A Social Choice Approach to Theorizing Justice

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PhD Thesis in Political Theory

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LUISS Guido Carli, Rome

October, 2015

Contents

Acknowledgments

I would like to thank Gianfranco Pellegrino, my thesis supervisor, for his continued encouragement throughout this study. I am also thankful to Sebastian Maffettone for creating the opportunity for me to pursue my research at the Center for Ethics and Global Politics.

I would like thank to Daniele Santoro, Manohar Kumar, Sebastian Rudas and Sine Bagatur for constructive exchanges, day and night, on my research as well as academic practice, and Arianna Curioni for introducing to me the fine points of the Italian way of life.

Most deeply and most directly, I am indebted to my brother Emir Benli and her wife Bade Uysaler, my mother Zeynep Erengul and her husband Ali Erengul, without their positive presence this thesis would not be possible, and my late father, Cem Benli who spurred me to think critically.

1. Introduction

1.1 Introduction

Thomas Pogge's remarks on the current practice of philosophy in the introductory chapter of *Politics as Usual, What Lies Behind the Pro-Poor Rhetoric* summarizes the main concern that has initiated this study. He writes that

> Philosophers have not been much help, lately, in giving us ways of evaluating and critically modifying what we care about. Many have rejected the very search for such standards as inseparably tied to an outdated metaphysics or as incompatible with the pluralism of multicultural societies. And some have then seen it as their task to cure us of the ambition that their reductionism presents as incapable of fulfilment. These are fascinating views that deserve discussion, But I continue to believe that philosophers can illuminate what really matter.[1]

If we agree with Pogge (as I do) that philosophy, in particular, theorizing justice, can guide our action in remedying injustices in the world, we need to have clear answers to a set of related questions. What is the relationship between the theorizing of justice and pressing problems of the real world such as discrimination, human rights violations, severe poverty or global warming? Are theories necessary and/or helpful in identifying, understanding or

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[1] Thomas Pogge, *Politics as Usual, What Lies Behind the Pro-Poor Rhetoric* (Cambridge: Polity Press, 2011), 8.

overcoming such injustices? And, if they are, what method should we follow for establishing a connection between general normative statements of theories of justice and particular problems of injustice?

Mainstream theorizing of justice, initiated by John Rawls seminal work *A Theory of Justice*[2], has recently come under criticism for its ability to devise satisfying answers to these questions. Within a debate on how to conceptualize ideal and non-ideal theorizing of justice, a number of theorists have pointed out a serious gap between contemporary theorizing of justice and actual problems.[3] In response, those who believe that theorizing justice should address real problems argue for ways to breach the gap, while others have retreated to their ivory towers. Methodological chapters containing empirical and theoretical assumptions as well as issues of implementation, feasibility and accessibility are now considered more seriously. The debate has resulted in important insights for improving the ability of theorizing to relate to actual problems.

Nevertheless, this thesis argues that theorizing justice in the Rawlsian framework is inherently flawed in guiding action in real world circumstances. Due to its two stage method consisting in first theorizing ideal principles that govern the perfectly just society, and then implementing them in actual circumstances, the framework is unable to incorporate an essential aspect of real world circumstances. Namely, that there are equally valid reasons for upholding different principles of justice and equally valid reasons for different ways of implementing them in particular contexts. As Gerald Gaus remarks, Rawls "fails to take to take account of the pervasiveness of rational disagreement about the correct impartial

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[2] John Rawls, *A Theory of Justice: Revised Edition*. (Massachusetts: The Belknap Press of Harvard University Press, 1999)

[3] See for example, Charles W. Mills, ""Ideal Theory" as Ideology," *Hypatia* 20, n. 3 (2005): 165-184, Colin Farrelly, "Justice in Ideal Theory: A Refutation," *Political Studies* 55, n.4 (2007): 844-64, Burke A. Hendrix, "Where should we expect change in non-ideal theory?" *Political Theory* 41(2013): 116-143; cf. Ingrid Robeyns, "Ideal Theory in Theory and Practice," *Social Theory and Practice* 34, n. 3 (2008): 341-353; John A. Simmons, "Ideal and Nonideal Theory," *Philosophy and Public Affairs* 38, n. 1 (20120): 5-36

morality. There is no compelling way to generate rational agreement on a specific morality in anything approaching the diverse and bounded social world we inhabit."[4] This failure has major implications for the capacity of theorizing to guide action in real world circumstances. The two stage method is either insufficient in guiding action or detrimental by making false judgments. Incorporating disagreement into the theorizing of actual injustices, however, implies a different idea of justice, which I argue is best comprehended by a social choice approach.

After I lay out my main critique of the Rawlsian method in Chapter 2, in Chapter 3 and Chapter 4, I respectively analyze two cases of policy choice in different domains of justice: the first regards implementing global taxes on natural resources; the second, reforming the European Union asylum policy. In this introductory chapter, I first briefly discuss the two stage method of theorizing justice and guiding action in the Rawlsian framework. I point out two aspects of Rawlsian ideal theorizing that have received criticism in the debate: the use of idealizations and practice dependence as well as the theorists' response to these practices. My brief discussion, however, cannot do justice to numerous and profound arguments that have been raised by the theorists. Yet, by highlighting the main points, I aim to provide a sufficient background for my main critique. In the last section, I provide an outline of the subsequent chapters.

1.2 The debate on ideal theorizing of justice

Theorizing justice within the Rawlsian framework consists of two stages. The first stage corresponds to theorizing ideal principles that govern the perfectly just society.[5] The second

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[4] Gerald Gaus, *The Order of Public Reason—A Theory of Freedom and Morality in a Diverse and Bounded World*, (Cambridge: Cambridge University Press, 2011), at xvii.
[5] Maintaining this core element, theorists have come up with various conceptualizations of ideal theorizing. In the Rawlsian theorizing, ideal theory prescribes principles which govern the institutions of a closed society with respect to socio-economic rights and basic liberties of individuals. Alternatively, ideal theorizing can be

stage corresponds to theorizing injustices in real world circumstances in light of ideal principles. In *A Theory of Justice* Rawls explicitly outlays his two step methodology:

> The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favorable circumstances. It develops the conception of a perfectly just basic structure and the corresponding duties and obligations of persons under the fixed constraints of human life. My main concern is with this part of the theory. Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions.[6]

Rawls not only divides theorizing into two but also prioritizes ideal theorizing over non-ideal theorizing. The priority of ideal theorizing derives from Rawls' belief that it constitutes the sole basis for a systematic grasp of actual injustices.[7] Rawls maintains that ideal principles project an aim and guide social reform.[8] Actual injustices can be identified as well as ranked depending on how far they deviate from the perfectly just scheme. Even if the measure of the departures from the ideal is primarily left to intuition, our judgment is

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interactional such as Robert Nozick's theorizing concerned with procedural justice between individuals. Robert Nozick, Anarchy, State, And Utopia (Oxford: Basil Blackwell,1974), or Peter Singer's theorizing concerned with moral duties of individuals that live in developed countries. Peter Singer, "Famine, Affluence, and Morality," Philosophy and Public Affairs 1, n. 3 (1972): 229-243; or it can be *realization based* such as Amartya Sen's theorizing which takes into account the actual freedoms and capabilities of individuals. Amartya Sen, *The Idea of Justice* (Massachusetts: The Belknap Press of Harvard University Press, 2009). Or ideal theorizing can be partial, such as theories that focus on only one domain or sphere of justice, or theories that are limited in scope. For example, we can conceptualize ideal theorizing that focuses on only gender justice as a particular domain of justice or we can limit ideal theorizing by focusing on only international or global justice. Ingrid Robeyns, "Ideal Theory in Theory and Practice." The main idea of ideal theorizing which persists in each different conceptualization is to identify moral principles that govern a perfectly just social organization.
[6] Rawls, *A Theory of Justice: Revised Edition*, 216.
[7] John Rawls, *A Theory of Justice*, 8; Rawls, *The Law of Peoples with The Idea of Public Reason Revisited* (Cambridge, Mass: Harvard University Press, 2000), 90.
[8] Rawls, *A Theory of Justice*, 215; *The Law of Peoples with The Idea of Public Reason Revisited*, 90.

essentially guided by the ideal of a perfectly just society.[9] In order to engage in non-ideal theorizing, we need an ideal theory already at hand.[10] Hence in the Rawlsian framework of theorizing justice, ideal theorizing is both logically and temporarily primary to non-ideal theorizing.[11]

The capacity of ideal theorizing in providing the means to remedy actual injustices has been recently questioned. In the following three subsections, I discuss two related aspects of ideal theorizing that has attracted criticism, the use of idealizations and practice dependence as well as how theorists respond to them.

1.2.1 The use of Idealizations

The first aspect of ideal theorizing that critiques have pointed out that may diminish the capacity of theorizing justice for guiding action is the use of idealizations.[12] Theorists use idealizations in order to differentiate between what is contingent and what is essential for their arguments. Thereby they can focus upon and address only the issues important for them.[13] Yet, idealizations often imply idealized, and therefore false predicates.[14] For example, in arguing for his principles, Rawls makes use of the two main idealizations: 'strict compliance' and 'favorable circumstances.' The former refers to an idealized society where all individuals comply with the principles of justice; the latter, to idealized background conditions such that

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[9]Rawls, *A Theory of Justice*, 216.

[10]Rawls, *The Law of Peoples with The Idea of Public Reason*, 89-90.

[11] For an account of the temporal and logical priority of ideal theorizing, see Hendirx, "'Where should we expect change in non-ideal theory?"

[12] See for example,; John, Laura Valentini, "On the apparent paradox of ideal theory," *The Journal of Political Philosophy* 17, n. 3 (2009): 332–355; "Ideal vs. Non-ideal Theory: A Conceptual Map," *Philosophy Compass* 7, n. 9 (2012): 654–664, Lisa H. Schwartzman, "Abstraction, Idealization and Obsession," *Metaphilosophy* 37, n. 5 (2006): 565-588 Robeyns, "Ideal Theory in Theory and Practice," Zofia Stemplowska "What is Ideal about Ideal Theory?" *Social Theory and Practice* 34, n. 3 (2008): 319-340.

[13] Ingrid Robeyns, "Ideal Theory in Theory and Practice," 352.

[14] For a discussion of idealizations and abstraction see Onora O'Neill. *Towards Justice and Virtue* (Cambridge: Cambridge University Press,1996), at 39–44.

the existence of ample economic and technological developments, natural resources and levels of education of citizens.

Idealizations are necessary for theory to make progress when considering complex problems of justice.[15] Idealizations are also useful in achieving determinacy. In a comparative argument for a set of principles of justice, the effects of competing principles need to be isolated from contingent factors. Using idealizations a comparison can be made based on only those factors wholly related to principles. Otherwise we cannot have a precise judgment as to what has influenced the outcome in each case.[16] Two main idealizations, 'strict compliance' and 'favorable circumstances', enable Rawls to isolate the effects of his ideal principles by excluding the difficulties resulting from partial compliance and the lack of resources.

Critics point out that there are two main problems with using idealizations. The first problem regards allocating duties defined by ideal principles in actual circumstances of non-compliance. Ideal theorizing tells us what to do in ideal circumstance when others comply and where there are adequate background conditions. However, such theorizing does not tell us what to do when others are not doing their share or where the society does not have adequate background conditions.[17]

Problems such as global warming and global poverty require collective action to achieve effective change of the status quo. When others are not doing their share, our contributions may lose significance. In such cases, a number of questions arise regarding the duties implied by principles. Should we continue doing our share regardless of its significance because ideal

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[15] Stemplowska, "What is Ideal about Ideal Theory?", 327.

[16] Simmons, "Ideal and Nonideal Theory," 8; Hendrix, "Where should we expect change in non-ideal theory?" 118.

[17] In a similar vein, in cases where the society is lacking ample resources for the realization of principles of justice, we may have an extra duty to raise resources to create background conditions. In which case, problems arise in determining which duty we should prioritize. I discuss this particular issue in detail in Chapter Two, when explaining two accounts of transitional and non-transitional theorizing.

principles tell us so? Or should we do more than our share in order to compensate for the absence of others' contributions? Is there a limit to such compensation? Or should we just do less than our share since without strict compliance our individual action does not accomplish what the principles aim to do?[18]

Liam Murphy argues for the 'collective principles of beneficence,' which require individuals to "promote the well-being of others up to the level of sacrifice that would be optimal under full compliance" in contrast to 'optimizing principles of beneficence,' which require individuals "to keep benefiting others until the point where further efforts would burden us as much as they would help others."[19] The latter is unreasonable, he argues, since it puts excessive demands on the agents. Murphy's principle is meaningful with regards to problems such as global poverty. It is unreasonable to demand that agents continue benefitting the extremely poor until they reach the point that they are also in similar circumstances of severe poverty. It is reasonable, however, to argue that agents should be obliged to contribute as much as they would have to under the conditions of full compliance, or at least there should be a limit to how much they should shoulder for the stake for others. Yet, with regards to kinds of problems such as global warming where significant change may come if and only if everyone complies with the principles, 'collective principles of beneficence' lose their intuitive appeal. In such cases, it is reasonable to argue that the agents should not be required to fulfil their share under full compliance, since it would not have any significant outcome. The problem with ideal theorizing is that it does not specify the means to decide which course of action individuals should take.

As Laura Valentini points out, these cases "breed scepticism regarding the possibility of identifying a master-principle we can apply in circumstances of partial compliance, telling

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[18] Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map," 655, 656.
[19] Liam B. Murphy, *Moral Demands in Non-Ideal Theory*, (New York: Oxford University Press, 2000), 7.

us precisely what each ought to do."[20] Instead she proposes that "individuals ought to do what is reasonably within their power to respond to existing injustice."[21] Different kinds of problems demand different kinds of duties in circumstances of partial compliance. What is required of an agent should be distinguished case by case in relation to the kind of problem the principles aim to address. This further reasoning in non-ideal circumstances comes as complementary to ideal theorizing of justice. As long as its centrality is recognized, a contextual solution to the problem of allocating responsibility does not conflict with the two stage method of theorizing.

Nevertheless, at times partial compliance may lead to a problem than would the allocation of duties. As Robert Jubb argues, "All other agents acting according to the principles makes it make sense for any given agent to act according to the principles, but in circumstances of non-compliance the principles are inappropriate. When others do not do as they ought to, there are injustices to which those principles do not properly respond."[22] Jubb's argument brings us to the second main problem raised regarding idealization, namely the problem of *bad idealizations*.

Idealizations are *bad idealizations* when they lead to false accounts of the social phenomena the theory itself aims to put under moral inspection.[23] In such cases, the theorist arbitrarily abstracts away or idealizes some influential feature of her subject that needs to be theorized. As Lisa Schwartzman points out, the problem is not the method of bracketing, but rather the degree or the form of bracketing.[24] First, the more a theory makes use of idealization the less the theory will be able to offer good guidance in actual circumstances. Hence, it is important for the theorist to find the balance in simplifying particular components

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[20] Valentini, "Ideal vs. Non-ideal Theory: A Conceptual Map," 656.
[21] Ibid., 656.
[22] Robert Jubb, Tragedies of non-ideal theory, *European Journal of Political Theory* 11, n. 3 (2012): 229–246, at 236.
[23] Valentini, "On the apparent paradox of ideal theory," 352.
[24] Schwartzman, "Abstraction, Idealization and Obsession," 570.

to focus on her subject. Second, and more importantly for the current discussion, the more the idealizations have some bearing for the conclusion of the theory, the more the theory will result in giving wrong recommendations. The problem is that the "agents and institutions who fail to measure up to supposed ideals may be blamed for the misfit."[25] In the end, in using bad idealization, the theory may end up being unable to give adequate guidance, if not false guidance, in addressing actual issues of injustice.[26]

For example, Collin Farrelly discusses the two principles of justice and two priority rules that Rawls' theorizes. The first principle guarantees equal basic liberties for all. The second principle arranges socio-economic inequalities for the improvement of the position of the worst off consistent with the just savings principle and fair equality of opportunity. The first priority rule gives an absolute priority to the first principles. The second priority rule gives priority to the second principle over the principle of efficiency.[27] Farrelly comments that 'strict compliance' and 'favorable circumstances' portray negative rights as costless. When negative rights are costless, "any society that exists in the circumstances of justice under reasonably favorable conditions could, if it just had the political will, guarantee the protection of these rights."[28] Thereby, Rawls can serially order the principles of justice and give absolute priority to the first principle of justice. However, in real world circumstances of partial-compliance and limited resources, negative rights have substantial costs for states. Attempting to realize them according to the priority rule requires states to devote most of their budget to the realization of basic rights, leaving very limited, if at all, resources for the second principle. The bad idealization in Rawls' ideal theorizing then undermines the applicability of the first priority rule in real world circumstances.

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[25] Onora O'Neill. *Towards Justice and Virtue,* 42.
[26] For example, see Valentini's discussion of bad idealizations in Rawls' The Law of Peoples. Valentini, "On the apparent paradox of ideal theory," 352.
[27] Rawls, *A Theory of Justice*, 266.
[28] Farrely, "Justice in Ideal Theory: A Refutation," 851.

Schwartzman recognizes that idealizations are a necessary part of theorizing. In turn, rather than conceptualizing theorizing without idealization she suggests that we "focus more on the question of how to avoid employing false idealizations and oppressive or ideological normative ideals."[29] For better action guidance then, valid idealizations need to be distinguished from bad idealizations. One way to proceed is to make explicit and scrutinize each idealization that a theorist uses. David Schmidt argues that an idealization that is consequential for the conclusion of the argument can be legitimate only if "the variable actually is reintroduced and its centrality acknowledged."[30] Yet, there are cases where this distinction cannot be made at the level of ideal theorizing. For example, the problem of racial injustice and the principles required to overcome the problem "cannot be determined acontextually, independently of the particular circumstances to which it is meant to apply."[31] If there are deep stereotypes in society such as racial prejudices, which can only be observed in a particular context, then, there is a need for alternative principles to redress those contexts of injustice.[32] The particular measures cannot be directly derived from ideal theory but can only be established on a case by case basis in relation to the kind of problem that the principles aim to address.[33]

1.2.2 Practice Dependent Theorizing

Up to this point I have discussed a formal aspect of ideal theorizing. The conclusion we may draw from both problems of the allocation of responsibilities and bad idealizations is that idealizations need to be scrutinized in relation to the aim of theorizing with a focus on the

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[29] Schwartzman, "Abstraction, Idealization and Obsession," 574.
[30] David Schmidtz, "Nonideal Theory: What it is and What it needs to be," *Ethics* 121, n. 4 (2011): 772-796, at 777.
[31] Ibid., 346
[32] For a discussion of racial prejudices embedded in mainstream ideal theorizing, see Mills ""Ideal Theory" as Ideology."
[33] Valentini, "On the apparent paradox of ideal theory," 346.

implications of the principles in actual contexts. Now we can focus on the particular aim of Rawlsian ideal theorizing, which is to theorize the principles of a perfectly just society. The question then is what kinds of idealizations are legitimate in Rawlsian ideal theorizing for good action guidance? We need to determine the kind of empirical information the theorizing should take into consideration.

In terms of the kind of empirical information theorizing permits, Rawlsian theorizing has been considered as a practice-dependent theorizing.[34] Existing practices, specifically institutions, play an important role in the justification, formulation and implementation of ideal principles. Different principles are theorized for each institutional context. Practice-dependent theorizing has been contrasted with practice-independent theorizing. For the latter, existing practices are only relevant in the implementation of principles. In turn, the same overarching principles are valid for all contexts.[35] For example, a principle of luck egalitarianism which prescribes an equal distribution of resources moderated only on the basis of individual responsibility is posed as a practice-independent criterion valid for all contexts. Once the luck egalitarian theorist establishes the validity of the principle, she can look for ways of best implementing it in different contexts.

The distinction between practice-dependence and practice-independence is crucial in determining the scope of principles of justice. For example, in Rawlsian practice-dependent theorizing, the existence of institutions plays a constitutive role. As Andrea Sangiovanni argues "institutions put people in a special relationship, and it is the nature of this special relationship that gives rise to first principles of justice that would not have existed

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[34]See for example, Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," The Journal of Political Philosophy 16, no 2 (2008): 137–164, at 138, 147; "How Practices Matter," *The Journal of Political Philosophy,* early view published online, (2015); Laura Valentini, "Global Justice and Practice Dependence: Conventionalism, Institutionalism, Functionalism," *The Journal of Political Philosophy* 19, n. 4 (2011): 375 - 497. In addition to practice-dependent and practice-independent theorizing, in the literature, there is a further distinction between fact-sensitive and fact-insensitive theorizing. I here discuss only the former distinction, since fact-insensitive theorizing of justice advocated by Gerald Cohen gives a negative answer to the question regarding action guidance posed in the beginning.

