

States Are Not Basic Structures: Against State-Centric Political Theory¹

Abstract

Contemporary political philosophy often operates on a “two-tiered” theoretical treatment of global politics, on which domestic political systems and the principles governing their internal dynamics constitute one tier, and on which the relationships between states and governing multinational institutions constitute a second.² One way of grounding and justifying this approach, preferred by Rawls, is called constructivism. Constructivists describe the world as containing specific domains and domain-types of political and social interaction, and relativizes principles of justice to important versions of these – states, in the case of contemporary two-tiered political philosophy. In this paper I argue against the specifically Rawlsian account of uniting these three commitments (two-tiered political theory, constructivism, and statism) and gesture towards a general argument against the coherence of this bundle of views.

I.

Contemporary political philosophy often operates on a “two-tiered” theoretical treatment of global politics, on which domestic political systems and the principles governing their internal dynamics constitute one tier, and on which the relationships between states and governing multinational institutions constitute a second.³ One way of grounding and justifying this approach, preferred by Rawls, is called constructivism. Constructivists describe the world as containing specific domains and domain-types of political and social interaction, and relativizes principles of justice to important versions of these – states, in the case of contemporary two-tiered political philosophy. In this paper I argue against the specifically Rawlsian account of uniting these three commitments (two-tiered political theory, constructivism, and statism) and gesture towards a general argument against the coherence of this bundle of views.

Hobbes, Locke, and Rousseau theorized in the abstract about the emergence of a social contract uniting and governing a political community whose boundaries of membership, responsibility, and accountability roughly corresponded to its geographical boundaries. During this same historical period, the part of the world in which they did their abstract theorizing about neatly bounded communities successfully began the colonial campaigns that created world politics as we know it, expanding the reach of European coercive control far beyond the borders designated as “home” and those designated as proper signatories to the social contracts.

¹ Thanks to: Henry Richardson, Madison Powers, Helena de Bres, Attila Tanyi, Abigail Higgins, WHOEVER ELSE HELPS

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It is curious, then, that the ongoing discussion on global justice and injustice often takes the form of arguing about what nations owe to each other as such, or about what citizens of different states owe to each other as fellow inhabitants of the globe despite being members of different political systems. This discussion typically involves a “two-tiered” theoretical treatment of global politics, on which domestic political systems and the principles governing their internal dynamics constitute one tier, and on which the relationships between states and governing multinational institutions constitute a second.⁴

From this basic two-tiered starting point, a spectrum of disagreement emerged concerning which principles ought to have priority, especially as the point bears on the particular complications of international distributive justice. On one end of the spectrum, writers like Thomas Pogge and AJ Julius insist that the principles of justice that bear on the global political system (that exists as an aggregate or epiphenomenon of discrete national political systems) ought to take priority and constrain the behavior of states, even outside of their borders. Towards the other end, dissenters like Thomas Nagel and John Rawls Hobbesianly insist that states’ internal responsibilities ought to take precedence, even going as far to endorse the stronger position that states are constrained only by basic humanitarian principles outside of their borders.⁵

Whatever is to be said for this descriptive view, it sits awkwardly next to the strongly interventionist bent of the world history that established the international system as we find it today. Perhaps justice demands that each state manages its own economic and political affairs, as the defenders of two tiered theories of political justice maintain. But the colonial conquest of much of the world by a handful of northern European empires and the subsequent direct and indirect management of much of the world’s overall population has had a powerful effect on international affairs as we now know it. The widespread formal and unveiled political domination of colonized societies by colonizer states was phased out as recently as the period from the 1940s to the 1970s, and persists at smaller scales in some parts of the world.

My views on what should be done about the aftermath of colonialism and today’s global problems as such are quite sympathetic to the Pogge and Julius end of the spectrum of debate on international distributive justice. Correspondingly, they are unsympathetic to much current discussion of distributive justice that assumes something like a two-tiered account: in effect, amounting to discussions of how former colonizer powers can “justly” distribute the ill-gotten material, institutional, and cultural plunder from past and (arguably) present colonial and neocolonial domination.

Nevertheless, I will not focus here on taking sides in the disagreement about the priority or lackthereof of principles of global justice as they relate to international distributive justice. My task instead will be to attack what I see as a load bearing theoretical assumption of that discussion: the basic coherence of the application of a theoretical distinction between “tiers” of politics to debates about global politics in the world as currently constituted.

⁴ Blake and Smith use the term “two-tiered” in discussion of Rawlsian views of international distributive justice. I use this term to describe the division of political principles and modes of an analysis into a domestic tier and a global tier, though some of what I say here may apply to certain ways of theorizing local-national and local-global distinctions as well. Blake and Smith, “International Distributive Justice.”

