
Global Justice and Sovereignty: The Problem with Structural Sovereignty and Constitutive Identities

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Abstract Current literature demonstrates that the relationship between global justice and sovereignty is dependent upon how sovereignty is applied. Considering John Rawls's work on sovereignty, he defines sovereignty as a product of states that is limited by successful internal governance. The problem arises in what ought to be done when there is poor internal governance. I will examine the theoretical work on sovereignty and its relationship to indigenous sovereignty. This will help demonstrate that sovereignty is a structural, rather than an ideological problem. Sovereignty, being a structural element and ordering principle, proves to be problematic. The problem of global justice may be the limitation created by sovereignty as associated with a structural phenomenon and the multitude of variations in sovereignty's conceptualization, and what sovereignty implies. Building upon the work of Thomas Nagel, Joshua Cohen, Charles Sabel, and John Rawls, this paper focuses on the example of the limitations of sovereignty faced by indigenous people to demonstrate why constitutive identities limit the effects of sovereignty and global justice.

Introduction

The complex association between global justice and sovereignty is dependent upon how sovereignty is applied. How sovereignty is applied determines how we interpret the relationship between the concept of global justice and its relationship to sovereignty. Considering John Rawls's work on sovereignty in *The Law of Peoples*, he defined sovereignty as a product of states that are limited by morality. He demonstrated sovereignty as morality and as a product of states by utilizing an example of famine; "... famines are often themselves in large part caused by political failures and the absence of decent government." (Rawls, 2001). This helps demonstrate that there is a correlation between good governance and internal justice. In essence, he tied the concept of global justice to successful internal governance. This definition limits global justice to being defined by the concept of the nation-state, and this is dissatisfying. By limiting global justice as a relationship to the governance provided by the nation-state, global justice becomes limited to specific types of internal governance and negates resolving potential large-scale injustices. The problem arises in what ought to be done when there is poor internal governance. If we limit the complex association between sovereignty and global justice to be dependent upon the success of national justice,

is global justice even possible? How can we reconcile the differences between the necessity of sovereignty and the desire for global justice? Can we have global justice with the concept of sovereignty or is it limited by the structure of sovereignty itself? One further thing we must consider is the implication of whether sovereignty is a structural element of society or is it an ideology.

Consider the implications that can be drawn from literature on violence and the effects of dehumanization, specifically infrahumanization as demonstrated by Emanuele Castano and Roger Giner-Sorolla. Castano and Giner-Sorolla explored the effects of infrahumanization in violence, or “the denial to an individual or group of some of the characteristics that make us human, rendering the target less than human, if not wholly non-human,” to demonstrate that individuals dehumanize others to maintain a reduction in collective guilt (Castano & Giner-Sorolla, 2006). This introduces the potential for internal domestic entities to commit horrendous acts without the feelings of guilt and responsibility associated with conducting such acts. If you were to run over your neighbor’s dog, it may not be easy to drive off and leave a mangled and desecrated corpse in the middle of the road, but you could do it. However, *hopefully*, you would feel some sense of guilt for committing such an act. But what happens when senses of guilt are removed? While there may be just domestic policies in some states, that does not mean that all nation-states have the potential or even the possibility of being just. To reconsider John Rawls’s ideal theory once more, “[o]ur hope for the future of our society rests on the belief that the social world allows a reasonably just constitutional democracy existing as a member of a reasonably just Society of Peoples” (Rawls, 2001). Rawls demonstrated the understanding that his conception of sovereignty was limited by the necessity of dependence upon a specific type of society under which it would be successful. But the world is not a work of fiction and that necessitates respect for the facetious reality we are in. So, if sovereignty cannot be applied outside the domestic sphere without leading to increased injustice, do we need it? Or is sovereignty just a quest for hegemony?

