BUILDING OF GLOBAL JUSTICE AND A COSMOPOLITAN ORDER
—Dialogue with Habermas and Others

Xunwu Chen*

Abstract: *Reflecting on Habermas' non-state concept of legally constituted world community, this essay starts with two questions of global justice: (1) Beyond state-borders, what is the associative human relationship that gives rise to the obligation of justice in the globe?; (2) How is the administration and enforcement of global laws of justice and laws of global justice possible without a world government? This essay augues that global justice purports to give due to basic human rights and rights-centered human relations among all citizens in the globe, and a cosmopolitan order of justice constitutionalizes the norm of basic human rights and rights-centered human relations among all human beings in the globe; attempts to ground global justice in elsewhere other than in rights-centered associative human relations are erroneous; without a world government, the most reasonable way to develop, administrate, and enforce global laws of justice and laws of global justice and to build a cosmopolitan order of justice, is through a two-track politics of global democracy*.

THERE OUGHT to be global justice for much the same reason that there ought to be municipal justice and international justice. There can be global justice for much the same reason that there can be municipal justice and international justice. In the globe, as it is in a nation-state, there ought to be, and can be, a set of rules in virtue of which certain types of human conducts, practices, and institutions can be said to be criminal, and in virtue of which certain kinds of crime, e.g., crime against humanity, can be defined. That being said, the road to global justice is long; the task of building it is formidable, and daunting. How best to conceive global justice and a cosmopolitan order of justice in theory? What is the human relationship which gives rise to obligations of global justice in the globe? What is the most reasonable, productive way for us to develop, administrate, and enforce global laws of justice and to build a cosmopolitan order of justice? These questions invite concerted approaches.[1] Against such a backdrop, this essay will present a critical-constructivist approach to global justice and a cosmopolitan order of justice to join the discussion today.

*XUNWU CHEN, Professor of Philosophy, Department of Philosophy & Classics, School of Liberal and Fine Arts, University of Texas at San Antonio, San Antonio, TX 78249. E-mail: xun.chen@utsa.edu

[1] In this essay, global justice refers to "the global requirements of justice, conceived as a special class of reasons for action that apply primarily to the institutional structure of political and economic life." (Beitz, 2005, 27).

I

Thomas Nagel's misgiving about global justice is a proper point for us to start here. According to him, "We do not live in a just world. . . But it is much less clear what, if anything, justice on a world scale might mean." (Nagel, 2005, 113). Nagel recognizes that "International requirements of justice include standards governing the justification and conduct of war and standards that define the most basic human rights. Some standards of these two kinds … define certain types of criminal conducts." (*Ibid*., 114). He considers the norm of basic rights to be universal (Ibid., 114, 130). That being said, Nagel conceives the normative force of basic rights to be of humanitarian morality, not of justice (Ibid., 131). He more or less operates with a political concept of justice in which "justice is something we owe through our shared institutional relations only to those with whom we stand in a strong political relation. It is, ... an associative obligation."(Ibid., 121). Meanwhile, Nagel is particularly concerned with the meaning and possibility of global social-economic justice. It is evident that he does not share Thomas Pogge's concept of basic economic rights. Another source of Nagel's skepticism comes from his concern about the link between global justice and sovereignty. Beyond state-borders, how can citizens be "both putative joint authors of the coercively imposed system, and subject to its norms"?(Ibid., 128). What is the enabling condition of global justice beyond state-borders? How global laws of justice are established, administrated, and enforced beyond state-borders?

According to Joshua Cohen and Charles Sabel, Nagel recognizes a normative order beyond state-borders but wrongly conceives such an order to be merely one of humanitarian morality, not of justice (Cohen and Sabel, 2006, 448—175). They insist normative requirements such as cultural inclusion are that of justice. However, Cohen and Sabel do not explain the distinction between normative requirements of justice and those of humanitarian morality and why normative requirements such as inclusion are of obligations of global justice, not of humanitarian morality. Nagel rules out much discredited realism on global justice, Cohen and Sabel purport to stamp for some realist claims of global justice; e.g., inclusion is an objective norm of global justice existing as part of the objective ethical-legal reality of the universe at large. Not surprisingly, Cohen and Sable flatten out Nagel's insight into real obstacles for a plausible concept of global justice. Even though they attempt to address the question of how can citizens be both subjects and co-authors of global laws of justice beyond state-borders, they do not recognize that the difficulty is being both subjects and co-authors of global laws of justice. Noteworthy, on this point, Nagel divorces democratic procedure and legitimate formation of common will and co-authorship, proposing a totalitarian, imperialistic procedure as a proper form of formation of common will and co-authorship of citizens in the globe. Cohen and Sabel endorse Nagel wrongly when they accept some kind of top-to-bottom imposition of laws as a legitimate form of

formation of common will and co-authorship, threatening to turn global justice into some kind of ironic tale.

A.J.Julius attempts to answer the question of what is the human relationship giving rise to obligations of justice beyond state-borders. Julius believes that the problem of Nagel's view is his failure to draw a distinction between the two kinds of problems: the 'allocative' and 'associative' problems and thus between an 'allocative concept of justice' and an 'associative concept of justice'. Julius argues, "The allocative conception refuses the claim that the justice relation supervenes on co-membership in states. So that claim will find support, if anywhere and if not from some non unfamiliar or nonegalitarian view, from a view within the associative conception." (Julius, 2006, 177).