[35] Sangiovanni, "Justice and the Priority of Politics to Morality," 147.

otherwise."[36] In the absence of institutions, then principles of justice are not morally relevant. Contrarily, for practice dependent theorizing, the principles are relevant for all contexts.[37]

A number of authors describe the particular method of theorizing practice-dependent principles as a practice of *constructive interpretation*.[38] In Ronald Dworkin's words, constructive interpretiaon refers to the process where the theorist imposes a "purpose on an object or a practice in order to make of it the best possible example of the form or genre to which it is taken to belong." Constructive interpretation involves three stages: the identifying (pre-interpretive), the interpretive and the critical (post-interpretive). At the pre-interpretive stage, theorists identify a shared object of interpretation, which for Rawlsian theorizing is the institution. This stage involves only observation of uncontroversial sociological facts. At the interpretive stage, theorists determine the point and purpose of the institution, and then, reconstruct the reasons of the participants for affirming the basic rules, procedures and standards of the institution. Finally, at the post-interpretive stage, theorists speculate on the way in which the institutions shape relations among participants. In the form of principles of justice, they point to ways through which the point and purpose of institutions can be reconciled with the reasons of the participants to uphold such institutions. As Lea Ypi explains, "the basic assumption is that since social and political institutions fundamentally modify the nature of relations between agents, the nature of such institutions also influences the reasons these agents might have for endorsing or rejecting principles designed to regulate

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[36] Ibid., 140.
[37] The importance of this distinction can be seen most clearly in the global justice debate, which I discuss in Chapter Three.
[38] Ronald Dworkin, *The Laws Empire*, (Cambridge: Harvard Universit Press, 1986), at 52 'Constructive interpretation' is described first by Dworkin's in his account related to interpretating law. Yet, recently, a number of authors such as Aaron James have used it in explaining practice dependent theorizing, 'Constructing Justice for Existing Practices: Rawls and the Status Quo," Philosophy & Public Affairs 33, n. 3 (2005): 281-316, Sangiovanni, "Justice and the Priority of Politics to Morality," 148-150; Valentini, "Global Justice and Practice Dependence: Conventionalism, Institutionalism, Functionalism," Ypi *Global Justice and Avante-Garde Political Agency*, 52-53.

their reciprocal relations."[39] Establishing a relationship between institutions and principles renders the content of the principles meaningful for the agents.

The major criticism to practice dependent theorizing is that so far as it starts from an interpretation of existing institutions, the content of principles is significantly constrained. First, when a particular unit of analysis is defined as the subject matter of theorizing in the pre-interpretive stage, and the principles are constructed to regulate merely that unit, the existence of that unit with its complementary structures is taken for granted. Second, at the interpretive stage, taking the point and purpose of the institutions as the starting point may lead to reproducing the injustices perpetuated by the institution, such as historical injustices in theorizing ideal principles. Valentini notes that "If principles of justice consist in an interpretation of existing practices, then they must *fit* with them. For instance, any plausible interpretation of the point of a hierarchical society will result in a hierarchical conception of justice, according to which people's rights and opportunities vary depending on their social status"[40] Finally, in terms of scope, so far as focusing on practices "leads us to focus on participants, we will be forced to ignore what should be the real possibility that a practice treats nonparticipants unjustly."[41] All three criticisms stress that practice dependence undermines the critical capacity of ideal principles, and places theorizing to a status quo bias.

Advocates of practice dependent theorizing such as Sangiovanni respond to these critiques with an important clarification. He remarks that "For a conception of justice to get off the ground, there must be some sense in which the terms of the institution are at least capable of being justified to all participants; if the institution must depend on systematic and unmediated coercion to reproduce and sustain itself, then the institution is incapable of such a

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[39] Lea Ypi. *Global Justice and Avante-Garde Political Agency*. (Oxford: Oxford University Press, 2012), 51.
[40] Valentini, "Global Justice and Practice Dependence: Conventionalism, Institutionalism, Functionalism," 407, 408.
[41] James, 'Constructing Justice for Existing Practices: Rawls and the Status Quo," 285. See also, Ibid., 309-311.

justification and must therefore be rejected."[42] Not all institutions can be included in a constructive interpretation. Slavery, for example, is not capable of being justified to all participants. In turn, we cannot take slavery for granted, and theorize principles regarding a just institution of slavery. This condition also eliminates institutions that exclude non-participants based on discriminatory practices.

1.2.3 An action guiding ideal theorizing

The debate on conceptualizing ideal and non-ideal theorizing has resulted in a clearer methodology for ideal theorizing. So far as the advocates of Rawls' two stage method can respond to the critiques, this method claims to guide action in actual circumstances. Valentini observes that ideal principles may not be immediately applicable to actual questions of injustice, and the particular kind of guidance may vary from case to case. Yet, she adds that this is not a serious charge and expecting otherwise would unreasonable.[43] As Adam Swift states, "as long as philosophers can tell us why the ideal would be ideal, and not simply that it is, much of what they actually do when they do "ideal theory" is likely to help with the evaluation of options within the feasible set."[44] For example, Holy Lawford-Smith and Valentini argue that ideal theorizing uncovers a profound understanding of justice and thereby identifies a society's priorities.[45] Stemplowska maintains that ideal theorizing is helpful "to judge what we have already achieved against a final landmark of where we ought to be."[46] She points out that judging where we are, even though we do not know precisely how to get there, is essential for motivation and advocating change. The extent of the deviance from the

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[42] Sangiovanni, "Justice and the Priority of Politics to Morality," 162.
[43] Laura Valentini, "On the apparent paradox of ideal theory," 340.
[44] Adam Swift, "The Value of Philosophy in Non-Ideal Circumstances," Social Theory and Practice 34, n. 3 (2008) 363-387, at 365.
[45] Holly Lawford-Smith, "Debate: Ideal Theory—A Reply to Valentini," *The Journal of Political Philosophy* 18 (2010): 357-368; and Laura Valentini, "A Paradigm Shift in Theorizing About Justice? A Critique of Sen," *Economics and Philosophy* 27 (2011): 297-315.
[46] Stemplowska, "What is Ideal about Ideal Theory?", 332.

ideal state of justice and the injustice portrays the severity of the injustice, which will be useful in informing the public and constructing an opinion. The extent may convince people that taking action is worthwhile as the problem is urgent. Swift claims that ideal theory may "alert us to the presence of previously undiagnosed vices and virtues or expose some apparent vices as virtues."[47] For example, in contemporary liberal societies which have undergone a long process of feminist transformation, there is a general belief that the society is gender just. In order to assess such claims of perfect justice, we need ideal theorizing at hand.[48] Finally Robeyns suggests that in some complex cases we need a vision of the ultimate objective to find the right course of action. "The reason is that if this is not the case we may choose an injustice-reducing action that may benefit us in the short run, but this nevertheless may lead us to a suboptimal situation (from the point of view of justice) in the long run, due to the path-dependency of our actions."[49]

1.3 The problem of disagreement and a social choice approach

There is one major criticism against the two stage method of Rawlsian theorizing that I propose has not been adequately addressed in the debate on ideal and non-ideal theorizing. In real world circumstances, there is persistent disagreement pertaining to both levels of the two stage method. There are equally valid reasons for upholding different principles of justice and equally valid reasons for different ways of implementing them in particular contexts. Andrew Masons coherently summarizes the extent of this disagreement:

> This disagreement arises in relation to a range of different issues and occurs at
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> different levels. It includes disagreement over what counts as a just exercise of

[47] Swift, "The Value of Philosophy in Non-Ideal Circumstances," 2008.
[48] Ingrid Robeyns, "Amartya Sen's Redundancy and Priority Claims in The Idea of Justice," *Crooked Timber*, (2010)
[49] Ibid.

coercive political power, disagreement over basic liberties and how much weight each should be accorded, disagreement over what constitutes a just distribution of wealth and income, and disagreement over what decision-making procedures are likely to produce the most just outcomes. Sometimes these disagreements are over fundamental principles, whilst on other occasions they concern the application of shared principles to complex circumstances that are interpreted differently. At a more abstract level (and mainly in academic writings), there is disagreement over whether an adequate theory of justice must be constructivist, realist, or contextualist in character—or none of these.[50]

The action guidance of the two stage method depends on mutual agreement on a set of ideal principles. We can achieve the role of ideal theorizing specified by its advocates only by virtue of mutual agreement on a set of ideals. In the context of disagreement, societal priorities will vary and we will have multiple landmarks to judge what we have achieved or where we are leading.[51] To guide action in this context we "need substantive or evaluative judgments about the relative importance or value of the different values at stake."[52] Yet, the two stage method does not provide us with any of the tools.[53] The critical part of this dissertation argues against Rawls' two stage method due to the problems arising from the fact of pervasive disagreement. The constructive part develops Amartya Sen's social choice approach to justice as a method that can deliver concrete judgments in comparing policies.

In Chapter 2, I begin by evaluating Amartya Sen's call for a radical divorce from the Rawlsian social contract approach. Sen challenges the Rawlsian method with two distinct claims. First, he claims that identifying the perfectly just social state is *redundant* in

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[50] Andrew Mason, "Rawlsian Theory and the Circumstances of Politics," 659.
[51] Lawford-Smith, "Debate: Ideal Theory—A Reply to Valentini," 361.
[52] Swift, "The Value of Philosophy in Non-Ideal Circumstances," 369.
[53] One role of ideal theorizing still relevant in the context of multiple ideals is what Swift has pointed out in identifying undiagnosed vices.

advancing justice by arguing that such identification is neither sufficient nor necessary for making relational rankings of alternative social states.[54] Second, he claims that the method is lethally *indeterminate* by arguing that reaching an agreement on ideal principles is not feasible.[55] Therefore, he concludes, the Rawlsian approach needs to be abandoned.

I argue that Sen's argument is insufficient to ground his call for radical divorce. Yet, I also show that there is a more important problem with Rawlsian theorizing. In Section 2.2 I unpack Sen's claim that for the purposes of comparison, theorizing a perfectly just social state is neither sufficient nor necessary. I develop the Rawlisan method in detail by introducing two kinds of reasoning: non-transitional and transitional, through which we can construct non-ideal principles based on ideal principles. With a hypothetical case of policy choice regarding health care, I demonstrate that the Rawlsian method is unable to identify determinate rankings of alternative social states. My analysis in this section supports Sen's claim of redundancy. In Section 2.3, I offer an alternative interpretation of the Rawlsian approach by emphasizing that determinate rankings are not the primary aim of theorizing. Instead, the method demarcates a set of legitimate courses of action. Within the legitimate set, each course of action is as morally good as is the other. I argue that the alternative interpretation circumvents both claims of redundancy and indeterminacy. In Section 2.4, I develop Sen's social choice approach. I show that for a number of cases his approach can morally distinguish between actions within the legitimate set. This outcome implies that the Rawlsian approach is mistaken in asserting that the social states within the legitimate set are morally indistinguishable, an assertion that is a more serious drawback than is Sen's initial critique. Finally, in Section 2.5, I conclude by emphasizing along with Sen that we need to take moral reasoning further in order to advance justice whenever we can.

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[54]Sen, *The Idea of Justice,* 9.
[55]Ibid, 9.

In Chapter 3 and Chapter 4, I respectively analyze two cases of policy choice in different domains of justice: the first regards implementing global taxes on natural resources; and, the second, reforming the European Union asylum policy. The reason for working on these cases is that I share Pogge's belief that the best support for the claim that philosophers can illuminate what really matters "comes not from abstract arguments" but "from showing by doing: from working through a problem so as to make evident its importance."[56]

In Chapter 3, I compare three competing proposals for implementing global taxes on natural resources: Hillel Steiner's 'Global Fund', Thomas Pogge's 'Global Resource Dividend' and Paula Casal's 'Global Share'. Using the social choice approach that I develop in Chapter Two, I show that we can reach a mutual agreement on a morally better policy among alternatives without reaching an overall agreement on ideal principles. In Section 3.2, I begin with a discussion of how principles are grounded in the global justice debate. After a brief overview of the two classic positions in this regard, statist and cosmopolitan, I argue that both positions contain problems in the application of the social choice approach to the distribution of global resources. For statists, the demand for mutual agreeability on courses of action, which the social choice approach requires, is too stringent. Individuals or states in the globe are not in a relation that gives rise to stringent duties. For cosmopolitans, there are in fact principles of distributive justice that govern the relationship between individuals in the globe. Yet, principles that govern the distribution of global natural resources can only be posed within the general distributive scheme. The demand for mutual agreeability is relevant for identifying the general distributive principles but not for the particular domain of global natural resources. Instead, I argue that the method of the third wave theorists who maintain that there are multiple grounds for theorizing principles of justice for different domains is suitable for the application of the social choice approach. In Section 3.3, I proceed with the

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[56] Thomas Pogge, *Politics as Usual, What Lies Behind the Pro-Poor Rhetoric*, 8.

social choice approach. I describe the alternative states implied by proposals of Steiner, Pogge, and Casal in terms of tax base, rate, and distributive aspects. In Section 3.4, I determine how the social states are valued from different ethical perspectives. From the exchange between the three authors I single out eight different perspectives: egalitarian, prioritarian, sufficientarian, utilitarian, libertarian, conservation of resources, as well as considerations regarding transitional aspects and equal respect of persons. From each perspective I derive a particular ranking of the three proposals. Egalitarian, prioritarian, and conservation of resources prioritize the Global Share, sufficientarian, utilitarian and transitional perspective prioritize the Global Resource Dividend and the libertarian perspective and perspective of equal respect prioritizes the Global Fund. Before I go on to discussing the relative valuations of the rankings, in Section 3.5, I respond to two main objections to the social choice method regarding feasibility and impartial spectators. Responding to the feasibility objection, I emphasize that we need to take seriously Sen's requirement for public scrutiny of option. Each argument provided by impartial spectators needs to be rigorously engaged in order to reach a clearer understanding of each proposal. Responding to the impartiality objection, I bring in Thomas Scanlon's requirement that principles should be such that others could not reasonably reject for assessing the ethical perspectives and Gerald Cohen's *interpersonal test* in evaluating the arguments for the implementation of a policies. In Section 3.6, I pose Steiner, Pogge, and Casal as *impartial spectators* who impart arguments that imply relative valuations of the eight perspectives. Then, I point at the overlaps among relative valuations and show the extent of agreement regarding the policies. Finally, in Section 3.7, I draw two recommendations for reforming the policies towards a less unjust alternative. My first suggestion is to reform the Global Resource Dividend to an extent that it can conserve natural resources at least as well as Global Share can. My second suggestion is to reform the Global Resource Dividend to an extent that it

sustains equal respect for individuals at least as much as the Global Fund does. Reforming the Dividend in these ways gives us a morally better alternative that all can mutually agree.

In Chapter 4, I compare the Common European Asylum System (CEAS) with two alternatives for reforming the in terms of justice. I reconstruct these alternatives by combining the already existing practices of the CEAS together with two opposing attitudes to the asylum seekers. The first policy proposal, which I call 'Turn Back', is designed to prevent the Syrian asylum seekers from entering EU territory. The second proposal, which I call 'Fair Share', is designed to provide shelter for the asylums seekers and share the burden among the Member States. I assess the policies by applying the three step method of social choice that I develop in the previous chapters. In Section 4.4, I begin with the first step by describing the alternative social states implied by the policies as richly as the assessment requires. In Section 4.5, I discuss six ethical perspectives by which we can value the proposals: libertarian, basic rights, utilitarian, equal respect, state sovereignty and solidarity. Libertarian, basic rights and utilitarian perspectives prioritize the Fair Share. Perspectives of state sovereignty and solidarity prioritize the Turn Back and, equal respect, the CEAS. Next in Section 4.6, I first identify *impartial spectators* who give relative valuations of the rankings by different perspectives, and then look for overlaps among rankings of impartial spectators with the aim of identifying pair wise valuations. Yet, prior to three steps of the social choice approach, in Section 4.2, I offer an account of the asylum policies of the neighboring countries of Syria and the actual conditions of the asylum seekers. In Section 4.3, I then offer an account of the commitments of the EU Member states based on the Refugee Convention. Both accounts are important for understanding the social states described in Section 4.4 and their assessment by the ethical perspectives in Section 4.5. Finally, in Section 4.7, I conclude by pointing out that even though the perspective of state sovereignty does not prioritize Fair Share, this absence is not an obstacle for the mutual agreement. In addition, I suggest reforming Fair Share by

including the choices of the asylum seekers as criteria for determining the country of relocation. Thereby, mutual agreement on Fair Share is possible as the method does take into consideration the decisions of the asylum seekers as much as does CEAS claims it does.

In Chapter 5, I highlight a number of aspects of the social choice approach to theorizing justice. In section 5.2, I emphasize that it is able to incorporate pervasive disagreement in society regarding injustices better than its alternatives. I argue that Rawlsian constructivism and Cohen's intuitionism take into consideration the point of views of others in two different levels of theorizing. The social choice approach, by bringing these two aspects together better responds to pervasive disagreement in real world circumstances.

In section 5.3, I emphasize that the social choice approach enables us to refrain from making authoritarian judgments. I argue that the moral judgments in comparing policy proposals as far as they are concerned with social morality, they are authoritative. In turn, I show that if we do not go as far as we can with moral reasoning, we are prone to make authoritarian judgments. As an example I show how the Rawlsian method I discuss in Chapter 2 suffers from this problem. Then, I discuss the cases of implementing global taxes on natural resources and reforming EU asylum policy. Finally, in Section 5.4, I emphasize that the judgments of social choice approach can always be improved with new perspectives and information. The only way to achieve it in practice is with sustaining an environment for free and open-ended discussion.

2. Advancing justice: the Rawlsian vs. social choice approach

2.1 Introduction

Guiding courses of action in advancing justice requires comparing alternative social states in terms of justice. Such comparisons can be guided by the application of varying approaches in the literature on theorizing justice. This chapter focuses upon a recent discussion of Amartya Sen's criticism of the Rawlsian approach dominant in political theory since *A Theory of Justice*.[57] In "What Do We Want from a Theory of Justice?",[58] followed by *The Idea of Justice*[59] Sen calls for a radical divorce from the Rawlsian tradition, claiming that it is unable to guide action in the face of pressing problems of injustice. The problem with the Rawlsian approach, Sen argues, lies with its method which draws on the identification of the perfectly just social state for guiding action.

As I discuss in Section 1.2, John Rawls maintains that ideal theorizing constitutes the sole basis for a systematic grasp of actual injustices.[60] Ideal theorizing identifies ideal principles that govern the perfectly just society. Non-ideal principles that guide courses of action in actual circumstances are derived from ideal principles. In order to engage in non-ideal theorizing, we need an ideal theory already at hand.[61] A number of assumptions sustain the proposed relationship between ideal and non-ideal principles. As Rawls points out, ideal principles project an aim and guide social reform.[62] Actual injustices can be identified as well as ranked depending on how far they deviate from the perfectly just scheme. Even if the

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[57] Rawls, *A Theory of Justice*: *Revised Edition*.
[58] Amartya Sen, "What Do We Want from a Theory of Justice?" *The Journal of Philosophy* 103 (2006): 215-238.
[59] Sen, *The Idea of Justice*.
[60] Rawls, *A Theory of Justice*,8; Rawls, *The Law of Peoples with The Idea of Public Reason Revisited*, 90.
[61] Rawls, *The Law of Peoples with The Idea of Public Reason*, 89-90.
[62] Rawls, *A Theory of Justice*, 215; *The Law of Peoples with The Idea of Public Reason Revisited*, 90.

measure of the departures from the ideal is primarily left to intuition, our judgment is essentially guided by the ideal of a perfect society.[63] Sen challenges the Rawlsian method with two distinct claims. First, he claims that identifying the perfectly just social state is *redundant* in advancing justice by arguing that it is neither sufficient nor necessary for making relational rankings of alternative social states.[64] Second, he claims that the method is lethally *indeterminate* by arguing that reaching an agreement on ideal principles is not feasible.[65] Therefore, he concludes, the Rawlsian approach needs to be abandoned. As an alternative, he offers his social choice approach.

Sen's argument is insufficient to ground his call for radical divorce. His two claims need to be reassessed in the face of an alternative interpretation of the Rawlsian approach. Moreover, it remains to be shown that the social choice approach is ultimately preferable. In this Chapter, I offer an argument to this end. In section 2.2 I begin by unpacking Sen's claim that for the purposes of comparison, theorizing a perfectly just social state is neither sufficient nor necessary. I develop the Rawlisan method in detail by introducing two kinds of reasoning: non-transitional and transitional, through which we can construct non-ideal principles based on ideal principles. With a hypothetical case of policy choice about health care, I demonstrate that the Rawlsian method is unable to identify determinate rankings of alternative social states. My analysis in this section supports Sen's claim of redundancy. In Section 2.3, I offer an alternative interpretation of the Rawlsian approach by emphasizing that determinate rankings are not the primary aim of theorizing. Instead, the method demarcates a set of legitimate courses of action. Within the legitimate set each course of action is as morally good as is the other. I argue that the alternative interpretation circumvents both claims of redundancy and indeterminacy. In Section 2.4, I develop Sen's social choice approach. I show

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[63]Rawls, *A Theory of Justice*, 216.
[64]Sen, *The Idea of Justice,* 9.
[65]Ibid., 9.

that for a number of cases it can morally distinguish between actions within the legitimate set. This outcome implies that the Rawlsian approach is mistaken in asserting that the social states within the legitimate set are morally indistinguishable, an assertion that is a more serious drawback than Sen's initial critique. Finally, Section 2.5, I conclude by emphasizing with Sen that we need to take moral reasoning further in order to advance justice whenever we can.

2.2 Unpacking Sen's critique

Sen's first claim regarding the Rawlsian method is that ideal theorizing is neither sufficient nor necessary for ranking alternative social states. He argues that there is no *analytical connection* between ideal theorizing and actual comparative judgments.[66] In other words, the former cannot supply the theoretical tools needed for advancing justice.

Sen's argument is based on the complexity of the comparison between alternative states in virtue of their respective distance from the ideal state. Sen writes,

> The difficulty lies in the fact that there are different features involved in identifying distance, related, among other distinctions, to different fields of departure, varying dimensionalities of transgressions, and diverse ways of weighing separate infractions.[67]

Sen does not merely point to the unfeasibility of computing distance between an ideal state and the actual states in comparison. There is a more fundamental problem at hand. The information regarding the distance of alternatives from the ideal does not necessarily imply a definite ranking among the alternatives. According to Sen, measuring distance from the ideal

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[66]Ibid., ix, 97.
[67]Ibid., 98-99.

involves many variables. Each variable can be assessed in conflicting ways based on different valuations of various dimensions of justice. Hence, ranking alternative social states requires a valuation of the relative importance of different dimensions of justice, a process which the identification of perfectly just social state does not provide.[68]

Sen's criticism severely undermines the ability of the Rawlsian approach to guide action. Yet, it needs to be substantiated. In order to analyze how theories in the vast literature of Rawlsian justice guide action, I distinguish between two kinds of reasonings. I call the first kind of reasoning 'non-transitional' with reference to its alternative 'transitional'. Non-transitional reasoning compares alternative social states based on the values and relations identified by ideal principles. Transitional reasoning, on the other hand, compares alternative social states by virtue of their ability to bring society to a state of perfect justice. The two kinds of reasoning are forms of non-ideal theorizing in the sense that they guide action in actual circumstances. In the rest of the section, I discuss them respectively through a hypothetical case of health care policy.[69] Ultimately, I show that the Rawlsian method is not sufficient to identify relational rankings of alternative social states.

