

# Editorial

The relationship between the nature of institutions and principles of justice and right action has always been central to political studies. It lies at the heart of normative political theory. Major changes in the perceived structure of institutions or patterns of human interaction, or significant events that challenge our political imagination, tend to heighten our awareness of this complex relationship. The last decade of the 20th century, and early years of the 21st, have witnessed many such events and changes. One need only mention Al Qaeda's attacks on the United States of America and its activities elsewhere, the United States' response to these attacks by invading Afghanistan and toppling the Taliban and the decision by the United States—taken under false pretexts—to invade Iraq and effect 'regime change' there.

These events as 'media spectacles'—represented by images of passenger planes being flown into the World Trade Center's twin towers and round-the-clock television coverage of the invasion of Iraq with its 'shock and awe' aerial bombardment of Baghdad—have captured the attention of viewers and readers around the world. There are, too, other less well covered events that ought to engage our attention. These include famine and ethnic cleansing as well as the 'routine', if little commented upon, sufferings of the 'ordinary' working people and poor of the world. These events—the more 'spectacular' as well as the less—along with structural changes, often captured by the term 'globalization', remind us of our common humanity, our interconnectedness and our interdependence. They remind us, or ought to, of the obligations that we have towards those less fortunate than ourselves. They alert us, or ought to alert us, in Michael Ignatieff's felicitous phrase, to the 'needs of strangers'. Do our moral obligations and political responsibilities end at our national borders? Is justice a matter only within nationally circumscribed boundaries? Are our bonds of citizenship only with those we believe share our 'ethnos being', our language, religion or sense of national identity? Should 'foreigners', whoever they might be, enjoy the same rights, and have the same duties, as us? These are among the governing questions of moral philosophy and normative political theory, and they demand answers that are rigorously and carefully wrought.

It is to this context of conflict and contestation, of global inequality and suffering, and of military intervention, that Darrel Moellendorf's compellingly argued *Cosmopolitan Justice* speaks so eloquently and with great intellectual rigour and discipline. The power and appositeness of Moellendorf's arguments, and the circumstances of their reception, invited a sustained, critical encounter with his book. The editors of *Theoria* responded to this 'invitation' by choosing to devote this issue to such an encounter. Paul Voice, Richard Miller, Mervyn Frost, Patrick Hayden, Thaddeus Metz, Brian Orend, Penny Enslin and Mary Tjiattas, Gillian Brock and Fernando Tesón engage, in turn, with Moellendorf's arguments, subjecting them to close and careful scrutiny. Darrel Moellendorf replies with a series of detailed responses to principal points raised in each of the critiques.

Paul Voice opens the debate by engaging with Moellendorf's project indirectly as part of a wider critique of neo-Rawlsian attempts to refine *A Theory of Justice* and to apply it to a wider canvas. Voice argues that it is problematic to use this framework as the beginning point for tackling the philosophical questions associated with the issue of global justice. Indeed, he suggests that political philosophers have become 'bewitched' by Rawls's 'narrow way of seeing things' and are thus unable to tackle the major challenge to the Rawlsian project, namely radical pluralism (defined as incompatible conceptions of the good). Doubtless the issue of global justice needs a philosophical treatment, but the question for Voice is whether this treatment should look to Rawls for answers. He argues that Rawls's own answer to the challenge of pluralism fails for *structural* reasons, reasons that are beyond the capacity of the theory to adjust to and accommodate. Secondly, he argues that the 'neo-Rawlsians' now engaged in applying the Rawlsian framework to the problem of global justice inherit and thus succumb to the same structural defects. By neo-Rawlsian Voice means those who argue, against Rawls himself, that the domestic original position as laid out in *A Theory of Justice* should form the framework for deciding global principles of justice. For Voice the domestic original position suffers fatal difficulties that are also suffered by any construal of an international original position. The challenge of radical pluralism for global justice is thus: once the idea is introduced that democratic societies with free institutions promote and indeed encourage a multiplicity of different 'conceptions of the good', the stability of Rawls's post-contract society is threatened, and this problem is accentuated if we reasonably suppose that the diffi-

culties of pluralism are greater the more people we include in the founding agreement.