Julius's view of global justice as described above is flawed. First, in the overwhelming majority of cases of global justice, an allocative relation supervenes on an associative relation. An allocative relation is essentially a social relation, not a natural relation. As a social relation, an allocative relation is derived from an associative relation. Second, while an allocation relation can be an object of the concern of justice, the justice in an allocation relation does not come from the existence of an allocation relation or problem, but must be built into it. Thus, for example, in the justice of an allocation relation, if A does not have the rights to claim X while B has the rights to make such a claim, then B should have X while A should not have it. The justice in an allocation relation between A and B here is not based on the existence of an allocation relation itself, but on each party's rights. Rights arise from an associative relation, not from an allocative relation in itself. Thus, here, Julius rightly insists that the justice relation among human beings is not limited by co-member-ship in states, but fails to see that the justice relation among human beings supervenes on a rights-centered associative relation among all human beings in the globe—a relation that enables human beings to extend their lives together under the rule of law. Moellendorf points out that one distinguishing property of the duties of justice is that "duties of justice are generated by associative relations." (Moellendorf, 2002, 31). Obligations of justice, e.g, obligations of global justice, are generated by associative relations. Thus, Nagel could rightly insist that "socio-economic justice is fully associative." (Nagel, 2005, 127).

Noteworthy, obligations of justice differ from merely humanitarian moral duties in two aspects. First, obligations of justice are not merely advisory, but sanctionable. Justice defines what can be counted as criminal acts or practices, not merely some wrong acts or practices. Given obligations of justice are sanctionable, they can only rise from some form of associative human relation. Second, obligations of justice are specific and presuppose institutional and institutionalized associative relations. Likewise, obligations of global justice presuppose laws of global justice and global laws of justice. Global justice must be defined in laws and sanctioned by laws. And laws are expressions of associative human relations. Global laws of justice are expressions of associative relations among citizens in the globe. What associative relations exist

among persons in the globe, making them citizens of the globe? That is the question!

Notwithstanding, the concept of global laws of justice brings us to a capricious high sea, returning us back to Nagel's skepticism. Global laws of justice, like municipal laws of justice, should not be conceived as given either by nature or a divine power. Instead, they should be understood to be developed by human beings. As Robert Post indicates, "contemporary law can not easily appeal to the authority of God, divine rulers, or universal ethics, it must appeal to democratic self-determination."(Post, 2006, 2). We do not have the metaphysical or cognitive bases to talk about God-defined or nature-mandated global laws of justice. We can, and should, talk only about democratically established global laws of justice. Democracy is the only source of the legitimacy of global laws of justice. Accordingly, the question for us here is, and remains to be, how can legitimate global laws of justice be democratically developed amid the diversity and boundaries of democracies in the world and the absence of a world republic. In addition, we cannot talk about global laws of justice without enforcement. The enforcement of global laws of global justice presupposes global institutions having the authority to do so or can legitimately delegate such an authority to others to do so. How can, and should, global institutions that have enforcing authority be legitimately established amid the absence of a world republic? If government is the necessary enacting condition for justice, then, what and which government is the legitimate enacting condition for global justice? If law is a necessary vehicle of justice, then whose laws are legitimate?

Cohen and Sabel' view on internationally administrative institutions such as IMF, WTO or ILO is inadequate here. With their view, one cannot see that (1) the legitimacy of global institutions come from their democratic geneses, and will continue to be tied with their democratic geneses; (2) international institutions can be legitimately transformed into global institutions only through democratic procedures, not by totalitarian imposition. Therefore, the kind of global institutions which they advocate will always have a legitimacy problem. Nagel attempts to get around the problem of legitimacy by emphasizing that sovereignty precedes legitimacy (Nagel, 2005, 145). Cohen and Sabel seem simply to set aside the problem.

In light of the above, if we do not want to treat the ideal of global justice as merely a comforting tale, and given what we aim at here is global justice that is juridical and must be embodied in a set of laws, procedures and mechanisms which would constitute a global legal regulatory realm, we need follow Nagel and ask three questions here: Beyond state borders, what is the associative human relationship giving rise to obligations of justice in the globe? Beyond state-borders, how ought we to build the link between global justice and sovereignty, as well as global justice and legitimacy? Without a world government akin to a state government, what is the enabling condition of global justice? To answer these questions more convincingly and plausibly, we need a

new conceptual strategy and approach that differs from both a cosmopolitan approach and a political approach which Nagel explores.

II

The new conceptual strategy which I propose here is critical constructivism. Its key is to replace a concept of basic human rights as divinely or naturally given by a concept of basic human rights as necessary assumptions from the idea of the rule of law. The new approach replaces a realist concept of a cosmopolitan order of justice by a constructivist concept of a cosmopolitan order that is anchored on a constructivist concept of basic rights and rights-centered human relations. The new approach conceives rights-centered human relations to be both institutional and necessary, modifying Nagel's view on rights-centered relations (as institutional and merely contingent) and allowing us to see that obligations of global justice are associative obligations.

