

**Democracy, Agency and the Priority of Liberty:
A Response to Gillian Brock's *Global Justice:
A Cosmopolitan Account***

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Gillian Brock's *Global Justice: A Cosmopolitan Account* is an important contribution to contemporary discussions of global justice. The book marketer's clichés are apt: it should be read by all students and scholars of global justice and will interest both academics and the general reader. It merits this praise because of its many virtues as a piece of scholarly writing: it is clear, provides a good introduction to the literature and develops an original account of its subject. Its originality consists in Brock's attention to both practical and theoretical issues that have been neglected by cosmopolitan theorists. She structures her account as a response to two kinds of skeptics about cosmopolitan theories of global justice: "nationalism" skeptics, who claim that cosmopolitan approaches neglect or exclude goods specific to bounded political communities, and "feasibility" skeptics, who claim that cosmopolitanism is unworkable in practice, whether because of difficulties in motivating adherence to cosmopolitan norms or because of the difficulty of realizing a cosmopolitan global order, including the difficulty of making the transition to a more just global order. Cosmopolitan responses to the former sort of skeptic abound, but the second sort of skepticism—which is a staple of cosmopolitanism's critics—has received only the most cursory attention from proponents of cosmopolitanism and is often the weakest part of their arguments. Brock, accordingly, devotes most of her attention to answering the feasibility skeptic and, to some extent and appropriately, subsumes her response to the nationalist skeptic under her response to the feasibility skeptic. Broadly, her response to the feasibility skeptic is to adopt a form of cosmopolitanism that she thinks offers the broadest moral and psychological appeal, and to push for institutions that avoid, in her view, overly strong demands on actually existing contemporary individuals. Despite the many merits of her account, I argue that in doing so Brock adopts an overly minimalist conception of equality and democracy and explore some ways in which this minimalism affects her practical recommendations.

Brock's theory involves a re-conception of Rawls's original position, on a cosmopolitan basis. The parties to Brock's original position are "randomly selected" delegates to a conference that is to decide on «a fair framework for interactions and relations among the world's inhabitants» (Brock, 2009, p. 48-49. All unattributed references hereafter are to Brock, 2009). The parties are under a familiar Rawlsian veil of ignorance about their allegiances and condition, as well as being unaware of the

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distributions and demographics of particular communities (p. 49). Brock's parties know that there are such communities, however, although these communities may "overlap", have vague borders or be variously constituted, and the parties are familiar with the basic facts of human history (in particular historical and contemporary threats to human well being), economics and psychology. Such understanding of psychology should, if Brock is correct about the psychological evidence for the appeal and stability of her account, predispose the parties to endorse Brock's principles. Under these conditions, she argues that they will not choose a global difference principle, as a number of cosmopolitan theorists argue, but a principle that provides everyone with opportunities to live a «minimally decent life» (p. 50). This account of the minimally decent life operates as a "floor", below which no one should be allowed to fall, a floor understood in terms of individuals' basic needs being met, certain "basic liberties" being protected and institutions that express the «fair terms of cooperation in joint undertakings and practices» –including fair distributions that result from them– and that promote this minimally decent life for all (p. 52-53). Further, Brock understands needs in the robust sense of Doyal and Gough, as «universalizable preconditions that enable non-impaired participation in any form of life» (Doyal and Gough, 1991, cited Brock, 2009, p. 64). These needs include «physical and psychological health», «security», «understanding» of one's options, «autonomy», and «decent social relations with at least some others» (p. 66-67). Armed with this complex understanding of the floor below which any life would not be minimally decent, Brock appeals to the experimental results of Frohlich and Oppenheimer, who claim to have modeled the veil of ignorance in their psychological experiments and to have shown that a floor principle –like Brock's except that it is only expressed in terms of a floor income which otherwise maximizes the highest average income– would be chosen over the difference principle by 78% of respondents after due deliberation (p. 55-56). Brock emphasizes their further claim that support for a floor principle that maximizes average income is found in a variety of cultural communities and is stable: individuals who have to live under institutions informed by such a principle are more likely to endorse the principle afterwards (p. 57).