Opinion is surely easier to study than behavior because it is easier to measure, and it also takes a lot less effort on all sides to change people’s minds than it does to inspire any sort of action. However, recent events have highlighted the importance of studying the latter. The question of whether governments or international organizations can actually affect the public’s decision-making has come into sharp focus in recent years since both the start of the COVID-19 pandemic and increased alarm surrounding the catastrophic effects of climate change. Even during the height of the pandemic, many members of the public flouted guidance from groups like the WHO or the CDC. When looking back at the pandemic and other similar issues, it is important to determine why so many members of the public did not follow the guidelines, and what could have been different in the IOs’ messaging to better assure compliance.

John Rawls’s *The Law of Peoples* demonstrates that we can have justice in the domestic sphere, however, the question of how we handle justice outside the domestic sphere and the relationship to domestic justice versus global justice is left in an incongruous state (Rawls, 2001, 11). We have seen in situations, such as that of

indigenous peoples, that reality is contritely different, and domestic justice can be arguably absent. There is a salient dilemma in the concept of a sovereign nation caring for its' own internal justice when the added effects of internal division may alter what collective justice should be defined as. An example to consider here is the infamous "drowning child" by Peter Singer, the question he focuses on is that if the cost to us is little, ought we not save the child? (Singer, 1997). Whether justice is being managed in a utilitarian format can be largely associated with who is defining the cost. If the one defining the cost is the elites who control the nation-state and define sovereignty, the problem of global justice may be that the concept of sovereignty itself is unsatisfying. While many have argued for or against the potential of a world state, there needs to be another means of compromise (Wendt, 2003). The salient notion needs to be that the structure of sovereignty may limit the potential to achieve global justice, and if that is the case do we need it? And what ought to replace it? If not sovereignty? Then what? If the ordering element we introduce provides sufficient grounds to prevent justice and enable wrongdoing, how can the element be useful, let alone just? If sovereignty is wrong, do we have a legitimate replacement, and if not, how do we fix it? If sovereignty is unfulfilling and a world state is infeasible, then what? The ideal notions of John Rawls help develop sovereignty as both a means and an end, by defining sovereignty as a product of states that is also limited by morality it becomes a structural element of society and an ideology (Rawls, 2001). But what should sovereignty be? And does defining sovereignty as an ideology or a structural element make it useful?

I will examine the theoretical work on sovereignty and its relationship to indigenous sovereignty. This will help uncover the issue of establishing justice without resulting in justice as a form of collective action or the use of a monopoly of force through a quest for hegemony. Also, it will help demonstrate that sovereignty is a structural, rather than ideological problem. The necessity of sovereignty being a structural element or ordering principle, rather than an ideal principle for achieving the best ideological ends proves to be problematic. The problem of global justice may be the limitation put upon sovereignty as associated with a structural phenomenon and the multitude of variations in sovereignty's conceptualization. To deal with the question of the relationship between sovereignty and the potential for global justice, I will utilize the work of Thomas Nagel (2005), Joshua Cohen and Charles Sabel (2006), and John Rawls (2001).

First, I will briefly unpack John Rawls's conception of sovereignty as a product of states and its association to morality. Second, I will introduce Thomas Nagel's concept of sovereignty by necessity. Third, I will discuss the work of Joshua Cohen and Charles Sabel, focusing on the tension of the conception of sovereignty compared to Rawls's. Fourth, I will utilize the example of the trouble caused by the limitations of sovereignty faced by indigenous people to demonstrate why constitutive identities limit the effects of sovereignty and global justice—meaning that the type of constructed tribal sovereignty that has been granted by a nation-state authority limits the authoritative capacity of tribal institutions hindering internal domestic justice. Much

like dehumanization and infrahumanization limit the effects of experiencing collective guilt, so too can constitutive identities affect sovereignties' ability to help establish global justice. A comparable example to consider is the effectiveness experienced in decolonized versus colonized institutions and the legitimacy of their authority. The question to be considered here is if sovereignty is ultimately helpful for indigenous groups against settler states. Fifth, I will offer a means of the conception of sovereignty between the extremes of the limitations of the nation-state and a world state concerning the effect of constitutive identities, which relates to the antagonism between concepts of self.¹ Also, in this section, I will argue that rather than the alternative of a world state, the formation of ethical accountability contracts may be a desirable alternative. In conclusion, I will finalize with closing remarks and where this leaves us.