To the question that beyond state-borders, what is the associative human relationship giving rise to obligations of justice in the globe, a critical, constructivist answer is: the existence of basic human rights as legal rights and of rights-centered human relations as institutional and necessary relations among citizens under the rule of law in the globe. In a critical constructivist approach, global justice purports to give due to basic human rights and rights-centered human relations among citizens in the globe and places obligations on citizens in the globe in terms of basic rights and rights-centered relations. Rules of global justice make criminal those conducts, practices, and institutions that violate basic human rights and break rights-centered relations among human beings in the globe, defining what is called "crimes against humanity".

It is not surprising that basic human rights and rights-centered human relations among citizens in the globe constitute the basis for global justice. Global justice shares the same essence with municipal justice and international justice: that is, it purports to give due to rights, entitlements, and rights-centered associative relations. As a norm, justice sets straight what is due, just as benevolence gives what is needed. As a legal norm, claims of global justice must, and can legitimately only, arise from claims of basic human rights and rights-centered human relations among citizens in the globe. That being said, we should not conceive basic rights and rights-centered relations among human beings in the globe as something given by some divine powers or creators, or engraved in nature itself. Instead, we better recognize that they are necessary constructions from the idea of the rule of law; citizens in the globe can extend their lives together only under the rule of law. We are better off by having a constructivist approach to global justice, instead of a realist or holist approach. A constructivist approach recognizes that human rights and rights-centered relations are constructed from the idea of the rule of law, but recognizing them to be necessary constructions, not something contingent or arbitrary. Here, rights-centered relations are institutional in the sense that their contents are defined institutionally.

They are necessary in the sense that they arise necessarily from the idea of the rule of law.

Notwithstanding, conceptually, the notion of justice as giving due to basic human rights and rights-centered human relations is in congruence with the traditional Chinese concept of justice as setting righteousness straight.[2] It sets obligation and duty straight. In addition, the principle of giving due to human rights and rights-centered relations embodies the spirit of our time—it is the norm, the value, and the standard of modernity today. As Robert Fine argues;

> Human rights are a social form of right that has arisen in our own times and is an achievement of our age. …Human rights exist not just in the mind but as a determinate form external to our own subjective feelings and opinions of it. It has a legal status within international law and has percolated into other areas of international and domestic law." (Fine, 2009, 17).

Furthermore, the concept of human rights embodies the traditional idea of justice as giving due to what is due. Rights and rights-centered human relations constitute a class of what is due which must be honored. Giving due to basic rights and rights-centered relations honors what is due.

In light of this, we can appreciate the 1948 United Nations' Declaration of Human Richts, as a global treaty constructing and defining some basic human rights, and consequently, a set of rights-centered human relations. Seyla Benhabib indicates, "Since the UN Declaration of Human Rights in 1948, we have entered a phrase in the evolution of global civil society which is characterized by transition from interna-tional to *cosmopolitan* norms of justice." (Benhabib, 2006, 15-16). The UN declaration has "the force of treaty law among their signa-tories," institutionally defining basic human rights and rights-centered human relations in the globe (Moellendorf, 2002, 5). Basic human rights are also defined by other international covenants. For example, *the 1966 International Covenant of Social, Economic, and Cultural Rights* lists 11 categories of persons' basic socio-economic rights in the globe (http://cyberschoolbus.un.org/treaties/economic.asp). Robert Post observes that the rapid rise of human rights conventions and agreements in the globe in the years after Nuremberg is "astonishing" (Post, 2006, 2).

What is said above is crucial enough to warrant summoning it in a Habermasian justification of basic rights and rights-centered human relations. First, basic human rights are distinguished from moral rights. "Human rights are juridical by their very nature."(Habermas, 1998b, 190). The norm of basic human rights is not advisory, but obligatory in

[2] In traditional Chinese philosophies, the concept of justice, or *zhengyi* (正义), consists of two words "*zheng*(正setting straight, rectifying) and "*yi*(义 righteousness). Thus, literarily, *Zhengyi* connotes righteousness that stands straight, contrasted to what is crooked and cannot stand straight. It connects setting righteousness straight.

human actions and for human institutions. "Human rights ... purport to embody a law that is cosmopolitan"(Post, 2006, 2). Second, basic human rights can be, and are, assumed from the concept of the rule of law. Law stipulates rights and obligations. To speak of the rule of law is to speak of specified rights and obligations. Law is meant to protect rights just as morality is meant to emphasize duty. Habermas rightly says, "the legal medium as such presupposes rights that define the status of legal persons as bearers of rights." (Habermas, 1998a, 119). Conversely, to speak of basic human rights is to speak about rights in virtue of the rule of law. Third, once we anchor our construction of global justice on the idea of the rule of law, the question here becomes what must be presupposed if citizens in the globe want to extend their lives together under the rule of law in the globe. The answer is that basic human rights and rights-centered human relations must be presupposed. Fourth, basic human rights, as described above, and obligations pertaining to these rights are that which no one can reasonably deny as necessary norms regulating global human relations and affairs under the 'rule of law. Fifth, giving due to basic rights is a matter of justice, not a matter of benevolence. On the one hand, what is given is that which the receiver is entitled to. The act of giving due is not a compassionate act of the giver as the stronger to the receiver as the weaker, but an obligatory act between equal actors. On the other hand, what is given due to is as merited and proportional, not excessive or insufficient. It does not depend on the good will or altruism of the giver or the need of the receiver.