Richard Miller points to the fact that, for Moellendorf, our political choices should be guided by egalitarian moral principles in terms of which the interests of compatriots do not take priority over those of foreigners. An implication of this is ‘that people in rich and powerful countries ought to do much more than they now do to help poor and oppressed foreigners’. Although he accepts his ‘broad framework’, Miller thinks that Moellendorf’s arguments for ‘international economic equality are inadequately grounded and too demanding’. Further, he suggests that Moellendorf’s ‘assertion of a prima facie obligation to intervene to advance basic justice is dangerous and overly supportive of American hegemony’. The problems that Miller identifies in Moellendorf’s argument derive from the attempt to articulate a ‘globalization’ of Rawls’s model of distributive justice. This, in Miller’s view, renders Rawls’s principles ‘extremely demanding’ because in Rawlsian terms ‘there is less chain-connection among opportunities and life prospects in the world at large than there is domestically’ and because Moellendorf’s ‘construal of the “worst-off representative individual” is relatively narrow’. Miller proceeds to engage in a constructively critical manner with the ‘profoundly associational’ basis, and its implications, of Moellendorf’s justification for his perspective. While agreeing with Moellendorf’s rejection of ‘extreme statism’, he invites consideration of ‘mixed’ rivals to Moellendorf’s approach and reflects on the problems that, on his account of Moellendorf’s approach, attach to arguments for military intervention.

In ‘Justice and Sovereignty’, Mervyn Frost, while sympathetic to Moellendorf’s conclusions in *Cosmopolitan Justice*, expresses reservations about his Rawlsian constructivist method of argument. He argues that it does not pay sufficient attention to ‘the importance of a system of democratic states for the constitution of fully autonomous ethical individuals’. In spite of the differences between Moellendorf’s cosmopolitan and Rawls’s state-centric approach, Frost argues that both theorists use the original position to model, within the context of a specific set of social practices, the commitments of ethical actors of a certain kind: neither feudal Europeans nor precolonial Africans, but 20th century American democrats. This approach does not make apparent the detailed inter-relationship between particular ethical actor-statuses and the social arrangements constituting them, or between contemporary notions of democratic citizenship and ideas about the democratic state.

Constructivism is said to contain an inherent ‘ethical methodological individualism’, such that, first, we distil our most basic individual commitments, and second, we construct society on the basis of these insights. Frost proposes instead ‘a more thoroughgoing form of ethical analysis which would demonstrate that the principles we support, need to be understood in the context of the social wholes within which we are constituted as actors with this or that specific kind of ethical standing’—a constitutive theory which understands that the meaning, value and constraints of the elements which comprise social practices can only be understood by participants in these practices. In the tradition of Rawls and Moellendorf, individual rights are seen as pre-existing; and states are only a means to an end. By contrast, Frost’s constitutive approach claims that individual rights are in fact only made possible within a sovereign, democratic and, indeed, moral, state.

Patrick Hayden’s paper, ‘Cosmopolitanism and the Need for Transnational Criminal Justice: The Case of the International Criminal Court’, begins by articulating a multidimensional description, informed by Moellendorf, of cosmopolitanism as both an ethical and a political project. Taking up Moellendorf’s hope that his book will ‘complement the efforts of international lawyers seeking to defend legal cosmopolitanism’, Hayden argues that cosmopolitan justice is to be understood not only in terms of associative duties of a special and general nature, but also in terms of perfect and imperfect moral obligations. The nature of imperfect obligations is considered in connection with international human rights, which are taken to provide content to the concept of cosmopolitan morality. He then argues that egregious violations of cosmopolitan morality, in particular, genocide, war crimes and crimes against humanity, generate imperfect moral obligations to rectify injustice, and so ought to lead to the formation of global institutions designed to prosecute and punish such violations. In the final section of his paper, Hayden discusses the newly established permanent International Criminal Court as an example of the type of global institution through which such obligations may be satisfied.

Thaddeus Metz criticizes Moellendorf’s arguments from the Kantian principle of respect for persons to the conclusions that (1) states must enact liberal legislation, (2) states may not interfere with religious or perfectionist regimes, and (3) states may not restrict immigration for perfectionist reasons. Metz’s strategy rests on using a distinction between open and closed societies arguing that, although

Moellendorf's arguments might be sound for closed societies, they are not for open ones. An open society is one from which it is relatively easy to leave, and a closed society is one from which it is comparatively difficult to do so. At root, Metz's claim is that open perfectionist societies are not unjust so long as they allow sufficient and reasonable options for policy avoidance, emigration or related forms of citizen choice.