Rawls's Sovereignty and Justice of Social Cooperation

Thomas Nagel phrases John Rawls's relationship between sovereignty and justice rather eloquently; "... for the most part, the ideal of a just world for Rawls would have to be the ideal of a world of internally just states" (Nagel, 2005). Rawls introduces the first problem with his conception of justice by linking sovereignty to the domestic state, while he may not call it a problem, it nonetheless introduces complexities to justice that are limited by that correlation. One specific complexity is the necessity of well-ordered people to pursue a mutual advantage (Rawls, 1971). An external global mutual advantage is dissonant with the concept of internal social mutual advantage; it is hard to gain social cohesion within a domestic state let alone at a global level. For example, consider ordering pizza with your mates, there is always the one oddball who wants pineapple on his pizza. What do you do with him? Exclude him for not agreeing to your conception of the perfect pizza. In an ideal world, we would figure out how to "split" the pizza in a way so that everyone gets what they want. Since everyone is an individual actor, this should be relatively easy. However, Rawls does acknowledge this saying; "... although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests." (Rawls, 1971). To continue utilizing the pizza example, the underlying problem comes in when it is not just you and your mates, but also you, your mates, and your mates' kids. Rawls's concept negates this second layer to "an identity of interests" through a focus on the nation-state.

Rawls denotes that this is problematic by defining specific characteristics of what he defines as a well-ordered society, namely that a society must have a universal agreement on what principles are just and that the social institutions exist to meet those principles (Rawls, 1971, 4). The aspects of Rawls that need to be considered here are his appeals to the social contract, the concept of distributive justice, and his tie

1. Constitutive identities will be defined later, for the time being the importance is the effect that identity has on the relationship between self, state, and sovereignty.

to rational beings (Rawls, 1971, 4). The correlation between these three components defines sovereignty as a structural component of justice and a moral one. But this brings us back to the point, is sovereignty a structural element, an ideological point, or a mix of both? For Rawls, it is both, but does this work?

Traditionally, when we consider the social contract, we immediately perceive the work of Hobbes, Locke, and Rousseau. However, there is a unique element in which Rawls utilizes social theory in the domestic state that helps explain why sovereignty is necessary for the success of internal justice. For Rawls, the interest is in providing “a way of assigning rights and duties in the basic institutions of society and . . . defin[ing] the appropriate distribution of the benefits and burdens of social cooperation” (Rawls, 1971). This is all well and good, simply stated, we need institutions that handle the division of profits and losses to establish social cohesion. For example, consider dating culture, it is one thing when a man and woman go out and the expectation is that the man pays for everything. In contrast, going on a date where each party pays their way, the burden is shared. While Rawls does include a specific distribution of sharing burdens, this is beyond the scope of the date example. But Rawls goes one step further with his organization of distributive justice, he adds to the association a necessity of having a “free and rational” people (Rawls, 1971, 9).

Immediately, we should question exactly what is meant by a “free and rational” people and what this could mean for establishing global justice. When we distinguish that there is a difference in the ability to act justly based on who is defined with the capacity to act or think rationally, we are limiting the potential for justice globally. Rawls has tied the association between a people being free with the capacity to be rational as a means of pursuing justice. What happens in the situation when we alienate internal actors as not being defined as rational actors and therefore lacking the capacity to contribute freely?

The problem of the alienation of the capacity to act is exactly why Rawls needs the “veil of ignorance,” or the idea that any individual characteristics are removed from your perception (Rawls, 1971, 11). This can be conceptualized by imagining being blind, you denote no color to your skin, race is a non-event, and your biological sex is unidentifiable. Regardless of the “veil of ignorance,” the application of the social contract for Rawls introduces limitations on who can act in a manner about justice as the individual still must be “free and rational,” so what exactly is justice for Rawls?