There are a number of objections that might be made against Brock's understanding of equality. Even if people do converge on such a principle, we might question whether the notion of equality embodied in it conforms to our moral intuitions, especially if we consider how it operates in actual situations. One concern relates to the role that agency plays in Brock's conception. Although Brock sees her development of a robust conception of agency as crucial to her account, the details seem to permit a less than robust role for individual agency in practice. First, and unlike Rawls, there is no priority rule that favours liberty.² Although there is a separate justification,

² Brock says, «Reasonable people will care, at least minimally, about enjoying a certain level of freedom. Freedom may not be the only thing they care about, of course, and often they may not care about it very much when other issues are at stake about which they care more deeply. Nevertheless, reasonable people will care at least a little about enjoying *some* freedoms» (p. 50).

in Brock's original position, for the basic liberties of freedom from «extreme coercion (such as slavery), freedom from torture, arbitrary arrest and detention, freedom from arbitrary interference and attack, and freedom from discrimination» (p. 152) and the liberties of free expression, association and some sort of participation that derive from these (p. 159), there is no fundamental obstacle to trading off these liberties against other components of the minimally decent life. This is true whether these basic liberties are considered to be independent of needs or in terms of the basic need for autonomy. While Brock's floor principle may operate to block the worst forms of unfreedom, like slavery, in that no one should be allowed to fall to that level of unfreedom, it gives little guidance regarding states of affairs and global institutions in which individuals have this minimum level met. Given that these liberties can be limited by other liberties and by potential harms they may cause (p. 153), the way is open for societies inclined to limit liberty to do so in the name of suppressing license or preventing harm. Further, at the level of cases at the margin of minimal decency or even below the floor of a minimally decent life in non-ideal theory and in the non-ideal transition to Brock's just global order, Brock's theory may license significant trade-offs which a strict priority rule would block. In a world that features many authoritarian societies –some traditional, some not– arguments for such trade-offs will not be wanting.

Part of this problem lies with the notion of a floor principle itself. In this regard, it is instructive to compare Brock's account with Amartya Sen's use of capabilities as the measure of equality. Brock argues that her needs-based account is 'closely related' to the capabilities approach (p. 71). This may be true, if the capabilities approach is understood in terms of Martha Nussbaum's list of capabilities, but is questionable if Sen's more sophisticated account is considered. Nussbaum's list does seem to be tied to needs, whereas Sen emphasizes the informational aspect of capability theory –and hence its flexibility (See Sen, *The Idea of Justice*, chapter 11)– but also its role as a conception of equality. Although Sen is unwilling to provide an authoritative list of capabilities, let alone their priority relations, he is clear that such hierarchies of priority can be established, at least as far as individual (and social) choice of capability sets is concerned. Both Sen's famous results concerning the relationship between democracy and famine and his insistence that "development as freedom" is based on a universal appreciation of democracy suggest some of the priority relations that he is prepared to endorse. Indeed, he builds a certain ideal of democratic participation into the work of capabilities themselves, under the 'process aspect' of capabilities. Further, Sen developed capability theory as a non-minimalist theory of equality. In his classic lecture, *Equality of What*, (Sen, 1979) Sen explicitly argues that capabilities serve as a better metric of equality than rival conceptions because they better identify the inequalities that count and how they should be remedied. One of Sen's examples is a disabled person who requires more resources to be free to achieve equal functionings with able persons, not a minimally decent life (Sen, 1979, p. 218). Sen's view culminates in the

theory of justice that animates his *Idea of Justice*: justice consists in comparative improvements in equality –and the remedy of injustice– not in the attainment of a minimally decent life for all persons. (Sen, 2009, chapter 4) Unlike Brock’s floor theory, Sen’s theory of justice requires the perpetual realization of more equal distributions, even above any particular floor provision of a minimally decent life to all.

