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Roland Pierik and Wouter Werner

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Cosmopolitanism in context: an introduction

ROLAND PIERIK AND WOUTER WERNER

This book deals with the strained relationship between cosmopolitanism as a moral standard and the real existing institutions in which cosmopolitan ideals are to be implemented.

Cosmopolitanism is an age-old normative ideal which contends that all kosmopolitês, all citizens of the world, share a membership in one single community, the cosmopolis, which is governed by a universal and egalitarian law. Martha Nussbaum describes such cosmopolitans as persons “whose primary allegiance is to the worldwide community of human beings.”¹ This cosmopolitan notion of a common humanity translates normatively into the idea that we have moral duties towards all human beings since “every human being has a global stature as the ultimate unit of moral concern.”² From ancient philosophy onwards, the cosmopolis has been portrayed as a perfect order, guided by divine or natural reason, and contrasted to actual men-ruled polises that were failing ideals of justice and law. Cicero, for example, described true cosmopolitan law as:

right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions ... We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it.³

In similar fashion, some contemporary cosmopolitan thinkers seek to ground cosmopolitanism on naturalist arguments, albeit with slight modifications and variations. Buchanan, for example, speaks of a “natural duty of (cosmopolitan) justice,” which he characterizes as “not a

¹ Martha Nussbaum, “Patriotism and Cosmopolitanism,” in *For Love of Country: Debating the Limits of Patriotism*, ed. Joshua Cohen (Boston: Beacon Press, 1996), p. 4.

² Thomas Pogge, *World Poverty and Human Rights* (Oxford: Polity Press, 2002), p. 169.

³ Cicero, *De re publica*, ed. Clinton W. Keyes (Cambridge, Mass., London: Loeb Classical Library, 1977), p. 211 (§3.22).

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rock-bottom, basic moral principle, though it is close to it.”⁴ Tan speaks of the “duty of justice” which he regards as a “natural duty” and understands as the requirement “to support and comply with just institutions that exist and apply to us” and the duty to further just arrangements that are *not yet established*.⁵ It should be noted, however, that other cosmopolitan thinkers have sought to found moral cosmopolitan principles on alternative or supplementary grounds, such as the existence of a global basic structure of interdependence⁶ or the existence of a global consensus on basic human rights.⁷ Despite the sometimes diverging foundations, contemporary moral cosmopolitan thought shares three basic features.⁸ First, *normative individualism*: human beings or persons are taken to be “self-originating sources of valid claims”⁹ and, as such, as the ultimate units of concern. In this way, moral cosmopolitanism differs from moral approaches that take ethnic or religious communities, the family, the state, traditions, etc. as moral concerns in and of themselves. For cosmopolitanism, such issues are not valuable intrinsically, but only instrumentally in the role they play in making people’s lives better. Secondly, *all-inclusiveness* (at least when applied to human beings): the status as ultimate unit of concern applies to every living human being equally and not merely to a sub-set thereof, e.g. compatriots, men, or Christians. The basic rights and interests of each individual are of equal importance – although beyond these basic rights and interests cosmopolitanism tolerates differences between individuals. Third and finally, *generality*: the special status of persons has

⁴ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), p. 87.

⁵ Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004), p. 60, quoting John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), p. 115, emphasis is by Tan.

⁶ Charles Beitz, *Political Theory and International Relations*, 2nd edn. (Princeton: Princeton University Press, 1999), pp. 143–53; Pogge, *World Poverty and Human Rights*, p. 20. Similar arguments are made by others, i.e. Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 83–85; Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005), p. 4.

⁷ Buchanan, *Justice, Legitimacy, and Self-Determination*.

⁸ Thomas Pogge, “Cosmopolitanism,” in *A Companion to Contemporary Political Philosophy*, ed. Robert E. Goodin, Philip Pettit, and Thomas Pogge (Oxford: Blackwell, 2007), p. 316; Caney, *Justice Beyond Borders*, pp. 3–6; Tan, *Justice without Borders*, pp. 93–98. Pogge also discusses impartiality as a fourth feature of cosmopolitanism which, we think, is already sufficiently dealt with in the first three features.

⁹ This much quoted phrase is coined by John Rawls, “Kantian Constructivism in Moral Theory,” *Journal of Philosophy* 77, no. 9 (1980), p. 543.