Justice is the distribution between advantages and disadvantages, for Rawls, justice is fairness (Rawls, 1971). This is problematic because distributive justice introduces the attempt to equalize a predominately unequal system. Just because some people are in a better position to assume more of the burdens of society, for example, those who are substantially well off, it does not mean they will assume more of the burdens. Ability to do something, does not always translate to the willingness to do so. Rawls may counter this by asserting that individuals need to be “rational and mutually disinterested” (Rawls, 1971, 12). However, while Rawls notices the problem with expecting reciprocal utility, there is not a good solution to counter it—making others better at personal cost to yourself is still dissatisfying. If you could save a stranger’s

life by giving them a kidney, should you? Highly individualistic countries will find it problematic to have an external rather than internal locus of control—an internal locus of control is having control over your own fate, while an external locus of control means fate is defined by the intervention of others. For example, let's utilize the abstract concept of the American dream. While the basic idea of the American dream is the ability to move on a continuum through social classes, the underlying cultural characteristics relate to the euphemism “hard work pays off”—meaning if you work hard enough you can place yourself in a better position in society or move between social classes. Distributive justice is problematic because it introduces and depends upon the idea that a rational actor will support the difference principle and the just savings principle as recommended by John Rawls.

The just savings principle states that “inequalities [should] be arranged. . . to the greatest benefit of the least advantaged” and the difference principle states that there is a need to “maximize the sum of advantages” (Rawls, 1971, 266). That's all well and good, but why would anyone agree to it? Good people often do bad things because they feel good, can altruism counter this globally? There is a problem with the association between rationality and morality, we are assuming that rational actors will behave morally. I'd rather have my cake and eat it too, I'd rather be able to earn a livable wage and gain the potential benefits from working than give those benefits to someone less fortunate. While this pessimistically seems overly self-interested, consider the reality, an American family is generally better off than a family living in a developing nation. However, even though that family is generally better off, they may still be living under the standards of the society in which they are associated. There is a difference between an American family of four living at \$20,000 a year versus \$60,000, but both would be substantially better off than those living in a developing nation. Under the concept of distributive justice, global justice would require both families' contribution to lessen the burdens on the family living in a developing nation (if extrapolated beyond the nation-state).

How can we reconcile the difficulties in domestic justice along with the complexities of sovereignty? Not by assuming people want to behave morally. However, to Rawls's credit, he was writing with the goal of internal domestic justice, rather than towards a globalized just world. Rawls's focus on internal domestic justice alleviates the necessity of sovereignty being a system-level phenomenon, focusing instead on sovereignty as the starting point. For Rawls, the nation-state is the starting point, not the special responsibilities we owe to human civilization. The other implication that is problematic for Rawls, is that just as he begins at the domestic level of analysis forgoing important system-level implications, he also negates any actors below the domestic level, for example, American Indians and their conception of sovereignty within a domestic sovereign nation.

Thomas Nagel and Sovereign Necessity: Critique of the “Political Conception” and Cosmopolitanism

Moving away from the Rawlsian ideal theory of sovereignty as a product of states and limited by morality, Thomas Nagel focuses on the reason for sovereignty as due to its necessity. For Nagel, the world is inherently unjust and because the world is inherently unjust there is the necessity of a tool, namely sovereignty, with the legitimacy to utilize a monopoly of force to assure collective cohesion (Nagel, 2005). Nagel’s key argument focuses on the concept of sovereignty and the relationship between internal justice versus external justice. Rather than refute traditional sovereignty, which has become a foundational basis for international contracts, such as the United Nations, Nagel focuses on the necessity of sovereignty for justice outside the domestic sphere.² Specifically, Nagel focuses on the concept of “socio-economic justice” and how this can be applied on a world scale (Nagel, 2005, 114). His focus is a two-fold examination of the “relationship to justice and sovereignty and the scope and limits of equality as a demand for justice” (Nagel, 2005). He draws the distinction between Cosmopolitan concepts of global justice and his concept of political conception, which is statist. He situates his theoretical work through a critique of Hobbesian cosmopolitanism and Rawls’s political demands of the nation-state, openly critiquing the cosmopolitan view and Rawls’s “political conception” of justice (Nagel, 2005).