The failure to include a priority rule informs some of Brock’s practical recommendations. Some of Brock’s discussions, like her emphasis on reforms of global taxation or of the global economic order, are important contributions to the potential realization of a more just world, but some of her recommendations suffer from her failure to give sufficient priority to liberty and from her straitened understanding of democratic agency. I consider her account of responsive democracy first. When considering the prospects for cosmopolitan democracy, Brock argues, following Weinstock, that a form of ‘responsive democracy’ rather than a more participatory conception of democracy is most suited to the global order (p. 105). Although Brock initially presents it as a ‘supplement’ to a participatory model, responsive democracy soon becomes a rival to participatory conceptions (p. 106). Participatory conceptions emphasize individual agency and expression, whereas responsive democracy is oriented to responding to people’s interests and better securing them (p. 105-106). Brock argues that responsive democracy better addresses cases of collective action problems, cases where affected people cannot participate –like future generations– and cases in which expert knowledge is required to secure people’s interests (p. 106). Following Weinstock, she envisages many of these cases being dealt with by delegated authorities, that may or may not have direct lines of accountability to the actually existing people whose interests are being secured. A similar understanding of «tracking people’s interests», rather than letting the people express those interests, can be found in her use of Philip Pettit’s understanding of «non-domination» (p. 314).

Perhaps the worries we might have about “responsive democracy” could be allayed by Brock’s use of Elizabeth Anderson’s “democratic equality”, where strict egalitarianism of access to certain goods regardless of one’s motivation or character is replaced by a concern that all individuals are guaranteed «effective access to levels of functioning sufficient to stand as an equal in society» (Anderson, 1999, p. 318-319, cited in Brock, 2009, p. 303). Anderson’s “democratic equality” combines a participatory and democratic understanding of equality with a toleration of potential deviations from strict equality that is similar to Brock’s floor principle.³ But it could also reveal a deep tension in Brock’s understanding of democracy: responsive democracies –with their expert panels, robustly independent judiciaries, auditors, “commissions of enquiry”, etc.– are vulnerable to capture by elites, especially privileged possessors of greater education and capital. While counter-majoritarian institutions like bills and

³ Note that Anderson’s use of Sen’s capabilities does not include Sen’s emphasis on egalitarianism, even though it does share his view that comparative improvements in justice should focus on ending oppression. See Anderson, 1999, p. 75-76.

covenants of rights and independent judiciaries are required for liberal democracy at both the national and global level, Brock's enthusiasm for delegated institutions certainly skews her conception of democracy away from Anderson's more participatory understanding. I think that the dismal history of development interventions by experts who were hoping to secure people's interests, but were unaccountable to those people, is a cautionary tale that shows the dangers of a responsive conception of democracy. Indeed, the development interventions –concrete attempts to meet individuals' basic needs– that are the principal mode by which states have attempted to discharge their global obligations are curiously absent from Brock's account. After a long and hard learning process, development practitioners are increasingly seeing not just consultation of, but participation with beneficiaries in development projects as crucial to their sustainability, long term stability and success.

The other area where Brock's practical recommendations are undermined by her failure to include a priority rule or to sufficiently acknowledge individual agency is immigration. Brock notes Joseph Carens's use of Rawls's priority rule in his classic article advocating open borders (Carens, 1987). Carens argues that, in a global original position, the parties would choose a robust right to migrate which, like other rights subsumed under Rawls's liberty principle, have lexical priority over considerations of distribution (Carens, 1987, p. 258). As I have noted above, Brock, like Rawls, is prepared to curtail liberties both for the sake of other liberties, but, unlike Rawls, is prepared to curtail liberties because of harms they might cause, including bad social and distributional consequences for the world's worst off. As Darrel Moellendorf has noted, this is how Brock squares her claim that "freedom of movement" would be chosen in her original position with her support of relatively restrictive immigration policies.⁴ This is crucial to Brock's discussion of immigration, since she uses a remarkably thorough account of the "brain drain" of healthcare workers from poor countries to wealthy ones to stand for the problems of immigration as a whole. She also has a long critique of remittances as promoters of global justice, also because of their bad consequences for sending communities and the willingness to work of receivers of remittances (p. 207). Considering the consequences for both the receiving country, the migrants themselves and the country of origin, she concludes that the harmful consequences for poor individuals' health care and the distorting effects of remittances in the country of origin mean that the migration of individuals from poor countries to wealthy ones is not an appropriate engine of global justice.

