

# CHRISTOPH BROSZIES | Brock and Justification

What is the best justificatory strategy for normative political philosophy and how should it proceed? Since the publication of John Rawls' *A Theory of Justice* (1971), political philosophy has witnessed a renewed interest in the idea of a social contract as a way of arriving at justified moral principles. In *Global Justice: A Cosmopolitan Account*, Gillian Brock uses a modified version of Rawls' original position as a justificatory procedure to develop her own conception of global justice. In the first part of this paper, I will concentrate on the justificatory elements used by Brock, which are not directly connected to the original position. In the second part, I will discuss some important differences between Brock's understanding of the original position and a more faithfully Rawlsian one.

Brock's thought experiment reflects 'our actual situation as much as possible' in order to make the 'ideal world easy to imagine' (p. 48) – and, one could add, to escape the persistent charge of idealization levelled against original position justification. In her thought experiment, delegates from national, religious or cultural communities meet at a global conference to decide on 'a fair framework for interactions and relations among the world's inhabitants' (p. 49). The delegates are supposed to be self-interested and unaware of their allegiances, the wealth of their community, the amount of natural resources and any other information that might threaten an unbiased judgement. According to Brock, the delegates would want to ensure that (i) everyone should enjoy *some* equal basic liberties and that everyone should be protected from certain real...risks of serious harms.' (p. 50). In the first category you would find traditional (negative) liberties such as freedom from assault or slavery and also '*some* basic freedoms governing movement, association and speech' as well as 'guarantees against torture...or extreme coercion' (pp. 50 – 51). As well as securing basic liberties, delegates would also wish to ensure (ii) that all human beings are able to meet their basic needs. According to Brock, distributive justice is fulfilled when a universal minimal floor principle (sufficientarianism) ensures that everyone's basic needs are met and no further redistributive arrangements are called for. Brock also stipulates (iii) that the current state-based world order would by and large be kept, and aspirations for a world state would not be endorsed by the delegates.

Before turning to Brock's justificatory procedure, let me briefly consider her conclusions. My general impression is that Brock's conception is less original

and more conservative than her self-avowed cosmopolitanism indicates. Brock argues that the protection of basic liberties is a result of the deliberation process of the original position. The content of these basic liberties is not developed until later in the book when Brock substantiates the rather abstract principles vindicated at an earlier stage of the argument. She herself addresses one major possible objection to her conception of freedom and liberties (p. 153-154), but I believe that her reply is not fully satisfactory and fails to address the concern properly. From a multicultural perspective, her conception of liberties might seem to have a western bias; some might even point out that the very existence of collectives could depend on denying some of the basic liberties she envisions. It is not that I believe that no coherent answer can be given to such worries. But my general feeling is that these worries cannot be silenced by remarking, as Brock does, that cultures are free to decide against Brock's liberties and to retain their traditional forms of life. The charge of paternalism is a serious one, and Brock could have done more to provide a more satisfactory reply. Regarding (iii) – the institutional structure adopted by the delegates – Brock simply reiterates the scepticism regarding the feasibility and possible consequences of a world state first articulated by Kant. And although she argues in the course of the book, 'for a form of global governance that is diffuse and overlapping' (p. 331), she also believes that the delegates in her original position would by and large keep the current state-based system:

Given that my ideal world (strongly coloured by the actual world) is already divided into political communities, delegates might find it reasonable to use those divisions in some of their prescriptions' (p. 52).

Two reasons might be given for remaining modest in regard to global institutional change. The first is Brock's wish to accommodate nationalist worries about identity, democracy, individual motivation and especially cultural belonging. Like others before her,<sup>1</sup> Brock aims to show that there can be a middle path between extreme cosmopolitanism and liberal nationalism, and that it is possible to defend a form of cosmopolitanism which is able to accommodate supposed special ties and commitments among compatriots. The more general reason is the wish to provide a 'realistic utopia' (Rawls), which is a normative ideal that is workable in our current situation. What gets lost in this picture is the question of whether justice or morality might demand a (possibly currently unobtainable) ideal, which, though unobtainable, might nevertheless inform our political and moral deliberation – a problem of which Kant was painfully aware

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1. For example Kok-Chor Tan, *Justice Without Borders* (Cambridge: Cambridge University Press, 2004).

of in his reasoning on a global state. Brock offers no other grounds to help us understand why it is justified to assume divided communities or states as a starting point of the original position. It seems to me that a possible answer might start with a certain conception of the person as embedded in a specific cultural and/or political context that makes forms of individual belonging a morally relevant aspect and is therefore included in the information made available to the parties in the original position. I doubt, however, that this strategy is especially attractive for Brock if she wants to keep her cosmopolitan understanding of the person as a 'citizen of the world' (p. 8).

