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Mülakat / Interview

Interview with Pogge

Özlem Denli: I will write an essay on your theory of global justice. In addition, we worked on the following questions. (**1**) Is it fair to argue that there is a culturalist tendency in political philosophy emphasizing cultural pluralism and specificity, and concepts such as tolerance and recognition, which accompanies the process of globalization? In your opinion, what is the meaning of cosmopolitanism?

Thomas Pogge: Yes, this culturalist tendency is certainly there, growing out of a concern to protect and preserve the many cultures, languages, religions, world views and ways of life extant on this planet. Instead of a global melting pot or monoculture, which would most likely be dominated by Western-style consumerism, we – and this includes many Westerners – would rather live in a culturally diverse world that would offer people genuine alternatives in regard to their local community and lifestyle.

'Cosmopolitanism' denotes in the first instance support for the idea of a single global society, something like Kant's world republic. Cosmopolitans in this legal or political sense are advocates for a

world state. But in philosophy another meaning has established itself. Here cosmopolitanism is the idea that the whole human world should be shaped in light of the equally weighted needs and interests of all human beings – and not through the usual bargaining that gives some nations, firms and persons vastly disproportional influence. Given certain empirical facts or assumptions, this philosophical cosmopolitanism may lead to the endorsement of legal or political cosmopolitanism. But it does not have to. Thus one might argue that people's need for cultural diversity is best met in a world in which reasonably autonomous territorial states continue to play a major role.

Özlem Denli: (**2**) Is Rawls a culturalist thinker in his later work, especially "the Law of Peoples"? How do you relate your work to Rawls's early and late theorizing?

Thomas Pogge: Rawls is expressing support for the idea that non-liberal ways of organizing national societies should be tolerated and respected, in particular such "decent hierarchical societies" as his infamous Kazanistan. But, in fact, his respect for such societies is barely skin-deep as Rawls also expressed the strong hope that these societies will reform themselves into liberal ones. His main reason for tolerating decent societies seems to be that this is the best way of facilitating their self-reform: that any show of disrespect or pressure would be counter-productive.

Rawls's early work, pulled together in *A Theory of Justice*, taught us to focus moral attention, first and foremost, upon a social system's basic structure: its central organizing institutional arrangements. This topic is of crucial importance not merely at the level of the nation state but, with the rapid emergence of a highly influential global institutional architecture after the end of the Cold War, also at the supranational and global levels (for example, in regard to the formation

of the European Union and the World Trade Organization). But, amazingly, Rawls misses this crucial topic of global institutional design even while historical events during the 1990s were bringing it to social prominence. The eight laws of peoples he proclaims seem to endorse a kind of libertarianism at the global level, approving any international institutional arrangements that states may have agreed upon ("Peoples are to observe treaties and undertakings"). Such approval is problematic, given that expertise and bargaining power among states in our world are, and in a Rawlsian world would continue to be, very unequally distributed, resulting in a skewed international order that leads to ever escalating economic, social and political inequalities. It is true that Rawls calls for a "fair background framework" governing international relations and speaks out against "unjustified distributive effects" of supranational cooperative organization. But because he does not provide, and explicitly rejects, any conception of social justice focused on the global institutional order, his theory lacks any basis on which one might judge a given background framework to be fair or unfair, or given distributive effects justified or unjustified.

Özlem Denli: **(3)** Is global justice an institutional matter alone? What is the role of virtue, conscience and sense of justice in dealing with global hunger and poverty? Can you name some basic values and principles that ground or support your critique and reform proposals regarding global justice?

Thomas Pogge: Global justice cannot be a solely institutional matter because social institutions – the rules, practices and procedures that structure and organize the common life of human beings – must be put in place, preserved or revised, interpreted, applied and enforced by living human beings. For this reason, an institutional order

can be just for any length of time only when it enjoys the intelligent and morally motivated allegiance of citizens and public officials. Here the key virtue is one of role-differentiated anti-nepotism. Public officials must be committed to the idea that, when they act in their capacity as officials, they must completely set aside their personal attachments for the sake of practicing perfect impartiality. They are not merely asked to give more weight to their allegiance to society than to their allegiance to their family and friends (which would be remarkable enough!). Rather, they are asked to give *no special weight at all* to the needs and interests of their loved ones.