2.2.1 Non-transitional reasoning

The main assumption of non-transitional reasoning is that ideal theorizing uncovers a profound understanding of justice and thereby identifies a society's priorities.[70] In theorizing

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[68]Ibid., 99. Sen points out that some theorists have offered 'conglomera' theories that provide principles for both identifying the perfectly just society and comparing actual social states. Rawlsian theorizing is an example of a conglomera theory so far as it provides both ideal principles and priority rules that guide trade off questions in actual circumstances. Yet, Sen stresses that the latter does not follow from the former (Sen, *The Idea of Justice*, 16-17). I discuss in detail the Rawlsian principles in the following section.

[69]Although my illustrative case throughout the paper is about policy choice, my discussion is not confined to policy analysis. The idea of action guidance is broader. It aims to include analyses of individual interactions, social movements as well as institutions.

[70]As I point out in Subsection 1.2.3, number of philosophers have emphasized this role for ideal theorizing. For example, see Holly Lawford-Smith, "Debate: Ideal Theory—A Reply to Valentini,"; and Valentini, "A Paradigm Shift in Theorizing About Justice? A Critique of Sen."

ideal principles we come to know what aspects of a society matter for an assessment of justice. Non-transitional reasoning uses this knowledge to achieve improvements of justice by constructing non-ideal principles that resemble ideal principles as much as possible. Rather than aiming for the ideal state of justice, non-transitional reasoning opts for elimination of actual injustices.[71]

Principles of ideal theorizing are used in the *formulation* of non-ideal principles. Hence, non-transitional reasoning requires an ideal theory at hand. According to Costanze Binder, the description of the perfectly just society points at the salient features for assessments of justice by determining values and relations which guide the comparisons of social states.[72] It provides the necessary information needed for making comparisons, namely, the metric of justice (a) and the principles (b). The former specifies the kind of empirical information necessary to make any assessment. It tells us where to look. The latter specifies what makes a society just. It tells us which particular relation we need to take into account while making the comparisons.[73]

Let's look at a case of distributive justice where we need to rank three alternative courses of action by non-transitional reasoning. Suppose a society has a health care policy that provides free medical care for its citizens without medical insurance for a period of two years of unemployment (Po) and is faced with a decision between reforming health care by two alternative policies Px and Py or postponing reform. Px provides free medical care without any time constraints for the unemployed citizens who do not have medical insurance. Py provides no free medical care for its unemployed citizens. Again suppose that there is an agreement in society that the Rawlsian ideal principles are the most appropriate principles of

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[71]Costanze Binder, "Action Guidance and Comparative Theories of Justice," *unpublished manuscript*, 2. My account of non-transitional reasoning mainly draws on Binder's account of comparative theories of justice.
[72]Ibid., 7.
[73]Ibid., 2, 8.

justice. Then, for a comparison using non-transitional reasoning we need to consider (a) and (b) in accordance with the Rawlsian ideal principles. For (a), we identify information regarding the status of 'primary goods' such as basic rights and liberties, income and wealth, and the social bases of self-respect as the metric of justice in social states implied by the policies.[74] And for (b), we compare primary goods with respect to the Rawlsian principles and priority rules. The first principle guarantees equal basic liberties for all.[75] The second principle arranges socio-economic inequalities for the improvement of the position of the worst off consistent with the just savings principle and fair equality of opportunity. The first priority rule gives an absolute priority to the first principles. The second priority rule gives priority to the second principle over the principle of efficiency.[76]

Yet, the relation between ideal principles and actual circumstances can be problematic. In most cases, the assumptions of ideal background conditions of ideal theorizing prevent ideal principles to be directly applied in actual circumstances.[77] Non-transitional reasoning recognizes such limitations. It does not assume that ideal principles are sufficient for an actual comparison, but that they identify the priorities of society. In this sense, the assessment is grounded on a moderate interpretation of the priority of ideal theorizing. Ideal theorizing is temporarily prior to non-ideal theorizing, since to begin with the model requires specific ideal

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[74]Rawls provides a list of primary goods 'a. basic rights and liberties, also given by a list; b. freedom of movement and free choice of occupation against a background of diverse opportunities; c. powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure; d. income and wealth; and finally, e. the social bases of self-respect' John Rawls, *Political Liberalism,* (New York: Columbia University Press, 2005,) 181.

[75]Rawls provides a list of basic liberties, 'Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.' Rawls, *A Theory of Justice*, 53.

[76]Ibid., 266.

[77]Michael Phillips calls the view that ideal principles have direct applications in actual circumstances 'moral purism'. It is untenable for it makes space for logical incoherence as absence of proper institutions makes us logically impossible to act on them Michael Phillips, "Reflections on theTransition from Ideal to Non-Ideal Theory," *Noûs* 19 (1985): 551-570, at 556.

principles. Yet, it is not logically prior to non-ideal theorizing as the outcome of comparison is not finalized by ideal principles.[78]

In most comparisons, tradeoff questions arise due to differences between ideal and actual background conditions. In turn, we need to reinterpret ideal principles for the particular question at hand. Non-transitional reasoning suggests that the tradeoff questions should also be guided by the priorities of society. In our case with the Rawlsian ideal principles, the absolute priority rules are unsustainable in actual circumstances of scarce resources.[79] Yet, they still guide the comparison in a less strict sense. As Rawls writes, "The lexical ranking of the principles specifies which elements of the ideal are relatively more urgent, and the priority rules this ordering suggests are to be applied to non-ideal cases as well."[80] For example, tradeoff questions such as 'which basic liberties need to be prioritized?' or 'how improved should the position of the worst off be?' are assessed by their contribution for a better enhancement of liberties in general.

In returning to the comparative assessment of two healthcare policies, we first compare the status of basic liberties implied by three courses of action. Assuming that basic health care is not among an individual's basic rights, the comparative question does not relate to the first principle of justice. Yet, it does relate to the second principle. On the one hand, Px improves the position of the worst off by providing free access to medical care for unemployed citizens without health insurance. On the other hand, Py exacerbates the position of the worst off by refraining medical care from unemployed citizens. The comparison can be made not only in terms of material resources but also in sustaining the social base of self-respect. Since the two policies do not directly relate to the just savings principle or the principle of equality of

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[78]Here I draw on Burke Hendrix's distinction between logical and temporal priority of ideal theorizing. Hendrix, "Where should we expect change in non-ideal theory?"

[79]The point that a commitment to Rawlsian priority rules leads to counter-intuitive results is well demonstrated by Collin Farrely. Farrely, "Justice in Ideal Theory: A Refutation."

[80]Rawls, *A Theory of Justice*, 216.

opportunity, we can establish a ranking between three courses of action, Px>Po>Py, and argue that Px needs to be preferred to Po and Py.[81]

Yet, the analysis is not confined to non-transitional reasoning. The policy choice transforms the background conditions which have direct implications for tradeoff questions. Hence, we need to take into account the implications of any policy on the background conditions. How the analysis should proceed in the face of such considerations is reflected in the following discussion of transitional reasoning.

2.2.2 Transitional reasoning

Transitional reasoning is grounded on a stricter interpretation of Rawls' distinction between ideal and non-ideal theorizing. According to this interpretation, the former is both logically and temporarily primary to the latter.[82] In other words, ideal theorizing is both a good starting and ending point. Rawls maintains that the transition to an ideal state of justice is a long term project that should be theorized accordingly.[83] As he points out:

> Non-ideal theory asks how this long-term goal might be achieved, or worked toward, usually in gradual steps. It looks for policies and courses of action that are morally permissible and politically possible as well as likely to be effective.[84]

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[81]The rankings of policies that I present throughout the paper are based on empirical assumptions. Alternative empirical assumptions would point to alternative rankings. Yet, this contingency does not undermine my illustrative point about how the two reasonings function in guiding action.

[82]My account of transitional reasoning draws on John Simmons' argument for transitional theorizing. Simmons, "Ideal and Nonideal Theory."

[83]For example, in Rawls' view of international justice the questions of non-ideal theory 'are questions of transition, of how to work from a world containing outlaw states and societies suffering from unfavorable conditions to a world in which all societies come to accept and follow the Law of Peoples.' Rawls, *Law of Peoples with The Idea of Public Reason Revisited,* 90.

[84]Ibid., 89.

John Simmons follows Rawls' formulation and argues for a transitional understanding of non-ideal theorizing. The main assumption is that all societies aim for a state of perfect justice. In turn, the aim of non-ideal theorizing should be to identify *transitional* non-ideal principles that carry society to a state of perfect justice. Non-ideal principles are constructed for overcoming obstacles that result from deviances from the main idealizations of ideal theorizing. They are *justified* by the fact that they aim to pursue the perfect society that ideal theorizing has identified. Moreover, in order to achieve perfect justice, partial principles that address only one domain of justice are rejected in virtue of an integrated approach.[85] As Simmons points out, theorizing that targets injustices here and now, or only one domain of justice, may turn out to be staggering or even blocking the improvements on other domains or the society's chances of reaching overall justice.[86]

Let's consider what transitional reasoning implies for the comparative case at hand. One of the main idealizations of Rawls' ideal theorizing is 'favorable conditions'. It implies that society has enough natural resources and an adequate level of economic and technological development to establish institutions governed by ideal principles. Suppose that like most contemporary societies our society does not have ideal favorable conditions. Then, transitional reasoning identifies courses of action that contribute to sustaining favorable resources. Py, which implies significantly lower public spending than do Po and Px, accumulates resources that can be used in improving the background conditions of society. Px and Po, which imply higher public spending in virtue of expanding free medical care, prevent the accumulation. In turn, Po and Px may block prospective improvements for the worst off in society. When the background conditions are improved, there is the chance to implement more effective policies to better improve the position of the worst off. Po and Px may also

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[85]For a discussion of partial and comprehensive (integrated) ideal theorizing, see Ingrid Robeyns, "Ideal Theory in Theory and Practice," 341-353.
[86]Simmons, "Ideal and Nonideal Theory," 22-24.

undermine society's abilities to address socio-economic improvements in other domains. And, more importantly, they may distance society from establishing basic liberties for all, which is prioritized by the first principle. Hence, transitional reasoning identifies an alternative ranking between the three courses of action, Py>Po>Px.

Yet, transitional reasoning has a large scope that can justify a number of counter-intuitive courses of action. Many desirable courses of action identified by non-transitional reasoning can be rejected or undesirable ones can be justified in the name of contributing to a long term project. Hence, it is important to determine if the transitional reasoning indeed corresponds with the aims of enhancing justice. To this end, we can consider the three restricting conditions for transitional policies and courses of action that Rawls recognizes. They must be 'morally permissible', 'politically possible' and 'likely to be effective' in moving society toward the ideal of perfect justice.[87] In addition, we can add a fourth condition that Simmons emphasizes: we should foremost address the most grievous injustices.[88] Let me briefly discuss how these restricting conditions may influence our case for policy choice.

The *political possibility* of a course of action relates to a number of aspects regarding the makeup of the society. The political possibility of choosing transitional reasoning over non-transitional reasoning is related to the willingness of society for giving up what is considered to be the course of action that leads to less justice here and now (Px>Po>Py) for a long term and integrated project of perfect justice (Py>Po>Px). The public deliberation on the latter involves competing claims based on the two kinds of reasoning with constraints specified by the particular problem at hand. For our case, we can demonstrate possible lines of reasoning by adding the relative information. First, the citizens may find it *morally impermissible* to implement Py instead of Px. Abstaining free medical care from the

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[87]Rawls, *The Law of Peoples*, 89.
[88]Simmons, "Ideal and Nonideal Theory," 18.

unemployed may have dire consequences especially for the vulnerable parts of population, such as the homeless or illicit drug users. It can be argued that substantial increases in mortality rates related to infectious diseases such as HIV and tuberculosis are morally impermissible. Second, citizens may judge that the condition of those who do not receive medical care because they are unable to pay for insurance is *the most grievous injustice*. Hence, the resource accumulation of Py for an integrated approach that addresses all domains of justice at the same time is unjustified and should be rejected. Third, the citizens may judge Py to be an *ineffective step* to build the background conditions of ideal justice. It can be argued that resource accumulation implied by Py undermines the abilities of the vulnerable population to enjoy basic liberties and equality of opportunity, which has bad consequences for economic growth and long term resource accumulation of society.

An analysis of the two kinds of reasoning lays out possible tradeoff questions that arise due to the method of Rawlsian approach. We may now ask if we can reach a definite ranking of policies Px and Py for the comparative question at hand. The first step is to make the relevant calculations of the implications of a particular policy precise enough. In virtue of the Rawlsian ideal principles, we need to determine all the implications of the policy on different political liberties, the worst off part of society, and the background conditions. Although the task is complicated and involves multiple disciplines, it can be resolved. The second step, where we compare the precise implications of alternative policies, is more controversial. The problem is that ideal principles do not tell us how to assess competing valuations reached by the two kinds of reasoning.[89] For example, citizens may judge that not receiving health care is not the most grievous injustice in society. At the same time, they may hold the opinion that the rising mortality rates among the vulnerable are not morally permissible and emphasize

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[89] The priority rules identified by Rawls can be adopted to apply to actual circumstances as well. Sen points out that Rawlsian theory is a conglomera theory that is able to work to some extent at both levels. However, even the priority rules do not enable us to reach definite rankings.

that the position of the worst off needs to be improved in the domain of health. Both claims are based on the same ideal principles of justice. We cannot rank them without establishing relative valuations. Identifying the perfectly just social state is not sufficient for comparing alternative social states. This conclusion supports Sen's claim of redundancy.[90]

2.3 Demarcating the set of legitimate courses of action

However, there is an alternative interpretation of the Rawlsian method that circumvents Sen's criticism. Sen writes that:

> The absence of such comparative implications is not, of course, an embarrassment for a transcendental theory itself, seen as a freestanding achievement. The relational silence is not, in any sense, an 'internal' difficulty'; indeed, some pure transcendentalists would be utterly opposed even to flirting with gradings and comparative assessments, and may quite plausibly shun relational conclusions altogether. They may point in particular to their understanding that a 'right' social arrangement must not, in any way, be understood as a 'best' social arrangement.[91]

As Sen recognizes, the exact formulation of relational rankings may not be interpreted as an aim of Rawlsian theorizing, a result which renders his criticism 'external'. Rawls has a different understanding of how theorizing justice can guide action. He explicitly recognizes the importance of addressing urgent problems of everyday life and offers ideal theorizing as the guide for judgments in actual circumstances.[92] However, he maintains that in the context of reasonable disagreement, the convictions of individuals do not converge on exact rankings.

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[90]The second part of Sen's claim of redundancy, namely that identifying the perfectly just social state is not necessary for comparing alternative social states can be supported by demonstrating that there is a feasible alternative to the Rawlsian approach that does not draw on ideal theorizing. I take up this task in the last section where I develop Sen's social choice approach.
[91]Sen, *The Idea of Justice*, p. 99.
[92]Rawls, *A Theory of Justice*, pp. 8, 215-216; Rawls, *The Law of Peoples*, p. 90.

Instead, individuals can specify a framework of deliberation that is able to sustain fair and effective social cooperation.[93] Identifying the basis of the deliberative framework is the primary aim of theorizing justice. Afterwards, we can determine whether a course of action is legitimate in virtue of the deliberative framework.

2.3.1 Sequences from the first principles

It is important to track the process followed by the Rawlsian approach to understand the specific idea of action guidance implied above. The prior step is ideal theorizing, which specifies the general first principles that govern the basic structure of an ideal society. Then, a sequence is determined through which more particular subjects in actual circumstances are respectively theorized. The theoretical unity is sustained by the connection between each particular principle and the previous more general principles.[94] The deliberation that is involved both in identifying ideal principles and the sequences constitute the framework, where the former guides the whole process.

The sequences can be modeled as the two kinds of reasoning I have introduced in the previous section. Non-transitional and transitional reasoning(s) show how particular cases can be linked with ideal principles. Courses of action that relate to the ideal principles in virtue of the two models are considered legitimate; the rest are not. In this way, the deliberative framework enables individuals to demarcate a set of legitimate actions. Let's turn back to our case regarding the choice of health care policy. A particular ranking between the three courses of action Px>Po>Py that we assert based on the belief that Px improves the position of the worst off is legitimate because it is an outcome of a sequence guided by ideal principles. An alternative ranking Py>Po>Px that we assert based on the belief that Py improves the background conditions of society towards achieving a full state of justice is also legitimate for

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[93]Rawls, *Political Liberalism*, 3, 368.
[94]Ibid., 262.

the same reasons, provided that the policy does not violate the restricting conditions. Moreover, a middle ground such as Po>Px>Py or Po>Py>Px is also legitimate so long as it is based on a reasoning that specifies a balance between the two sequences.

As Rawls points out, the measure of departures from the ideal, which grounds relational rankings of legitimate courses of action, is left mainly to intuition.[95] The exact distance of the alternative state from the ideal is valued differently by each individual. Among legitimate courses of action, a particular course of action is 'just' for an individual based on her valuations. For others who have alternative valuations, the course of action is legitimate but not just. Hence, Sen's first claim of redundancy needs to be qualified: the method of Rawlsian approach is able to guide action by demarcating legitimate actions from illegitimate ones. Yet, it is not sufficient to rank courses of action within the set of legitimate courses of action.

2.3.2 Reasonable first principles

At the previous step of theorizing ideal principles Sen raises his claim of indeterminacy. Rawls maintains that in order to initiate any sequence that determines the set of legitimate courses of action, we need to agree on a unique set of ideal principles. He emphasizes that the justification of principles 'is a matter of the mutual support of many considerations, of everything fitting together into one coherent view'.[96] The required agreement is modeled by a hypothetical initial situation called the 'original position'. Rational and equal people cleansed of vested interests deliberate in order to identify a conception of justice that specifies appropriate principles.[97] Sen points out that 'what we do not know is whether the plurality of

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[95]Rawls, *A Theory of Justice*, 216.
[96]Ibid., 19.
[97]Rawls, *Political Liberalism*, 22. The deliberation involves ranking alternative traditional conceptions of justice based on how the conceptions reflect preferences in terms of primary goods and feasibility consideration. Ibid., 271-278. Although Rawls recognizes that there are competing reasons for alternative conceptions of justice, he believes that there 'may still be an overall balance of reasons plainly favoring one conception over the rest.' Rawls, *Political Liberalism*, 26. 'Citizens of the well-ordered-society' are expected to converge on a set of

reasons for justice would allow one unique set of principles of justice to emerge'.[98] Even with the restricting assumptions of the original position that exclude vested interests, it is possible for parties to offer a variety of competing non-arbitrary reasons for alternative principles of justice. Since all have a valid claim to impartiality, there will be a plurality of outcomes.[99]

Rawls recognizes this condition as 'reasonable disagreement'. For points out that "many of our judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will arrive at the same conclusion".[100] Particularly, in the deliberation for choosing the first principles of justice, he recognizes that there are various equally reasonable candidates. He describes such a condition as follows:

> Thus, the content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one.[101]

Sen argues that Rawls cannot consistently recognize reasonable disagreement and at the same time demand a unique choice at the original position without providing a method to select one principle among competing reasonable alternatives. The problem is that if there is no mutual agreement on a set of principles, or there are two sets both agreeable by society, then, the Rawlsian method runs into lethal indeterminacy.[102]

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principles whose fairness is demonstrated by the original position. In turn the basic structure of the well-ordered society is organized according to the content specified by the chosen principles. Ibid., 259.

[98]Sen, *The Idea of Justice*, 11.
[99]Sen, "What Do We Want from a Theory of Justice?" 224.
[100]Rawls, *Political Liberalism*, 58.
[101]Ibid., 450.
[102]Sen, *The Idea of Justice*, 12, 58.

However, Sen's claim of indeterminacy also needs to be qualified. Recall that the exact determination of relational rankings is not the primary aim of Rawlsian theorizing. Rather, the aim is to identify the basis of a deliberative framework. To this end, it is sufficient to identify a set of reasonable ideal principles that ground a fair and effective system of social cooperation.

It is important to recognize that the 'step by step' process of identifying principles and choosing courses of action only *models* how each step depends on the prior one. Such a process does not imply an actual sequence of events. Rather, it is a reflective tool for the individual. The assessment does not start from an exact identification of ideal first principles. It starts from evaluating the ranking. If the ranking is an outcome of one of the sequences that are guided by one of the ideal principles of justice, then, it is legitimate.[103]

Our case regarding choice of health care policy stands out as a problem of distributive justice. Besides the Rawlsian ideal principles, we may formulate a number of reasonable distributive principles. In very simple terms, utilitarians focus on aggregate welfare, libertarians on securing personal entitlements, egalitarians on reducing inequalities, prioritarians on benefiting the worst off or sufficienterians on securing enough. Each family of distributive principles takes into account a specific value and relation as relevant for

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[103]Considering the point of view of the actual citizens is helpful to make the claim more explicit. In Rawls' theorizing, one place where the theory connects with actual circumstances is the point '-of you and me who are elaborating justice and fairness and examining it as a political conception of justice.' Rawls, *Political Liberalism*, 28. Agents assess the political conception in relation to their convictions by a test which Rawls calls 'reflective equilibrium'. If the political conception passes the test with the convictions of every other agent, then, 'overlapping consensus' is sustained and the conception is publicly justified. If such justification is achieved, then, the agent can advance claims on others about courses of action based on the political conception, and expect that others recognize her claims. As Rawls writes, 'the political conception provides a publicly recognized point of view from which all citizens can examine before one another whether their political and social institutions are just.' Ibid., 9.