Let me now turn to Brock's justification of (ii) – a minimal floor principle of justice. As we have seen, Brock argues against the global application of egalitarian principles such as Rawls' difference principle. Brock seems to believe that her minimal floor principle is the (only) rational outcome of the deliberation process of her original position. She says: 'in the ideal choosing situation, the minimum package it would be reasonable to agree to specifies that we should all be adequately positioned to enjoy the prospects for a decent life' (p. 52). One reason for this modest outcome might be the fact that 'delegates will be aware that any entitlements selected will generate financial obligations' (p. 50). Delegates might shy away from a more demanding principle because they think of their potentially available resources (e.g. income) and aim at securing as much as possible. It is, however, not clear to me why the delegates – in the absence of any existing entitlements – would find it more rational to gamble on finding themselves on the side of the better off and not on the side of the poor. Absent of any knowledge about their future situation regarding resources, why would they opt for maximizing their income instead of minimizing the bad effects of a lower income level? Brock provides no answer. This is particularly striking, as she seems interested in adopting Rawls' constructive procedure as presented in his original position. She seems generally sceptical of the ability of her thought experiment to deliver a clear-cut argument against more egalitarian conceptions. In order to find out why she opts only for sufficientarianism, we need therefore to look beyond her version of the original position. I assume that behind Brock's reluctance to adopt a more egalitarian position lies her wish to preserve the autonomy of collective agents, like states. According to this picture, global egalitarian principles of distributive justice potentially endanger the possibility of states to pursue their own policy. This is an interesting challenge for global egalitarians and a thorough discussion about the issues at stake is needed. Simply to assume, however, that the moral value of collective autonomy trumps demanding egalitarian principles seems question-begging because it assumes what needs to be shown.

One important strategy for global egalitarians is to argue for the existence of a form of global cooperation.<sup>2</sup> If we have reasons to believe, for instance, that the global economy constitutes a form of global cooperation, we might want to go further and argue for a *prima facie* equal distribution of the jointly produced goods. Both steps (the empirical claim about the existence of a global form of cooperation and its normative implications) are in principle disputable. Brock does not discuss the second aspect; she believes however that the empirical evidence for global cooperation is an insufficient element to justify demanding global duties of justice. According to her, ‘some people seem surprisingly unconnected to the global economic system...others...simply disconnected.’ As a result, ‘appealing to everyone’s connectedness to the global economic system is unwise if it is to supply the central grounds for concern for all others’ (p. 307). It is therefore better ‘in seeking the grounds for our obligations to provide others with certain goods...not to attend exclusively to our cooperation with them’ (p.308). Brock accepts that cooperation gives rise to a ‘fair distribution of benefits and burdens’ (p.53), but she does not explain why – as far as some global cooperation exists – this does not produce egalitarian principles of distributive justice.

Brock seems to be critical of egalitarian theories of justice in general because she suspects that for these theories the value of equality exists for its own sake as a free-standing, ultimate principle. Those theories are – as repeated by Brock (p. 301) – vulnerable to what has been termed the ‘levelling-down objection’: if equality is our sole value, we might be able to reach it either by improving the situation of those individuals who have less of a certain good or, alternatively, by lowering the standard of those individuals who have more. The second alternative can have extremely counter-intuitive results.<sup>3</sup> A more careful reading of the literature in question, however, reveals that very few egalitarians defend equality as the sole moral value. Most egalitarians do not attach intrinsic value to equality and so can allow that inequality is not always the worst result. This means, I believe, that Brock needs to say more to defend her criticism of egalitarians than she does in *Global Justice*.

Beside her version of the original position, Brock offers another way of justifying her version of sufficientarianism, which she introduces with the following words: ‘A sceptic might complain that such armchair theorizing is all well and good, but what evidence is there that anything like what I suggest would actually be chosen?’ (p. 54). I believe that this question hints at a problematic understanding of original position type justification. In order to get to the bottom of Brock’s question, let us first summarize a few main aspects of a broadly Rawlsian original position.