In making his argument Metz begins by spelling out the open and closed distinction. He then moves to question Moellendorf's rationale for thinking that respect for persons requires liberal legislation, presenting arguments that perfectionist laws can be respectful if adopted in an open society. Next, he takes up Moellendorf's endorsement of intervention in non-liberal regimes objecting to his central argument for permission to interfere, and also providing reason to think that when a non-liberal regime is open, interference is disrespectful. Then, Metz addresses Moellendorf's rejection of restrictions on immigration, arguing not only that it can be respectful to put an open society's concern to promote a certain culture above people's interest in freedom of movement, but also that Moellendorf's own argument for secession rights entails rights to restrict immigration. In the subsequent section Metz rejects Moellendorf's arguments for secession rights maintaining, again, that the open/closed distinction makes a difference, in that if citizens who wish to secede have other viable ways to avoid a state's policies, respect for them does not require the state to let them secede.

At heart, Metz's concern with Moellendorf is with an inherent perfectionism: the belief that all states, indeed the majorities of citizens in all states, should seek one and the same end: the promotion of justice conceived in liberal-egalitarian terms. Against this Metz argues that there is not anything inherently wrong with states pursuing different ends. His task is 'to show how a Kantian can agree with the Hegelian dictum that the world of universal liberalism would be like a night in which all the cows are black'.

Whilst generally very positive about Moellendorf's work, Brian Orend offers two main lines of criticism. These address Moellendorf's thoughts on institutional design at the cosmopolitan level, and his account of justified wars. In respect of cosmopolitan government Orend tackles no less than six issues, but the most significant of these is methodological. Orend sees Moellendorf, like Rawls, vacillating between grounding his argument in universal reason or a narrower political ideology. Thus at the outset Moellendorf talks of

identifying principles of internationalism that the left should identify with, whereas in closing he claims that there are rational grounds for all members of the global society to accept the principles of justice. For Orend this is a fundamental tension, which Moellendorf leaves unresolved.

Orend's other concerns with cosmopolitan government target Moellendorf's claim that a movement for global justice must be driven by popular pressure, his ambivalence about the status and role of states in securing cosmopolitan justice, and his assumption that global stability is impossible without economic equality. Against these claims Orend advocates a human rights based politics of global justice which places more emphasis on the role of elites and a pragmatic approach to confronting global economic and cultural difference. On Orend's view, greater global justice can only really be advanced by the linking of rights to fundamental human needs through institutions and practices similar to existing ones.

In respect of just wars, Orend criticises Moellendorf for not including two of the six standard criteria for justifying war, namely, right intention and public declaration by a proper authority. Moellendorf drops these criteria because he wants to broaden the conception of a just war to include cases of injustice caused by the 'basic structure' of a society or the 'international effects' of policy. Orend responds by arguing that motives matter in justice, employing a complex approach to motivation used by Walzer, and citing with approval Kant's urgings that states that go to war commit themselves in advance to ethical rules of conduct. Further, Orend holds that public declaration by a proper authority requires higher levels of popular consent for war, including a role for international institutions in ensuring more just and enduring post-war settlements.

Penny Enslin and Mary Tjiattas believe that Moellendorf's project provides a useful basis for the development of a case for educational intervention and redistribution of resources. Building on Moellendorf's view that there are *cosmopolitan* duties of justice, they argue that in education these are both negative and positive. The former are largely redistributive in nature, the latter take the form of duties of intervention based not (primarily) on requirements of distributive justice, nor responsibility for harms or wrongs inflicted, but on responsibility for addressing injustices committed by others. They believe that Moellendorf's thesis has implications for both national education policy and cross-national intervention. Unlike Moellendorf's military examples, Enslin and Tjiattas suggest that a case can be made for

interventions that, for example, promote basic education, especially literacy, and also awareness of human rights, gender equality, health education, and an informed and critical perspective on domestic and international politics, and that these can be justified on the grounds that they advance justice in the basic structure by empowering citizens. They further propose that the proper authority to justify these types of interventions already exists within the emerging global networks of non-governmental organisations and civil society structures. They conclude that there is a pressing need to educate a global citizenry that will take up these issues.