One might argue that rights are defined by laws; therefore, it is that just laws determine properly basic rights, not the other way around.Accordingly, it is that the existence of basic rights should supervene on the existence of global laws of justice, not the other way around. We might run into a kind of chicken-egg relation problem here. Suffice it to say that basic rights, including basic socio-economic rights, must be assumed if the rule of law is possible. The fact that laws define rights and obligations indicates where there is the rule of law, there is an assumption of the existence of rights and obligations and an assumption of the basic contents of these rights and obligations. By this token, basic rights and global laws of justice can be conceived to mutually co-originate each other in genesis.

The idea of the rule of law is the footing here. Global justice which the present essay aims at is juridical.[3] Noteworthy, international justice is established by international treaties and conventions that are juridical. How international justice exists gives us a clue about how global justice can exist. The full realization of global justice requires a set of legal rules, procedures and mechanisms that would constitute a global legal regulatory realm. Making the rule of law a reality in the globe—not merely a value or an idea—is part of the content of building global justice in the globe and part of the content of building a cosmopolitan order of justice. One might even say that in content, to build a

[3] Admittedly, there can be global justice in a moral sense that is not our focus here.

cosmopolitan order is to construct a global, non-state legal realm of justice anchored on the idea of basic human rights.

In summary, the existence of basic rights and rights-centered human associative relations among citizens in the globe, which is necessarily assumed from the idea of the rule of law, gives rise to obligations of global justice. The norm of basic rights is assumed to be a legal norm and rights-centered human relations are assumed to be legal relations under the rule of law, amid contents of basic rights and rights-centered relations must be further defined substantially in specific municipal, international, and global laws that are democratically established.

III

Given what is said above, a proper concept of basic human rights becomes a key to an adequate understanding of global justice and a cosmopolitan order of justice here. The phrase "a proper concept" is deliberately used here to highlight that some errors exist in present philosophical discourses of basic human rights. Some concepts of rights are too unconstrained to be free of flaw, e.g., Pogge's concept of socio-economic rights that has raised a lot of eyebrows. Some are too inadequate to be proper, e.g., Dale Dorsey's concept of rights. Accordingly, concepts of global justice based on those flawed concepts of basic rights are fatally defective. Causes of building global justice that these concepts of global justice attempt to drive are wrong ones.

Pogge's concept of basic socio-economic rights conflates basic rights with basic needs. In it, "a human right is specified by the notion of a need: basic elements central to the notion of a decent human life ('what human beings truly need') are outlined as the basis of discrete rights." (Dorsey, 2005, 563; Pogge, 2002, 27—51). But a rights-claim and a need-claim are two different kinds of claim. A need-claim appeals for compassion, while a rights-claim appeals for justice. For example, suppose my car is broken down on the road and I need to go to school on time; I cannot just go to a nearby house to say to the host, "I have the right to drive your car because I need it to go to school on time." Noteworthy also, a person's claim of basic needs can be incompatible to that of another person, even if both claims are legitimate and justified. Meanwhile, a person's claim of basic rights cannot be incompatible to another person's claim of basic rights, if both claims are legitimate and justified. Moreover, need-claims advise us and their force is attraction. Rights-claims oblige us and their force is obligatory and compelling.

The difference between rights-claims and need-claims lies also in this. In some situations, a rights-claim may not be a need claim. For example, if I owe a company, then I have a rights-claim to the profit or earned money from the company, though I may not need the money. Conversely, in other situations, a need-claim is not a rights-claim. For example, if a person who is extremely hungry and does not have money to buy a piece of bread and you pass by, then person can ask you for a couple of dollars in terms of need. But it would be unjustified and absurd for him or her to say to you: "look, I need something to eat; therefore, I

have the right to take a few dollars from your wallet." A rights-claim is a claim of entitlement, while a need claim is a claim of suffering. Thus, a rights-claim is a source of the norm of justice, while a need-claim is a source of benevolence.

In short, while global justice is grounded in the concept of basic rights, claims of rights have their scope and limit. Some human relations are rights-centered, others are not. By this token, if we define the scope of basic rights wrongly, we will end up with a wrong definition of global justice. Thus, for example, some philosophers believe that the economic inequality between those who are born into poor countries and those who are born into rich countries is a matter of injustice and a kind of violation of basic rights. The error of these philosophers in their view on global justice is, like Pogge's error, due in no small measure to an erroneous concept of basic rights.

At the same time, if one's view of basic human rights is inadequate, one cannot have a proper concept of global justice either. Dorsey's error exemplifies this misconception. Dorsey argues that a concept of global justice which is grounded in the Poggean concept of basic rights is implausible; instead, a plausible concept of global justice should not be couched in the language of rights. Dorsey puts forth a welfarist concept of global justice grounded in the idea of public good in the globe. According to his concept, global justice "cannot take human rights as an important moral concept" (Dorsey, 582). Rejecting the idea of the inviolability of some alleged Poggean socio-economic rights, Dorsey goes on to reject the thesis that "rights constrain the legitimate policy options available: no legitimate, options violate or infringe what one possesses and has a right to possess." (*Ibid*., 566). In a final analysis, Dorsey's rejection, of what he considers to be a rights-centered concept of global justice, is in effect a rejection of Pogge's need-centered concept of basic human rights. The rejectability of Poggean "rights-claims" is not the rejectability of the concept of global justice as giving due to basic rights. Dorsey's failure to draw such a distinction leads him to his welfarist concept of global justice.