In the account I propose, in an actual moment of choice the agent reflects on the comparative assessment through the two kinds of reasonings and makes a claim justified by the political conception. Yet, her claim is one of numerous legitimate claims. The set of legitimate claims contains rankings diversified by different first principles and the alternative valuations in various trade-off situations. The assessment takes place within the full political justification of the conception of justice. Hence, all the agents know that each claim for an alternative ranking is legitimate due to the sequence from the political conception. The final relational ranking of the agent is 'just' for her, and 'legitimate' for others.

making relational rankings. Ultimately, they have strong arguments that are in line with common intuitions about justice. In the deliberative framework, then, the choice regarding health care policy may be guided by any of the legitimate ideal principles of justice.

In the discussion so far, we have reached two conclusions regarding the Rawlsian method. Due to reasonable disagreement in both identifying ideal principles and competing valuations in tradeoff situations, the ordering of alternative rankings does not provide a determinate choice among particular courses of action within the set of legitimate actions. Yet, by demarcating the set of legitimate actions, the method is able to establish the basis of fair and effective social cooperation. This interpretation of Rawlsian method circumvents both Sen's claims of redundancy and indeterminacy. Yet, it also implies that any course of action within the legitimate set is morally as good as is the other. There is no need for further reasoning in terms of justice. Hence, the ultimate choice between the courses of action within the set of legitimate actions is based on factors that do not relate to justice.[104] Any one of the three options of health care policy (Px, Py, Po) may be implemented in accordance with the political affiliations or economic priorities of powerful groups.[105]

Yet, is there really no moral difference between any competing courses of action within the group of legitimate actions? Is it always morally justified to take any course of action on the basis that it is an implementation of a legitimate ideal principle by a legitimate sequence? In the following section, I develop Sen's social choice approach as a method that is able to provide the tools for distinguishing between social states within the legitimate set. If social

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[104]As Sen writes, "assertive incompleteness, like assertive completeness, has the effect of closing a substantive issue, declaring further research to be pointless." Amartya Sen, "Well Being, Agency and Freedom: The Dewey Lectures 1984," *The Journal of Philosophy* 82 (1985): 169-221, at 180. For a discussion of assertive vs. tentative incompleteness, see Amartya Sen, "Incompleteness and Reasoned Choice," *Synthese* 140 (2004): 43–59, at 55; "Well Being, Agency and Freedom: The Dewey Lectures 1984," 179-180; "Maximization and the Act of Choice," *Econometrica* 65(1997): 745-779, at 763-764.

[105]Decisions that are not based on considerations of justice need not always be an imposition of the powerful group. Decisions can be taken with some pre-established decision making process that reflects considerations of efficiency, productivity or pre-established norms. However, which decision making process will be followed needs also to be decided based on a decision making process. In the contemporary context of politics, the process is usually determined by historical contingencies that involve power relations.

choice approach is feasible for a number of cases, then, the Rawlsian approach has a larger problem than indeterminacy. Namely, that it incorrectly asserts courses of action as morally indistinguishable.

2.4 Social choice approach and determinate rankings

In "What do we want from theory of justice?" Sen begins by setting out the foundations for a social choice approach for theorizing justice. The new approach draws on "Rawls' lead on the basic connection between objectivity, public reasoning and the theory of justice."[106] It shares the idea of fairness based on mutual acceptability. Yet, it poses a different question than the Rawlsian approach. Rather than the nature of the perfectly just social state, social choice approach asks what would be the less unjust alternative in a comparison. Thereby, the content of public reasoning is substantially different. Moral reasoning is aimed at determining the morally better option that can be endorsed by.

In the constructive part of *The Idea of Justice*, Sen exposes the details of the novel approach. Moreover, he claims that it is able to identify injustices in the current world order such as persistent famines, exclusion of medical access, subjugation of women and torture.[107] However, nowhere does he demonstrate how an actual assessment can be made by the social choice approach. In this section, I aim to develop Sen's social choice approach based on my analysis of action guidance with the two kinds of reasoning. I first demonstrate in three steps how social choice approach can reach more determinate rankings of alternative social states. Then, I consider two objections regarding its legitimacy as an exercise of normative reasoning and feasibility.

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[106]Sen, *The Idea of Justice*, 216. The social choice approach that Sen proposes differs from other theories of social choice in virtue of the fact that the collective choice is not grounded by aggregates of inputs such as preferences or votes. Rather, in line with Rawlsian idea of justice as fairness, the choice is grounded by mutual agreeability.
[107]Ibid., 24-25, 103-104, 243.

The first step of social choice approach is to have a description of the alternative states as richly as the valuation requires.[108] For actual cases, this entails a detailed inspection of the problem at hand. For our hypothetical case, we can specify a number of general characteristics of the society. Recall that as with most contemporary societies, ours does not have enough resources to simultaneously address all the issues of justice. Institutions are not fully effective in implementing distributive schemes; there is need for institutional improvement; and there are problems in other domains of justice such as political, gender and environmental justice that need to be addressed. Moreover, Px and Py are alternative policies that are feasible as well as accessible from the original state Po.

In addition, we need to specify the particular kind of information to which the principles we are going to use in the comparison are sensitive; the information regarding the values and relations which guide the comparison.[109] An important feature that Sen's social choice approach shares with the Rawlsian approach is the emphasis on the mutual justification of principles of justice.[110] Hence, only those principles that withstand critical scrutiny by an informed public are allowed in the deliberation. The comparative claims need to refer to perspectives that are acceptable by others.[111] For our case at hand, let's specify five distributive principles discussed in the previous section as reasonable principles; libertarian, egalitarian, prioritarian, sufficientarian, and utilitarian.[112]

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[108]Amartya Sen, "Environmental Evaluation and Social Choice: Contingent Valuation and Market Analogy." *The Japanese Economic Review* 82 (1995): 23-37, at 24.
[109]For a discussion of principles of justice and their respective informational basis, see Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf Inc., 2000), at 55-56.

[110]For a discussion of commonalities between Sen and Rawls on justice as impartiality see Gerald Gaus, "Social Contract and Social Choice," *Rutgers Law Journal* Vol 43(2012): 167-405, at 245;and on mutual justification see Fabienne Peter "Sen's Idea of Justice and the Locus of Normative Reasoning," *Journal of Economic Methodology* 19 (2012): 165-167, at 166.
[111]For a discussion of impartiality and objectivity see Sen, *The Idea of Justice*, 122.
[112]The kind of principles referred here are not ideal principles designed to govern a perfectly just social state. Rather, they are principles that reflect the values emphasized by a particular ethos, such as an egalitarian ethos. In this way, social choice approach does not depend on principles of ideal theorizing. For a discussion of the relationship between values, principles and ethos, see Jonathan Wolff, "Fairness, Respect and the Egalitarian Ethos," *Philosophy and Public Affairs* 27 (1998): 97-122.

A relevant information for the assessment is about how the resources for sustaining Px are to be secured, since Px requires more than Po. We also need to take into account how the resources that emerge from Py are to be deployed, since Py requires less than Po. Accordingly, we can specify that in our society Px is to be funded by the general tax scheme already in place. And the funding that is to emerge from Py is to be used both in addressing the problems with the institutions as well as other domains of justice. Other relevant information relates to the consequences of the policies on the well-being of individuals. We need to know the proportion of unemployed citizens without medical insurance to the employed, the level of well-being of each group of individuals and an account of how they will be affected by the policy decision in terms of well-being. Accordingly, we can specify that it is a particular moment of economic hardship. Unemployment rates are as high as 15%. The unemployed have insufficient income to receive medical treatment that involves costly controls and medication. The absence of medical treatment implies a significant decrease in their well-being, which can be remedied by Px. Moreover, bad health has also dire consequences for other aspects of their life. The unemployed individuals are no longer able to make efficient use of public life; furthermore, the prospects of finding employment and getting back health care are seriously undermined. On the other hand, the remainder of the population is also experiencing economic hardship. The public expenditure sustaining Px can instead be used for a general economic scheme that implies economic growth and consequent increase in the well-being of society in general.

Having specified the relevant information, the second step is to identify alternative rankings of social states by the principles and the two kinds of reasoning. The above description of the social states is just rich enough to identify rankings of policies with non-transitional reasoning based on the five distributive principles. Egalitarian principles (e) are likely to rank Px over Po and Py because the former decreases inequalities by taxing the well

off and improving the position of the worst off. Prioritarian principles (p) are likely to rank Px over Po and Py because the former helps the worst off. Sufficientarian principles (s) are likely to rank Px over Po and Py because without access to health care, individuals are destined to stay under a particular level of well-being. Utilitarian principles (u) are likely to rank Py over Po and Px because the decrease in the level of well-being of 15% of the population in Py is compensated by the increase in the well-being of the rest. Libertarian principles (l) are likely to rank Py over Po and Px because the latter two use the tax revenue from the well-off for the improvements of others, depriving the former of their personal entitlements. In addition to rankings based on non-transitional reasoning with five distributive principles, we need to consider the rankings based on transitional reasoning. Let's assume that similar institutions would need to be in place in order to implement better distributive schemes implied by the five principles. Let's further assume that the importance of improvements in other domains of justice with regards to the distributive domain is relatively similar regardless of the particular distributive principle that is chosen. Hence, transitional reasoning (t) based on all the five distributive principles is likely to rank Py over Po and Px because the former implies securing resources to be used in the improvement institutions and addressing problems in other domains of justice.

Table 1

Egalitarian Principles (e)	Prioritarian Principles (p)	Sufficientarian Principles (s)	Utilitarian Principles (u)	Libertarian Principles (l)	Transitional Reasoning (t)
Px	Px	Px	Py	Py	Py
Po	Po	Po	Po	Po	Po

Py	Py	Py	Px	Px	Px

So far, in terms of deriving rankings from principles for actual circumstances, the analysis is similar to the approach. We have at hand a number of courses of action based on the two kinds of reasonings and five distributive principles, all of which are undistinguishable in terms of justice. The third step of social choice approach articulates a way to eliminate a number of alternatives by making use of incomplete orderings.[113] We can make use of incomplete ordering in virtue of the particular aim of social choice approach. As I have emphasized, rather than identifying the perfectly just social state, the social choice approach aims to guide action by identifying the morally better alternative for the question at hand. Hence, disagreements do not need to be fully resolved for the entire society. In other words, the outcome of deliberation need not specify a complete ordering for all cases.

The reasoning has two steps. First, we identify impartial spectators who give relative valuations of the rankings specified at the previous step. Impartial spectators are idealized agents cleansed of vested interests as well as the bias of tradition and custom.[114] They represent possible *impartial* rankings of different reasonings that can be proposed in relation to the particular policy question. Impartiality of the rankings is again sustained by reasoned scrutiny from different perspectives. We demand impartial reasons for each of the rankings proposed by the impartial spectators. For our case, let's specify three impartial spectators who have alternative rankings: A (e>p>s>u>l>t)[115], B (p>s>l>e>u>t) and C (s>p>l>e>t>u).[116] It is

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[113]For a discussion of eliminating alternatives based on incomplete orderings, see Amartya Sen, "Well Being, Agency and Freedom: The Dewey Lectures 1984," 181.

[114]'Impartial Spectator' is the idealized agent Sen adopts from Adam Smith. It not only eliminates 'the influence of vested interest, but also the impact of entrenched tradition and custom' Sen, *The Idea of Justice*, 44-45.

[115]e>p is read as e is preferred to p.

[116]It might be objected that referring to more than one impartial spectator undermines the impartiality of the spectators. I discuss this objection in detail in the following subsection.

important to note that the reasons each impartial spectator gives for ranking one ethical perspective over another refer to the alternative policies. In other words, rankings of the principles are relative to the comparative question. The same impartial spectator who assesses a similar question in another domain, or compare different proposals is likely to offer a different ranking of principles.

Table 2[117]

A	B	C
e	p	s
p	s	p
s	l	l
u	e	e
l	u	t
t	t	u

The second step is to look for overlaps among rankings of impartial spectators with the aim of identifying pair wise valuations. As Sen points out, when different parts of the plural evaluation point to the same valuation between two rankings, we can assert that particular valuation as an overall ranking.[118] In the above evaluation of the impartial spectators A, B and C there are nine overlaps: e>u, e>t, p>u, p>l, p>t, s>u, s>t, s>l and l>t. These are nine valuations that all impartial spectators agree on.

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[117]Gaus provides a similar illustration of how impartial spectators may rank alternatives. Gaus, "Social Contract and Social Choice," 247-248.
[118]For a discussion of dominance reasoning, see Amarta Sen, *On Ethics & Economics*, (New York: Basil Blackwell, 1988) at 66; and *The Idea of Justice*, 105.

The pair-wise valuations that all impartial spectators agree on identify alternatives that are not judged to be worse than any other.[119] Even though they do not point to the best alternative, the information is central for guiding action. As Sen writes, "intelligent moral choice demands that we not choose –explicitly or by default- an alternative that we can see is morally inferior to another feasible alternative."[120] According to the above nine overlaps, there is an agreement that u, t, and l are all inferior to at least one of the other alternatives. This means that it is morally wrong to choose any one of them, when there is the chance to choose any one of the others: e, p and s. In turn, for making a morally justified choice among alternative distributive principles, the option set is significantly decreased. For our case of health policy, the option set has also decreased to an extent that we can make a morally justified choice of Px, over Po and Py since all of the principles in the available set; e, p and s entail a ranking that prefers Px over Po and Py.

Contrary to the Rawlsian approach, Sen's social choice approach as I have developed offers the possibility of distinguishing a morally better choice among the three policies. This entails that the approach is mistaken in asserting those courses of action as morally indistinguishable. There are in fact morally distinguishable courses of action within the legitimate set.

2.5 Two Objections

In our hypothetical case, the determinate choice was possible by virtue of the particular evaluations of impartial spectators A, B and C. At this point, it is useful to consider at least two fundamental concerns regarding the account of Sen's social choice approach developed

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[119]For a discussion of maximization and optimization, see Sen, "Maximization and the Act of Choice," 763-769.
[120]Sen, "Well Being, Agency and Freedom: The Dewey Lectures 1984," 181. Sen also points out that "The classical framework of optimization used in standard choice theory can be expressed as choosing, among the feasible options, a "best" alternative… The general discipline of maximization differs from the special case of optimization in taking an alternative as choosable when it is not known to be worse than any other (whether or not it is also seen to be as good as any other)." Sen, Maximization and the Act of Choice, 763.

here. First we can ask: is it justified to assert relative valuations of first principles for the actual question as *impartial* orderings? As we have seen, one of the main assumptions of approach is that there is reasonable disagreement on ideal principles. Taking reasonable disagreement seriously might bind us to affirm any relative valuation of first principles as subjective, rather than objective. Second, we can ask: even if the relative valuations of the first principles are objective, is it realistic to assume that they can take such a form as to allow partial orderings to significantly affect the choice set?

The first question concerns the legitimacy of social choice approach as an exercise of normative reasoning. If the relative valuations of first principles are subjective, then spectators cannot be impartial. A, B and C would merely represent three of a great number of relative valuations of the reasonings that correspond to contingent preferences of groups. In this sense, social choice approach would remain only as a mechanism for aligning preferences. It would have practical value but no normative impact.

For Sen, the differences between the impartial spectators are a result of the way the question is assessed from different social positions. Yet, the relative valuations are *positionally objective.* They reflect what can be seen from a given position as a person-invariant but position-relative observation. In other words, the orderings can be made by any person who occupies that social position.[121] Sen maintains that objectivity "'is not so much a 'view from nowhere', but one from a 'delineated somewhere'".[122] For our case, the ordering of impartial spectator A (e>p>s>u>l>t) implies that there is a social position from where the contextual assessment of the comparative question leads to that particular ranking. This is recognized also for the competing orderings of impartial spectators B (p>s>l>e>u>t) and C (s>p>l>e>t>u). The economic hardship in our hypothetical society; the unemployment rates,

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[121]Sen, *The Idea of Justice*, 157-158.

[122]Amartya Sen, "Positional Objectivity," *Philosophy & Public Affairs* 22 (1993): 126-145, at 129.

the extent of bad health and poverty, the conditions of the institutions and other domains of justice can be unique experiences among varying social positions. The perception(s) of women, immigrants or ethnic minorities with histories of domination produces distinct reasonings that translate into different impartial rankings. It is important to note that assessment of the question is from a particular position. Assessing other questions from the same position may lead to alternative valuations.

These claims, nevertheless, need to be trans-positionally consistent and put to critical scrutiny by an informed public. Sen suggests that the kind of scrutiny may take the form of Thomas Scanlon's approach in identifying reasonable principles.[123] For example, the reasons for the emphasis on the egalitarian claims in the ordering of the impartial spectator A need to be such that no one could reasonably reject.[124] The reasons may be grounded on the particular information derived from the trans-positional experiences of a historically dominated group, but not on their preferences. Otherwise, the orderings would reflect their positional bias or illusions.[125]

The second question concerns the feasibility of social choice approach. The hypothetical society that I have considered so far has been particularly accessible to partial orderings that significantly affect our choice set. Yet, is it realistic to assume similar orderings with an actual case?

In order to test the feasibility of the social choice approach, let's add three more impartial spectators to our evaluation of health care policy: D (l>e>t>u>s>p), E (t>p>s>l>e>u) and F (u>l>t>e>p>s). Each prioritizes a reasoning that has a lower ranking in the evaluations of the impartial spectators A, B and C. The upshot is that in the new

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[123]Sen, *The Idea of Justice*, 197.

[124]Scanlon holds that "thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject." Scanlon, *What We Owe to Each Other,* (Cambridge, Mass.: Harvard University Press, 1998) at 5.

[125]For a detailed discussion of positional objectivity see Sen, *The Idea of Justice*, 130.

evaluation there are no pair-wise valuations upon which all impartial spectators agree. We are not able to eliminate any of the principles as morally inferior to any other. The set of legitimate courses of action remains morally indistinguishable.

Table 3

A	B	C	D	E	F
e	p	s	l	t	u
p	s	p	e	p	l
s	l	l	t	s	t
u	e	e	u	l	e
l	u	t	s	e	p
t	t	u	p	u	s

The evaluation with only the impartial spectators A, B, and C and the evaluation with A, B, C, D, E, and F represent two distinctive kinds of orderings that we can encounter in assessing comparative questions. The former is particularly receptive to partial orderings; the latter, on the other hand, is equally unreceptive. In assessing actual comparative questions, we are definitely going to encounter cases of both kinds. However, more commonly, we should expect rankings that are in between. In such cases, even if the similarity between the orderings is not enough to identify a determinate course of action, the information is still relevant for reforming the alternatives.

Let's consider another case where in addition to A, B and C, we have the impartial Spectator J who has the ordering l>t>u>e>p>s. The only pair-wise evaluation that all impartial spectators agree on is l>t. It implies that in cases where we are able to choose l, we

should not choose t. The partial agreement does not enable us to distinguish any course of action as the morally right one.

Table 4

A	B	C	J
e	p	s	L
p	s	p	t
s	l	l	u
u	e	e	e
l	u	t	p
t	t	u	s

Recall that the different ordering of J is the outcome of J's different valuation of the actual comparative question. From the social position of J, one explanation of the different ordering that prioritizes (l), (t) and (u) over the (e), (p) and (s) may be the extent of Px. Also recall that Px provides free medical care for unemployed citizens who do not have medical insurance without any time constraints. Px contrasts severely with libertarian considerations, since it implies using the tax revenue from the well-off for improvements for others, depriving the former of their personal entitlements. Moreover, Px significantly diminishes the resources that could be spent on the improvement of institutions and other domains of justice. In turn, it also implies a decrease in the well-being of the employed that is not compensated by the increase in the well- being of the unemployed.

For exploring ways to reach an agreement on advancing justice, we can reformulate the policy options. We can aim to align the rankings of impartial spectators just enough to be able to morally distinguish morally better courses of action. One option is to moderate Px to Px*

which provides free medical care for six years to all unemployed citizens without medical insurance. Px* implies less deprivation of personal entitlements of the well off, and more resources for the improvement of institutions and other domains of justice than Px. Hence, the comparison between Px*, Py and Po points to different orderings of the reasonings since Px* implies different weights for libertarian, transitional and utilitarian considerations than does Px. In turn, the policy adjustment has the prospects of changing the ordering of J to the extent that it is compatible with pair-wise valuations identified through the orderings of A, B and C. In this way, the social choice approach can be informative in reformulating courses of action towards a mutually agreeable choice.

2.6 Conclusion

In this article, I try to accomplish two things. First, I qualify Sen's two claims of redundancy and indeterminacy by offering an alternative interpretation of the Rawlsian approach in guiding action. I show that the Rawlsian method demarcates a set of legitimate courses of action that citizens can take as morally justified. Second, by demonstrating that for a number of cases Sen's social choice approach is able to morally distinguish between actions within the legitimate set, I argue that the Rawlsian method is misguiding in advancing justice.

For Rawls, identifying 'the fair terms of social cooperation' is the primary aim of theorizing justice. The Rawlsian approach serves well to this end. Yet, as I argue in this article, within a fair system of social cooperation we can still make mutually agreeable advances in justice. Admittedly, the hypothetical case regarding choice of health care policy is highly simplified. Actual questions regarding courses of action for alleviating injustice are much more complex. Nevertheless, the complexity of the problems should not stop us from taking moral reasoning further. Sen's social choice approach gives us just the right tools.