On reflection, this is quite a surprising element of ordinary moral thinking. Human beings form very close bonds with one another: the bond between a parent and her child, for example. And it is very natural, then, for people who stand in such a very close relationship to give it much special weight: for a mother, say, greatly to prioritize her child over other people to whom she has a much slighter attachment or none at all. To be sure, the special weight a mother may give to the needs and interests of her child is not unlimited; but it is nevertheless quite substantial. It is all the more remarkable, then, that ordinary morality strictly limits the scope of any such partiality: there are certain contexts in which she may give even quite important interests of her child no special weight at all. When she makes decisions as principal of a high school, for instance, it would be wrong of her to give greater weight to her own child's interest in good grades than to the analogous interest of other pupils. The same is true when she holds a public office that involves the awarding of government contracts.

The same is true even when she merely exercises the office of citizen, when she weighs in, for instance, on the question whether and how affirmative action should be continued in her country. In this context it would again be unfair of her if she based her public statements on private reasoning such as the following: "I love my chil-

dren and, if they were girls or black, I would of course speak up in support of affirmative action. But in fact my kids are both white boys who would be taxed to fund an affirmative action effort that would also erode their competitive advantage over girls and non-white kids. For the sake of my children, I will therefore use my political voice in opposition to affirmative action programs." Even opponents of affirmative action would find such reasoning morally deficient: it is widely agreed that, in their public pronouncements and electoral decisions about matters of legislation and institutional design, citizens ought to set aside their private commitments and loyalties to focus exclusively on social justice and the national good.

To be sure, this sort of impartiality of citizens and public officials is not fully achieved in any society today. But it is widely enough shared as an ideal in the more advanced societies to afford substantial protections to the weak and vulnerable. Poverty and hunger could not continue if an analogous impartiality requirement were recognized on the global level in regard to the design and application of global institutional arrangements. This is my hope for moral progress: that there will come a time when those who participate in the formulation or implementation of global rules, practices or procedures will, in this capacity, set aside not merely their allegiance to their family and friends, but also their allegiance to their home country, and will single-mindedly aim for just institutional arrangements, that is, institutional arrangements whose design can be justified by reference to the equally weighted needs and interests of all human beings worldwide. In a world in which most supranational officials are cosmopolitans in this sense and in which such cosmopolitanism is demanded of them by citizens worldwide – in such a world serious deprivations would not be hard to avoid.

Human rights are meant to formulate and to protect the most important needs and interests of human beings, and the central aim of

supranational institutional design should then be the full realization of human rights worldwide. To be sure, human rights do not exhaust justice and justice does not exhaust what is important, nor even what is morally important. Still, the appeal to human rights suffices to ground my critique of the global status quo and my institutional reform proposals.

Humanity has the capacity to establish and maintain and a global institutional order that would fully realize human rights. Yet human rights are still massively under fulfilled around the globe. It is our responsibility, the responsibility of the more privileged citizens around the world, to conceive and to implement suitable institutional reforms that would advance the global realization of human rights.

Özlem Denli: (**4**) In your theorizing and reform proposals you deal with negative duties as a less controversial moral ground compared to positive duties. How does this emphasis affect the empirical side of your argument, and what challenges have you encountered?

Thomas Pogge: I have sought to show that the more privileged citizens in the more affluent countries are, though their governments actively involved in human rights violations insofar as these governments design and impose a global institutional order that foreseeable and avoidably reproduce massive human rights deficits in the so-called less developed countries. People have opposed my thesis by claiming that those human rights deficits have other, more local causes. Against this, I have tried to show that these relevant local causes are often themselves causally dependent on supranational institutional factors or working in tandem with them. These empirical matters are certainly complex and difficult; and it is my hope that the controversies my work has triggered will motivate more solid social science research into the causal effects of particular supranational institutional features

and how these effects interact with the effects of other relevant causal factors (national climate, geography, natural resource endowment, culture, religion, political system, colonial history, etc.).

Özlem Denli: (**5**) What kind of institutional structures can be used to implement your idea of a global resource dividend?

Thomas Pogge: The Global Resources Dividend (GRD) has two sides: collection and disbursement. On the collection side, there are three elements. First, we need to formulate rules about what countries are to be charged for and how much. Here the idea is to discourage natural resource uses that are especially harmful, for example by causing environmental degradation or climate change or by depriving future generations of their fair share. Second, we need to put in place an assessment system that monitors how much crude oil is being extracted in Nigeria or how much CO_2 is being released in Indonesia. Although the GRD is collected from countries, its cost will be passed on, typically via companies, to end-users of scarce natural resources and to the consumers whose purchases and consumption sustain greenhouse gas emissions and pollution. Third, we also need to create a system of sanctions maintained by compliant countries against non-compliers. The former are required to put special tariffs on imports from and exports to non-complying countries in order thus to collect the GRD payments upon which the latter have defaulted.