Brock argues for various "win win" solutions, in which all parties benefit. Some of these are well worth exploring, especially programmes that compensate poor countries for the costs of training health care providers who then migrate to wealthy countries, including mandatory periods of return to their country of origin.(p. 208-209) Such programmes can be reconciled with a robust right to migrate, since such highly-

⁴ Moellendorf cites Brock, 2009, p. 50. See Moellendorf, 2010, p. 266.

skilled migrants have some obligations of reciprocity to their fellow citizens who paid for their education and highly-skilled migrants can be presumed to have availed of this education voluntarily. Some of Brock's other recommendations, however, cannot be reconciled with a basic right to free movement, even within one country. Her suggestion that immigrants from overpopulated countries be required to live in underdeveloped parts of wealthy countries (p. 209-210) subjects immigrants to unfair coercion, restricts their freedom of movement compared to citizens in a discriminatory way and makes them a tool of the wealthy country's economic policy. Much of the world's migration is internal to states, and the level of coercion used in China in the past to control internal migration shows the importance of the basic liberty of free internal movement (Lambert and Chan, 1999, p. 82-83). Worse still is Brock's enthusiasm for «guest worker programmes, the admission of migrants to work for temporary periods, with the time limit of their stay set by the usual point where remittances tend to decrease (p. 210-211). Not only do all actual guest worker programmes involve high levels of coercion and surveillance even where they operate properly, in most cases they are seriously under-regulated, exposing migrant workers to extreme levels of coercion. Beyond these normative concerns about the use of migrants for economic development, there are a number of parts of Brock's account of migration that might be challenged on empirical grounds. For example, the use of highly skilled health care workers as emblematic of international migration is problematic. Migration is a complex phenomenon, especially when considered in relation to poverty, and includes migration internal to one country, including internal displacement, as well as international migration. In a number of countries, migrants are drawn from the very poor, even if people with no assets whatsoever are somewhat less likely to migrate.⁵ We might agree with Brock when she argues that «increasing immigration (in isolation)» does not necessarily constitute progress in global *distributive* justice, but a less restrictive immigration policy may represent more just treatment of individual would be migrants, particularly when we consider them as agents.

Brock's recommendations surrounding immigration again show the dangers of her lack of a priority rule and insufficient consideration of immigrants' agency. If the representatives to Brock's conference know that there are distinct political communities, some of which have coercively enforced borders, they have good reason to choose a right to migrate, as Carens conceives it, as a basic liberty. They also, for the reasons involving trade-offs I have urged above, have reason to give their basic liberties priority. Even accepting the facts about migration contained in Brock's account

⁵ This is true of Ethiopia, for example. See Black, Hilker and Pooley, 2004, p. 12. See also Caponi, 2006, who notes that migration from Mexico in relation to level of education attained takes the form of a 'U-shaped' curve. In other words, the individuals most likely to migrate are those with the least and the highest level of education. Given the inequalities of access to education in Mexico, those with the least education vastly outnumber those with the most. Although Caponi finds that Mexican immigrants to the United States of America are somewhat better educated than those who stayed home, this does not mean that they are well educated.