3 Implementing global taxes on natural resources

3.1 Introduction

Paula Casal describes the contemporary world order as characterized by massive deprivations, inequalities and environmental problems. She reminds us that

> One-fifth of humanity lives in abject poverty on less than $1 per day, and almost half on less than $2 per day. The consequences of deprivation for the children of developing countries are particularly horrific: two in five are stunted, one-third are underweight, and one quarter of all 5 to 14-year-olds work for wages, often under harsh conditions in agriculture, mining, textile and carpet production, or prostitution. Climate change is worsening matters further still, already adding 300,000 deaths annually.[126]

According to Casal, most individuals agree that the contemporary world order is shocking and depressing. Nevertheless, there is no consensus "on how to eradicate global poverty and distribute the costs of doing so."[127] Acknowledging the injustice embedded in the current does not to an agreement on the appropriate remedies. With the aim of exploring an effective way to improve the current situation, she engages in a fruitful debate with Hillel Steiner and Thomas Pogge regarding implementation of global taxes on natural resources, a domain which has prospects of significantly impacting the contemporary world order. The debate proceeds with Casal critically examining each author's original tax scheme and advocating her own proposal. In light of Casal's criticisms, Steiner and Pogge then defend and clarify their proposals. The exchange is concluded by Casal's final reply.

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[126] Paula Casal, "Global Taxes on Natural Resources." *Journal of Moral Philosophy* 8, (2011): 307-327, at 308.
[127] Ibid., 308.

The approach that Pogge and Casal share differs from Steiner's. While Steiner theorizes from a left-libertarian view what would be the ideally just arrangement regarding the distribution of natural resources, Pogge and Casal conceptualize an initial step for overcoming global problems. In this article, I compare the three policy proposals using the social choice approach proposed by Amartya Sen, in 'In What do we want from a theory of justice?'[128]and *The Idea of Justice*.[129] I show that we can progress in overcoming a number of problems without reaching an overall agreement on ideal arrangements. The questions of what is the perfectly just way to eradicate global poverty and who should bear these costs do not need determinate answers in order to improve the status quo. By means of the social choice method, we can come to an agreement among actual alternatives on a less unjust social state.

I compare the global tax schemes by developing the social choice approach in three steps, which I respectively discuss in the following sections. The first step involves describing the alternative social states as richly as the assessment requires. For our case at hand, this activity entails a detailed inspection of what the alternative proposals imply. In Section 3.3, I discuss Steiner's 'Global Fund', Pogge's 'Global Resource Dividend', and Casal 'Global Share' in terms of tax base, rate, and distributive aspects. In Section 3.4, as the second step of social choice approach, I discuss how the social states are valued from different ethical perspectives. I first identify from the exchange between the three authors eight perspectives from which the competing proposals can be valued: egalitarian, prioritarian, sufficientarian, utilitarian, libertarian, conservation of resources, as well as considerations regarding transitional aspects and equal respect of persons. From each perspective I derive a particular ranking of the three proposals. Egalitarian, prioritarian, and conservation of resources prioritize the Global Share, sufficientarian, utilitarian and transitional perspective prioritize

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[128] Sen, "What do we want from a theory of justice", 2006.
[129] Sen, *The Idea of Justice*, 2009.

the Global Resource Dividend and the libertarian perspective and perspective of equal respect prioritizes the Global Fund. Before I go on to discussing the relative valuations of the rankings, in Section 3.5, I respond to two main objections to the social choice method regarding feasibility and impartial spectators. Responding to the feasibility objection, I emphasize that we need to take seriously Sen's requirement for public scrutiny of option. Each argument provided by impartial spectators needs to be rigorously engaged in order to reach a clearer understanding of each proposal. Responding to the impartiality objection, I bring in Thomas Scanlon's requirement that principles should be such that others could not reasonably reject for assessing the ethical perspectives and Gerald Cohen's interpersonal test in evaluating the arguments for the implementation of a policies. After that, in Section 3.6 as the third step of social choice approach, I pose Steiner, Pogge, and Casal as *impartial spectators* who impart arguments that imply relative valuations of the eight perspectives. Then, I point at the overlaps among relative valuations and show the extent of agreement regarding the policies. Finally, in Section 3.7, I draw two recommendations for reforming the policies towards a less unjust alternative.

Yet, prior to embarking on the social choice method, we need to determine whether it is relevant for the distribution of global natural resources. Only if the distribution of global natural resources is a valid domain for considerations of justice can we then press the demand for mutual agreement in choosing courses of action. To this end, I begin in Section 3.2 with a discussion of how principles are grounded in the global justice debate. After a brief overview of the two classic positions in this regard, statist and cosmopolitan, I focus on the method of the third wave theorists who maintain that there are multiple grounds for theorizing principles of justice for different domains.

3.2 Is fairness relevant in the distribution of global natural resources?

Social choice approach demands that the choice between courses of action need to be mutually justifiable. Hence, prior to using social choice approach for guiding action, we need to determine whether considerations of fairness are relevant to assess the distribution of global natural resources. We need to establish the grounds for theorizing stringent principles for this domain.

Mathias Risse defines grounds of justice as "those considerations or conditions based on which individuals are in scope of principles."[130] Particular features of a population ground principles of justice. Our concern here is global natural resources. The population we need to consider is the world population as a whole. Therefore, we need ask if there is a feature of world population that puts individuals within the scope of distributive principles. If we fail to provide the required grounds, we can still pose humanitarian principles. However, a social choice approach in this domain cannot be justified.

In the debate in theorizing global justice, there are two main positions: statist and cosmopolitan. They provide competing accounts of how principles of justice are grounded, and whether those features exist for the world population. There is an extensive literature arguing for each position. Here my concern is not to engage with the debate, but rather to determine if an assessment of the distribution of global resources by the social choice approach is compatible with any of the two positions.

The statists believe that there is only one particular relationship among individuals, namely the membership to a state that is grounded by the principles of justice.[131] The significance of membership to a state is characterized by alternative statist accounts. For some theorists, such a membership implies a commitment to a system of social cooperation or reciprocity while other theorists focus on the coercive relationship between an individual and

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[130] Mathias Risse. *On Global Justice* (Princeton: Princeton University Press, 2012), 5.
[131] Ibid., 8.

the state.[132] Regardless of how the particular relationship is characterized, all statist theorists pose principles of distributive justice to govern the interactions of individuals within the state. Beyond the boundaries of the state, since the global population as a whole lacks a similar binding relation, stringent principles of justice are not relevant between individuals. In considering global problems, such as those related to the distribution of natural resources, emphasis on membership to a state renders the state as the relevant unit of moral concern. Moreover, since the membership of the states to the global order is not a relation similar to the membership of individuals within the state, statists do not pose distributive principles that govern the interactions between the states as well. Instead, they pose less stringent moral principles such as principles that are limited to sustaining mutual aid and respect. Similarly, in regarding the relationship among individuals, only less stringent moral obligations such as humanitarian aid can be posed. [133] Hence, for the statists, global natural resources cannot be assessed by considerations of fairness either between individuals or between states.

The second main position in the global justice debate is cosmopolitanism. Cosmopolitans provide two different accounts of how principles of justice are grounded. [134] Globalists, or weak cosmopolitans, agree with the statist that one particular relationship exists among individuals that grounds the principles of justice. However, globalists disagree with the statists on the assumption that the membership to a state, whether based on coercion or cooperation, solely constitutes that relationship.[135] They point to the cooperative or coercive

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[132] Samuel Scheffler, "The Idea of Global Justice: A Progress Report" *Harvard Review of Philosophy,* forthcoming.

[133] See for example, Rawls, *"The Law of Peoples: with The Idea of Public Reason Revisited,"* at 119, 120; Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33, n.2 (2005):113-147; Samuel Freeman, "Distributive Justice and the Law of Peoples," in *Justice and the Social Contract* (New York: Oxford University Press, 2007), 297-321; David Miller, *National Responsibility and Global Justice* (New York: Oxford University Press, 2007)

[134] Risse. *On Global Justice*, 8. Gillian Brock, "Contemporary Cosmopolitanism: Some Current Issues" *Philosophy Compass* 8, n. 8 (2013): 689–698, at 691; Simon Caney, "Review Article: International Distributive Justice," Political Studies 49, (2001): 974-997, at 975, 976.

[135] See for example, Darrel Moellendorf, "The World Trade Organization and Egalitarian Justice," *Metaphilosophy* 36, n. ½ (2005): 145-162.

features of the global order and argue that an individual's membership to the global order is sufficiently binding to pose stringent principles of justice. Strong cosmopolitans, on the other hand, reject the assertion that a relationship among individuals grounds principles of justice. Instead, the common features shared by the world's population, regardless of the kind of relationship they hold, are sufficiently grounding.[136] In assessing global problems, both accounts of cosmopolitanism, regardless of the particular reasons they offer, assert that the relevant unit of moral concern is the individual. Hence, they pose stringent principles that govern the interaction of individuals. The states are relevant as a means to implement the global distribution identified by cosmopolitan principles. In addition to the stringent duties of distributive justice, humanitarian duties and principles that sustain mutual aid and respect between states are still relevant.[137]

Both positions contain problems in the application of the social choice approach to the distribution of global resources. For statists, the demand for mutual agreeability on courses of action, which the social choice approach requires, is too stringent. Individuals or states in the globe are not in a relation that gives rise to stringent duties. For cosmopolitans, there are in fact principles of distributive justice that govern the relationship between individuals in the globe. Yet, principles that govern the distribution of global natural resources can only be posed within the general distributive scheme. The demand for mutual agreeability is relevant for identifying the general distributive principles but not for the particular domain of global natural resources. The principles for the latter can be derived from the former either in the form of transitional principles that aim to achieve the global distributive scheme or as

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[136] See for example, Simon Caney, "Cosmopolitan Justice and Equalizing Opportunities," *Metaphilosophy* 32, n. ½ (2011): 113-134; "Survey Article: Cosmopolitanism and the Law of Peoples," The Journal of Political Philosophy 10, n. 1 (2002): 95-123;
[137] See for example, Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism*, (New York: Cambridge University Press, 2004)

approximations of the general principles. A comparison between alternative policy proposals is thus problematic.

A recent approach in theorizing global justice, which Gabriel Wollner calls the third wave, offers an alternative method of grounding principles.[138] Contrary to both statist and cosmopolitan positions, the third wave theorists assume that the principles of justice are grounded in multiple ways and that differing grounds of justice lead to diverse principles. In the domestic context, we are assured that principles of distributive justice apply because the domain is over-determined by a plurality of grounds.[139] In the global context, different grounds that correspond to various domains. Theorizing is therefore partial, in contradiction to integrated and transitional theorizing. For example, Risse recognizes five grounds: "individuals as human beings, members of states, co-owners of the earth, as subject to the global order, and as subject to a global trading system."[140] Each ground corresponds to the distribution of a certain set of objects. For Risse the distribution of global natural resources is grounded by Common Ownership of the Earth. Based on this ground, he constructs a set of natural ownership rights. They are rights "to use (in the narrow sense) resources and spaces to satisfy one's basic needs or else to live in a society that does not deny one the opportunity to satisfy one's basic needs in ways in which it otherwise could have been done through original resources and spaces."[141] Risse limits the content of his natural ownership rights to a guarantee of basic need of satisfaction because he is looking for rights that can be acceptable to every reasonable person. Constructing more comprehensive rights from the grounds of common ownership may be objected by reasonable people.

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[138] Gabriel Wollner, "The Third Wave of Theorizing Global Justice: A Review Essay" *Global Justice: Theory Practice Rhetoric*. 6 (2013): 21-39, at 27. Exemplary of the third wave, Wollner discusses theorizing of Laura Valentini *Justice in a Globalized World: A Normative Framework*, 2011; Aaron James *Fairness in Practice: A Social Contract for a Global Economy*, 2012; and Mathias Risse *On Global Justice*.
[139] Wollner, "The Third Wave of Theorizing Global Justice: A Review Essay", 27-30.
[140] Risse, *On Global Justice,* 11.
[141] Ibid., 112.

The aim of the social choice approach is not to construct ideal principles based on particular grounds. Rather, this approach guides action by identifying the morally better alternative. Hence, once we agree that there are reasonable grounds for theorizing justice for the domain of distribution of natural resources, we can then proceed with the social choice procedure. Paula Casal points out that there are at least three rationales that can ground the distribution of natural resources. There are geoist reasons, similar to Risse's Common Ownership of the world, that "affirms the equal claim of humanity to land and other planetary resources.'[142] These reasons demand compensation for unilateral appropriation of resources for those who are excluded. There are also consequentialist and contractualist reasons for alleviating poverty and reducing natural resource consumption that have environmentally beneficial effects.[143] All grounds and the consequent principles based on those grounds need to be mutually agreeable. Casal lists a number of ways in which natural resources can claim fair distribution. They are *limited in supply*; hence acquisition of one resource by one person tends to keep others away. Natural resources are *not created*; hence no one have a priori entitlement claim. They are *essential to human survival* and *easy to distribute*. Moreover, consuming natural resources leads to negative externalities such as pollution and waste.[144] We can claim, then, that it is mutually agreeable that there are grounds for demanding an impartial assessment of the distribution of natural resources

3.3 Competing proposals for global taxes on natural resources

Having specified the position of the social choice approach in the global justice debate and the grounds for the particular assessment of the distribution of global natural resources, I now

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[142] Casal, "Global Taxes on Natural Resources," 308,309.

[143]Ibid., 309. Yet, some grounds inevitably carry more weight than do others from different ethical perspectives. Rather than serving as an obstacle, the difference of valuation lies at the core of the social choice approach.

[144] Paula Casal. "Progressive Environmental Taxation: A Defence." *Political Studies* 60, (2012): 419-433, at 421.

turn to the content of the assessment. The first step of my three step exposition consists in describing the alternative states as richly as the comparison requires. To this end, in line with Casal's analysis, I discuss the three proposals of Steiner, Pogge, and Casal in terms of tax base, rate, and distributive aspects.[145]

3.3.1 The Global Fund

I begin with Steiner, who proposes a distributive scheme regarding global natural resources termed as the Global Fund (Pf). It is based on a left libertarian view of justice which "requires that persons be compensated for all, and only, those elements or proportions of their poverty that are not self-inflicted."[146] When theorizing global natural resources, Steiner argues that everyone is at full liberty to occupy and use any of the world's resources. For the only commodity that is a priori justly owned by people is their body. If anyone reserves a portion of the world's natural resources for his or her exclusive use, then she is required to compensate others.[147] The Fund is designed to engender compensation in today's world where the distribution of natural resources has been arbitrary.

The Fund imposes a global flat 100% tax on natural resource ownership. Natural resources are defined in a very broad way including "all global surface areas and the supra- and sub-terranean spaces contiguous to them, as well as the natural objects they contain."[148] The tax is levied on states. As owners of locations, they are taxed the full competitive rental value of all its territories determined by the highest bid for each location's right to exclusive

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[145]At this step, I do not engage with the debate or take any position regarding the proposals. When describing the social states implied by the policies, I include only what each author accepts from another's criticism. The arguments of the authors for their proposals and against subsequent criticisms involve empirical assumptions. I accept each author's assumptions as valid regarding their own views, except in a few places where an obvious criticism is not addressed by an author.

[146] Hillel Steiner. "The Global Fund: A Reply to Casal." *Journal of Moral Philosophy* 8, (2011): 335-352, at 329.
[147] Ibid., 332.
[148] Ibid., 330.

use.[149] The tax is supplemented by 'pollution vouchers' that states need to pay in case of negative environmental spillovers.[150] The revenue collected at the Fund is distributed equally. As Steiner maintains, "each person on the globe is entitled to an equal portion of each such location's value."[151] The Fund distributes each nation "a *per capita* equal share of that aggregate revenue."[152] The form which the distribution takes is the provision of regular payments, such as an unconditional basic income or an initial capital stake.[153] It is anti-paternalistic in "allowing individuals to decide whether to consume their share or to choose to invest with others in producing public goods."[154] Although the main aim of the Fund is to apply the Lockean proviso of rightful appropriation, the Fund nevertheless has considerable impact for alleviating inequality, poverty, and addressing environmental problems. The net effect of the Fund transfers resources from the rich to the poor. Moreover, as Steiner points out, the equal distribution of the revenue eliminates 'poverty traps'.[155]

3.3.2 The Global Resource Dividend

Pogge's proposal in redistributing global natural resources is called the Global Resource Dividend (Pd). It is a tax scheme that aims to alleviate global poverty and inequality. At the same time, Pd contributes to conserving non-renewable natural resources for protecting the environment and the interests of the future generations.[156] The Dividend imposes a modest flat tax on both use and ownership of natural resources. Levied on states, the tax targets a limited number of natural resources identified by a number of factors: the use

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[149] Ibid., 331,332.
[150] Ibid., 332,333.
[151] Ibid., 331.
[152] Ibid., 332.
[153] Ibid., 330.
[154] Casal, "Global Taxes on Natural Resources," 322, 323.
[155] Steiner, "The Global Fund: A Reply to Casal," 334.

[156] Thomas Pogge, "Allowing the Poor to Share the Earth." *Journal of Moral Philosophy* 8, (2011): 335-352, at 338.

or ownership of the taxed resource must be easy to monitor or estimate for keeping overall collection costs of the tax scheme low. The taxation needs to have a small impact on the price of goods consumed to satisfy basic needs, and at the same time it should encourage conservation of resources and environmental protection.[157] Pogge argues that taxing the ownership of natural resources such as oil leads to over extraction of the resource so as to compensate for the tax. Therefore, countries owning non-renewable natural resources such as crude oils, metals, or minerals are taxed only for the extraction of the resources with the aim of encouraging conservation of non-renewable resources.[158] For similar reasons, when imposing taxes on land, "rainforests and other wilderness areas as well as lands used for planting basic food stuffs for human consumption should be exempted."[159] Moreover, contrary to Steiner's Fund, the rate of the land tax needs to be "based on the unimproved quality of the land rather than its market value" in order to enable the alleviation of poverty. Pogge points out that in nations such as Bangladesh, land prices are high because of the tremendous population, and the position of those should not be further worsened.[160] The tax rates are to be arranged periodically based on their conservational effects as well as target revenue. Pogge tentatively aims "at about $300 billion or (in 2010) about half a percent of the sum of all gross national incomes — that would suffice to design and implement the structural reforms and policies that would end severe human poverty once and for all."[161] Although the flat tax rate may be regressive, it is compensated by the distributive scheme.[162]

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[157] Ibid., 342.
[158] ibid., 339.
[159] Ibid., 343.
[160] Ibid., 348.
[161] Ibid., 341, 342.
[162] Pogge is recognizes the regressive character of the flat tax of Pd. He points out that "While lower per-capita incomes are associated with lower natural-resource consumption, they are also associated with higher natural-resource consumption per unit of income. This is true for households as well as for countries; therefore, if GRD were charged at a flat rate, poor people and poor countries would end up contributing a larger percentage of their income than rich people" (Ibid., 344)

The revenue collected by the Dividend is distributed in accordance with prioritarian values, with special emphasis on the worst off.[163] The form of revenue distribution is diversified. A portion of the revenue is distributed in cash by need-based basic income or stock of starting capital. However, the major portion is distributed in the form of global public goods and institutional design.[164] Pogge asserts that "using the GRD to fund such public goods as well as clean water, adequate sanitation, basic health care, basic education, careful redesign of national and supranational institutions/legislation, land reform, and measures against corruption, human trafficking, smoking and alcoholism, ensures that its introduction brings net benefits to nearly all poor people."[165] Compliance is sustained by rendering redistribution conditional upon government cooperation.[166] Moreover, by employing different distributive schemes, various incentives can be provided to diverse agents. Thereby Pogge aims to make sure that "all agents and agencies involved understand that they will lose funding if they do not work effectively in the interest of the poor."[167]

3.3.3 The Global Share

Casal proposes the Global Share (Ps) as an improvement on the Global Resource Dividend. The aims of both policies are similar in alleviating problems of global poverty and inequality as well as encouraging conservation of non-renewable natural resources for environmental protection and interests of future generations. Levied on the states, the Share imposes taxes on both use and ownership of different kinds of natural resources such as oil, land, and sea access. Tax base and tax rate are determined and modified periodically in relation to a target

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[163] Ibid., 351.
[164] Ibid., 347.
[165] Ibid., 347, 348.
[166] Casal, "Global Taxes on Natural Resources," 323.
[167] Pogge, "Allowing the Poor to Share the Earth," 351.

revenue, the consequences for poverty and conservation.[168] The emphasis is on the environmental objective.[169] Different from the Dividend, the states are taxed progressively. In determining the exact rates and bases for each resource, multiple poverty lines are employed.[170] In addition, taxes for the affluent states are modified in relation to their position from the global average per capita.

The revenue is distributed in a prioritized fashion. As Casal presents, the standard formulation of prioritarianism considers "(i) how many people can be benefited, (ii) the size of the benefit, and (iii) the level of advantage of the recipient."[171] Similar to the Dividend, the form of distribution is the provision of public goods rather than regular payments such as basic income, i.e., in providing "clean, efficient technologies to enable developing countries to skip the unhindered carbon intensive industrialization that others have enjoyed."[172] In order to sustain compliance to the scheme, Casal suggests that we can employ progressive import duties or withhold the distributive benefits from noncompliant states.[173]

3.4 Ranking the proposals by ethical perspectives

The second step of the social choice approach is to determine how the social states are valued from different ethical perspectives. Each perspective provides reasons for alternative rankings. From the exchange between the three authors I single out eight different perspectives. From each perspective I derive a particular ranking of the three proposals. I characterize these perspectives as egalitarian, prioritarian, sufficientarian, utilitarian,

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[168] Casal, "Global Taxes on Natural Resources," 319, 320, 323.

[169] Paula, Casal. "Rejoinder to Pogge and Steiner." *Journal of Moral Philosophy* 8, (2011): 353-365, at 358.
[170] Casal, "Global Taxes on Natural Resources," 323.
[171] Ibid., 323, 324.
[172] Ibid., 324.
[173] Ibid., 326.

libertarian, conservation of resources, as well as considerations regarding transitional aspects and equal respect of persons.