⁵ Nagel, “The Problem of Global Justice,” 142–43; Pogge, *World Poverty and Human Rights*; Julius, “Nagel’s Atlas.”

Neither does my goal here require a principled rejection of constructivism, as some strictly cosmopolitan rejections of two-tiered politics might. Constructivists in general prefer to describe the world as containing specific domains and domain-types of political and social interaction, and relativizes principles of justice to important versions of these. Within this general *modus operandi*, Rawls identifies the “basic structure” as a particularly important domain-type, which he takes to be the subject of domestic justice and the province of the state.

But I do not deny the (importantly empirical) claim that the world as currently constituted may hold a multiplicity of basic structures in the specifically Rawlsian technical sense. Neither do I deny the more general constructivist twin theses that 1) the world may be, in some theoretically important sense, separable into domains and that 2) principles of justice may need to be relativized to these domains.⁶ If either the specifically Rawlsian or general constructivist account is correct, then this would at least provide a coherent descriptive basis for the normative order suggested by two-tiered global politics, and identifying these basic structures could play an important role in political theorizing. Thus, my criticism of the particularly strong statist commitments of statist two-tiered politics rests neither on a descriptive commitment to portraying the world as a single global basic structure, nor upon a normative commitment to a strong cosmopolitanism or egalitarianism.⁷

Rawls’ theory is two-tiered, constructivist, and statist. It starts from the constructivist commitment that the world is separable into domains of interaction that ought to be governed by distinct principles of justice. Additionally, Rawls takes on the two tiered commitment that global politics ought to be thought of in (at least) two main separate tiers: the domestic or state-level tier and the global, inter-state, inter-peoples tier. Finally, Rawls takes on the statist commitment that the principles of justice that govern the state-level domain have some sort of theoretical priority over those that govern the inter-state level, thus establishing domestic justice as the primary site of the pursuit of overall justice.

I argue here against what I see as an important suppressed empirical premise necessary to make sense of the tripartite combination of constructivism, two-tiered politics, and statism in Rawls’ thought: that the divisions between basic structures or otherwise normatively significant assemblages of international structures conform to the political boundaries of states. I offer reasons to suspect that the borders between the world’s states might not even roughly correspond with divisions in the world’s basic structures, that the map of basic structures and the map of the world’s current nation states might look quite different. This is trouble for the constructivist positions like Rawls’, which treat the jurisdictional and geographical boundaries of states as political divisions between basic structures, and thus takes the aforementioned boundaries as ones that appropriately carve the world at its normative joints. The considerations that suggest that states are not basic structures undermine the particular separation between domestic and global politics which is needed to maintain the defense of statist two-tiered global politics, and also cosmopolitan answers to those arguments that concede this framework.

⁶ This characterization is Meckled-Garcia’s, from section A of “On the Very Idea of Cosmopolitan Justice”. Meckled-Garcia, “On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency.”

⁷ Cohen and Sabel also take note of the conceptual distance between the statist pole of Nagel and Rawls and its strongly cosmopolitan anti-pole, though in response to Nagel rather than Rawls. Cohen and Sabel, “Extra Republicam Nulla Justitia?,” 152–53.

Then, even if we accepted the fundamental aspects of Rawls' theory more or less wholesale, and were willing to accept the twin theses of constructivism operating in the background, it's far from clear that we could justify the statist orientation that some Rawlsians and Rawls himself adopted. Since John Rawls' theory and many aspects of its basic framework are commonly appealed to by discussants in this literature, I confine myself to arguing against Rawls' ideas. But many of the charges I aim at Rawls apply broadly to any constructivist political theory that separates politics into two tiers. Thus, I aim to thereby motivate abandoning the use of statist two-tiered frameworks of international justice generally, or at least to motivate the empirical defense of the approach that I argue is required.

In part II I show why states would have to correspond to basic structures in order to justify a Rawlsian account of statist two-tiered frameworks of global justice. In part III I give reasons to doubt that states are or correspond to basic structures. In part IV I conclude.

II.

The most famous and primary of Rawls' works, *A Theory of Justice*, develops the account of justice for the well-ordered society, considered in abstraction from the relations it might have to other societies. Using the concepts elaborated in *A Theory of Justice* and related papers, Rawls went on to present a picture of inter-societal justice in *A Law of Peoples* premised on the separateness of the tier of inter-societal relations and the principles that govern them.