Dorsey's welfarist concept is not a proper one of global justice because of its wrong footing. Admittedly, in some circumstances, some governmental policies, because of some other constraints—for example, famine, epidemic, or disasters—and conditions, do not do full justice to all rights-claims. This does not indicate that justice is not giving due to rights-claims. Instead, it means only that giving due to rights-claims in justice is integrated with giving due to other legitimate claims of public good in particular circumstances. By the same token, the fact that there are limits of rights-claims does not indicate that justice is not giving due to rights-claims. Instead, it indicates only that justice has its scope and limit just as rights-claims have their scopes and limits.

Notwithstanding, Dorsey rightly points out that a rights-centered concept of global justice will face two questions: (1) what can be counted as basic rights? That is, what is "the content of rights claims"?; (2) what is "the level of rights claims" (*Ibid*, 567). Pogge's answers to both questions are flawed. That being said, Dorsey wrongly holds that

global justice does not supervene on basic rights-claims and rights-centered human relations. In reality, contrary to Dorsey's view, global justice implies giving due to basic human rights. Obligations of global justice arise from rights-centered human relations among citizens in the globe. This does not mean that global justice is not about public good in the globe. Nor does it mean that claims of basic rights have no limits, and their substantial contents are totally context-transcending. Instead, it is that even at the global level, justice denies that a violation of someone's basic human rights can be justified by some allegedly greater good.[4] Justice denies that a breach of rights-centered human relations can be justified by some allegedly greater good. In some circumstance, public welfare might demand certain self-sacrifice from individual persons. But the call for self-sacrifice from individual persons cannot be legitimately grounded in the denial of those individual persons' basic rights and rights-centered relations among persons. Instead, it presupposes acknowledgement of basic rights and rights-centered relations among persons. The call for self-sacrifice is a call of nobility as much as it is a call of duty.

In short, global justice is a rise of the claims of basic human rights and of rights-centered associative relations among citizens in the globe. It sets straight claims of what is due to citizens in the globe. Its opposite, injustice, crooks basic human rights and rights-centered associative relations among citizens in the globe.

IV

We are now in a position to address the question of the link between justice and sovereignty. Nagel rightly indicates that global justice would require global sovereignty (Nagel, 2001,122). In my opinion, the way to build a link between justice and sovereignty is through "a two-track global democracy". On the one hand, it is through global democracy in a manner of informal politics in the global public sphere. On the other hand, it is through formal politics of global democracy in an institutional, institutionalized manner. Global democracy liberates citizens from political solipsism, provincialism, nationalism, and the like. A two-tract global democracy maximizes the scope and degree of democratic participation of citizens on the one hand and makes institu-tional construction on the other hand. Accordingly, it safeguards the legitimacy and sovereignty of global justice that is constructed, the efficiency of building global justice, and the effectiveness of global justice as a legal norm, not merely a moral norm.

Seyla Benhabib proposes what she dubs as "democratic iteration" as the way to build a cosmopolitan order of justice. For Benhabib, "Democratic iterations are complex ways of mediating the will-and opinion-

[4] My contention here is debted to John Rawls's view that "justice denies that the loss of freedom for some is made right by a greater good shared by others." See, Rawls, (1971). *A Theory of Justic*e. Cambridge, Mass:: Harvard University Press. pp.3–4.

formation of democratic majorities and cosmopolitan norms." (Benhabib, 2006, 45). It consists of linguistic, legal, cultural, and political transformations, invocations, and revocations (Ibid.). Benhabib's proposal calls for both the formal and informal politics of global democracy. Meanwhile, Habermas's vision of legitimating a constitution for world society through a democracy of three levels in his paper "Konstitutiona-lisierung des Völkerrechts und die Legitimationsprobleme einer verfassten Weltgesell-schaft" in this volume reveals a call for a two-track global democracy.[5] Habermas's concept of constitutionalization of international laws for a world society, which aims at establishing a cosmopolitan order or a non-state, legally constituted community, also calls for both formal and informal politics of global democracy - if we are to have a fully legitimate constitutionalization of international laws for a world society. A constitutionalization of international laws is legitimate, if it emerges from a dynamic process of a multifaceted, multi-level democracy in which various affected parties or their representatives have their legitimate say, and there is possibly the best, inclusive, and democratic participation.

I would like to press the point about the task to develop global laws of justice here. As I shall see it, even if norms of global justice are merely moral and critical ideas about municipal laws or these norms constitute merely what Benhabib calls "the morality of the law", the world is richer with them. That being said, in this essay, what we aim at is global justice that is juridical, embodied in global laws of justice, in international laws as well as in municipal laws. In other words, we aim at global justice as a legal norm here. We focus not only on a cosmo-politan order of global justice wherein violation of basic human rights in one corner of the earth will be felt in other corners of the earth, but also on an order wherein violation of basic human rights will be considered to be a crime in every part of the earth and will be held accountable as a crime.

For this reason, some matters of formal politics of global democracy should be sorted out here. In particular, the role of nation-states in a two-track global democracy of building global justice (e.g., its indispens-ability in assembling a global legal architecture of justice) should be discussed. Global justice brings to prominence the status of individual citizens. This does not make the role of nation-states insignificant. Building global justice and a cosmopolitan order of justice calls for the active, democratic participation of all individual citizens. It calls equally for the democratic participations of all nation-states.

