

INTERNATIONAL LAW AND GLOBAL JUSTICE: KEY THEMES AND DEBATES

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The unjust nature of the current global order is evidenced among other things by problems of poverty, inequality, climate change, and forced migration. Any attempt to reform the contemporary legal order to realize the goal of global justice calls for both an *internal* and *external* critique of the legal technologies of global governance. The former involves identifying the constraints imposed by the doctrines of international law in bringing about a just world order, in particular the doctrines of sources, jurisdiction, and state responsibility. The external critique is that of existing rules, regimes and institutions which produce unjust global outcomes. The principal focus of my presentation will be on the external critique and the realization of the goal of global justice.

It anticipates the need to take a position on two key ongoing debates: First, is it meaningful to talk of justice at the global level? Second, what is the meaning of justice? So far as the first question is concerned there are two broad views on the validity of the idea of *global* justice. The first view is espoused among others by John Rawls, David Miller, and Thomas Nagel. In their view the idea of justice is meaningful only at the level of the nation-state as there are no global demos and global state. However, while these thinkers are sceptical of the idea of global justice they do not deny the need for some forms of humanitarian and development assistance being offered to weak states. The second view is associated with the names of Charles Beitz, Nancy Fraser, Thomas Pogge, and Amartya Sen. Their contention is that a national conception of justice or methodological nationalism is not justified in the era of accelerated globalization (if it ever was after the beginning of the colonial era) when the decisions of advanced capitalist states, embodied in law, or taken by international institutions they control, deeply impact the development chances of weak states and thereby the lives of their citizens. These decisions therefore need to be subjected to public reasoning. A strong argument in favour of this view is also that the welfare of peoples in advanced capitalist economies depends on the exploitation of underdeveloped economies. I will argue the case for the second approach.

In so far as the substance of the concept of justice is concerned the choice is broadly between the thought experiment approach of Rawls, termed “transcendental institutionalism”, arrived at in the “original position”, behind a “veil of ignorance”, and the “comparative justice” approach of Sen which lays stress on pragmatic interventions through deliberative reason as there is never a single right answer to situations of injustice. I follow the latter approach although both can be fruitfully combined. In thinking about the meaning of justice at an operational level I adopt the disaggregated approach of the socialist feminist thinker Nancy Fraser who helpfully breaks up the concept of justice into three principles: the principle of recognition (e.g., cognitive justice), the principle of representation (e.g., the all affected principle) and the principle of redistribution. I will confine myself to the principle of redistribution or the realization of global economic justice (GEJ). Overall I will argue that unreformed *global* capitalism and GEJ cannot proceed hand in hand. We have to imagine other alternative futures to be realized through non-violent social and political movements pioneered by Mahatma Gandhi and Martin Luther King and there outcomes codified in international law.