Among the idealizing assumptions used to develop the principles of justice for the domestic tier is that the well ordered society is a "closed" system in causal "isolation from other societies".⁸ From the perspective of developing an ideal theory, nothing has gone wrong simply because of the introduction of this assumption. However, this assumption, and its interaction with the theoretical decisions made with respect to other core technical terms that form the foundation of his political theory, helps explain why the two-tiered ideal theory distinction unravels when moved to the real world context of the state system as we find it in the early 21st century.

The ideal form of a society, for Rawls, is a "fair system of social cooperation".⁹ This is to be distinguished from a domain of merely coordinated activity, which might be achieved by the sheer will or coercive control exerted by a sufficiently powerful central authority.¹⁰ A fair system of social cooperation would not simply involve coordinated activity of its members, but would be a domain in which that activity is governed by "publicly recognized rules and procedures which those cooperating accept as appropriate to regulate their conduct"¹¹.

It should not escape our notice, even at this level of abstraction, that the empires (or shells thereof) in which debates are taking place about international distributive justice certainly were not societies in this sense in very recent history, given plausible guesses about the relation between the relationships of dominance that categorized colonial rule and the reasons people regulated their conduct by the rules and procedures that issued from this political context. Many of them arguably are not even in the present, depending on what choices we make about how to describe their internal dynamics. Rawls is careful not to idealize too heavily here: this conception of what a society is serves a

⁸ Rawls, *A Theory of Justice*, 7.

⁹ Rawls, 6–7.

¹⁰ Rawls, *Justice as Fairness: A Restatement*, 6.

¹¹ Rawls, 6.

regulative and evaluative ideal to identify when a society has succeeded as such (the “well-ordered society”). However, he stops short of characterizing a society in this sense as a description of actual social and political communities.

Pressing on: the “basic structure” is the “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”.¹² This includes the “political constitution, legally recognized forms of property, and the organization of the economy”.¹³ For Rawls, this basic structure is the direct subject of justice as fairness, the primary conception of justice in Rawls political philosophy, which for Rawls is equivalent to domestic justice.¹⁴ The basic structure is a relationship between persons: specifically, the “free and equal” citizens who populate the society and whose associations are regulated by the institutions that make up the basic structure (in *Justice as Fairness: A Restatement*, Rawls hastens to remind us about the closed society assumption when introducing this point).¹⁵

The definition Rawls has given for basic structure is a functional one in the following sense: what makes a basic structure a basic structure is in what causal effects it in fact has on those whose lives and opportunities it structures. Then a basic structure is not made one by virtue of its ideological role, not (directly) because of the forms of regard or legitimacy reserved for the institutions that claim to regulate it and not made one in virtue of the epistemic role it might play in simplifying our causal and explanatory accounts of the political world around us, except insofar as and precisely to the extent that these facts themselves exert the kind of causal influence initially specified.

It is here that the important role of the closed society assumption asserts itself. Rawls can justifiably treat the “political constitution, “legally recognized forms of property”, and the “organization of the economy” as both domestic issues and as, jointly, an elaboration of the concept of the basic economy. In a closed society, domestic decisions with respect to these things (corresponding in the real world to a state’s constitution and constitutionally governed institutions) would play the causal role picked out for the basic structure: determining the distribution of advantages and disadvantages, rights and obligations, to the members of the society. However, for the real world, causally open societies that Rawls’ theory is being deployed to describe, a state’s constitution and its own legal structure of property and other economic decisions are just some of the causal inputs to the lives of its citizens among others: economic, political, and cultural pressures that permeate the society’s borders are also among the relevant causal inputs.

Then: describing actual states in the world as having separate basic structures – a load bearing aspect of the two-tiered framework - cannot coherently be understood as an innocuous simplification or postulate built somehow into the very concept of state. It turns out to involve an implicit empirical claim about the causal contributions of the domestic space vs. that which is exogenous to it, and a very weighty one: that the domestic institutions and associations of a state are the causal inputs that structure the divisions of advantages of basic rights in different nations. This empirical claim requires empirical defense, and I have yet to identify any in the philosophical literature as it currently stands.

¹² Rawls, *A Theory of Justice*, 6.

¹³ Rawls, “The Basic Structure as Subject,” 159.

¹⁴ Rawls, *Justice as Fairness: A Restatement*, 11.

¹⁵ Rawls, 40.

My counter argument consists of two mutually supporting points. First, a descriptive point about what our political world is like: on the assumption that domestic institutions, forms of economic organization, and legal frameworks are not the sole or even the main causal determinants of the rights and divisions of advantages within nation states – a conjecture I regard as overwhelmingly likely – then neither the formal geographic borders of states nor the figurative boundaries of their institutions' domains of responsibility pick out the boundaries of basic structures.