Nation-states play a crucial, instrumental role in building a global legal architecture of justice. In content, a core ingredient of global democracy is to make nation-states be both co-authors and subjects of laws of global justice and global laws of justice. This can be learned from how international laws of justice are developed and how inter-

[5] Also see Habermas, Jürgen (2008) *Europe:The Faltering Project*. Cambridge, UK:: Polity. pp.109–130.

national legality is crafted. Making citizens in the globe be both co-authors and subjects of global laws of justice involves formal politics of global democracy, for exam-ple, formal legislature of laws through formal, constitutionalzed and institutionalized procedures and mechanisms. The 1948 UN Declaration of Human Rights is a paradigmatic example here. In the world that we live today, formal politics in global democracy must involve participations of nation-states and peoples. As Habermas insists, "Today any conceptualization of a juridification of world politics must take as its starting point individuals and states, as constituting the two categories of founding subjects of a world constitution." (Habermas, 2008b, 119). Noteworthy, global justice also holds nation-states as "legal subjects" accountable for any crimes against humanity or violations of basic human rights. If nation-states should be subjects under global laws of justice, they should also be co-authors.

In the absence of a world government, participations of nation-states and peoples are the most reasonable representative participations of citizens in the globe. The consents that are given in the names of nations and peoples by their governments in global politics can be justifiably considered as "proxy consents" of citizens in their nation-states. So far as global legislature is concerned, we need recognize the legality of global laws, treaties, and covenants in the same way as we recognize the legality of international laws, treaties, and covenants. Thus, Habermas rightly indicates that the legitimacy of a cosmopolitan order cannot be achieved without participations of nation-states and peoples (Habermas, 2006, 141—142).

Inclusive, democratic participations of nation-states and peoples turn divided self-governing peoples into interdependent, democratically self-governing peoples. Nation-states constitute part of the political reality from which the politics of global justice starts and from which we start our endeavor to develop laws of global justice. We can, and must, turn nation-states into useful mediations in the development of global laws of justice. In some contexts, we need utilize the institutional resources of nation-states to enforce global laws of justice. Thus, in the context of arguing for a concept of a new cosmopolitan order of justice, Habermas indicates, "even an appropriately reformed world organization will permanently rely on power centers organized in a state basis." (Habermas, 2007c, 335).

Democratic participations of nation-states and peoples in legislature, administration, and enforcement of global justice bring true sovereignty to the legislature, administration, and enforcement of global laws of justice. This can be seen as follows. First, globally sovereign legal institutions can be established only through democratic participations of nation-states and peoples in the globe. Ours is a time in which there are both sovereignty of invidiaul persons and sovereignty of nation-peoples. In our time, no democratic establishment and maintenance of globally sovereign legal institutions of justice can occur without democratic participations of nation-states and peoples. On this point, internationally sovereign legal institutions give us an example. Second, organizational, global institutions consist of democratic participations of nation-states as

members and are in effect a kind of "congresses" of the nation-states, e.g., the United Nations, WTO, WHO, and the like. A requirement of membership of some of these institutions is that a member must be a sovereign nation-state. For example, only a sovereignty state can be a member of the United Nations. Third, global treaties and charts that have legal force require signatures of nation-states. Habermas says rightly, "legal norms stems from the decisions of a historical legislature." (Habermas, 1998a, 124).

Notwithstanding, at the center of global justice is that global laws of justice have binding force to both governments and individual persons. In this context, democratic participations of nation-states and peoples are of two-fold significance. They formally and institutionally affirm the binding force of global justice on states and governments, which in turn also makes governments accountable to their own conducts in the court of global justice, on the one hand and makes nation-states serve as institutional auxiliaries to global laws of justice on the other hand. Nation-states provide auxiliary institutional resources to the enforcement of global laws of justice.

In short, today, a viable scheme wherein citizens in the globe are both co-authors and subjects of global laws of justice need make possible democratic participations of nation-states and peoples. Democratic participations of nation-states and peoples bring sovereignty and formal legitimacy to global institutions that administrate and enforce global justice. They can also contribute necessary auxiliary, institutional resources to global administrate and enforce global laws of justice.

V

The concept of a two-track global democracy is intended to be one stone for three birds here. A two-track global democracy is intended as the way to establish the link between global justice and sovereignty. It is also intended to be the way to build the link between global justice and legitimacy, and the way to safeguard that global justice does not suffer organizational deficiency. I will come to the last bird which a two-track global democracy aims at here, continuously keeping an eye on the bird of legitimacy too. As its objective change—that is, it aims at safeguard that global justice does not suffer organizational deficiency, a two-track global democracy has slightly different content here.

Giving that as a legal norm, global justice allows no organizational deficiency, a two-track global democracy is to develop the enabling condition of global justice, making possible rightful enforcements of global laws of justice and laws of global justice.[6] Accordingly, its focus and content are: (1) making governments of those participating nation-states in global democracy complementary enabling conditions of global justice; and (2) gradual assembling of a global legal architecture. Such a

[6] According to Havermas, one of the three distinctions between a moral norm and a legal norm is that a legal norm allows no organizational deficiency, while a moral norm can allow such deficiency (Habermas, 1998a, 113–114).

two-track operation of global democracy is necessary and indispensable in our time to build global justice and a cosmopolitan order of justice. Such a two-track global democracy should be integrated with the one consisting of formal and informal politics that beings sovereignty and legitimacy, amid its focus on organizational and institutional sufficiency.

