt; only supranational institutions can fulfil this task, by setting appropriate incentives, sanctions, and counterbalances. Finally, the case of tax competition also shows that different problems of background justice may be structurally similar and substantively different at the same time. If tax competition is a problem of background justice, then it requires the establishment of new practices (supranational institutions) to maintain old practices (states) just. However, the new practices need not be governed by the same principles that are needed to tackle domestic background justice. Plausibly, for instance, the supranational institutions that are needed to tackle tax competition will need to engage in regulatory, rather than distributive, tasks – such as penalizing dramatic forms of tax cuts that are blatantly aimed at stealing capital and skilled labour, or protecting weaker states from tax competition through both financial aid and capacity-building.

b) Another potential candidate for global background injustice is the problem of *escalating trade tariffs* in international trade governance. Escalating tariffs refers to a phenomenon whereby trade tariffs are lowest on unprocessed raw materials and rise significantly with each step of processing. Countries apply escalating tariffs mainly in order to defend technologically-intensive sectors of their national economy, which tend to be both the most profitable and the most resistant to economic shocks and crises. In a deeply interconnected world where countries enjoy significantly unequal bargaining power, those with weak regulatory power and large natural resources – including large amounts of fertile land – are said to be driven by escalating tariffs to structure their economy around the production of one or several raw materials, in order to obtain immediate gains.<sup>48</sup> This is said to happen, among other cases, for soybean in Brazil, for cocoa beans in Ghana and Côte D'Ivoire, and for coffee beans in Uganda and Kenya. When a country's economy is restricted to the production of a limited number of raw materials – or even to only one, the country becomes vulnerable in three ways: 1) it is significantly limited in its effective power to diversify its productive activity and its economy more generally (including service provision), which is widely considered in development economics to be an essential step towards balanced development and growth; 2) it is exposed to economic shocks much more than countries with more diversified economies; and 3) it becomes, as a result of lack of diversification, extremely dependent on trade and export trends – and thus easily threatened. Escalating tariffs might represent, for some states, not only an absolute and/or comparative disadvantage, but the loss of the *very capacity* to tackle issues of domestic prosperity and justice with an acceptable degree of autonomy and power. For some developing countries, not being able to diversify their economies, or to access foreign markets in the only areas where they are reasonably competitive, or to defend their productive sectors against artificially competitive foreign imports, might entail not being able to develop in a sufficiently robust and equitable manner to be able to

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<sup>47</sup> Philipp Genschel, "Globalization, Tax Competition and the Welfare State" *Politics & Society* 30 (2002): 245-272.

<sup>48</sup> Nick Stern, "Cutting Agricultural Subsidies", [globalenvision.org/library/6/309](http://globalenvision.org/library/6/309).

govern their internal equity and their independence from external interference. Once again, then, trade tariffs, as the outcome of a *prima facie* legitimate pattern of interaction between states, might erode the effective sovereignty of at least some of them.

Hence, a recognition of the special importance of states need not rule out the presence of problems of global background justice, and consequently the advocacy of the establishment of global institutions, which however would not substitute the role of states but only guarantee background justice *between* them. The examples of tax competition and escalating trade tariffs show how this line of reasoning could be applied. Determining which problems of background justice among states, if any, are present in our global order, and which global institutions could tackle them, is an interdisciplinary task which cannot be addressed here. My present aim is rather to provide a conceptual framework and a research agenda for such a task. Before moving on to the last step of my argument (namely that of global background justice between agents other than states), however, two points are worth stressing. Firstly, it should be emphasised one last time that the idea that a problem of background justice between states can arise is perfectly in line with the revised version of the practice-dependence thesis offered at the end of section 2: in some cases, existing practices need the establishment of completely new practices for their justice to be preserved. In these cases, under certain circumstances, the practice of sovereign states acting like independent actors in the global arena and responsible for securing socio-economic justice within their borders can no longer be maintained except by establishing new practices. Secondly, the cases of tax competition and escalating tariffs show how the patterned principles that are needed to tackle problems of background justice are not always strictly distributive. In some cases, what we need instead is a set of global institutions with classic regulatory authority, to readjust power relationships between different agents in order to restore the problem-solving capacities of states.