Secondly, a justificatory point: states would need to pick out basic structures for Rawlsian two-tiered statism to both be justified and applicable to our actual political world as we find it. This is because, as Rawls himself explains, basic structures are the actual subject of domestic justice. The connection is not arbitrary or lexical: it is the functional role that basic structures play in organizing social life and the benefits thereof that justifies two-tiered theory's special concern for the relationships within them and the priority of the principles of justice to the domain of the state, which is thought to be the very same domain that "basic structure" picks out. Then, if states do not perform this functional role, the principles of justice that apply particularly to the domains of interaction picked out by basic structures do not thereby apply particularly to states or their constituent institutions.

If both of these are true, then applications of the statist two-tiered framework used to develop Rawls' ideal theory of justice to real world debates about migration politics and international distributive justice would be committed to a mistake of model-to-world inference: political philosophers have failed to correctly identify the real-world phenomena that are the counterparts of the phenomena that exist in the theory. Perhaps equivalently, they have misrepresented real world phenomena and the relations between them.

III.

A.

If the gloss given in section II is on the money, then it is enough to call the deployment of Rawlsian, statist two-tiered frameworks into question. To point out the claim that the borders of states correspond to basic structures is a positive empirical claim is also to point out where the burden of proof ought to lie in debates like the one on international distributive justice. But section II is only enough to make out the theoretical claim that, as defined, states at least with respect to the negative contrasting claim that states could only contingently (if ever) demarcate the boundaries of basic structures. That gets us as far as pointing out that it is theoretically question begging for Rawlsian two-tier political theorists to postulate that states constitute basic structures in the needed theoretical sense. But here in section III I aim to cast doubt on the empirical possibility that states more than rarely (if ever) actually demarcate the boundaries of basic structures.

A reminder of what's at stake: if we have reason to doubt that such a defense is in the cards, we thereby have reason to doubt the basic coherence of two-tiered Rawlsian frameworks, at least as applied to topics of real world justice like the debate on international distributive justice. Given the scope of this paper, I confine myself to arguing against the empirical description of the world on which states correspond to basic structures. But, cards on the table: this is an intermediate claim in service of motivating the further and weightier conclusion: that the very causal links that constitute a global economic and political system entail that there is just one global basic structure.

The implicit empirical claim of the application of the two-tiered Rawlsian framework to the real political context of non-closed “societies” admits of strong and weak interpretations. On the strong side, the use of two-tiered frameworks could betray a view on which a state’s domestic political constitution, scheme of property, and other basic institutions are the sole (**strong₁**) or causally primary (**strong₂**) causal contributors to the divisions of advantages and rights for their citizens. A **weak** interpretation would acknowledge the existence and explanatory role of exogenous causal inputs for the division of rights and advantages within any particular state’s borders, but would be committed to the specialness or other non-causal priority of the nation.

Strong₂ is the most plausible option. Strong₁ represents the simple assertion of Rawls’ simplifying assumption as the empirical reality of geopolitics in 2018, and is refuted by literally any evidence of causal connection from a state and the outside of its formal boundaries. The weak interpretation equivocates in a way that saves the cosmetic legitimacy of at the expense of the theoretical justification for doing so. The functional claim about the role the basic structure plays in structuring the associations within a “society” wasn’t simply an arbitrary indicator property that helped pick out what objects in the world, but also part of the explanation and justification for labeling the basic structure the proper subject of the principles of justice that govern the domestic tier of politics. If the causal input of the state’s boundaries and institutions is only the “basic structure” by nominal fiat – effectively tying a pretty ribbon around the causes we find most theoretically convenient to consider – then we’ve also given up on the aspect of the theory that allowed us to treat form and reform of the political institutions and forms of organization of and within a nation state as the full scope of the domestic tier of politics. That is to be committed to claims that jointly entail the incoherence of the two-tiered framework of global politics, whether or not one spots and attends to this fact or not.

The target claim for vindicating two-tiered Rawlsianism is the strong₂ claim about basic structures: that states are in some sense the primary (strong₂) causal contributors to the divisions of advantages and rights for their citizens. To make this out, it won’t be enough that the geographical boundaries of formal, internationally recognized sovereignty roughly correspond to the division of the world into states. That would fit the weak interpretation of the basic structures claim, which equivocates on the functional definition given by Rawls which is key to the justification for demarcating that which pertains to it as the target of principles of domestic justice. Further, it would be a simple repetition of the fundamental error this paper responds to: taking on board the theoretical terms and categorizations handed down by history (this time the political history of the world rather than the history of European political theory) rather than submitting them and their hidden baggage to scrutiny. We should be more demanding, and strong₂ tells us what to demand: it has to be true of these national divisions that the internal structuring forces of their forms of political community, institutions, and culture are the primary structuring forces constraining citizens and their associations.