The critique Nagel offers against the cosmopolitan view of justice is centered around the universality that it would require; for there to be a cosmopolitan just world there would need to be a form of global sovereignty (Nagel, 2005, 118-9). However, he is also quick to state that one way to bring this to fruition is through the creation of a federal system of accountability with “special responsibilities toward one another” (Nagel, 2005, 120). That’s all well and good, but the likelihood of agreeing to either global sovereignty or a federal system of accountability seems problematic, that is most likely why Nagel chooses to counter by critiquing Rawls’s internally just states and the application to sovereignty as a form of morality.

The interesting element here is the relationship between global justice and sovereignty being limited to distributive qualities, and if so, what does this mean for humanitarian concerns—such as genocide and racial extermination? While Nagel denotes this is outside his scope, it is an important aspect to consider if the focus of global justice being tangible is limited to distributive or socio-economic means. Nagel’s focus on justice concerning “socioeconomic justice” seems misguided with his argument (Nagel, 2005, 114). It is much more persuasive if he focused on the criminal conduct of war, which he was quick to mention and displace as not his interest area (Nagel, 2005). Applying a focus on war rather than “socioeconomic justice” may have offered a better foundation for disregarding the possibility of conquest

2. Agenda item 112 (b) from the fiftieth session of the United Nations General Assembly on February 27, 1996. “Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes”

in the “scope of sovereign authority” (Nagel, 2005, 146). While this question may be out of scope for Nagel’s focus, I think it is important to note that if conquest is no longer a viable option for establishing coercive authority, what is? Underlying Nagel’s argument, I would presume that he would counter by saying that international institutions have the capacity to use power to create international legitimacy, thus replacing the necessity of a pathway for conquest. It is interesting to note how Nagel justifies using a concentration of power through unjust institutions as a means of transformation from illegitimacy to legitimacy using institutional power. However, I find this answer dissatisfying as it makes the world of conquest and prestige seem replaced by one of cloaks and daggers.

A specific intersection between the work of John Rawls and Thomas Nagel is the focus on distributive elements of justice as tied to the capacity of the nation-state. Nagel goes a step further to argue that sovereignty helps create stability, which given that Westphalian sovereignty is a base principle of international law, is probably true. While Rawls may assert that it only applies within a society, Nagel would counter with the claim that internally just states are great, but sovereignty enables stability, which morality alone is not enough, and justice requires a structuring element (Nagel, 2005, 115-6).

The tension between Nagel and Rawls is found in the association (relationship) between justice and morality. Nagel critiques this by focusing on Rawls’s turning justice into “an associative obligation,” utilizing the example of “one does not have to marry and have children,” it is a special type of relationship (Nagel, 2005, 121). This is the salient notion for Rawls that there are specific relationships that we have a duty to, but not all. The concept of associative duties introduces complexity in introducing global justice beyond internally domestic nation-states because if there is no special association then there is no obligation. However, it is worth noting that while Nagel utilizes the association between sovereignty and necessity, this contributes to the problems with the structure of sovereignty, but also describes its necessity. Sovereignty, for Nagel, is tied to the nation-state, and because it is the primary form of political legitimacy it is a necessity for structuring the potential for justice by creating stability through group cohesion (Nagel, 2005, 113).

This is where the line between Rawls and Nagel becomes intriguing. Rawls focuses on the association of having specific associative duties, or obligations to others, while Nagel perceives that there are “some conditions of justice [that] do not depend on associative obligations”—namely socioeconomic justice (Nagel, 2005, 126). Nagel’s respect for the statist nature of global justice demonstrates respect for the current world order. Rather than trying to manipulate the solution before the problem, or as a colloquialism, put the cart before the horse, he is minding the reality the world is currently structured under, namely the structure of sovereignty. Part of his rationale for sovereignty is having a legitimate concentration of power with collective coercive cohesion and authorization (Nagel, 2005, 138). This says that the citizens grant the authority of the state to be under its subjugation, while also holding the state accountable (responsible) for fulfilling some sense of basic internal equalities.