Nagel rightly indicates that justice requires "government as an enabling condition" and puts the subjects/receivers of justice in "an institutional relation" (Nagel, 2005, 114, 120). However, he wrongly suggests, "the most likely path toward some version of global justice is through the creation of potently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states."(*Ibid*., 146). To correct Nagel's error here, the qualifier "patently unjust and illegitimate" should be replaced by the qualifier "imperfectly just and legitimate". In addition, the qualifier, "that are tolerable to the interests of the most powerful current nation-states", should be replaced by the qualifier, "that are tolerable to the interests of all nation-states in accordance with the consensus of the majority of participating nation-states and peoples in the globe and that are justifiable in the rational discourse of global politics available." What we aim at here is global justice as giving due to basic rights of citizens and rights-centered human relations among citizens beings under the rule of law in the globe, not justice defined by laws of stronger and powerful nations. We also aim at global justice that honor legitimate claims of nation-states as legal subjects.

Meanwhile, when we aim at global legal justice and a cosmopolitan order of justice as a legal one, we need recognize that only global institutions, or their representatives, have the legitimate authority of enforcing global laws of justice and institutionally interpreting global justice. We need not aim at a world government or a state-like world republic. That is, we need not conceive a cosmopolitan order of justice to be a world state. However, we must be devoted to build global institutions as the necessary enabling conditions of global justice. Global institutions are the necessary conditions and components of the integrity, consistence, and unity of global legal justice. We cannot talk about global legal justice in the full sense without emphasizing a unified, coherent, and consistent legal understanding, enforcement, and administration of global legal justice. We cannot talk about a unified, coherent, and consistent understanding, enforcement, and administration of global legal justice without emphasizing global legal institutions as necessary and indispensable institutions. Here, international and regional institutions are complementary tools to the development and implementation of global justice. They are ladders and bridges connecting nations/peoples with one another in the globe. Admittedly, international and regional institutions are not identical to global institutions. Nonetheless, they can be either some original models for global institutions or some mediations to the latter, or both. All the same, without global institutional architecture, there can be no substantive global justice.

Kok-Chor Tan rejects the idea that "justice depends on the prior exist-ence of a social scheme," arguing that "justice constrains and informs our institutional arrangements, not the other way around." (Tan, 2004, 34). To be fair, Tan's concept of global justice is a moral one. That being said, Tan's view is one-sided. Global justice and institutions co-originate one another. While global justice as a moral norm can, and may, allow organizational deficits, global justice as a legal norm cannot allow such deficits. What we aim at here is global justice that is not only a moral norm, but also a legal norm and a legal substance. Global justice as a legal norm cannot maintain itself if it loses its organizational conditions of legislature, administration, and enforcement. In a final analysis, even a moral concept of global justice co-originates with global institutions, for example, language. Thus, Benhabib's concept of democratic iterations of cosmopolitan norms of justice is essentially a comprehensive democratic institutionalization of cosmopolitan norms of justice.

Notwithstanding, a global understanding of and reasoning on global justice and global institutions are interdependent. They co-originate each other. As Richard H. Brown indicates, "Social structures canalize rational thought; reasoning creates and recreates social structures." (Brown, 1987, 77). With regard to global justice, global institutions canalize global reasoning on global justice and, conversely, global reasoning on global justice creates and recreates global institu-tions that will canalize and canonize global justice. Global institutions are necessary and indispensable for a substantive under-standing of and reasoning on global justice. A global understanding and reasoning on global justice formalizes the normative contents of global justice that global institutions should embody.

In sum, global and international institutions are necessary conditions for the construction of global justice. Indeed, the sovereignty of global justice need be embodied in global institutions that form a global legal realm. In content, a cosmopolitan order of justice is structured by global institutions of justice. A non-state cosmopolitan order of justice need not only a constitu-tion that constitutionalizes its norms and principles, but also global institu-tions as its enabling conditions. Because global and international institutions are all possible today, therefore, global justice is possible and a cosmopolitan order of justice is possible. If we do not want to entertain the ideal of global justice merely as some kind of comforting tale, we must work hard to build those necessary global and institutional institutions to enable global justice.

VI

In conclusion, the proper footing of global justice is the idea of the rule of law. The proper ground for global justice is the existence of basic human rights and rights-centered associative human relations. A two-track global democracy is the most reasonable path to build global justice and a cosmopolitan order of justice. The most reasonable choice for us to make today is to advance toward perfect global justice through imperfect global justice, not through global injustice. It is to move

toward a cosmopolitan order of justice through normative, ethical, legal orders of various levels and scopes.

There should be formal, institutionalized, and proceduralized politics of global democracy in forming and organizing the common will of citizens on global justice and in procuring institutional resources for global justice and a cosmopolitan order of justice. It is through formal, institutionalized, and proceduralized politics that a global legal architecture is assembled, the global legal authority is formally organized, and therefore a global legal regulatory realm is historically developed. By this token, it is through formal, institutionalized, and proceduralized politics that a formally legitimate cosmopolitan order of justice is built.