B.

It is important to be clear on what would count as a defense of strong₂, and thereby of threefold commitments to two-tiered, constructivism, and statism exemplified by Rawls.

Powers and Faden come close to an explicit defense of strong₂ in *Structural Injustice*. They maintain that states are “normatively unique”, going some distance to fulfilling the implicit demand on two tiered constructivist statists to explain what is so special about states that makes them the basis on which to establish tiers of justice, and the principle for the “implicit division of moral labor” that arises

concomitantly with these tiers.¹⁶ They point out that states have “unique institutional capacities” that no other individual institutional actor within the existing global order has. The comprehensiveness of a state’s legal structure and the inherent redistributive nature of many of its exercises of power give it a special kind of causal influence over the “distribution of advantages, power, risks, and opportunities” of those who live in them – much like the role “basic structure” plays in Rawls’ thought.

Notice, however, that even were we to concede that states are unique in this way, we could still coherently insist that borders between states do not pick out borders between basic structures. First, this is at most an argument about the relative suitability of different institutional actors to affect the basic “division of advantages, power, risks, and opportunities” – it is not the needed demarcation between distinct distributions that is assumed by two-tiered constructivist and statist accounts of justice like Rawls’. It could be that the world’s actual basic structures cut across state borders, but the state that controls this side of the border is best positioned to affect the sub-domains of the basic structure that are also on this side of the border, and the state on that side is best positioned to affect the sub-domains on that side.

Secondly, and more importantly, Powers and Faden’s characterization is primarily about the *scope* of causal levels at an actor’s disposal. While this is practically relevant in deciding how to manage the political world we find ourselves in, it can’t play the role called for by *strong₂*. There is a claim about the breadth of individual causal inputs’ influence in distributing benefits and burdens relative to other individuated causal inputs; *strong₂* is a claim about the depth of their influence. To claim that states have more kinds of influence than other actors in distributing advantages and risks just isn’t the needed claim for the Rawlsian. For example, it could be that no one institutional actor plays the role of primary distributor of the benefits and burdens of social cooperation, and that some set of actors and causal inputs combine to form the basic structure. Then we can admit Powers and Faden’s characterization but deny that the state meets the *strong₂* criterion of a basic structure.

This should not be construed as a direct argument against Powers and Faden, since they do not portray themselves as attempting to defend a distinctively Rawlsian account of the importance of states, nor do they claim that states pick out basic structures. But my interest here is not in the particularities of the basic structure as a theoretical device or of Rawlsian thought. My interest here is in the justificatory role that his account of basic structures plays in stitching together two-tiered, statist, and constructivist commitments together. Rawls’ account of basic structure is, among other things, an attempt at answering what it is about states that makes them a proper basis for splitting the theoretical discussion of political justice into domestic and global tiers. If basic structure can’t provide an answer that justifies the going split of tiers, theorists with the three commitments to constructivism, statism, and two-tiered theory will need to find another justification.

C.

The implicit and explicit defenders of *strong₂* are committed to a description of the world on which states are the primary determinants of the division of the rights, advantages, benefits, and burdens of social cooperation for those that live within them. This description of the world faces a host of challenges.

¹⁶ Chapter 6, “The responsibility of states”, section 6.1. Powers and Faden, “What Structural Injustice Is.”

The fact that the relevant foreign forces causally structuring “internal” politics will not always be other states is a major complication for implicit and explicit defenders of strong2. Moreover, this fact in and of itself presents a further direct challenge to the state centrality of two-tiered frameworks like Rawls’. The dominant military power on the Indian subcontinent in the 19th century was not the armed forces of Hindustan but the British East India Company (certainly under the support of an imperial state but, importantly, not itself one).¹⁷ Economically and socially calamitous import substitution on the African continent, helped along by the trans-Atlantic slave trade, was primarily led by the combined effect of a decentralized mass of decisions made by British slave traders and cloth manufacturers, often with scarcely more support, regulation, or organization than the express permission of the crown – upending economic associations between contemporaries and altering intergenerational epistemic and economic links within families in various African communities.¹⁸ The myriad forms of social, political, and economic organization on the continent were reorganized by decisions made thousands of miles away – then, at least these communities, kingdoms, and empires were likely not basic structures in the strong2 sense Rawlsian defenders of two-tiered theory would need.