3.4.1 Redistributive Perspectives

The first three perspectives--egalitarian, sufficientarian, and prioritarian--are related to redistributive aspects of the proposals. Policies are valued in relation to the net outcome of the revenue collection and redistribution. In basic terms, the egalitarian perspective values reducing inequality (E); the sufficientarian perspective values minimizing the aggregate shortfall below a poverty line (S); and lastly, the prioritarian perspective values maximizing the aggregate benefit for the worst off with diminishing moral value to the benefitting (P). The Fund imposes a flat tax on natural resource ownership and distributives revenue equally. Assuming that the affluent states own more natural resources than do the less affluent states, the affluent states owe more to the Fund, which in turn is distributed equally. The net effect reduces inequality. It is an improvement compared to the status quo from prioritarian perspective since the less affluent the state, the less tax contributed to the fund.[174] This valuation is also an improvement from the sufficientarian perspective, since the least affluent contributes least and the position of individuals below the poverty line is improved. The Dividend imposes a modest flat tax on use and ownership of natural resources and distributes the revenue in a prioritarian way with special emphasis for the worst off. Similar to the Fund, the revenue collection of the Dividend reduces inequality; it is simultaneously an improvement from prioritarian and sufficientarian perspectives. Although the Dividend's modest tax has a smaller impact for redistribution compared to the full tax of the Fund because of the former's low rate at the revenue collection stage, the redistributive stage of the Dividend significantly changes net outcome. First, for the Dividend, the worst off have a

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[174] Ibid., 322.

greater claim on the distribution than do the remainder of the population. Second, the tax base and rate are periodically modified in order to achieve the redistributive aims. For example, for cases where the flat tax rate of the Dividend is regressive, such as when lower income groups need to contribute a higher percentage of their income than do higher income groups, the tax base and rate are moderated to eliminate the regressive outcome.[175] So far as the Fund does not have distributive aims besides compensation for unjust appropriation, the Fund equally distributes the revenue. Moreover, the tax is not moderated in cases where the flat tax rate is regressive. Hence, the Dividend is ultimately ranked higher than the Fund in all three distributive perspectives E, S, and P. The Share, on the other hand, imposes a progressive tax on use and ownership of natural resources and distributes it in a prioritarian way. Due to progressive taxation at the stage of revenue collection, the Share fares better than does the Dividend from all three distributive perspectives. However, taking into account Pogge's emphasis on helping first and foremost the worst off and Casal's arguments against employing any poverty line in distribution, the net outcome of the Dividend is ranked higher by the sufficientarian perspective.[176] Hence, the ultimate valuation from the three perspectives can be formulated as E (Ps>Pd>Pf), S (Pd>Ps>Pf), and P (Ps>Pd>Pf).

3.4.2 Utilitarian Perspective

Utilitarian perspective (U) values the aggregate benefit a policy achieves in terms of poverty reduction. It relates to the revenue raising potential of the policies as well as how that revenue is used. As the Fund imposes a 100% tax on natural resource ownership, it has the highest revenue raising potential. However, the distribution is not directly aimed at poverty alleviation. As mentioned, the possible regressive consequences of the Fund's tax that are not

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[175] Ibid., 320.
[176] Ibid., 322, 323.

balanced at the redistributive stage undermine its ability to alleviate poverty. The Share and the Dividend, on the other hand, are similar in raising revenue since both tax use and ownership. Moreover, for both the Share and the Dividend alleviating poverty is a direct policy objective; this objective determines the choice of resources to be taxed as well as the tax rate and base. However, for Casal, the environmental objective matters more than does the poverty objective. She suggests that "we should revise the tax base depending on its environmental impact, even in the event that we managed to achieve our initial environmental policy objective without reaching our poverty objective."[177] And for Pogge, the conservational impact of the Dividend is to be arranged in relation to a pre-fixed poverty objective. As he emphasizes, it should "suffice to design and implement the structural reforms and policies that would end severe human poverty once and for all."[178] Hence, the Dividend ranks higher than does the Share by the utilitarian perspective; and the final valuation can be formulated as U(Pd>Ps>Pf).

3.4.3 Perspective of Conservation of Resources

The next perspective, conservation of non-renewable natural resources (C), values the impact of the policies on other domains such as environmental and intergeneration justice. Pogge and Casal point out that the high tax rate of the Fund encourages the states to extract more natural resources. As a response, Steiner proposes 'pollution vouchers' to be included in the Fund to compensate for any activity that damages the property of another. However, the interests of future generations remain outside policy objectives. Steiner maintains that "concerns for environmental degradation that damages no living persons, or that is licensed by them, may

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[177] Casal. "Rejoinder to Pogge and Steiner," 358.
[178] Pogge, "Allowing the Poor to Share the Earth," 341, 342.

well be grounded in other moral values but are *not* demands of justice."[179] Casal recognizes

that since conservation is not a demand of justice, "there is no guarantee that the balance of

contrary tendencies (respectively caused by oil ownership taxes and pollution vouchers) will

always resolve in favor of appropriate conservation."[180] For Pogge and Casal, on the other

hand, concerns for environment and future generations are direct policy objectives. Casal

emphasizes that no a priori rules exist that we can impose to ensure resource conversion.[181]

The tax bases, rate, and choice of resources to be taxed by the Share and the Dividend are

determined and moderated periodically according to the conservational impact. Nevertheless,

as I have pointed out, Casal prioritizes the environmental objective over the poverty objective.

Hence the Share ranks higher than does the Dividend, and the final valuation from the

perspective of conservation of non-renewable natural resources is C(Ps>Pd>Pf).

3.4.4 Libertarian Perspective

Libertarian perspective (L) values the compensation achieved by the policies for the arbitrary

acquisition of the world resources as well as the sensitivity of the policies to personal

entitlements. The Fund is meant to be a direct application of the Lockean proviso to global

natural resources. The determination of the full rent of natural resources and equal

distributions is aimed to implement the proviso. Hence, the Fund ranks higher than do both

the Dividend and the Share. However, Pogge and Casal also endorse the libertarian

perspective by "taxing only non-produced resources" and appealing only to "negative duties

to refrain from imposing harmful institutions."[182] Comparing the Share and the Dividend,

Casal argues that the progressive tax rate of the Share fares better with the libertarian

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[179] Steiner, "The Global Fund: A Reply to Casal," 333.
[180] Casal. "Rejoinder to Pogge and Steiner," 354
[181] Ibid., 358.
[182] Casal, "Global Taxes on Natural Resources," 310.

perspective. She asserts that "Lockean principles do not determine a particular rate structure but since they justify financial charges by the *harm* pollution or over-acquisition causes to fellow humans, it is not strange to expect repeat offenders to be charged at higher rates."[183] Moreover, the prioritarian redistributive scheme of the Share is valued better by the libertarian perspective compared with the Dividend because "sets no thresholds but compensates more those who are harmed more by the exclusion."[184] Hence, the final valuation can be formulated as L(Pf>Ps>Pd).

3.4.5 Transitional Perspective

The transitional perspective (T) assesses the proposals in terms of the institutions required for effectively implementing them. The valuation is based on the feasibility and accessibility of the proposals. The former refers to the material and political conditions of the world in order to implement the policies; the latter, to the relationship between the current world order and the proposed tax scheme. I consider the transitional perspective as ethical because evaluating a course of action that leads to less justice here and now with respect to a long term and integrated project of perfect justice requires an ethical valuation of the two options. Pogge emphasizes that the Fund is "an ideal of fully just institutional arrangement governing the use of natural wealth."[185] Even if the Fund's tax scheme may be feasible, it requires a major change in the current world order. On the other hand, the Dividend and the Share require minor institutional reforms designed for achieving piecemeal improvements. Hence, from the transitional perspective, the latter two rank higher than does the Fund. Comparing the Share and the Dividend, the institutions required to implement the former are more complex than are the latter. The progressive tax rate implied by the Share involves adjusting the price of any

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[183] Ibid., 327.
[184] Ibid., 327.
[185] Pogge, "Allowing the Poor to Share the Earth," 336.

commodity within the tax scheme according to the per-capita income of the country. As Pogge observes, in the face of the complex international division of labor, it is difficult and costly to make the adjustments.[186] Instead of complicated tax schemes such as progressive taxation, we need to aim at reducing inequality "through a small number of institutional mechanisms and policy instruments that are best suited to this task."[187] Hence, from the transitional perspective, the policies are ranked as T(Pd>Ps>Pf).

3.4.6 Perspective of Equal Respect

The last perspective I consider evaluates the three tax schemes based on the value of equal respect (R). Jonathan Wolff points out that the implementation of policies that aim to bring about a fairer outcome may, on the contrary, undermine the self-respect of the individuals whose position the policy aims to improve.[188] For example, in order to make a distribution based on responsibility, we need to know whether an individual's advantaged or disadvantaged position results from his or her choices or circumstances beyond one's control.[189] However, acquiring the required information may conflict with the value of equal respect for everyone. For example, there may be cases in which individuals are required to reveal personal information that will potentially undermine their self-respect."[190] Although the authors do not explicitly discuss equal respect, it is an important value within the debate. The informational requirement of the Fund which imposes a flat tax and equal distribution is much lower than both what the Dividend and the Share require. For the latter two, the benefits are means tested. The distribution is conditional on the states' cooperation with the objectives

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[186] Ibid., 344,345.
[187] Ibid., 345.

[188] Jonathan Wolff. "Fairness, Respect, and the Egalitarian Ethos," 97-122; "Fairness, respect and the egalitarian ethos revisited." *Journal of Ethics* 14, n. 3-4 (2010): 335-350.
[189] Ibid., 110.
[190] Ibid., 111.

of the tax schemes.[191] The authors aim to sustain compliance by means of progressive import duties or withholding the distributive benefits from noncompliant states.[192] Moreover, in order to make further claims on the redistribution, the less affluent states need to make the case that they are not responsible for their low income situations. The informational requirements exacerbate the position of the worse-off. As Wolff points out, "In the real world the burden of revealing data about one's circumstances falls only on one sector of society, and that sector is already among the most disadvantaged."[193] Hence the Fund is ranked higher from the perspective of self-respect. Comparing the Dividend and the Share, the former's flat tax scheme requires less information from the states than does the latter's progressive tax scheme. In addition to the informational requirement, there is another aspect from which the flat tax scheme promotes better the value of self respect than does the progressive tax scheme. As Pogge reminds us, "it is morally undesirable to exempt the poor — as if they did not care about, and could not share, our generation's responsibility for the environment and toward future generations and other species."[194] Preventing the less affluent from sharing responsibility in environmental problems undermines their agency and self-respect.Hence, from the perspective of self-respect we can rank the policies as R(Pf>Pd>Ps).

E	S	P	U	L	C	T	R
Ps	Pd	Ps	Pd	Pf	Ps	Pd	Pf
Pd	Ps	Pd	Ps	Pd	Pd	Ps	Pd
Pf	Pf	Pf	Pf	Ps	Pf	Pf	Ps

Table 1.

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[191] Casal, "Global Taxes on Natural Resources," 323.
[192] Ibid., 326.
[193] Wolff. "Fairness, Respect, and the Egalitarian Ethos," 111.
[194] Pogge, "Allowing the Poor to Share the Earth," 346.

3.5 Two objections to *impartial spectators*

At the conclusion of the second step, we have at hand rankings of the three proposals by eight different perspectives. The next step of the social choice approach aims to single out a number of rankings as relevant for determining the morally better policy. The reasoning consists of two further steps. The first step consists in identifying impartial spectators who give relative valuations of the rankings. Impartial spectators are idealized agents cleansed of vested interests as well as the bias of tradition and custom.[195] They represent possible *impartial* rankings of the different perspectives that are proposed in assessing policy options. Each relative valuation of the impartial spectators is based on reasons for valuing one ethical perspective over another. For assessing the discussion regarding the distribution of global natural resources, in the next section, I reconstruct the views of Steiner, Pogge, and Casal as impartial spectators who proffer competing arguments for relative valuations of the eight perspectives. However, in this section, I first aim to respond to a number of objections that Gerald Gaus raises that relate to this stage of the social choice method.[196]

3.5.1 Objection on feasibility

The first objection concerns the choice set that the impartial spectators evaluate. Gerald Gaus points out that we may have disagreements regarding the feasible options to be ranked by impartial spectators. If any one of the alternatives is not included in the rankings of an impartial spectaor, we will have an incomplete ordering regarding that alternative.[197] The disagreement regarding feasibility may arise due to different empirical assumptions involved in determining what kind of social states are implied by the proposals. The objection Gaus

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[195] Sen, *The Idea of Justice*, 44,45.

[196] Gerald Gaus, "Social Contract and Social Choice," 248-251.
[197] Ibid., 249.

raises regards the first stage of the social choice approach that I have discussed in the second section. Moreover, alternative empirical assumptions may also create problems at the second stage. For, if we have different accounts of the social states implied by each policy due to alternative empirical assumptions, we will also have different rankings of the proposals by ethical perspectives. Then, the relative valuations proposed by the impartial spectators will be incommensurable. We will not be able to identify the pair-wise valuations upon which all agree. For example, Casal and Pogge criticize Steiner's Fund by pointing out that the high tax scheme encourages natural resource consumption and causes pollution. In response, Steiner proposes 'pollution vouchers' as a mechanism that renders liable countries which have destroyed another nation's environment. Yet, Casal is not convinced that pollution vouchers are adequate to sustain environmental protection. Whether the pollution vouchers are fit for the task or not depends on the empirical assumptions of the authors. The disagreement has direct consequences for the ranking of proposals by the ethical perspective of conservation of resources. One way to overcome such disagreements is to have an open discussion regarding the proposals. Moreover, we need to take seriously Sen's condition that the public be properly informed. Each argument provided by impartial spectators needs to be rigorously engaged in order to reach a clearer understanding of each proposal.[198]

3.5.2 Objection on impartiality

The second objection concerns the impartiality of the rankings provided by impartial spectators. Gaus cautions that "we also may well disagree on what constitutes such an objective, *bona fide,* perspective on justice."[199] The objection may be raised both for the impartiality of the spectators and the objectivity of the principles that they are ranking. First, it

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[198] Sen, *The Idea of Justice*, 122.
[199] Gaus. "Social Contract and Social Choice," 248.

may be argued that the spectators that we are considering are not impartial. Hence, their views should not be included in the assessment. Second, disagreement may arise as to the components to be considered of the list of ethical perspectives. It may be argued that an ethical perspective in the list is subjective.

The idea of ethical objectivity and reasonableness that Sen maintains is central to respond to both objections. Sen maintains that there are multiple ethical perspectives that have a claim to objectivity. A unique, impartial resolution of a question of justice is not always possible. He emphasizes "the possible sustainability of plural and competing reasons for justice, all of which have claims to impartiality and which nevertheless differ from – and rival – each other."[200] Hence the social choice approach involves multiple spectators that have a claim to impartiality. The competing reasons of justice come from different viewpoints of social groups who have varied experiences.

In the face of such plurality of values, the impartiality of the spectators and objectivity of the ethical perspectives are sustained by informed public scrutiny. The type of reasons that impartial spectators give in support of their relative rankings and the set of ethical perspectives are assessed by the general public.[201] As Sen indicates, "we can take the relevant standard of objectivity of ethical principles to be linked to their defensibility in an open and free framework of public reasoning."[202] Sen suggests that this kind of scrutiny may follow Thomas Scanlon's approach in conceptualizing moral principles as principles others could not reasonably reject.[203] For Scanlan the point of moral judgments is practical, "they make claims about what we have reason to do."[204] He writes that,

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[200] Sen, *The Idea of Justice,* 12.
[201] Ibid., 122.

[202] Ibid., 196.
[203] Ibid., 197.
[204] Thomas M. Scanlon, *What We Owe to Each Other*, (Massachusetts: The Belknap Press of Harvard University Press, 1998), at 2.

"When I ask myself what reason the fact that an action would be wrong provides me with not to do it, my answer is that such an action would be one that I could not justify to others on grounds I could expect them to accept. This leads me to describe the subject matter of judgments of right and wrong by saying that they are judgments about what would be permitted by principles that could not reasonably be rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject."[205]

Scanlon's formulation focuses on the reasons that are given to others and others give us. The authority of moral judgments is sustained by including the others' perception of the reasons given for the moral judgment. The spectators are impartial to the extent that the reasons given for each ranking cannot be reasonable rejected.

Moreover, as I discuss in 2.5, the differences between the impartial spectators are a result of the way the question is assessed from different social positions. The relative valuations are positionally objective, they reflect what can be seen from a given position as a person-invariant but position-relative observation. The positional objectivity of the impartiality of spectators can be sustained by following Gerald Cohen's 'interpersonal test.'[206] Cohen argues that in order to determine the validity of the kinds of reasons given for a policy, we need to take into account who utters the reasons and who listens to them. The justification needs to be achieved through a dialogical confrontation of each segment of society. His 'interpersonal test' is designed to sustain this condition. He writes that,

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[205] Ibid., 4.
[206] Gerald A. Cohen, Rescuing Justice and Equality, (Massachusetts: Harvard University Press, 2008): 35-42.

"to carry out the test, we hypothesize an utterance of the argument by a specified individual, or, more commonly, by a member of a specified group, to another individual, or to a member of another, or, indeed, the same group. If, *because* of who is presenting it, and/or to whom it is presented, the argument cannot serve as a justification of the policy, then whether or not it passes as such under other dialogical conditions, it fails (tout court) to provide a comprehensive justification of the policy."[207]

Cohen's interpersonal test further adds a component of human agency to Scanlon's formulation consistent with the positional rankings of impartial spectators. It places the criterion of impartiality to be tested within particular contexts. He points out that "When the justification of policies that mention groups of people is presented in the usual way, with exclusively third-person reference to groups and their members, the pertinence of the question why various people are disposed to act as they do is not always apparent."[208] This aspect of Cohens formulation best captures the positional perspective of impartial spectators. And it is able to assess their claims of impartiality. The reasons for what we should do then need to be such that others could not reasonably reject when uttered by any group in society.

With regards to the present discussion, the exchange between Steiner, Pogge, and Casal is a good example of public scrutiny. Each author gives reasons for their proposals as well as criticisms regarding the others' proposals. The analysis of the previous section shows that each author takes each perspective at least as reasonable. Similarly, each line of reasoning by an impartial spectator is open to public scrutiny. Hence, the rankings of Steiner, Pogge, and Casal as impartial spectators and the ethical perspectives to which they refer are included in the evaluation.

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[207] Ibid., 42
[208] Ibid., 42.

Even when the impartiality of spectators and ethical views are established, one final objection remains that regards the inclusiveness of the assessment. Gaus argues that we may "disagree on who counts as an impartial spectator."[209] It may be argued that the impartial spectators that we are considering are not appropriate for the assessment because they are outsiders. The view, which Sen calls 'closed impartiality', asserts that the valuations that we need to consider should only be those of a defined focal group. One way to define the focal group is as those individuals for whom the principles of justice apply: the group of people that are required to bear consequent duties. Another way to define the focal group is as those individuals whose lives will be affected by the principles of justice. The distribution of global natural resources which we aim to assess through the social choice approach has consequences for all throughout the globe in terms of distribution and environmental problems. It has consequences for everyone both as duty bearers and those affected by the principles. Hence, regardless of which of the two ways that we define the focal group, all possible impartial spectators are relevant for the assessment. The present inquiry, which includes only three impartial spectators, is constrained only by concerns of simplicity. The resulting judgment is partial and relative to the current impartial spectators. Yet, the inquiry is always open for including novel impartial spectators that enrich the discussion and improve our judgment.

3.6 Relative valuations and guiding action

With these considerations in mind we return to the inquiry at hand. The first step is to identify the relative valuations of impartial spectators. Steiner, Pogge, and Casal all have prior intuitions regarding the distribution of global natural resources before they assess the

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[209] Gaus. "Social Contract and Social Choice," 248.

comparative question at hand. One way to trace these intuitions is by looking at how each proposal fares with an ethical perspective. According to the analysis in Section Two, we can assert that Casal prioritizes prioritarian and egalitarian values as well as conservation of resources, Pogge prioritizes sufficientarian, utilitarian, and transitional values, and Steiner prioritizes libertarian values and the value of equal respect. However, the question at hand is a comparative one. We aim to determine which proposal leads to a less unjust social state. The reasons each impartial spectator provides for ranking one ethical perspective over another should also refer to alternative policies. In other words, the rankings of the ethical perspectives are relative to the comparative questions. If the same impartial spectator assesses a question in another domain or compares different proposals, she is likely to offer a different ranking of ethical perspectives.

In order to sustain the comparative aspect of the assessment, we may identify a general rule that guides the relative evaluations of the impartial spectators. When an ethical perspective is valued more or less equally by all impartial spectators, it is ranked relatively lower in the general ranking by all impartial spectators. What is important for impartial spectators is to bring their different valuations into realization. Hence, they want to emphasize how differently they assess the comparative question. In a similar way, if there is a stark difference between the valuations of the impartial spectators regarding a particular ethical perspective, then it ranks higher in general in the ranking of an individual impartial spectator who values it.

With this rule we can grasp the comparative character of the relative valuations and pose possible rankings of the impartial spectators. In addition we can rule out, unreasonable rankings. An impartial spectator should not rank a perspective higher irrespective of how other perspectives rank it. It would be an unjustified insistence of prioritizing one perspective over others regardless of the actual conditions of the policy question.