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global force and thus generates obligations binding on all. Persons are the ultimate units of concern for everyone, not only for their compatriots. In short, cosmopolitanism emphasizes the *moral worth* of persons, the *equal* moral worth of *all* persons and the existence of derivative *obligations to all* to preserve this equal moral worth of persons.

However, endorsing cosmopolitan moral ideals is one thing, having real existing institutions that effectively protect them is quite another. From its inception, moral cosmopolitanism has been confronted with the question as to whether it is possible and desirable to translate universal moral standards into real existing institutions. This question covers two interrelated sub-questions. In the first place, it raises the question of institutional design: is it possible to translate the moral ideals of cosmopolitanism into legal rights and duties and to design institutions that will effectively protect those rights and enforce those duties? In this context, it is worth mentioning that cosmopolitan thinkers generally dismiss the idea of a world government as either utopian or dangerous – “a universal despotism which saps all man’s energies and ends in the graveyard of freedom.”¹⁰ With a world government beyond the bounds of the possible or the desirable, many cosmopolitans have explored other ways of implementing cosmopolitan standards. Such attempts, however, always take place in a world which is a far cry from the ideal world of moral cosmopolitanism. This raises the second, related question: what happens when cosmopolitan standards are actually translated into positive law; into legal rights, duties, and powers? This question becomes all the more important in the realm of international law, with its close relations to the world of international (power) politics and the still pivotal role for state sovereignty. Is it possible for moral cosmopolitanism to become institutionalized and still to retain its critical stance towards power? What are the effects of institutionalizing moral cosmopolitanism on power politics? Will cosmopolitanism help to civilize politics or will it end up as yet another justification for imperialistic designs?

The questions that run through the different chapters of this book all relate to the problematique described above. Is it possible to translate the ideals of moral cosmopolitanism into institutions that operate in

¹⁰ Immanuel Kant, “Perpetual Peace,” in *Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1991), p. 94. See however Thomas Pogge who argues that the idea of world government is dismissed too easily: Pogge, “Cosmopolitanism,” p. 315.

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the non-ideal world of positive law, economic inequalities, established mechanisms of exclusion, and power politics? To what extent have the ideals of moral cosmopolitanism been incorporated into existing international institutions? What are the effects of such incorporation, both for the critical potential of moral cosmopolitanism and for the functioning of those institutions themselves? It goes without saying that such questions cannot be answered in the abstract. They require a more context-sensitive approach, which takes into account the specific aspects of a problem and the working of real existing institutions. For this reason, this book studies the (possible) role of cosmopolitanism in five different areas of international law and politics: the protection of the global environment, the World Trade Organisation (WTO), the United Nations (UN) system of collective security, the International Criminal Court (ICC), and transboundary migration. These topics are selected because they represent some of the most important issues that beset the world community and thus provide insight in the effects (or lack thereof) of cosmopolitan thinking in relevant sectors of international law and politics.

Moral unity and institutional fragmentation

Institutional questions have played a relatively marginal role in contemporary cosmopolitan political philosophy. Moral cosmopolitan thinkers have concerned themselves primarily with the *justificatory basis* of institutions, and remained largely agnostic about the *form* in which these institutions are organized.¹¹ Moreover, questions as to how cosmopolitan ideals are to be translated into positive legal rights, obligations, and legal powers have often been bracketed. Cosmopolitanism philosophers have not completely ignored institutional questions though. As a minimum, they have strongly articulated which institutional arrangements are to be excluded. On the one hand, moral cosmopolitanism has rejected institutional frameworks which exclusively privilege the institutions of the sovereign state.¹² Thus, cosmopolitans take the well-being of individuals as fundamental and see the values of national states as derivative.¹³ For some cosmopolitans, states only have instrumental value, in so far as they can contribute to

¹¹ Tan, *Justice without Borders*, p. 94.

¹² Charles Beitz, "Rawls's Law of Peoples," *Ethics* 110, no. 4 (2000), p. 677.

¹³ "Social and Cosmopolitan Liberalism," *International Affairs* 75, no. 3 (1999), p. 520.