Take the contemporary United States, which is arguably still the country with the most bargaining and coercive power in the world, waning as it might be. It might be a good first guess that the US would be causally insulated from forces outside of its borders if anyone was. Yet we see evidence of profound causal sensitivity of the relationships of US institutions and associations to forces outside its borders and the formal scope of its sovereign institutions.

Consider, for just one easy set of examples, the specific issues of employment and residence of US workers. These issues are critically important factors to the “division of advantages from social cooperation” in a society where such advantages are accessed with money, and in definite locations.

There are clear ways in which domestic US policy and culture contributes to the causal environment for housing and work (infrastructure investment, educational system, anti-discrimination laws and enforcement procedures) and thus help decide who gets what advantages and rights. Yet there are equally clear ways in which foreign causal forces profoundly contribute as well. Data are consistent with the hypothesis that domestic unemployment rates are sensitive to causes as geographically distant as overseas terrorist attacks or military conflicts (through the proximate cause of oil price volatility).¹⁹ It also would seem that whether young folks were employed and living in manufacturing dense areas like Alabama and Tennessee in the 90s (economic zones with high import-exposure to Chinese goods) had much to do with export-led growth being planned in Beijing and executed in Guangdong - presumably for reasons that had nothing to do with Rawlsian domestic duty to the citizens of cities like Montgomery or Nashville.²⁰ That’s not even to talk yet of the downstream effects and externalities of those moving persons and changing economic fortunes on the supposedly internal associations of the US basic structure, or to stare too long at the possibility that access to rights and access to economic opportunities are in some sense co-constituted, since the resources occasioned by the latter may be needed to access areas of social life where the former are sustained by

¹⁷ Barua, “Military Developments in India, 1750-1850,” 599.

¹⁸ See chapter 3, especially sections 3.1 and 3.2, in: Rodney, “How Europe Underdeveloped Africa.”

¹⁹ Guo and Kliesen, “Oil Price Volatility and US Macroeconomic Activity.”

²⁰ Autor, Dorn, and Hanson, “The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade,” 224.

convention.²¹ What justifies the presumption that the US state's causal levers are *by themselves* the primary determinants of the division of advantages and rights? Would this presumption make sense in the hollowed out post-industrial metropolises of Gary, Indiana and Detroit, Michigan, when the manufacturing plants and their capital have fled the US for other "basic structures"? In the Appalachian towns around abandoned coal mines, priced out of relevance by global energy markets?

It's even more dubious that nation states will categorically pick out basic structures when we focus on the much greater number of states towards the weaker end of the geopolitical power distribution, who are not nearly as resilient against outside causal forces. Whatever their political inclinations, who in Iraq or Afghanistan could refrain from suspecting that the internal workings of some foreign operators – say, for example, the United States - were relevant to their political landscape, and consequently how basic rights and advantages are distributed? Could we drop into Yemen, point at the patterns of who is in what jobs, who is at what level of material comfort, which child has a distended belly, and explain those patterns *primarily* by reference to the *Yemeni political constitution and political culture*, (as a particularly flat-footed application of Rawlsian thought might identify as centrally important)? Or might, say, the regional and geopolitical interests of foreigners like the ruling elite in Iran, the United Arab Emirates and Saudi Arabia go some distance in explaining who is where and who enjoys what?

This point also brings up another problem. Even if Rawlsians could convince us that the US, or Norway, or Sweden really are basic structures in the sense specified by strong₂, with rights and advantages distributed and associations managed primarily by their own policymaking and cultural environments, can they convince us this is true of states *as such*? As just stated, this seems satisfactory description of how rights and advantages are distributed in notable parts of the globe like Iraq and Afghanistan and Yemen. But, lest I be accused of cherry-picking, let's be clear about what two-tier Rawlsians must convince us of. Even excluding active warzones, is this a description of the relationship of internal causal forces to distribution of rights and advantages we're prepared to apply to Bangladesh? Suriname? Island nations like Barbados and Samoa, who have lost up to two years of GDP in the tropical storms intensified and made more likely by the climate pollution of larger emitters like the US, China, and the European Union?²² The Democratic Republic of the Congo, Malawi, or any of the other hosts of nations with weaker state bureaucracies and coercive power whose causal influence over the lives of its inhabitants often vanishes precipitously at the boundaries of their metropolises?²³

The latter of these, the European Union, brings up a further set of complications: the causal influence of groups or institutions that are not states yet occupy a similar functional role in the shaping of social life around some territories.²⁴ Within this set are political formations that are perhaps not *yet* states or whose statehood is contested, but aim at or already operate much like states do: as just stated, the European Union; the Islamic State in Libya between 2014-16, which had equipped itself with its own judicial system, radio station, and nascent bureaucracy before suffering military defeat; Boko Haram (or

²¹ For a thorough discussion of rights externalism, see chapter 1 of *Rights, Race, and Recognition*. I think Darby's account is right, but I don't rehearse his arguments here since Darby, *Rights, Race, and Recognition*.