Specifically, Nagel says; “. . . in the dual role each member plays both as one of the society’s subjects and as one of those in whose name its authority is exercised. One might even say that we are all participants in the general will” (Nagel, 2005, 128). Here is where the argument extrapolates to Nagel’s critics and how equality (or specifically what level of equality) should be held beyond internal states.

One further point to contemplate about Nagel’s focus on “socioeconomic justice” (2005, 114) is the difference he denoted between the Cosmopolitan view of justice and his political conception. The difference between the Cosmopolitan view and Nagel’s political conception brings to light is the difference between economic justice and moral justice (Nagel, 2005, 119). But is a Utilitarian view of global justice possible outside a world state or world government? This is what makes Nagel’s argument feasible, he offers a single virtue for global justice, rather than a comprehensive utility. This concept is critiqued by Joshua Cohen and Charles Sabel, denoting how Nagel drifts from his strong statist argument (Cohen & Sabel, 2006). In essence, Nagel’s focus on utilizing institutions to create legitimacy creates justice as defined by those who have the authority and legitimacy to set the agenda. Rather than just be what states make it, justice is a social construct of the powerful. My concluding question is: is justice more than a social construct and are there universally acceptable forms of justice beyond the base minimum of humanitarian aid?

Nagel proposes a universal nature to justice, however, his means to achieve this is through the necessity of a not-necessarily just agent. While this may be beyond a traditional agent and structure problem, it does bring light to the previously mentioned statement as a critique of Rawls; good people often do bad things if it benefits them. Again, I’d rather have my cake and eat it too. However, this may be the reality of the problem with sovereignty, it is necessary to control the behavior of agents from extrapolating beyond normal levels of inappropriate inhumanity. Universal justice may not be possible, but maybe there is a certain level of common decency that sovereignty protects, even if that decency is surrounded by death, destruction, and generally ill intent. Nevertheless, the very necessity of the statist nature that Nagel introduces, is the exact critique that Joshua Cohen and Charles Sabel focus on.

Cohen and Sabel: Statist Critique

While Thomas Nagel focused on situating his theoretical work against Rawlsian justice and the cosmopolitan view, Joshua Cohen and Charles Sabel focused on offering a critique of Nagel—focusing on his association with a strong statist nature (Cohen & Sabel, 2006). The first problem that Cohen and Sabel denote with the definition and utilization of sovereignty by Nagel is the dependence upon a “co-authorship of coercive law” (Cohen & Sabel, 2006, 148). While they generally support the conclusion drawn by Nagel, the problem for them rests heavily on his strong statist nature (Cohen & Sabel, 2006). Cohen and Sabel point out an important denotation about the problem of such a strong statist focus; “. . . it is now a mistake to assign the state so fundamental a role in political morality” (Cohen & Sabel, 2006, 149). Nagel’s

strong statist notion is exactly what hinders the inclusion of constitutive identities into having agency in a nation-state utilizing sovereignty as a tool of political legitimacy. Cohen and Sabel specifically say; “[s]trong statism is founded on the thesis that norms of justice only apply to people who stand to one another in certain relations: in particular as members of a single state, subject to the same coercively enforced rules, and presented as sharing responsibility for those rules” (Cohen & Sabel, 2006, 151). This is a critical problem for both Rawls and Nagel as it grants legitimacy on specific grounds, immediately resulting in the exclusion of the other. To revisit the earlier stated pizza example, it’s great to exclude the one oddball who wants to order pineapple on his pizza, not so great or just to also exclude his children. So, rather than global justice just being an element of the necessity and legitimacy tied to sovereignty, there is an underlying association tied to the identity of those under the sovereign’s guidance. It is less a matter of the adherent structure of sovereignty alone and is more a matter of who is defined as protected and provided justice by the sovereign versus who the sovereign decides to subordinate to alienation and otherness about justice.