For Steiner, the transitional value (T) is not a priority, since he does not take into account that the Fund requires complex institutions for its implementation. On the contrary, for Pogge and Casal, the transitional value is of high importance as the Dividend and the Share presuppose only minor institutional reforms in the current global order. Moreover, there is a great difference between the transitional requirements of the Fund and both the Dividend and the Share. Similarly, there is a major difference between their relative valuations. Hence, the transitional value ranks high in the rankings of Pogge and Casal, and low in that of Steiner. Considering the libertarian value (L), the Fund is a direct implementation of the Lockean proviso, whereas the Dividend and the Share are only constrained by it. We can assert that there is a major difference in the valuations of impartial spectators. Hence, the libertarian value is ranked high in the ranking of Steiner and low in the rankings of Pogge and Casal. Similarly, the value of equal respect (R) is much more important for Steiner than for Pogge and Casal as the informational requirement of the Fund is much lower than both the Dividend and the Share. Hence, the value of equal respect ranks high in the rankings of Steiner, and low in the ranking(s) of Pogge and Casal. Still, Pogge prioritizes the value of equal respect slightly more than does Casal as he points to concerns of agency. Utilitarian value (U), is considered important by all impartial spectators. The extent of the difference between the valuations of impartial spectators is low; hence (U) is ranked relatively lower. All proposals decrease inequality; hence, egalitarian value (E) is ranked relatively lower by all impartial spectators. Prioritarian (P) and sufficientarian (S) values are prioritized by both Pogge and Casal, and not by Steiner. Hence, they will be ranked relatively higher than the egalitarian and utilitarian value by Pogge and Casal and lower by Steiner. Moreover, Pogge prioritizes sufficientarian value over prioritarian value, and Casal prioritizes prioritarian value over sufficientarian. All proposals help in conservation of natural resources (C). However, for Casal, natural resource conservation is more important than it is for Pogge. Based on these

considerations, we can pose by impartial spectators as

Casal (T>P>C>S>U>E>R>L), (T>S>P>U>C>R>E>L) and (R>L>U>C>E>T>P>S).

rankings follows:

Pogge

Steiner

Table 2.

Casal	Pogge	Steiner
T	T	R
P	S	L
C	P	U
S	U	C
U	C	E
E	R	T
R	E	P
L	L	S

After establishing the relative valuations, the next step is to identify the overlaps in terms of pair-wise valuations. Over lapping pair-wise valuations are the choices that the impartial spectators mutually agree on without an agreement on the overall rankings or the best choice. In the above evaluation of the three impartial spectators there are five pair-wise valuation that they all agree on T>P, T>S, C>E, U>E, R>L. They guide action based on shared beliefs. Sen points out a way to use pair-wise agreements in assessing any plural evaluation. He argues that 'intelligent moral choice demands that we not choose –explicitly or by default--an alternative that we can see is morally inferior to another feasible alternative.'[210]

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[210] Amartya Sen. "Well Being, Agency and Freedom: The Dewey Lectures 1984." *The Journal of Philosophy* 82, n. 4 (1985): 169-221, at 181.

(Sen, 1985, p.181). According to the above five pair-wise valuations, there is an agreement that P, S, E, and L are all inferior to at least one of the other alternatives: U, T, C, and R. Then, we can claim that it is morally wrong to choose any one of P, S, E, and L when there is the chance to choose any one of the others: U, T, C, and R.

For the case at hand, the application of the social choice approach has decreased the mutually agreeable choice set at hand. Yet, what does it imply for the actual policy choice? As Sen contends, depending on the extent of similarity among the rankings, we can have different levels of guidance.[211] In some cases, the similarity may be to an extent that it can determine a morally better option or options. In other cases, such as the one at hand, pair-wise valuations do not point to a determinate choice. Nevertheless, they can still provide guidance for reforming policy options. The four ethical perspectives that the impartial spectators agree to be superior to at least one of the other alternative are U, T, C, and R. As I have discussed in Section Three, utilitarian and transitional perspectives rank Pd over Ps and Pf. However, from the perspective of conservation of resources, Ps ranks over Pd and Pf; similarly, from the perspective of equal respect, Pf ranks over Pd and Ps.

There may be multiple ways of articulating this similarity as valuable information for reforming policy alternatives. Nevertheless, the easiest way to arrive at a mutually agreed choice seems to lay with reforming Pd. My first suggestion is to reform Pd to an extent that it can conserve natural resources at least as good as Ps. However, in the analysis of Section Three, I have suggested that there is a tradeoff between the environmental and poverty reducing aspects of the proposals. Moreover, just as Pogge prioritizes the latter by employing a prefixed objective, Casal prioritizes the former. Hence, Pd needs to be reformed in a way that emphasizes the environmental objective more without dropping below Ps in poverty reduction. Perhaps, one way to go is reforming both policies by dropping any fixed objective

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[211] Sen, *The Idea of Justice*, 104, 105.

on both environmental protection and poverty reduction and, instead, attaching importance to their equal improvement. Then, the tax base, rate, and choice of resources to be taxed are to be determined for each case depending on the effects on equal improvement of environmental protection and poverty reduction. This suggestion makes more sense when we consider that the worst off groups in society are subject to the worst effects of environmental problems, and, as Casal points out, that poverty diminishes the capacity of people to address environmental problems.[212] Hence, both Pd and Ps may be ranked equally by both utilitarian and conservation perspectives.

My second suggestion is to reform Pd to an extent that it sustains equal respect for individuals at least as much as Pf does. As I have discussed in Section Three, both Pd and Pf imply flat taxation. Hence, the difference between the proposals in promoting to self-respect is related to the differences in the distributive mechanisms. Equal distribution of Pf requires less information than the conditional distribution of Pd regarding people who are the worst-off and states who are cooperating with the tax scheme. The condition of proving that a state cooperates with the tax scheme is a general condition that applies to all states and ensures only that the worst off are receiving the benefits. Determining which individuals or groups are the worst off, on the other hand, requires information that burdens an already disadvantaged sector. These people need to make the case that they do not bear responsibility for their worst-off position. The distributive mechanism of Pd is central for the scheme and relates closely with its other aspects; hence, the mechanism cannot be dropped. Perhaps one way to reform Pd is to supplement it with a mechanism that sustains a ''vulnerability presumption principle''. According to this principle, which has been proposed by Christian Barry for evaluating information relevant for determining responsibilities, we are to use standards of

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[212] Casal, "Global Taxes on Natural Resources," 319.

proof that "express a willingness to err in favor of the acutely deprived subjects."[213] For our case at hand, the benefits of the tax scheme can be withheld from those individuals if and only if it is clear that their worst-off position results from the outcome of their choices. In cases where the evidence is disputable, the benefits of the tax scheme cannot be withheld from the vulnerable. Hence, the burden of an informational requirement is minimized to an extent compatible with Pf. Reforming the Dividend in accordance with the two suggestions has the prospects of transforming the guidance derived from the pair-wise valuations to determining the Dividend as the morally better option.

3.7 Conclusion

Steiner, Pogge and Casal offer competing global tax schemes on natural resources. In line with Sen, I assume that each have an equal claim to justice so far as they survive informed public scrutiny. Nevertheless, for making a morally better choice, the conflicts between the views do not need to be fully resolved. As I demonstrate in this article, we can still derive important moral guidance with the analysis of social choice approach. Admittedly, my analysis is a small part of an open ended discussion. The aim is not to reach a conclusion in the debate regarding the implementation of a global tax scheme. New information and perspectives always offer original ways of moderating the outcome. Yet, the two policy recommendations are valuable as they point towards a less unjust social state among the actual alternatives. Following Sen, "we go as far as we reasonably can."[214]

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[213] Christian Barry, "Applying the Contribution Principle."*Metaphilosophy* 36, n. 1/2 (2005): 210-227, at 221.

[214] Sen, *The Idea of Justice*, 401.

Chapter 4. Reforming the EU Asylum Policy

4.1 Introduction

Since 2011, millions of have been forced to leave their houses in search of safer living

conditions due to the conflict in Syria. In addition to more than seven million internally

displaced people, as of September 2015, there are more than 4 million people of concern

registered by the United Nations High Commissioner for Refugees (UNHCR) in   neighboring

countries.[215]   The conflict did not, however, immediately initiate a refugee influx into the

European Union (EU). Between April 2011 and August 2015, only less than ten percent of the

Syrian refugees applied for asylum in the EU Member States.[216] Instead, Syrians have sought

refuge in neighboring countries such as Turkey, Lebanon, Jordan, Iraq and Egypt. However,

the situation is dramatically changing. There seems to be no prospect of a peaceful solution of

the Syrian conflict in the near future. Furthermore, massive numbers of asylum seekers are

continuously taking the long and dangerous road to Europe in search of safety. Thousands

daily cross the Mediterranean Sea from Turkey, Egypt, Libya and Tunisia to Italy and Greece.

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[215] "These generally include refugees and asylum-seekers, returnees, stateless persons and, under certain conditions, internally displaced persons (IDPs)." UNHCR, *Resettlement Handbook Revised edition*, Geneva: United Nations High Commissioner for Refugees, (2011) at 18.

[216] UNHCR data, available at http://data.unhcr.org/syrianrefugees/regional.php

The sea journey is extremely hazardous. According to UNHCR data, as of September, there were 477,906 arrivals by sea in which 2,962 people were reported dead or missing in 2015. Reaching Greece or Italy is not the desired final destination for these asylum seekers. From Greece, where 357,065 people have made landfall since the beginning of the conflict, the refugees travel through Macedonia and Serbia in order to reach Hungary, making their way towards northern European countries such as Germany or Sweden.[217] In this long journey, the refugees are usually without adequate shelter, sanitation or supplies. Moreover, they are left vulnerable to human-smuggling organizations.[218]

The escalating crises, however, have not received public attention in Europe until three alarming events hit the news in 2015. In April 25th, a boat carrying refugees from Libya to Italy was capsized, drowning 400 people including minors and children.[219] In August 27th, a sealed truck was discovered parked in eastern Austria containing the bodies of at least 40 refugees who had suffocated.[220] In September 2nd, the body of Aylan, a Syrian boy from the town of Kobane, was found lying face-down on a beach in the holiday resort of Bodrum in Turkey. He was one of the twelve refugees drowned in an attempt to cross the Aegean Sea to reach the island of Kos in Greece.[221] In the first week of September, the concerns raised by the inhuman images have materialized around another crisis. Thousands of asylum seekers, most of them fleeing the conflict in Syria, were gathered at Budapest's main train station. The

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[217] UNHCR data, available at: http://data.unhcr.org/mediterranean/regional.php. Actual numbers are likely to be much greater. It is estimated that the risk of dying while crossing the Mediterranean is 2%. Philippe Fargues and Sara Bonfanti, "When the best option is a leaky boat: why migrants risk their lives crossing the Mediterranean and what Europe is doing about it." *Migration Policy Centre: Policy Brief*, October 2014, at 5.

[218] As Fargues indicates "The ratio of Syrians smuggled by sea to Greece or Italy, compared to those regularly seeking asylum in the EU28, has jumped from 14.7 percent in 2011 to 40.9 percent in 2012 and 44.7 percent in 2013." Philippe Fargues, "Europe Must Take on its Share of the Syrian Refugee Burden, But How?" *Migration Policy Centre: Policy Brief*, February 2014, at 3.

[219] Damien Gale, "Hundreds of migrants believed to have drowned off Libya after boat capsizes" *Guardian*, April 15, 2015.

[220] Luke Harding, "Police fear as many as 50 migrants dead inside lorry left by Austrian motorway." *Guardian*, August 28, 2015

[221] Helena Smith, "Shocking images of drowned Syrian boy show tragic plight of refugees," *Guardian*, September 2, 2015.

asylum seekers demanded the opportunity to travel across Hungary to Austria and finally to Germany and Sweden, where they believed their claims of asylum would be better received. The Hungarian government officials, claiming that they are following EU regulations, demanded that the asylum seekers remain in the established refugee camps.[222]

The events revealed two major problems with the asylum policies of the EU states brought together under the Common European Asylum System (CEAS). First, the asylum seekers did not have effective access to the official asylum procedures; second, the bordering countries such as Hungary did not have adequate means to receive asylum seekers. Hence, beyond responding to the immediate humanitarian situation, the need for reforming CEAS was made evident. My main aim in this chapter is to compare, in terms of justice, the current practice with two alternatives for reforming CEAS. I reconstruct these alternatives by combining the already existing practices of the CEAS together with two contrasting attitudes regarding the asylum seekers and their plight. The first policy proposal, which I call 'Turn Back', is designed to prevent the Syrian asylum seekers from entering the EU territory. The second proposal, which I call 'Fair Share', is designed to provide shelter for the asylums seekers as well as share the burden among the Member States.

I assess the policies by applying the three step method of social choice that I developed in the previous chapters. In Section 4.4, I begin with the first step by describing the alternative social states implied by the policies as richly as the assessment requires. In Section 4.5, I discuss six ethical perspectives by which we can value the proposals: libertarian, basic rights, utilitarian, equal respect, state sovereignty and solidarity. Furthermore, in Section 4.6, I first identify *impartial spectators* who give relative valuations of the rankings by different perspectives and then look for overlaps among rankings of impartial spectators with the aim

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[222] Daniel Nolan and Kate Connolly, "Hungary closes main Budapest station to refugees," *Guardian*, September 1, 2015.

of identifying pair wise valuations. Yet, prior to three steps of the social choice approach, in Section 4.2 I offer an account of the asylum policies of the neighboring countries of Syria and the actual conditions of the asylum seekers. Section 4.3 offers an account of the commitments of the EU Member states based on the Refugee Convention. Both accounts are important for understanding the social states described in Section 4.4 and their assessment under the ethical perspectives are discussed in Section 4.5. Finally, in Section 4.7 I conclude with some policy recommendations.

4.2 Syrian Asylum Seeker in Neighboring Countries

The current condition of the Syrian asylum seekers in the neighboring countries is important for understanding the reasons behind the refugee's flight to Europe. The prima facie fact is that the asylum policies of neighboring countries were not designed for the long term duration of the Syrian conflict and the great number of asylum seekers it has produced. They do not offer long lasting solutions to diverse problems refugees face in their territory. I discuss the case of Turkey in more detail as it is the only neighbor who is party to the Refugee Convention with a relatively more welcoming legal framework towards Syrian refugees and hosts the highest number in absolute terms. At the end of the section, I also offer some comparative remarks in relation to other neighboring host countries such as Jordan and Lebanon.

The major issue concerns the legal status of the refugees in host countries. The most important legal document regarding the refugees is the Refugee Convention of 1951 and its Additional Protocol of 1967. These documents provide a baseline in determining who is considered a refugee, what are the rights of refugees and the relevant duties of the states. Although Turkey has signed both the Convention and its Additional Protocol of 1967, the nation maintains a geographical limitation that allows asylum rights only to refugees coming

from European countries.[223] The Syrians asylum seekers, being non-European, are thus not eligible for attaining Convention refugee status. Hence, although Turkey has implemented an open borders policy for asylum seekers arriving from Syria, they cannot apply for Convention refugee status. Instead, they are recognized as 'guests' who have been given 'temporary protection' status.[224]

Under this 'temporary protection' status, the Syrian asylum seekers enjoy mainly three kinds of rights.[225] First, these rights commit the state of Turkey to the principle of non-refoulment, and thereby guarantee the Syrian asylum seekers residence within the territory of Turkey unless they can be resettled into a safe third country.[226] The principle of non-refoulment laid out by Article 33 of the Convention states that

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.[227]

However, the duty of non-refoulement differs from a right to asylum. As James Hathaway points out "it [non-refoulment] only prohibits measures that cause refugees to ''be pushed

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[223] Ahmet Icduygu, "Syrian Refugees in Turkey: The Long Road Ahead." Washington DC: Migration Policy Institute, (2015) at 4.

[224] "Temporary protection is generally used to describe a short-term emergency response to a significant influx of asylum-seekers and was initially developed by several European States as a response to the large-scale movement of people fleeing the conflict in the former Yugoslavia in the 1990s" UNHCR, *Resettlement Handbook Revised edition*, 20.

[225] The actual policy document regarding the Syrian refugee influx in Turkey remains secret and non-accessible to the public. Kemal Kirisci, "Syrian Refugee and Turkey's Challenge: Going Beyond Hospitality." *Brooking Institution Reports* (2014) at 14. Our understanding of the policy is only from the declarations of government officials and thus creates an ambiguity and insecurity regarding the status of refugees.

[226] I discuss the limited capacity of the resettlement mechanism at the end of this subsection.

[227] UNHCR,"Convention and protocol relating to the status of refugees," (2011) at 30.

back into the arms of their persecutors''; it does not affirmatively establish a duty on the part of states to receive refugees."[228]

The second right the temporary protection status gives to the asylum seekers is protection from punishment for bypassing the legal entrée conditions when entering the host state. Although Turkey has been following an open border policy since the beginning of the conflict, there have been times when the borders were closed for security reasons, a state of affairs which makes the second protection important. The first part of Article 31 of the Convention states that

> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.[229]

In line with UNHCR Guidelines on Temporary Protection and Stay Arrangements,[230] the third kind of right commits the host government to provide basic rights without discrimination such as rights to physical protection and shelter, access to services such as health care and basic education for children, freedom of movement and respect for family unity.

The first two kinds of rights imply negative duties for the state. Such rights are concerned with protecting the asylum seekers from punishment due to their circumstances. The third kind of right, however, implies a number of positive duties. In practice, the Syrian asylum seekers in Turkey face major problems in the actual enjoyment of the rights of the last

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[228] James C Hathaway, *The Rights of Refugees under International Law*, (New York: Cambridge University Press, 2005) , 300-301.
[229] UNHCR,"Convention and protocol relating to the status of refugees," 29.
[230] UNHCR, "Guidelines on Temporary Protection or Stay Arrangements," (2014).

kind. Moreover, without the actual enjoyment of basic rights, the first two kinds of negative rights lose their significance.

A major problem is that asylum seekers outside the camps, which constitute the majority of the refugee population, lack formal access to rights of the third kind.[231] Due to the number of asylum seekers and the duration of the conflict, the camps have far exceeded their capacity for adequately hosting the asylum seekers.[232] Four fifths of the total number of asylum seekers are now living in towns and cities, where they lack access to adequate housing and services. There is no infrastructure for schooling half a million Syrian children, and no clear policy in addressing their educational needs that arise from differences in curriculum and language.[233] They experience problems in actual access to health care system because the health care system in refugee concentrated regions is overburdened, health care workers lack awareness regarding the entitled rights of the Syrian asylum seekers, and language barriers exist.[234]

Another important problem relates to the issue of employment of Syrian asylum seekers. Gaining access to the formal economy is very difficult for them since the temporary protection status does not provide a work permit. As Kirisci points out, Syrian asylum seekers "would need to have a valid passport as well as a residence permit and the employer would need to show that a Turkish national could not be found for the position."[235] Without work authorization, the refugees are led to jobs in the informal economy with extremely low wages and no legal protection. This situation creates "an underground labor force for adult

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[231] Kirisci, "Syrian Refugee and Turkey's Challenge: Going Beyond Hospitality," 15.

[232] UNHCR data , available at http://data.unhcr.org/syrianrefugees/regional.php. Of the countries hosting the highest number of refugees, Turkey has more than one million nine hundred thousand, Lebanon more than one million one hundred thousand, and Jordan more than six hundred thousand. Moreover, as Fargues points out " It has to be remembered that the Syrian refugee crisis comes just after the Iraqi refugee crisis of 2006-2009, which had displaced around two million Iraqi citizens towards the very same countries: Syria, Jordan, Lebanon, Turkey and Egypt." Fargues, "Europe Must Take on its Share of the Syrian Refugee Burden, But How?", 3.

[233] Ibid., 23.

[234] Ibid., 28.

[235] Ibid., 21.

and children workers in industries such as construction, textile manufacturing and heavy industry as well as in the agricultural sector."[236]

Last, but not least, a growing social problem has ensued. First, although a portion of the refugees has close ties with the local population, there remain major cultural, ethnic and religious differences.[237] Such differences are felt more intensely as the reality that the refugee population is there to stay becomes increasingly obvious for the local communities. Second, the region of Turkey bordering Syria has traditionally been composed of diverse religious and ethnic communities. An increase in numbers of one particular community due to the refugee influx has created political problems. Third, increases in housing rents and competition in the labor market, as well as illegal activities are usually associated with the presence of the refugee population. All these factors have transformed the previous welcoming attitude of the local communities into hostility towards refugee communities.

UNHCR lists three policy options: integration to the local community, repatriation to the country of origin or resettlement to a third state as durable solutions for the problems of asylum seekers.[238] Yet, none of these outcomes seem viable in the near future for Syrian asylum seekers. First, since they are ineligible for refugee status in Turkey, the government is under no legal obligation to implement a policy of integration. Furthermore, no time limit has been introduced to the temporary protection.[239] Hence, the Syrian asylum seekers lack access to any asylum procedure. Second, repatriation, the voluntary return of the refugees to their country of origin, is not an option as the Syrian conflict has entered its fifth year with no

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[236] Ibid., 21.
[237] Ibid., 29.
[238] UNHCR, "Resettlement Handbook Revised edition," 28.
[239] Meltem I. Ciger, "Implications of the New Turkish Law on Foreigners and International Protection and Regulation no. 29153 on Temporary Protection for Syrians Seeking Protection in Turkey," *Oxford Monitor of Forced Migration* 4, n. 2 (2014): 28-36, at 28.

prospect of peaceful solution in the future.[240] Moreover, it is unclear if the post-conflict Syria will be hospitable for those who have fled the country during the conflict. Third, although the Syrians refugees are recognized by the UNHCR as people of concern and entitled to resettlement, the resettlement mechanism does not have the capacity to respond to the current scale of the crises. UNHCR recognizes refugees, as

> those who are outside their country of origin or habitual residence and
>
> unable to return there owing to serious and indiscriminate threats to
>
> life, physical integrity or freedom resulting from generalized violence
>
> or events seriously disturbing public order.[241]

This definition of the UNHCR extends protection to nearly all of the Syrian asylum seekers. Nevertheless, the number of asylum seekers that third countries are willing to admit through the resettlement mechanism is very low. Furthermore, the UNHCR's capacity to process the number of applications is inadequate.[242] Actual resettlement world-wide has been only a fraction of the numbers in need.[243] Syrian refugees who have applied to the UNHCR in 2015 have been given interview dates as late as 2020.