²² Mottley, "STATEMENT BY HON. MIA AMOR MOTTLEY, Q.C. M.P. PRIME MINISTER OF BARBADOS TO THE GENERAL DEBATE."

²³ I'm indebted to Abigail Higgins for this point.

²⁴ I'm indebted to Attila Tanyi for this point.

the Islamic State in Nigeria, as it prefers to be known) which controlled a small country's worth of territory around 2014-2015.²⁵

Perhaps more worrying – both for the world and for the two-tiered theorists' arguments – is a second subset of institutions and formations. These are generally not confused with states at all but their causal impact on the lives of those in the applicable domains of interaction are, arguably, no less profound. The world's large-cap corporations, particularly those operating in markets with meaningful downstream social effects like agriculture, weapons manufacturing, and technology. In particular, the five largest tech companies are also the world's largest corporations in general, measured by market capitalization: Alphabet(Google), Facebook, Amazon, Apple, and Microsoft, who have a combined market capitalization of over \$4 trillion USD, roughly equal to the combined market capitalization of bottom 282 companies of the S&P 500 combined and greater than Germany's GDP.²⁶ Barwise and Watkins reason that the relevant feedback mechanisms are positive, and thus it is likely that over time their economic dominance over competitive will become more difficult to dislodge.²⁷

Even supposing that an answer is on the way for any of the aforementioned, we could leave the world of putatively public state governments and similarly sized political formations still generate tough cases for the strong₂ view. Many of the advantages of social cooperation – and even its basic rights, on an externalist conception of rights – must be secured through access to money, which is in turn secured through wage labor at workplaces. But the workplace too is regulated, often in ways unencumbered by the expressed legal commitments or structures of the state or territory in which the work is performed. Elizabeth Anderson has gone as far as to call workplace regulation and domination “private government”, suggesting that many of us spend much of our waking hours in “communist dictatorships” run by authoritarian executives who can and often do arbitrarily intervene in the lives of their employees.²⁸

Moreover, many of these authoritarian dictatorships often govern themselves in response to both domestic and global markets (most obviously those producing for export) and are often governed according to the dictates of executives and shareholders who could be personally accountable as citizens to any country on Earth. Here, too, the plausibility of the strong₂ commitment that the surrounding state's basic institutions play a primary role in explaining who gets which rights and advantages is tested. The differential profitability of different courses of management and the considerable discretion of executives itself would seem to do much more explaining of who gets what in a workplace.

I don't think Rawlsian defenders of two-tiered theory can answer these challenges. They would need to to justify the two-tiered framework. After all, our theoretical generalizations purport to describe the world the people in these countries live in, too, whether or not the actual forces in the

²⁵ Raghavan, “Inside the Brutal but Bizarrely Bureaucratic World of the Islamic State in Libya”; “What Makes Boko Haram Run?”

²⁶ “One Chart Puts Mega Tech's Trillions of Market Value into Eye-Popping Perspective - MarketWatch”; “Germany GDP.”

²⁷ Barwise and Watkins, “The Evolution of Digital Dominance: How and Why We Got to GAFA,” 1, 28–29.

²⁸ Anderson, *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)*, 37–41.

world that distribute advantages and basic rights across the globe often position these people as prestigious influential forces in the rooms where theorists are held accountable.

IV.

A.

The preoccupation with states and the terms of political organizations that match their pretensions to power has long been a mistake, one that functions as a good enough approximation for the comparatively well regulated countries likeliest to produce people with the time and funding to theorize about global politics, but seems otherwise difficult to square with the world as it has been and currently is. Until very recently in the scheme of history the institutions and basic arrangements of associations and distributions of advantages of cooperation – the basic structure – of many peoples or societies were very formally determined from forces outside their society.