2. Potential problems of background justice in trans-national contexts can also be identified in the interaction of individuals or other kinds of non-state actors. However, these background justice problems are very likely to be tightly connected to the weakness of state institutions in the present global order, due to either background injustice between states, or to the intrinsic inadequacy of domestic basic structures vis-à-vis patterns of interaction that escape territoriality. The problem of job insecurity in some sectors of the labour force in developed countries as a result of competition from workers from or in developing countries is a suitable example in this respect. It is often argued that this phenomenon is responsible for lowering salaries and worsening contract conditions more generally for workers in developed countries. Such workers no longer enjoy the bargaining power they used to enjoy in a less globalized world, for they know that if they reject certain conditions as unsatisfactory transnational corporations will be able to move to where the labour force is cheaper, less unionized, and less protected. This is a typical and indeed standard phenomenon of background injustice: the conditions under which the outcomes of certain transactions can be deemed fair are no longer guaranteed. However it occurs in a transnational pattern of interaction, and often between actors that are subject to different legal jurisdictions and different basic structures. The problem is closely connected to the weakness of state institutions, which has been identified above as a possible source of international background injustice in itself. On the one hand, if states had a stronger capacity to control internal socio-economic dynamics, they could limit the capacity of transnational corporations to relocate as they please to less unionized countries in order to avoid negotiations on labour conditions. On the other hand, the phenomenon further weakens the sovereignty of states: the more mobile corporations are, the more states have to adapt their public policies in a way that is attractive to them, rather than grounding them in considerations of socio-economic justice. Thus, problems of global background justice among non-state actors are likely to be connected to the loss of the problem-solving capacities of states, and to the weak regulatory capacities of developing states – both of which, as we have seen above, are independent sources of background injustice.

The points raised in this section are of a tentative, exploratory nature: my aim here is not to provide a comprehensive taxonomy on when and how global background conditions could be unjust, let alone to answer the question of whether the current global order is a case of background injustice (the latter being to a great extent an empirical question). My aim has rather been to suggest how

fruitful the notion of background justice can be in generating new insights for the global justice debate. I have suggested a strategy for identifying unjust background conditions that can cater for both the analogies and the differences between the domestic and the global cases: background conditions are unjust when transactions cannot be conducted according to the normative criteria that apply to the morality of those very transactions. Whereas the domestic and the global cases are structurally similar, the relevant problematic transactions may be different, thus calling for different kinds of regulation.

I believe, however, that two important and policy-relevant points emerge from the analysis conducted in this section. Firstly, a background justice approach cuts across the dichotomy between anti-cosmopolitan statist (for whom the subjects of justice at the global level are states or peoples) and cosmopolitan individualists (for whom the well-being of individuals across the world is the main point of justice in all contexts). A background justice approach can be in line with anti-cosmopolitan statist in claiming that what matters is “the justice of societies”, whilst also pointing to the fact that, in the current world, only the establishment of some supranational institutions can help states gain or preserve sufficient problem-solving capacity to remain or become “internally just”. Moreover, as already often stressed in this paper, the argument advanced here offers an alternative to strong cosmopolitanism and strong statism in that it suggests that there may be transnational problems of socio-economic justice without necessarily claiming that such problems are to be solved by applying our domestic conception of justice to them.

Secondly, the concept of background justice can be a means of highlighting the over-emphasis that the issue of *redistribution* has enjoyed in the global justice debate so far. Such debate has primarily focused on distributive duties towards the global poor, rather than, say, on the establishment of international institutions which could tackle problematic *power-relationships* between global actors. The problem of background justice, however, whilst clarifying the need for institutions to be governed by patterned principles, does not automatically lead to the endorsement of *distributive* patterns: it could well be the case that some important just background conditions can be best preserved by empowering global actors through patterns that are not necessarily distributive in kind.

## **Conclusion**

In this paper, I have focused on the implications that the background justice argument may have for the global justice debate. I have contended that a basic structure approach need not generate *pro status quo* biases: it is possible to hold that basic structure is the site of social justice and to claim that the current global order is unjust, *if* certain empirical conditions apply.

Is the global order a case of background injustice, then? One of the conclusions of this paper is that answering this question is not a purely theoretical exercise. The issue is to a great extent of an empirical nature; however, theoretical work is needed in order to establish *which* facts we ought to be looking for in the first place, and we can only find this out if we have a theoretical framework that tells us under which circumstances background conditions become problematic. Thus, the argument put forward in this paper provides a conceptual framework which allows us to prioritize areas of empirical investigation where phenomena of background injustice might be at play, in that it provides appropriate descriptions of plausible candidates for background injustice. It points out *which kinds of phenomena*, among those which are generally grouped under the umbrella of “globalization”, are the ones that would raise concerns of socio-economic justice, and it therefore clarifies the urgency of establishing their empirical relevance and of finding out whether they do actually create problems of background justice. Finally, it identifies tax competition and escalating trade tariffs as two interesting cases whose effects on global background justice are worth further analysis.