2. Most recently D. Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave, 2009).

3. D. Parfit, ‘Equality or Priority?’, *The Lindley Lectures*, University of Kansas, 1995.

The central idea behind the justificatory procedure of the original position is that a fair agreement among free and equally situated individuals produces principles which are just. This procedure is fair if all bargaining advantages and disadvantages have been removed from the deliberation process. Our acceptance of its result depends first on our accepting that a fair agreement between individuals is capable of establishing principles of justice, and second on the fact that the original position is adequately designed to produce such fair terms of agreement. If both conditions are fulfilled, the principles arrived at in the original position can be used to make critical assessment of current existing institutions. The principles generated in the original position are morally important in our real world for the very reason that they were arrived at in a situation that was free from morally irrelevant contingencies. Those who want to question the principles can either deny the meta-ethical contractual position, according to which fair agreement between free individuals is morally relevant; or they can question certain features of the set-up of the original position, such as the rationality of the parties or the information made available to the parties. Importantly, whether real people agree with the principles arrived at in the original position has no bearing on their justification: 'It is irrelevant to the justification of principles that they have or ever will be actually agreed to by anyone in the real world.'<sup>4</sup>

We can now see that Brock does not share this understanding of the original position. This becomes clear when we look at the reply given by Brock to the sceptic quoted above, where Brock presents the empirical work of Frohlich and Oppenheimer to support her sufficientarianism. According to these empirical findings, most real-world people would opt for a guaranteed floor constraint and against more egalitarian principles of justice, such as Rawls' difference principle. Frohlich and Oppenheimer's findings have been used before by political theorists to support their normative claims, for instance by David Miller.<sup>5</sup> But unlike Brock, Miller does not understand these empirical findings as evidence for normative claims arrived at through the process of the original position (in fact, Miller is generally sceptical of contractualism as a method to generate moral principles).<sup>6</sup> Instead Miller defends the more modest claim that 'an adequate theory of justice must pay attention to empirical evidence' and that 'social scientific and philosophical studies of justice are necessarily interdependent'.<sup>7</sup>

From a broadly Rawlsian understanding of the original position, the sceptic has missed the point of the original position as a justificatory procedure.

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4. S. Freeman, *Rawls* (Abingdon: Routledge, 2007), p. 144.

5. D. Miller, *Principles of Social Justice* (Cambridge, Mass.: Harvard University Press, 1999), ch. 4.

6. *Ibid.*, pp. 58-59.

7. *Ibid.*, pp. 42-43.

What could be said in her defence? She might appeal to two aspects of Rawls' justificatory procedure which could be understood as supporting her position. First, she could appeal to the idea of a reflective equilibrium which is arguably as important a justificatory strategy as the original position. Second, she might refer to Rawls' thought that '[j]ustification is addressed to others who disagree with us, and therefore it must always proceed from consensus, that is, from premises that we and others publicly recognize as true...or acceptable.'<sup>8</sup> I do not think that these two aspects of Rawls' theory support Brock's use of empirical findings to buttress her conclusions from the original position. And regarding the reflective equilibrium, we are not asked simply to accept or dismiss the results of the original position, in which case the whole process of the original position might seem superfluous. If we could simply repudiate or affirm the principles generated by the original position just because they do not correspond to our convictions, why then not take these convictions as the sole basis for our moral thinking? In Rawls' description of the reflective equilibrium, we are asked to test the principles delivered by the original position against our well-considered convictions of justice. If they are tension with each other, we 'modify the account of the initial situation or we can revise our existing judgements'.<sup>9</sup> What we cannot do, without making substantial changes to the justificatory role of the original position, is to present our judgments as mere counter-arguments against the results of the original position. Brock might reply that she has a different understanding of the original position and that she understands the justificatory procedure more along coherentist lines. This could be a promising route to argue for the inclusion of empirical findings into the justificatory procedure; as Brock, however, provides no discussion of the relationship between the reflective equilibrium, the original position and empirical findings, her understanding of the justificatory procedure remains obscure.

Regarding (ii), principles generated by the original position are not justified if the addressee of the justification cannot accept the premise, for instance the set-up of the original position. But as long as you accept the premise of the argument and the reasoning that leads to the conclusion, the conclusion itself is justified. These remarks should help us to see more clearly what form Brock's criticism of Rawls' egalitarian principles of justice should take: Brock needs to criticize the conditions of the original position and to offer an alternative, more convincing version of it than Rawls himself provided. She needs to show why this alternative design of the original position is better suited to capture our considered moral judgements - or else dismiss the idea of the original position altogether.

8. J. Rawls, 'Justice as Fairness: Political not Metaphysical' in J. Rawls, *Collected Papers*, S. Freeman (ed.) (Cambridge, Mass.: Harvard University Press, 1999), p. 394.

9. J. Rawls, *A Theory of Justice* revised edition (Cambridge, Mass.: Harvard University Press, 1999), p. 18.

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