On one plausible candidate characterization of imperialism offered by Amílcar Cabral, something akin to this kind of domination is the very definition of imperialism as such.²⁹ Cabral, I remind you, was literally fighting a war of independence from Portugal during the very moments while John Rawls was writing the theory that would be used to postulate the separateness of states' basic structures – a war that would claim his life and the life of many of his comrades. In Cabral's case, this structuring was done by the then-fascist Portuguese empire, which claimed Cape Verde and Guinea-Bissau, among other countries, as its colonies. History is replete with examples of this arrangement, both far and near – the African anti-colonial movement ending formal domination, of which Cabral was a part, was still in the making as recently as the 1970s.

Contemporary philosophers may try to claim that formal colonialism, at least, was too long ago to be relevant for our political purposes. This is a curious perspective on historical distance, especially at the geopolitical scale of politics. It would be especially curious as a defense of Rawls' decisions as a theorist: *A Theory of Justice* was published in 1971, in the middle of the wave of African anti-colonial movements in which Cabral and many others fought. That would be also be tough to square with accounts like Nagel's, whose principled arguments on international distributive justice also take their cues from English century theorist Thomas Hobbes' views of sovereignty (Britain was already a nascent colonial power by the early 17th century), but perhaps not everyone's.³⁰

Far or near, our Rawlsian objector might persist, the past is the past. Perhaps the two-tiered theoretical framework was inappropriate as a description of the global political landscape when it was

²⁹ Cabral gives this definition in the speech called "National Liberation and Culture": "The principal characteristic, common to every kind of imperialist domination, is the negation of the historical process of the dominated people by means of violently usurping the free operation of the process of development of the productive forces." He also elaborates: "Now, in any given society, the level of development of the productive forces and the system for social utilization of these forces (the ownership system) determine the mode of production." The political constitution that Rawls stresses the importance of is absent here, but, as economic organization and the scheme of property are central aspects of the basic structure, domination of the "historical process" as characterized by Cabral would likely entail domination of whatever "basic structure" might be taken by two-tiered theorists to exist in the boundaries of the dominated society. Cabral, *Return to the Source*.

³⁰ Nagel, "The Problem of Global Justice."

introduced and even up until recently, but so what? Now that the dust has settled from the end of formal colonialism, we *now* live in a world where it is appropriate to treat each state as demarcating a basic structure, and our domestic-global distinction now makes the causal difference entailed by this claim.

B.

I have confined myself here to a negative argument against the descriptive commitments of Rawls two-tiered structure of justice, one that plausibly extends to any two tiered constructivist account of justice. Defending an alternative is a task for another project, but I'll give a brief sketch of how it could go.

By my lights, Rawls was right to give a functional definition of basic structure and wrong about what this decision required of him. This makes one important challenge to Rawls external to his theory. Perhaps a basic structure arises where there is structured causal connectivity between people and peoples: causal connectivity that gives rise to patterns, nodes, and epiphenomena of the social structure that play a causal role in people's behavior. If so, then the connection between basic structure in this sense and any other formal political structures that we build is a contingent one; as such, the boundaries of the institutions we build to do the work of "domestic" justice could succeed or fail to be appropriately bounded. We find out what basic structure(s) we've inherited from the cumulative weight of history, what its properties are, and what changes we can make to it by investigation rather than stipulation – by the sort of study which the social sciences seem well equipped to take on.

This possibility makes two challenges to Rawls internal to his own theory: it gives up the publicity criterion of the norms and rules of social behavior and it also drops the theoretical assumption that there will must be some institution or set thereof governed by a political constitution for a structure to qualify as such. Perhaps there ought to some such set of institutions, but that question depends on empirical realities that are likely unevaluable from the arm chair (whatever Kant's pretensions otherwise) and, in any event, a better task for prescriptive aspect of a political theory than a postulate for its basic descriptive commitments.³¹

And this different approach makes one important challenge to the rest of us theorists: we will have to actually find out what the political structure of our world is, open to the possibility that it will not announce itself. An important task of both the social sciences and of political philosophy reveals itself from this different vantage point: to figure out how to form and reform political institutions in a way that tracks the actual basic structures that exist. Perhaps existing political formations will have to rebalance their commitments; or take on new ones entirely; perhaps, in the event that no reform is adequate to the degree or nature of the change required, we will need new formations altogether.

³¹ In explaining why he does not intend to give a universal or global account of justice in his categorization of justice as fairness ("justice as fairness" is his characterization of the justice of the domestic tier of politics), Rawls explains that he "assumes Kant's view ("Perpetual Peace" (1795)) is correct and that a world government would be either an oppressive global despotism or a fragile empire torn by constant civil wars". This essay as a whole argumentatively engages with this point. Rawls, *Justice as Fairness: A Restatement*, 13.

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