On the disbursement side, there are two essential elements. First, we need to formulate rules for how the GRD revenues are to be spent effectively toward the full realization of human rights. These rules should be highly flexible in regard to channels, encouraging the use of any conduits – international agencies, national governments, provinces, municipalities, NGOs, associations, unions, individuals, etc. – that can make funds effective toward their purpose of realizing hu-

man rights. Second, we need an administrative staff that makes spending decisions pursuant to these rules.

The entire GRD system must be continuously evaluated and periodically adjusted in light to the experience gathered. This evaluation should also observe and learn from other relevant national and international schemes ("best practices").

Özlem Denli: (**6**) At the expense of oversimplification it can be argued that the primary addressee of your reformist vision is the influential actors in affluent countries. What can be the role of masses in poor countries? What political mechanisms and processes can supplement the attempts for institutional reform?

Thomas Pogge: Citizens of poor countries certainly can, and increasingly do, play a significant role in the reform of their own society as well as in pressuring their government to do a better job in representing the interests of the majority of their compatriots internationally. There are great gains waiting to be made in regard to the latter task especially. Some large developing countries – China, India, Brazil, South Africa, Nigeria, Indonesia, Argentina – have become quite influential in international negotiations, and these countries now constitute a substantial counterweight to the US, EU and Japan in international negotiations. But ordinary citizens in these countries typically have very little understanding of how, and how strongly, international institutional arrangements affect their interests. The foreign policies and negotiating stances of the most powerful developing countries are therefore typically heavily influenced by their economic elites: the owners and managers of the major export and import companies, especially. Here collective learning and mobilization could make a tremendous difference by preventing the political leaders of the less developed countries from selling out the interests of their underprivi-

leged compatriots.

There is much else that the masses in the less developed countries can do to promote their own emancipation. They can form unions and other associations to defend their rights and interests collectively. They can maintain mass media and blogs to provide news and interpretation alternative to the establishment views. They can advocate and practice solidarity with poor people in their own society and in other less developed countries. They can influence the conduct of corporations through consumer boycotts and other collective actions. And they can, through their own conduct; help eradicate reactionary and discriminatory practices that disadvantage women, people of color, gays, untouchables, or members of certain religions, for example. I have not written about such matters in detail not because I deem them less important but because I lack the knowledge and standing to contribute meaningfully to such national and regional discourses. I am much better equipped to think and write about the responsibilities of people like myself, reasonably privileged citizens of the more affluent countries.

Özlem Denli: (**7**) In your recent work, you deal with climate change and global warming as an issue relevant to global justice concerns. Can you elaborate?

Thomas Pogge: This initiative originated in a conversation with Jaap Spier, Advocate General of the Netherlands. Noting that more than 20 years had been wasted without any progress against climate change, we were wondering what political levers were left to compel governments finally to act toward saving our planet. We concluded that only one avenue had not yet been tried: encouraging courts to compel governments to curb greenhouse gas emissions.

There is, of course, the common view that governments have no

legal duties to do anything about greenhouse gas emissions unless and until they explicitly impose such legal duties on themselves – something they have recently failed to do one more time in Paris. But in view of the very serious harm greenhouse gas emissions are inflicting and will inflict on millions of human beings, the soundness of this view is, to say the least, not obvious. There is, after all, a lot of law that bears on the issue of inflicting harm: human rights law, international law, tort law, private law and environmental law – to mention just the most obvious. And does it really make sense to say that the best overall interpretation of all this existing law is that states are free to emit as much greenhouse gases, and thereby kill and harm as many people, as they please?

Our "Expert Group on Global Climate Obligations" (EGCO) – consisting of 14 eminent legal experts – has unanimously concluded that this makes no sense, that states have a collective duty to restrain their emissions in order to avoid inflicting catastrophic harm on their citizens, on foreigners and on people yet unborn. Using legal reasoning, we have tried to explore, concretely and in detail, what these legally binding restraints are. This is a difficult task because these restraints are not explicitly laid down somewhere in black-letter law. To discern the relevant legal restraints, we have had to consider large swaths of law along with associated legal precedents and *opinio juris* and then find the best unified interpretation of them.