In ‘What does Cosmopolitan Justice Demand of us?’, Gillian Brock tackles three aspects of Moellendorf’s work. Firstly, parting company with Moellendorf, she argues that the difference principle would not be chosen in the original position. Using a thought experiment and relying on interesting psychological research data, she argues instead that people are much more likely to choose a needs-based minimum floor principle. Brock contends further that the difference principle and minimum floor principle may be co-extensive, as the minimum floor principle is in the best interests of the least advantaged. The second section of her paper argues that Moellendorf’s version of the equality of opportunity principle is vulnerable to criticisms of cultural insensitivity, although she recognizes the dilemma that arises when she proceeds to point out problems with a more general formulation of the principle. The third and final section of her paper considers Moellendorf’s account of justified intervention, arguing that it is flawed by omitting the criterion of gaining proper authority, as this criterion plays a crucial role in the justice of interventions.

Fernando Tesón takes up the issue of trade and global justice. Whereas most discussions of trade revolve around whether or not the rich have a justice-based obligation to transfer resources to the foreign poor, it is time, Tesón feels, for the philosophy of international distributive justice to focus equally on the production as on the distribution of global resources. It is to Moellendorf’s credit that he raises the issue of international trade, and criticizes protectionism as inimical to global justice; nevertheless, making possible the global free movement of goods, services and also persons would be more helpful than Moellendorf’s proposal to establish a global redistributive agency. In other words, endowing the poor with the freedom to produce, work, trade and emigrate at will can best reduce poverty in the world. Tesón argues that protectionism unfairly favours local producers to the detri-

ment not only of foreign producers but also of local consumers, and promotes inefficiency. Moreover, protectionism is objectionable whether practiced by rich or poor countries. For Tesón, ‘under conditions of free trade nations will produce the item in which they have a *comparative*, not absolute, advantage’; and the opening of national borders so as to permit free movement of labour will increase wealth by increasing competition and rewarding cheaper and more efficient producers and workers. Nevertheless, immigration controls to screen out criminals and terrorists remain necessary, as are means of reducing free rider problems.

Responding in advance to a possible counter from Moellendorf, that free markets, even allowing that they increase wealth and reduce poverty, nevertheless unjustly distribute wealth, Tesón argues that it is not unfettered markets, but bad government (not least collusion between transnational corporations and governments), which produces injustices. Before considering whether or not to redistribute wealth, it should first be assessed whether free trade and immigration cannot reduce poverty. In addition, redistribution schemes are expensive, involuntary and even coercive; whereas the ‘invisible hand of mutual advantage’ will allow for an economization of virtue, in Adam Smith’s sense. Tesón acknowledges, however, that his argument in favour of free trade, which is premised on the opacity and impersonality of the market, and, moreover, on self-interest, will be looked at askance by many left-of-centre philosophers who currently are more attracted to the lofty and altruistic ideals embedded in Moellendorf’s suggestion to redistribute tangible benefits to the needy.

Darrel Moellendorf responds to the contributions in three main parts. In the first he articulates, against his critics, a defence of his Rawlsian ‘constructivist justification’ of what he takes to be ‘the main principles of global justice’. In contrast to Rawls’s own account of the international original position, his account ‘represents the interests of persons directly’. This requires a conception of persons, and to this end he employs the democratic conception of individuals that Rawls develops in *Political Liberalism*. He claims, further, that the global application of principles of justice ‘is a contingent fact about the degree of integration, especially economic integration, or globalization of the present world’.

In the second part, he deals with the matter of sovereignty and intervention, re-asserting the fundamental claim that cosmopolitanism ‘is person-centric in the sense that the interests and rights of all persons of the globe are its fundamental object of concern’. In such an

account, the interests of states can only be represented derivatively. An implication of this is that cosmopolitanism must reject ‘accounts of state sovereignty that make the interests of states primary’. He reminds us that in *Cosmopolitan Justice* he argued that a state might indeed justifiably claim that an act of intervention has violated its sovereignty ‘if and only if its basic structure is just and the international effects of its domestic policy are not unjust’.

In the third substantive section of his response, he confronts the issue of association, noting that in *Cosmopolitan Justice* all duties of justice, including redistributive duties, are ‘associative duties’. Thus, the existence of a ‘global association’, which though primarily economic is also political and military, gives rise to global redistributive duties. In consequence, ‘non-compatriots owe duties of distributive justice to each other primarily because they are members of a global economic association’. He characterizes this account of distributive justice as a form of ‘global egalitarianism’ that argues ‘for a global distribution of resources that satisfies the Rawlsian ideal of democratic equality’.

THE EDITORS