and even in the absence of a priority rule, Brock's representatives will still want a set of international institutions that allow considerable freedom of migration to those who are willing to engage in it. If migrants tend to be more skilled and have more assets than the worst off, as Brock claims, then they will be even more likely to choose Brock's floor principle, involving as it does global institutions –including institutions that regulate migration– that raise average well-being. In a world in which everyone has the bases for a minimally decent life, whether through development interventions or free trade, there will still be migration pressure, since Brock's theory allows for significant inequalities between the well-being of individuals and of the populations of different political communities.⁶ It seems most likely that, in such a world, more open migration policies would lead to higher average well-being for residents of the receiving country and for the migrants themselves, and the people of the sending country would have their well-being protected by Brock's floor principle.

In our imperfect, non-ideal world –and again, by Brock's own lights– many would be immigrants are below the level of the minimally decent life, whether in terms of meeting their basic needs, enjoying basic liberties or being able to stand as equals in their society. In the transition to a more just order, more open migration policies might allow such individuals to achieve Brock's minimally decent lives. They will not be able to do this, however, if their agency is not taken into account. One problem with most theories of migration is that they tend to view migrants as tools for the enhancement of the well-being of others, whether as bringing skills needed in the receiving country, increasing economic growth through their demand or promoting development through the remittances they send back to the sending country.⁷ Brock's overall account of immigration and her specific recommendations for the use of migrants as guest workers and factors of regional economic development make migrant individuals tools of the cause of distributive justice. The cost of such a strategy is the migrant individual's agency and prospects for democratic participation. Rather than being given the freedom to achieve their basic needs as a person, migrant individuals are admitted on the basis of whether they assist overall well-being and only on this basis. Guest worker programmes are the ultimate example of this: migrants are admitted only so long as they benefit the host country (and in Brock's account, the sending country). Restrictions on their stay and on their access to permanent residency and citizenship prevent them from availing of the basic democratic rights of host country citizens, including union membership, access to politicians, social supports and the enforcement of health and safety legislation.⁸ As Max Frisch said of the most notorious long term guest worker programmes, those of postwar Germany, «We wanted workers; we got people» (Cited in Shanfield, no date). These democratic disadvantages particularly characterize the undocumented migrants engendered by coercive immigra-

⁶ For the impossibility of reducing migration pressure through development or trade, see Cohen, 2006, chapter 5.

⁷ For this point, see Little, 1992, p. 50.

⁸ I have argued this at greater length, with J.M. Mancini, in Mancini and Finlay, 2008.

tion regimes. In effect, under Brock's scheme, the majority of poor migrants face coercion, restrictions on their movement and denial of democratic participation because they have tried to migrate despite not being the very worst off in the sending country. Meanwhile, the truly worst off are characterized as extremely passive and unable or unwilling to alter their condition. They are seen as people who must have everything done for them. Even if the consequences of our actually existing regime of migration and remittances are as negative as Brock describes, this does not mean that a reformed approach to migration and remittances that promotes both freedom of movement and the well-being of the very worst off is not possible. Indeed, as Brock notes, such a reformed approach has already been explored in Mexico, where «roads and schools» and other «public works» have been built by the state providing matching funds to remittance money (p. 206). Such programmes evade the bad consequences –e.g. the tendency to spend remittance money on consumption– that Brock identifies (p. 205). If reforms of the recruitment of health care professionals from the developing world are possible, then so are reforms of remittances.

Despite all these concerns with both the theoretical and practical aspects of Brock's argument, it is clear that the guaranteeing of access to Brock's minimally decent life on the part of all the world's people would be a momentous improvement in the lives of the majority of human beings. Many of her practical recommendations, which I have not discussed in this response, should be heeded by anyone interested in achieving greater global justice. I have tried to identify both the theoretical concerns we might have about Brock's account and some places where the differences between her account and a more robust egalitarianism may lead to different results. These differences do not vitiate, however, the promise of Brock's title. She has given us an important account of global justice, and a cosmopolitan one.

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