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the primary cosmopolitan ideal of treating all world citizens as moral equals. Others present the more moderate view that certain associations, including states, can be valued independently of cosmopolitan ideals, but that these non-derivative ideals ought to be constrained by ideals of cosmopolitan justice. Thus, what is admissible in the name of states is defined by reference to independently arrived at principles of cosmopolitan justice.¹⁴

In this sense, cosmopolitanism challenges mainstream approaches like realism or Rawls's "society of states" approach. On the other hand, as was noted above, moral cosmopolitanism generally rejects the constitution of a single world government – including a world police – empowered to enforce the cosmopolitan law worldwide.¹⁵ Instead, it advocates a structure of overlapping and countervailing powers, composed of local, national, regional, and global institutions in different areas.¹⁶

Cosmopolitanism thinking thus situates itself in an inherently unstable in-between position: it simultaneously emphasizes the moral unity of the world *and* the need to protect a plurality of national and international institutions. The tension between moral unity and institutional fragmentation is not unique for political philosophical theories of cosmopolitanism. International legal thinking has equally struggled with the relation between universal values (human rights, global security, sustainable development, etc.) and the (still) decentralized and fragmented structures of global governance. The tension between moral cosmopolitanism and institutional practice becomes even more pronounced if we take into account that cosmopolitanism is intrinsically underdetermined, conflicting, and not self-executing – just like any other normative ideal (or maybe even more so). Cosmopolitanism thus constantly raises the question who is in a position to prioritize conflicting values and who has the power to determine and enforce their meaning in concrete circumstances. As Koskeniemi has pointed out, the result is that world unity is constantly pushed beyond the horizon:

A deep-structured cosmopolitanism maintains that, deep down, the world is already united ... The problem is that the claimed deep-structural

¹⁴ Tan, *Justice without Borders*.

¹⁵ Charles Beitz, "International Liberalism and Distributive Justice: A Survey of Recent Thought," *World Politics* 51, no. 2 (1999). Beitz, "International Liberalism and Distributive Justice," p. 287.

¹⁶ Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 55–56.

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principles vary, are conflicting, indeterminate, and receive meaning and applicability only through formal decision-making structures. Re-enter government to make the choice; re-enter intergovernmental negotiation to set the balance. Cosmopolis must wait ...¹⁷

While the tension between moral unity and institutional fragmentation is not new to cosmopolitan thinking, at least two developments have given it new force and meaning.

In the first place, the ideals of moral cosmopolitanism have increasingly found their way into international legal institutions. The establishment of the International Criminal Court, for example, is based on the idea that some crimes, by their very nature, affect the world community as a whole, as they are, in Hannah Arendt's words, "crimes against the human status," "without which the very words 'mankind' or 'humanity' would be devoid of meaning."¹⁸ In similar fashion, the Court's Statute is based upon the idea that "all peoples are united by common bonds, their cultures pieced together in a shared heritage" and that prosecuting international crimes is necessary to protect the "delicate mosaic" that holds the peoples of the world together.¹⁹ At the same time, the Court has to give concrete meaning and force to these ideas in a world characterized by geographical, ideological, and political cleavages, while being largely dependent on factors that are beyond the control of the Court (most importantly the willingness of States and the Security Council to cooperate with the Court).

However, the codification of cosmopolitanism ideals is not confined to the area of international criminal law. Similar elements can be found in areas such as the protection of the global environment, human rights law, peace and security law, the law of sustainable development, or the law of the sea. For some international lawyers, these developments indicate a change in international law that cannot, or at least not without great difficulty, be explained in terms of the inter-State paradigm.²⁰ The incorporation of cosmopolitan (or "community") values, they argue, challenges the established doctrines and methods of interpretation of international law, moving it from a civil law type of order between

¹⁷ Martti Koskeniemi, "Legal Cosmopolitanism: Tom Franck's Messianistic World," *New York University Journal of International Law and Politics* 35 (2003), p. 476.

¹⁸ Hannah Arendt, *Eichmann in Jerusalem. A Report on the Banality of Evil* (London: Faber and Faber, 1963), pp. 'Eichmann in Jerusalem' (1963), pp. 268–69.

¹⁹ Preamble ICC.

²⁰ See, *inter alia*: Bruno Simma, "From Bilateralism to Community Interest in International Law," *Recueil des Cours* 250, no. VI (1994).