Indigenous Sovereignty

After contemplating the work of John Rawls and Thomas Nagel, it is worth denoting the importance the state plays in utilizing sovereignty. Cohen and Sabel have offered a critique of the focus on strong statism through a relationship to cooperation and pluralism (Cohen & Sabel, 2006). While Rawls had specific moral and structuring implications for the use of sovereignty, Nagel viewed sovereignty as a necessity. However, there are problems with both assertions. The focus on the state as the distributor of justice allows for potential exclusions to happen due to the structuring potential of sovereignty. It relates to who has the capacity and agency to act and who is defined as being sovereign. While the focus has the potential for establishing global justice, the example of Indigenous sovereignty by Kouslaa T. Kessler-Mata (2017) is a useful counterexample to consider.

Federalism has its unique problems for creating justice in the domestic sphere. One implication of this is the limitations because of prohibiting self-governance of American Indians. Kouslaa T. Kessler-Mata denotes this complication as a result of “. . . ‘extraconstitution’ and simultaneously ‘limited’ nature, to acknowledge both its origins outside of the context of the US constitutional framework and its marked diminishment from a concept of absolute and exclusive self-government as in a Westphalian understanding of sovereignty” (Kessler-Mata, 2017, 29). In this instance, internal justice in the domestic sphere is limited by the application of sovereignty not being utilized in the traditional sense. The alternative that Kessler-Mata mentions through the work of Philip Pettit’s theory of freedom is maintaining “a relationship between citizens and [a] nation where the primary role of the state is ‘to ensure a dispensation of non-arbitrary rule,’ thereby protecting individuals against arbitrary

interference in their daily lives” (Kessler-Mata, 2017, 39-40).³

Why is this important for the potential to establish global justice? If there are problems with the utilization of sovereignty within the nation-state due to the exclusion of protections of certain individuals to act freely, it is problematic that there is potential for justice to be extrapolated globally. So, how do we handle these issues with sovereignty?

Federal Accountability and Respect to Constitutive Identities

To restate the concerns the previous theoretical work brings to light are questions such as is global justice possible? How can we reconcile the difference between the need for sovereignty and the desire for global justice? Should we have sovereignty? Has sovereignty become just a quest for hegemony? If not sovereignty, what ought to replace it? There is a salient disconnect between the idealized world depicted by Rawls and the reality of the world we live in. While it would be preferable to assume that nation-states could serve as protectors of internal justice thus removing the necessity of global justice it does not occur. It is the equivalent of the colloquium of leading a horse to water but not being able to force it to drink. We can expect a sovereign nation to behave with morality and justice, but that doesn't mean they will.

Sovereignty introduces the problem that justice becomes dependent upon the concept of internal justice. Rawls demonstrated this through his focus on utilizing the social contract, the concept of distributive justice, and the necessity of a “free and rational people” (Rawls, 1971). However, as I have already denoted, the focus on a “free and rational people” by its very definition is an exclusionary element. By creating the limitation that only certain moral actors are relevant to establishing justice, we discredit those who may have the potential to behave justly even if they do not fit the specific criteria. While Rawls does counter this with the example of Kazakhstan, it is still highly limited in the capacity to find justice outside the domestic sphere. Both Rawls and Nagel depend upon some form of legitimacy from the tool of the nation-state and the relevancy of sovereignty. As previously mentioned, there is a tension between the concept of sovereignty being a structural or ordering element and being an ideology. However, the problem may not be with sovereignty itself or the potential for it to be a quest for hegemony, but rather a problem with the elites who lead. The humorous notion is often made that communism is a fantastic ideology, too bad it always fails. Sovereignty has the potential to be the same way, as both an ideology and a structural element, but it is all about who has the agency to determine how to utilize sovereignty. So, what does this mean for global justice?