There should be informal politics of global democracy in forming the common will and opinion on principles and norms of global justice and procuring intellectual, moral, ethical, and social conditions for normative construction of global justice. It is informal politics wherein moral, ethical, and practical questions of global justice and a cosmopolitan order are first asked, outlooks and rationalities of global justice and a cosmopolitan order of justice are first discussed, debated, examined, evaluated, and judged by citizens in the globe, and reasoning and views of global justice and a cosmo-politan order are defined and redefined by citizens in the public sphere, e.g., in town-halls, medias, markets, coffee-houses, academic circles, churches, and so on.

The concept of a two-track global democracy reflects the fact that global justice and global institutions co-originate each other; a cosmopolitan order of justice and global institutions co-originate each other. It recognizes the roles of both state-nations and individual citizens in the process of global democracy. It is the most reasonable way to accommodate participations of nation-states, to develop global legal institutions, and to create global consensus and global-political intersubjectivity through both institutional procedures and democratic public spheres. It generates cooperation of nation-states and peoples *in a scope* far broader than that of formal politics only and *in a manner* far effective and fruitful than that of informal politics only. It is more embracing than merely formal politics and far more substantial, substantive, and fruitful than merely informal politics.

A two-track global democracy is necessary too. Without formal, institutional, and procedural dimension of global democracy, we will end up with empty hands in our endeavor to construct global justice in a substantive and substantial level. Institution and reason/reasoning co-originate. Without formal, institutional, and procedural democracy, the formal legitimacy of laws cannot be established. On the other hand, without informal, non-procedural, totally opening global democracy, a democratic formation of will and opinion will often be partial, even "patently unjust and illegitimate".

The concept of a two-track global democracy resists the Nagelian idea that "the global scope of justice will expand only through developments that first increase the injustice of the world by introducing effective but illegitimate institutions to which the standards of justice apply", without giving away Nagel's insight into the importance of the

formal aspect of the politics of global justice (Nagel, 2005, 147). It replaces Nagel's concept of illegitimate institutions with the concept of imperfectly legitimate institu-tions. It directs global justice to travel through a path of imperfect justice, not that of injustice.

A two-track politics of construction of global justice with instigating the notion of the rule of law can achieve what John Rawls' mechanism of original position should achieve without the need of "the veil of ignorance", for its focus is on necessary granting of equal, compatible rights, not on equal consideration of interests and needs. It can also achieve what Habermas's mechanism of "ideal speech situation" can accomplish—that is, having a normatively justified rules of global justice.

No all paths lead to global justice and a viable cosmopolitan order of justice, just as no all avenues lead to Rome. Reasonable politics is surely a way to justice. And a two-track politics of global democracy is the most reasonable way to build global justice and a legitimate cosmo-politan order of justice.

References

1. Barry, Brian. 2008. "Humanity and justice in global Perspective," Thomas and Darrel Moellendorf (ed.) *Global Justice*. St.Paul: Paragon House. Vol. I, 179—210.
2. Beitz, C.R. 2005. "Cosmopolitanism and global justice," *The Journal of Ethics*, 9: 11-27.
3. Benhabib, S. 2006. *Another Cosmopolitanism*. New York: Oxford University Press.
4. Brown, Richard. H. 1987. *Society as Text*. Chicago: Chicago University press.
5. Cohen, J and Sabel, C. 2006. "Extra Republican Nulla Justitia?" *Philosophy and Public Affairs* 34 (2): 448—175.
6. Dorsey, D (2005) "Global Justice and the limits of human rights", *The Philosophical Quarterly*, 55 (221): 562—581.
7. Fine, Robert Fine. 2009. "Cosmopolitanism and Human Rights: Radicalism in a Global Age," *Metaphilosophy*, 40:1, (January 2009): 8—23.
8. Habermas, J. 1998a. *Between Facts and Norm.* Cambridge, Mass:: The MIT Press.
9. -----. 1998b. *The Inclusion of the Other*. Cambridge, Mass:: The MIT Press.
10. -----. 2006. *The Divided West*. Cambridge, UK:: Polity.
11. -----. 2008/2009. *Between Naturalism and Religion*. Cambridge, UK:: Polity.
12.-----. 2008b. *Europe: The Faltering Project*. Cambridge, UK:: Polity.
13. -----. 2007. "A Political Constitution for the Pluralist World Society?" *Journal of Chinese Philosophy*, 34 (3): 331—344.
14. http://cyberschoolbus.un.org/treaties/economic.asp.
15. Julius, A. J. 2006. "Nagel's Atlas," *Philosophy and Public Affairs* 34 (2): 176-192, 177.

16. Moellendorf, Darrel. 2002. *Cosmopolitan Justice*, Boulder: Westview Press.
17. Nagel, Thomas. T. 2005. "The Problem of Global Justice", in *Philosophy and Public Affairs*, 32 (2): 113–147.
18. Pogge, Thomas. T. 2002. "Human Flourishing and Universal Justice", in Pogge's *World Poverty and Human Rights*, Oxford: Blackwell: 27—51.
19. Post, Robert. R. 2006. "Introduction", Seyla Benhabib, *Another Cosmopolitanism*. Oxford: Oxford University Press.
20. Scanlon, T.M. 2003. *The Difficulty of Tolerance*. Cambridge, UK:: Cambridge University Press.
21. Tan, K.C. 2004. *Justice without Borders*, Cambridge, UK:: Cambridge University Press.
22. Wener, L. 2005. "The Nature of Rights", *Philosophy and Public Affairs*, 33 (3): 223—252.