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sovereign states towards a legal order where a variety of subjects are organized under an overarching legal structure that upholds the interests of the international community as such.²¹ Speculations about a fundamental transformation of the international legal order, however, are not confined to academic literature. Maybe the most outspoken legal expression of this idea was given by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the *Tadic* case. In what reads as a rather unapologetic form of cosmopolitan legal reasoning, the ICTY concluded that international law had moved beyond its state-centric confines into the realm of cosmopolitan justice:

A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach. Gradually the maxim of Roman law *hominum causa omne jus constitutum est* (all law is created for the benefit of human beings) has gained a firm foothold in the international community as well.²²

The rise of cosmopolitanism in international law has given new impetus to the questions identified above. If international law indeed seeks to promote the well-being of human beings, as the ICTY seemed to believe, what are the consequences in practice? How does the incorporation of moral cosmopolitanism affect the interpretation and enforcement of law, the way in which political struggles are fought out, the exercise of power? Who is empowered to determine what is in the “benefit of all human beings” in concrete circumstances, who is authorized (or powerful enough) to prioritize the conflicting demands that follow from such abstract maxims?

In light of recent developments in international law, some age-old questions concerning the relation between moral cosmopolitanism and the reality of legal and political institutions thus gained renewed force and relevance. However, there is a second reason for re-examining these questions. From the late 1990s onwards, cosmopolitan thinking has made a sort of comeback in liberal political philosophy. The revival of cosmopolitanism had to do with the rapid developments in international law and politics described above, but also with a more internal-academic event: the publication of John Rawls’s papers on international justice, culminating in *The Law of Peoples* in 1999. In

²¹ *Ibid.*, p. 217.

²² *Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995.

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terms of the central *problematique* of this book, Rawls's theory of international justice can be regarded as an attempt to balance normative individualism with the realities of world politics. In his earlier work, Rawls had already articulated a moral position that essentially boiled down to an equal moral concern for individuals: only human beings are self-originating sources of valid claims, while a person's social and natural circumstances such as race, gender, or talents are "arbitrary from a moral point of view." Their effects on an individual's life chances, therefore, ought to be nullified.²³ At the same time, however, Rawls was cautious not to present his principles as full-fledged cosmopolitan claims. He confined his theory of justice to a "self contained" domestic society, seen as "a closed system isolated from others."²⁴ *The Law of Peoples* did not fundamentally alter this position. The starting point for Rawls's theory of international justice is not the individual as such, but peoples, organized in sovereign states. As a consequence, his basic rules for international conduct come very close to some core principles of existing international (and essentially inter-state) law: sovereignty, self-determination, non-intervention, self-defence, *pacta sunt servanda*; all mitigated by the need to protect the basic rights of individuals.

Well before the 1990s, Rawls's theory of justice had already spurred debates on the possibility and desirability of universalizing his domestic basic principles of justice. Cosmopolitan critics argued that Rawls failed to see the radical implications of his *Theory of Justice*, namely, that it can only be consistently conceived as a theory of *cosmopolitanism* justice. They held that nationality is just another "deep contingency" (like genetic endowment, race, gender, and social class in the domestic theory), one more potential basis of institutional inequalities that are inescapable and present from birth.²⁵ And since there is no reason within Rawls's model to treat nationality differently, cosmopolitans advocated the application of his principles of justice, not only within a single society but also between individuals across societies. Not surprisingly, these authors remained less than convinced by Rawls's rather traditional, 'Westphalian' approach in *The Law of Peoples*. They argue that their interpretation is the only consistent reading of Rawls's normative axiom of normative individualism that views *human beings*, instead of *compatriots*, are self-originating sources of valid claims, and

²³ Rawls, *A Theory of Justice*, p. 15. ²⁴ *Ibid.*, pp. 457–58.

²⁵ Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), p. 247.