This is closely analogous to what judges and jurists do in regard to other legal questions also. For example, a judge may be asked to decide whether a particular prison is so overcrowded that it is inconsistent with the inmates' human rights. There is no black letter law that allows the judge to derive a maximum permissible number of inmates. And yet it is clear that a prison can be overcrowded in human-rights-violating ways. So what is the threshold? The judge does not have the luxury to decline to decide, nor does she have the luxury

to give some vague range. She has to make a precise decision, using whatever legal materials are available in order to single out one most plausible number as the maximum number of prisoners that may be housed in the prison in question.

How then can a judge reason her way to a legally sound decision on matters of greenhouse gas emissions? She can start with the insight that states have a collective legal duty to avert climate catastrophe. To fulfill this collective duty, states must limit their emissions in the present and future years so as to achieve a high probability of avoiding massive harms deriving from, among other things: sea level rise; extreme weather events; acidification of oceans; shortages of food, water and oxygen; spreading disease vectors; extinction of plant and animal species. It is currently the very strong consensus of competent scientists that avoiding these disasters with high probability requires that we keep anthropogenic warming relative to the pre-industrial level below 2 degrees Celsius. Following this scientific consensus, the judge should then find that states have a collective legal duty to act so that the average global surface temperature will never rise more than 2 degrees Celsius beyond that baseline.

At the start of the Industrial Era, the share of Carbon Dioxide (CO_2) in the air was about 270 parts per million. Since then, human activities have already raised this concentration by 50 percent to 400 parts per million. This higher concentration leads to higher absorption of solar energy, which in turn is increasing the Earth's average surface temperature by 1.6 degrees Celsius. More than half of this increase has already occurred.

Scientists tell us that, to respect the 2-degree ceiling, the abundance of CO_2 in the atmosphere must not be allowed to exceed 450 parts per million and total future CO_2 emissions must therefore stay below 800 Gigatons (Gt or billion tons or 1000000000). To meet their collective legal duty, states might restrain, presumably by

agreement, their emissions so that they reliably stay below 800 Gt. If such an agreement existed, and if it worked, then states would be acting legally. But this is not the present situation. The course that states are currently on will lead to climate catastrophe. Annual CO_2 emissions worldwide are currently at 37 Gt and have been rising by about 3 percent each year. If this pattern continues, the remaining budget of 800 Gt of CO2 will be used up in 2033 and breach of the 2-degree ceiling will then become inevitable. Even if states reduce greenhouse gas emissions according to their present pledges, we will have gone through the remaining 800 Gt by 2040. Clearly, states collectively are engaged in conduct that breaches their collective legal duty to keep their citizens and future generations safe from extremely destructive climate change.

But how does this collective legal duty on the set of all states translate into specific legal default duties for particular states at particular times? This question is tricky because, on the face of it, each state can say that its present greenhouse gas emissions are fully consistent with respecting the 2-degree ceiling. Even if my state releases enormously large emissions this year, this is not inconsistent with averting climate catastrophe because it is always possible that other states, or my own state in the future, reduce emissions steeply enough for the 800 Gt budget to be respected. By this logic, the legal duty of states restrains only when it is already too late: from the moment when the collective constraint is actually being breached, in 2033 or whenever the 800 Gt budget will be exhausted. We EGCO members argue, however, that some states are acting illegally today by acting in ways that run an unreasonably great risk of climate catastrophe – that a state cannot justify its own excessive emissions by expressing the unfounded hope that other states or its own future self will behave better than it is behaving now.

What is implicit in these thoughts is a legally sound position on the

most reasonable allocation of the remaining 800 Gt of CO2 – both over states and also over future years. Only with such an allocation can we judge – here and now – that a specific state's emissions right now are greater than the law allows.

How do we derive this allocation in a legally sound way? In the time axis, we simply calculate a glide path, defined by a constant percentage decline over time – a glide path that would reliably respect the 800 Gt ceiling. This glide path has a gradient of 5% per annum. If humanity reduces its CO_2 emissions, from the current level of 37 Gt per annum, by 5% each year, then it will never exhaust the remaining 800 Gt. Our annual net CO_2 emissions would be 17 Gt in 2030, 6Gt in 2050, and 0.45 Gt in 2100.