For a society to be just, it must be just based on internal institutions and actions rather than external behaviors. Justice at this point is defined by the limitations and wills of those who define what will be viewed as just action. For example, consider

3. It is also worth noting that this example needs to be extended and extrapolated.

actions taken during times of war, while the justification of war is beyond the scope of this paper, this example will suffice to prove a point, when an attack is launched that places the lives of non-combatants at risk, who is responsible for protecting those non-combatants? Not the ones involved in deciding to launch the attack because the cost of the attack has already been viewed as a necessity for the potential benefits—a profit-and-loss version of the value of human lives. However, considering the Iraq war, Iraq may not take kindly that the U.S. felt it necessary to launch an air strike on a town that contained several non-combatants or civilians, as an illusion of achieving the removal of military targets (Jaffer, 2016). The problem this introduces is that sovereignty is protected by the leader of the nation-state, but that does not imply that other states are forced to respect it. So, what?

There needs to be a means that allows for sovereignty to exist preventing violation of the nation-state but still allowing for protections of the humans within it against both internal and external actors. Thomas Nagel mentioned one of the only implications outside the concept of a world state, a federal system of responsibility. While Nagel did not associate it with those exact terms, a system of aggressive accountability within the structure of sovereignty may be the only means to save the ordering system. However, we have often seen this fail through the example of the League of Nations and the United Nations—what power or legitimacy were these two institutions given to demonstrate authority and help establish global justice? There needs to be more than the concept of crimes against humanity because that concept is lackluster at best and still leaves several instances where those crimes go ignored and unpunished. How can we justify cases of genocide and ethnic cleansing? We often hear the syllogism and think of the children, there is no debate that a child being murdered in any form is unjust. However, a universal value for the protection of human lives is often negated and left in the hands of intervention from nation-states and their leaders. In this case, we are living in a Rawlsian world of internally just states but leaving the rest of the world to its own accord.

Conclusion

Rather than assume that there is an easy fix to the problem the structure of sovereignty introduces, it is worth mentioning that the implication of a world state is also not a reasonably viable solution. Even Nagel mentions how dissatisfying a goal this would be instead mentioning the necessity of a federal system in his critique of cosmopolitanism; “cosmopolitan justice could be realized in a federal system, in which the members of individual nation-states had special responsibilities toward one another that they did not have for everyone in the world” (Nagel, 2005, 120). We can consider the world state as an ultimately desirable and ideal outcome, as it enhances the potential for institutional buildup—meaning it allows for a world state to exist with proper institutions to support it. However, the problem the concept of collective world state introduces is that unity may not always be desirable. Conscious collective unity may be as problematic as sovereignty itself. We must be aware that while a world

state may be desirable, concepts such as this introduce the classic problems seen in in-group versus out-group identification. So, rather than enhance group cohesion, the concept of a world state is likely to leave us in a perpetual state of proxy conflicts.

While Alex Wendt has argued for the inevitability of the emergence of a world state with the legitimacy to use organized violence, he leaves the handling of human agency to the very end, denoting that there will remain struggles for recognition (Wendt, 2003). The salient notion needs to be that the very structure of sovereignty may limit the potential to achieve global justice, and if that is the case do we need it? Alex Wendt denoted the importance that agency would still play in a global world state and that may very well be the problem. Sovereignty itself may be redeemed if we focus, rather on the application of justice about sovereignty, and instead focus on justice about the agent/structure debate. And what ought to replace it? If not sovereignty? Then what? If the ordering element we introduce provides sufficient grounds to prevent justice and enable wrongdoing, how can the element be useful, let alone just?

The ending question remains of not what is wrong with sovereignty, but if sovereignty is wrong, and we do not have a legitimate replacement, how do we fix it? However, fixing sovereignty is beyond the scope that can be handled here, and instead, the hope is that we denote that sovereignty as a structural element is just as problematic as the moralistic and ideological concerns sovereignty has introduced.

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