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thus deny Rawls's separated approach of domestic and global justice.²⁶ Indeed, it is fair to say that those cosmopolitans who currently dominate the debate – Charles Beitz, Thomas Pogge, Alan Buchanan, Simon Caney, Kok-Chor Tan, among others – share a simultaneous acceptance *and* refutation of Rawls's work.²⁷ They all subscribe by and large to a liberal egalitarian position as formulated in Rawls's *two principles* as the normative foundation of their cosmopolitan theories:

- (1) Each person is to have an equal right to the most extensive basic liberties compatible with a similar system of liberty for all; and (2) Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged [the difference principle], and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.²⁸

At the same time they refute Rawls's own account of global justice as elaborated in the *Law of Peoples* as too limited, unrawlsian, and merely rules for an already vanished Westphalian world.²⁹

However, the ambitious project advocated by cosmopolitans raises fundamental questions concerning the relation between moral cosmopolitanism and institutional reality. Is it really possible to translate the principles of normative individualism into effective global institutions? Will the ideals of inclusiveness and equal moral concern for all survive the marriage between cosmopolitanism and institutional power? As was set out above, cosmopolitanism also has to find a delicate balance between the desiderata of moral universalism and the practicalities of a decentralized and fragmented international world. This means that the cosmopolitan project is always vulnerable to (at least) two types

²⁶ Allan Buchanan defends a comparable *Natural Duty of Justice*. Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 86–87.

²⁷ Allen Buchanan, "Rawls's Law of Peoples: Rules for a Vanished Westphalian World," *Ethics* 110, no. 4 (2000).

²⁸ Rawls, *A Theory of Justice*, p. 302. Thomas Pogge explicitly dissociates from Rawls's original position and the two principles. See Thomas Pogge, "Three Problems with Contractarian–Consequentialist Ways of Assessing Social Institutions," *Social Philosophy and Policy* 12, no. 2 (1995).

²⁹ John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp. 115–20. As is well-known, Rawls himself disagrees with this cosmopolitan reading of his domestic work. In his 1999 *Law of Peoples* he presents his favourite extension of the principles of justice for the domestic society to international relations for a *Society of Peoples*. For his criticism of the cosmopolitan interpretation of his work see Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge-Cavendish, 2007), p. 177 and p. 176 respectively.

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of critique: that of becoming part and parcel of imperialistic politics and that of becoming a pie in the sky.³⁰ An example of the first type of critique can be found in the work of Douzinas. Douzinas argues that, throughout history, different versions of cosmopolitanism have started as universalistic critiques of local injustices, only to end up as ideologies of imperial rule. Liberal cosmopolitanism, Douzinas argues, does not fare much better as it functions as the “geopolitical framework of the new millennium” and, in its institutionalized form “risks becoming the normative gloss of globalised capitalism at its imperial stage.”³¹ Scratch a cosmopolitan and you’ll find an imperialist just below the surface.³²

Others have questioned the reality of the cosmopolitan agenda. They argue that “cosmopolitanism seems to have a hard time gripping the imagination”³³ since humanity as a whole is too large and abstract to evoke genuine passions of unity, loyalty, and obligation.³⁴ In addition, they criticize the impreciseness of cosmopolitanism. Saladin Meckled-Garcia, for example, has argued that cosmopolitan theories of justice generally fail to specify which agent(s) should deliver justice and by which actions they should do so. “Purported principles that do not specify relevant agents must at least be said to be *incomplete* – they are not really principles at all, but descriptions of a desirable state of affairs.”³⁵

Such critiques force cosmopolitan theories to take a closer and more in-depth look at the institutional implications of their attempts to realize Rawls on a global scale. In order to avert the risks of becoming enlisted in hegemonic projects or being rendered irrelevant for the solution of real life problems, cosmopolitanism has to tackle what Buchanan has called the ‘lack of institutional focus’ of political philosophers: the tendency to concentrate on principles that govern separate moral issues without due attention for the question what it means if such principles are institutionalized so as to govern a practice that covers many cases:

³⁰ Note that these critiques bear family resemblances to the critiques that are often raised against mainstream international law. For a discussion see Martti Koskenniemi, *From Apology to Utopia, The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005).

³¹ Douzinas, *Human Rights and Empire*, p. 177 and p. 176 respectively.

³² Ronald Beiner as quoted in Catherine Lu, “The One and Many Faces of Cosmopolitanism,” *The Journal of Political Philosophy* 8, no. 2 (2000), p. 251.

³³ Nussbaum, “Patriotism and Cosmopolitanism,” p. 8.

³⁴ Lu, “The One and Many Faces of Cosmopolitanism,” p. 248.

³⁵ Saladin Meckled-Garcia, “On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency,” *Journal of Political Philosophy* 16, no. 3 (2008), p. 252.