The next question is how these permissible annual emissions are to be allocated among countries. Here politics tends toward a contractarian allocation; every country is served according to its vulnerability and threat advantage. In this scenario, vulnerable Bangladesh would be paying Switzerland and Canada to reduce their much higher emissions. We argue that, by contrast, existing law is best interpreted as tending toward equal per capita emissions entitlements. Current global CO_2 emissions are 5 tons per person per year. If total emissions must fall by 5% annually, then *per capita* emissions must fall by 6% annually to compensate for the 1% annual increase in the human population. The required glide path – both for the world at large and also for each individual country is then one that starts from 5 tons per person per year in 2015 and from there goes down each year by 6%. If all countries stick to this glide path, we have a sufficiently high probability of averting a climate catastrophe. This annual reduction would get average emissions down to two tons per person in 2030, one ton in 2041, and one-fifth of a ton in 2067.

EGCO has also formulated a fair allocation of our collective responsibility. Here the basic idea is simply that no country can claim for it-

self the permission to emit more *per capita* than can be permitted to all other countries. Every country must comply with the same glide path that humanity at large must follow. The most industrialized, high-emission countries do not get penalized for their historical emissions (though these do make their duties more stringent); but they also do not get a break for having to implement the largest reductions.

Most countries are currently below this common glide path, emitting less than five tons of CO_2 per person per year. But many rich countries are far above it. The European Union and China emit about 7 tons of carbon dioxide per person per year. The US and Australia emit around 17 tons. And Kuwait's emissions are at 28 tons per person per year. Such countries far above the common glide path are legally required to do what they can to get on track by catching up with the schedule of decreasing global emissions. Insofar as they cannot sufficiently lower their emissions right away, they must offset their temporarily excessive emissions by helping poor countries stay well below the glide path. By supporting poor countries' transformation toward green energy, rich countries can offset their temporary excess in emissions with the result that the world as a whole complies with the required glide path of a 6-percent annual reduction in *per capita* CO_2 emissions.

This is just a brief thumbnail sketch of the work EGCO has done. We have published our full account of states' climate duties as the Oslo Principles, along with a very thorough legal Commentary explaining and justifying these Principles. Both have been published together as a book: *The Oslo Principles On Global Climate Obligations* with an extensive legal Commentary, authored by Antonio Benjamin, Michael Gerrard, Toon Huydecoper, Michael Kirby, M.C. Mehta, Qin Tianbao, Thomas Pogge, Dinah Shelton, James Silk, Jessica Simor, Jaap Spier, Elisabeth Steiner, and Philip Sutherland, Expert Group on Global Climate Obligations (The Hague: Eleven Inter-

national Publishing 2015). Both can also be freely downloaded from the website of my Yale Global Justice Program at http://globaljustice.macmillan.yale.edu/news/oslo-principles-global-climate-change-obligations.

The Oslo Principles show that our world's governments can come together and protect our planet. If all countries tackle the problem together, then we can all live well, even as we use energy more frugally, shift our consumption away from energy-extravagant choices and switch from fossil to renewable energy sources. All human beings can have the energy they need to lead comfortable, fulfilled lives. The Oslo Principles present a hope for agreement on an equitable path toward averting our threatening climate catastrophe.

Let me add in conclusion that the Earth's climate is enormously complex, and our scientific grasp of it is continuously evolving. As we learn more about our planet's climate, we may need to adjust the common glide path entailed by the Oslo Principles and the associated national obligations. States' legal duty to avert a climate catastrophe does not change. But there may well be changes in what each state must do concretely to fulfill this duty, which is determined by the best scientific knowledge about its choices and their foreseeable effects.

Özlem Denli: **(8)** Is private property a human right? Why / why not?

Thomas Pogge: It is very important for people to exercise a high degree of control over their immediate environment: the place where they live and the things they use day-to-day. To have such control, you do not need to own these things, you might rent your apartment and everything in it with contractual protections ensuring that others cannot barge in when they feel like and that you cannot be thrown out from one day to the next. If you have such control and protec-

tions, then I see no human rights problem in your hypothesized inability to become the private owner of the apartment and its contents. The human right I would defend is then, in this regard, weaker than a human right to private property.

In another sense, however, the human right I would endorse is also stronger. The human right to private property is usually understood as entitling any person to acquire things as their own *if and insofar as this person has the money to afford or other capabilities to acquire them*. In my view, this makes the right too weak. A poor homeless person, who lives without protection from criminals and the elements (lousy weather), isn't helped by the – for her purely hypothetical – right to buy an apartment if she had the money. She has a human right to adequate shelter regardless of her financial situation, to at least a room that she can control along with a minimum supply of personal effects such as a bed, a chair, a table, a stove, a toothbrush, soap, water and so on. Having secured access to and reasonable personal control over such a minimally adequate set of items is central to a person's economic, social, civil and political rights.