The same conditions, if not worsening ones, hold for the Syrian asylum seekers in Jordan. The majority do not live in camps; the cities lack the infrastructure to meet the needs of the Syrian population and the public system is overburdened, causing problems with

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[240] "When looking at this possible durable solution, it is important to identify the indicators which may determine that voluntary repatriation could be an option in the near or foreseeable future. For example, are peace talks underway in the country of origin, or is there a likelihood they will be in the near future? Have there been any spontaneous returns of refugees or internally displaced persons? Has the security situation in the country of origin improved? Are the minimum safeguards as to treatment upon return and conditions required to promote voluntary repatriation being met in the country of origin? Is continued asylum for those who remain refugees ensured?" (UNHCR 2011a, 31)

[241] UNHCR, "Resettlement Handbook Revised edition," 80, 81.

[242] UNHCR, "UNHCR Projected Global Resettlement Needs 2016," 2015, at 12.

[243] As of September 2015 total places available worldwide are 107,239. Detailed data is available at: http://www.unhcr.org/52b2febafc5.pdf

housing, food, sanitation, energy and water. There is no policy to integrate the asylum seekers into the labor market. As the burden is increasingly felt by the local population, welcoming attitudes have gradually turned hostile.[244] In Lebanon, where the Syrian population makes up one fourth of the total population,   no officially established camps exist. Most asylum seekers live in urban areas; the remainder, in informal camps established by the community under extremely harsh conditions. The presence of the Syrian population, the highest number in the region in relative terms, has greatly strained an already insufficient infrastructure.[245]

The neighboring countries are the first option for the Syrian asylum seekers fleeing the conflict to take refuge. The open border policy of the neighbors provides the first escape from danger. Moreover, the proximity of the neighboring countries to Syria provides easier opportunities for repatriation. Lastly, cultural similarities tend to provide an initially welcoming environment. Yet, with the conflict entering in its fifth year, the negative factors discussed above have gained the upper hand. The complex issue of Syrian asylum seekers requires a search for extensive and long term solutions.

4.3 Commitments of the EU Member States

The asylum systems of the EU Member States offer a better alternative to Syrian asylum seekers than do their neighboring countries. The major reason is that, being party to the Refugee Convention and the Additional Protocol, every state of EU is required to give a fair hearing to people in their territory who have a claim to Convention Refugee status. Nevertheless, as Timothy Hatton cautions, this hearing is required by Article 33 of the Convention for avoiding *refoulement* of the potential refugees and does not apply to

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[244] Luigi Achilli, "Syrian Refugees in Jordan: A Reality Check," *Migration Policy Centre: Policy Brief* (2015), 2.
[245] Cameron Thibos, "One million Syrians in Lebanon: A milestone quickly passed," *Migration Policy Centre: Policy Brief (*2014), 3.

refugees outside their territory.[246] In addition, in line with Article 31, illegal entry of the asylum seekers to the host country does not prevent their claiming asylum or prejudice their admission procedure.[247] These two principles of the Convention create incentives for the Syrian asylum seekers to leave the neighboring countries and reach the EU territory so as to claim asylum.

According to the Convention, asylum seekers entitled to apply for Convention refugee status have a number of rights before, during and after the asylum determination procedure. I discuss these rights in this subsection to portray what is at stake for the Syrian refugees that take the hazardous journey to Europe.

As Hathaway underlines, "it is one's de facto circumstances, not the official validation of those circumstances that gives rise to Convention refugee status."[248] Hence, in order to prevent genuine refugees being disadvantaged, asylum seekers who are simply present on a host country enjoy a number of rights immediately and while their claim to Convention refugee status is being determined. These rights are similar to those given to asylum seekers by the 'temporary protection status' discussed in the previous section. In addition to the right to non-refoulment and protection from punishment due to illegal entry, Hathaway discusses four additional rights. First, the Convention binds the host country to provide for the security and basic economic needs of the asylum seekers, as well as creating adequate mechanisms for assessing the claim to Convention refugee status. Second, the basic human dignity of asylum seekers should be protected. This protection involves the right to the preservation of family unity, the right to freedom of thought, conscience and religion, and right to primary education of children. Third, the host state should provide adequate identification documentation that

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[246] Timothy J Hatton, *Seeking asylum: Trends and policies in the OECD* (London: Center for Economic Policy Research, 2011), 9.
[247] Ibid., 9.
[248] Hathaway, *The Rights of Refugees under International Law,* 303, 304.

portrays their status.   Lastly,   legal means should be open for asylum seekers in cases where any of the listed rights are breached.[249]

Ultimately, the claim of the asylum seeker depends on whether his or her situation fits with the Conventions' refugee status. Article 1 of Convention provides that required definition, characterizing it as follows:

> the term refugee shall apply to who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such   fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of   such events, is unable or unwilling to return to it."[250]

Based on the definition of the Convention, if the claimant qualifies as a Convention refugee, then s/he gains a number of more substantive rights. As Hathaway lists, "These include the right to engage in wage earning employment and to practice a profession, freedom of association, access to housing and welfare, to benefit from labor and social security legislation, intellectual property rights, and the entitlement to receive travel documentation."[251]

In cases where, after the assessment of the application by the host country, the claimant is not recognized as a Convention refugee, s/he may still be protected by the principle of non-refoulment. For Carens, "Even on the most expansive interpretation of the Convention, however, people fleeing civil wars and famine are generally not thought to

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[249] Ibid., 279.
[250] UNHCR, "Convention and protocol relating to the status of refugees," 14.
[251] Hathaway, *The Rights of Refugees under International Law*, 730.

qualify, because they are not targets of violence or deprivation, despite the fact that their lives are in danger."[252] The Syrian refugees who cannot make the case that they are particularly prosecuted for their race, religion, nationality, membership in a particular social group or political opinion are not qualified as Convention refugees. However, the conditions laid out by the principle of non-refoulment are broader than conditions required to be considered as a Convention refugee. If it is not safe for asylum seekers who do not qualify for refugee status to be returned to their country of origin, then they are allowed to stay with a quasi-refugee status fewer rights.[253]

In both cases, there is a time limit to their stay with the status of the Convention refugee or quasi refugee. They need to be eventually 'naturalized' and given "an opportunity to make a new life on the same terms as the members of the society they have joined." (Carens 2013, 203-204) This is established by the Article 34 of the Convention, which reads:

> The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.[254]

The Refugee Convention lays out the general conditions for the rights of asylum seekers before, during and after the assessment of their claim. The rights eventually offer long term solutions to the Syrians fleeing the conflict compared to the temporary protection status offered by the neighboring countries. Hence, entering into the territory of an EU state is the best chance for the Syrian refugees to achieve a safe and stable life.

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[252] Joseph Carens, *The Ethics of Immigration*, (New York: Oxford University Press, 2013) 200, 201.
[253] Ibid., 205.
[254] UNHCR, "Convention and protocol relating to the status of refugees," 30.

However, actual implementation of these rights does not always work to this satisfactory ending. Although every state of the EU who has signed the Convention is required to pass legislation in order to implement the Convention, they still differ in interpretation of the Convention. As Carens emphasizes, in the refugee definition of the Convention, there are a number of phrases such as "well-founded", "persecution" and "membership of a social group" that need to be interpreted in order to make precise determinations.[255] Moreover, the conditions of 'threat to life and freedom' in the formulation of the principle of non-refoulment are also open to different interpretations. While countries such as Germany and Sweden are more positive in receiving and interpreting the asylum applications of the Syrian refugees, others, for example, Greece and Hungary are more negative. Such differences lead to competing policies, where asylum seekers of similar origin and situations might end up with results as different as deportation or naturalization.

4.4 The CEAS and the two proposals for reform

4.4.1 The Common European Asylum System CEAS

The harmonization of asylum polices across Europe around the Common European Asylum System (CEAS) was established as a goal at the European Council meeting at Tampere in 1999. [256]The revised Dublin Regulation in 2013 (Dublin III) is the latest step in the development of the CEAS. The regulation builds on the experiences of two previous legal frameworks that have been established by the Dublin Convention in 1990 and the Dublin Regulation in 2003 (Dublin II). The Dublin Regulations establish the ground rules for determining the member state that is responsible for an asylum application. There are two

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[255] Carens, *The Ethics of Immigration*, 200.
[256] Hatton, *Seeking asylum: Trends and policies in the OECD*, 46.

main objectives. The first is preventing the abuse of the asylum system in the form of multiple applications by the same person in several Member States.[257] The second objective is to ensure that asylum seekers have effective access to procedures for determining refugee status.[258] The policy does not imply free entry to asylum seekers who wish to enter the EU territory. Nevertheless, in line with the Convention commitments of the EU Member States, they are protected by Article 31 and 33. In this subsection, I first offer a general account of the CEAS based on the ground rules established by Dublin III. Then, I describe the current status with respect to the Syrian asylum seekers.

In determining the Member States responsible for assessing an asylum application, Dublin III establishes a clear hierarchy of criteria.[259]   The most important criterion is family unity. The responsibility for the application of asylum lies with a Member State if a family member of the applicant resides in that Member State as a refugee or as an asylum-seeker whose status is under determination. The second most important criteria is the legal presence of the asylum seeker. If any of the Member States has issued the asylum seeker a visa or residence permit, then it is responsible for her application. If the first two criteria do not apply, then the first Member State in which the asylum seeker has irregularly entered is responsible for the application. Finally, if none of these criteria apply, then the Member State where the first asylum application was submitted is responsible.[260] When a Member State establishes, based on these criteria, that another Member State is responsible for the asylum seeker's application, then the former may request the latter state to take charge of the

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[257] The underlying assumption for the first objective is "that "shopping" for one's favorite country is inconsistent with the concept of a refugee: a person fleeing for his or her life would apply for asylum in the first available State" (Kritzman-Amir 2008, 361-362).

[258] UNHCR, "The Dublin II Regulation". *A UNHCR Discussion Paper* (2006), 9.

[259] Susan Fratzke, "Not Adding Up: The Fading Promise of Europe's Dublin System" *Migration Policy Institute Europe* (2015), 5.

[260] Ibid., 5. Effectively implementing these criteria involved establishing two agencies. "One is border control and surveillance, which includes the implementation of the EURODAC fingerprint database established in 2003 and the establishment of the FRONTEX agency to integrate and standardise border procedures in 2005." Hatton, *Seeking asylum: Trends and policies in the OECD*,47.

application. In a similar way, when a Member State determines that the asylum seeker has already submitted an application in another state, then the former may request the latter rescind the application. [261] Lastly, a member state may also take the responsibility of an application for asylum or reunite family members based on humanitarian grounds even when it is established by these criteria that the application is not its responsibility.[262]

A major problem with the Dublin regulations is the misplaced assumption that asylum systems of each Member State are similarly sufficient with regards to the protection of the Convention rights of refugees. As Tsourdi and Bruycker point out, "the differentiated levels of economic development between Member States, the discrepancies in their social assistance systems and the varying levels of investment in their asylum processing and reception systems, have led to widely diverging recognition rates and reception conditions."[263] Particularly, practices in Greece, Bulgaria, Italy and Hungary have been repeatedly challenged by the UNHCR and other asylum advocates.[264] There are problems that regard poor reception conditions and dysfunctional asylum procedures, subjection of the illegal entrees to prolonged detention periods and inhumane treatments, and inadequate respect for the criterion of family unity.[265]

Solving these problems constituted one aim of the Dublin III regulations, as a revision of Dublin II safeguards. Two pre-emptive measures were taken regarding the asylum system of a receiving country that has begun to show signs of deficiency to an extent in which the rights of the refugees are in danger. A separate provision was included that placed "a new responsibility on the transferring Member State to ensure that the applicant's rights and ability

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[261] UNHCR, "The Dublin II Regulation," 10. The difference between take charge and take back matters in terms of the time the responsible member state is required to respond. For a detailed account of the two possibilities, see Fratzke "Not Adding Up: The Fading Promise of Europe's Dublin System", 7.

[262] UNHCR, "The Dublin II Regulation," 10

[263] Evangelia M. Tsourdi and Philippe De Bruycker, "EU Asylum Policy: In Search of Solidarity and Access to Protection," *Migration Policy Centre: Policy Brief* (2015), 4.

[264] Fratzke, "Not Adding Up: The Fading Promise of Europe's Dublin System," 16.

[265] Ibid., 11, 17, 19.

to access protection will be respected in the receiving state."[266] In addition, an 'early and warning and preparedness mechanism,' that aims to assess and monitor the data, and determine the extent of the deficiency was put in place.[267] The mechanism enables the transferring state to fulfill its responsibility for stopping transfers to the asylum system with deficiencies.

Another major problem with (both II and III) Dublin regulations is that they place unfair burdens on the bordering states of the EU where the asylum seekers have made the first entry. These countries are the border countries of the EU where the Syrian asylum seekers usually have made first entry. According to the last two criteria just described, they are responsible for the asylum applications of those who have irregularly entered EU territory and who do not have family members residing in any of the member states. Moreover, due to 'take back' and 'take charge' mechanisms, the asylum seekers who submit asylum applications in other member states need to be transferred to the border countries.[268] It is also true that the border countries such as Greece, Bulgaria and Hungary are relatively less affluent than are the rest of EU member states, an economic difference which amplifies the claim of unfair burden.[269]

These two problems have materialized clearly around the Syrian refugee crisis. On the one hand, more than half a million people who have made landfall in Greece and Italy are aware of the poor reception conditions of the first entree states. These asylum seekers try to bypass these countries by avoiding registration, hoping to submit their asylum application to

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[266] Ibid., 22.

[267] Ibid., 21, 22.

[268] Asylum seekers who are aware of the possibility of poor reception try to bypass these countries by avoiding registration in the first country of entry or submitting another application in the member states with more positive reception conditions. Ibid., 15, 17.

[269] Fratzke points out that in practice, "even when the relative burdens are considered (e.g., asylum claims per capita), few of the states that bear a disproportionate share of responsibility are Europe's borders." Ibid., 9. However, this is due to the ineffective implementation of the asylum system. If the transfer or fingerprinting mechanisms are put to more effective use, the border states will have to carry the relatively greatest burden.

Member States with more positive reception conditions such as Germany and Sweden. However, non-registration prevents them from obtaining assistance and increases their vulnerability to human smugglers. Moreover, non-registration increases the difficulty for host states to organize assistance mechanisms and distinguish between economic migrant and refugee populations. On the other hand, the effective implementation of the Dublin III would mean that the applications of hundreds of thousands of asylum seekers entering EU annually need to be assessed by the asylum systems of EU border countries, a process which places excessive burdens on the latter.

4.4.2 The Turn Back Policy

A number of proposals have been offered for reforming the CEAS in the face of the problems related to the high number of Syrian asylum seekers. I discuss these proposals mainly as two competing policies. The first policy, which I call Turn Back, I discuss in this subsection. I reconstruct the Turn Back by combining the already existing anti-immigration practices of the CEAS and a number of further measures that the border Member States such as Hungary, Greece and Bulgaria have taken in response to the arrival of Syrian refugees.[270] The main aim of the policy is to reduce the heavy burden that the formal rules of the CEAS put on the border states. By deterring the asylum seekers from entering EU territory, and in turn, practically preventing them from submitting claims of asylum, the policy aims to substantially decrease the Syrian refugee population in their territory. In this way, the policy drops the second objective of the CEAS, which is to ensure that asylum seekers have effective access to procedures for determining refugee status.

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[270] The negative attitude of Hungary was pronounced clearly by the Prime Minister of Hungary, Viktor Orbán, on 3 September 2015 at a press conference held in Brussels as he said 'We have one message for refugees: Don't come!'.

This strategy has been already implemented in different ways in relation to the routes the asylum seekers take to reach the EU. The arrival of the refugees by the flight route are constrained by stringent visa requirements and controls at the borders, heavy fines for airlines companies who transport people without adequate documentation, and reorganization of the arrival areas as 'international zones' where no asylum claim can be raised.[271] The arrivals by sea route are constrained by coastguard operations. Refugees crossing the Mediterranean by carriers are intercepted on the sea and directed back to their original destination.[272] Refugees in the intercepted carriers are treated as illegal immigrants without any consideration to determine the potential asylum-seekers.[273] (Leonard 2010, 240)

The arrivals by the land route are constrained by a number of policies the border countries of the EU have implemented as a response to the arrival of the Syrian asylum seekers. Greece, Bulgaria and Hungary have one after the other taken preventive measures to block the Syrian asylum seekers from entering the country by the land route. First, in June 2012, "Greece dispatched an additional 1,800 border guards to the Greek-Turkey Evros border and placed 26 floating barriers along the river that divides the countries in an attempt to keep out a potential wave of Syrians fleeing the country."[274] The border protection was complemented with the construction of 12,5 km fence.[275] The measures taken by the Greek government turned the migration route to Bulgaria, where the infrastructure was far from

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[271] Carens, *The Ethics of Immigration*, 199. Also see, Morten Kjaerum, ''Refugee Protection Between State Interests and Human Rights: Where is Europe Heading?,'' *Human Rights Quarterly* 24 (2002): 513-536, at 515.

[272] In the context of the Syrian refugee crises thousands daily have started to cross the Mediterranean sea from Turkey, Egypt, Libya and Tunisia to Italy and Greece. The carriers are inadequate to make the crossing, and the interceptions usually turn into rescue missions.

[273] Sarah Leonard, "EU border security and migration into the European Union: FRONTEX and securitisation through practices," *European Security* 19, n. 2, (2010): 231-254, at 240.

[274] Fargues Philippe and Fandrich Christine "The European Response to the Refugee Crisis What is Next?" *Migration Policy Centre Research Report* (2012), 12. "According to Frontex, the total numbers of migrants crossing the Greek-Turkish land border dropped from over 2,000 a week in the first week of August to little over 200 in the second week, and this decrease was "the direct effect of increased surveillance and patrolling activities by the Greek authorities, which included the deployment of an additional 1,800 officers along the Evros river."" Fargues and Fandrich, "The European Response to the Refugee Crisis What is Next?" 12.

[275] Nevena Nancheva, "The unwanted: Asylum in the EU from Human Rights to Security," (paper presented at the 40th Anniversary Conference British International Studies Association, London 16-19 June 2015), 7.

sufficient to receive the asylum seekers or provide them with adequate accommodation, medical aid and subsistence.[276] The Bulgarian government took similar measures. The border protection policy included deterring the asylum seekers from reaching the Bulgarian territory by "the building of a razor-edge fencing facility and the deployment of 1400 (plus 100) strong police unit in order to ensure the '100% control' of sensitive areas along the border."[277] Asylum seekers who were able to cross the border were detained. The policy was successful in significantly decreasing the crossings.[278]

With both land routes to Greece and Bulgaria closed, the asylum seekers aimed for Greece through the sea route. Those who could make the landfall traveled through Macedonia and Serbia to reach Hungary as the first EU Member State. The reaction of the Hungarian government was no different than that of the Greek or Bulgarian government. In September 2015, Hungary finished constructing a barbed wire fence along to its Serbian border. Along the barbed fenced border, transit zones were created for housing of the asylum seekers and assessing their asylum applications. The capacity of the transit zones, which can register only 100 asylum claims per day were insufficient in the face of thousands arriving to the border daily.[279] In July 2015, a number of legislations were amended that provide the legal grounds of the border protection policies. The asylum procedures were extremely accelerated, making the one-instance judicial review of asylum cases ineffective. Serbia was recognized as a safe third country for asylum-seekers. Hence, refugees arriving from Serbia were immediately rejected at the border.[280]

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[276] Ibid., 7.
[277] Ibid., 9.

[278] "As a result of these measures, the numbers of irregular crossings sharply drop from thousands in the autumn of 2013 to 139 in Jan 2014 and 124 in Feb 2014 (Ministry of Interior report 10 Mar 2014)." Ibid., 9.
[279] Hungarian Helsinki Committee ,"No Country for Refugees – New asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary" (2015), 1-3.
[280] Ibid., 1,2.

The turn back policy consisting of blocking all sea, air and land routes to the EU is effectively implemented without breaching the rights of the refugees protected by the Refugee Conventions in virtue of a particular interpretation of the safe third country rule. Accordingly, the member states have the authority to send back the asylum seekers to a safe third country which they passed through before entering a Member State. As Hathaway points out "To qualify as a ''safe third country'' there must simply be a determination that the destination country is prepared to consider the applicant's refugee claim, and will not expose the claimant to persecution, (generalized) risk of torture or related ill-treatment, or refoulement."[281] The first country of arrival and safe third country rules start a chain of deportation that ends with the refugee's return to neighboring countries of Syria such as Turkey, Lebanon and Jordan. Although in these countries the refugees are not exposed to torture, prosecution and refoulment, as I have discussed in Section Two, the refugee population has no long term prospects.

4.4.3 The Fair Share Policy

I reconstruct the second policy proposal, which I call Fair Share, by combining the relocation scheme proposed by the European Commission with a number positive attitudes towards the Syrian refugees. Similar with Turn Back, Fair Share aims to reduce the burden on the border states of the EU and prevents asylum shopping. Yet, at the same time, it aims to make sure that the asylum seekers have effective access to procedures for determining refugee status. It

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[281] Hathaway, *The Rights of Refugees under International Law*, 295. "Firstly, the potential asylum seeker may face a risk of persecution or torture in the third country itself. In other words, it may be that the return to the third country constitutes *direct refoulement.* However, potential asylum seekers may also be treated properly in the third country but claim that the third country may return them to their country of origin, where they do face persecution or torture. In that case, return to the third country may constitute *indirect refoulement.*" Tally Kritzman A and Thomas Spijkerboer, "On the Morality and Legality of Borders: Border Policies and Asylum Seekers." *Harvard Human Rights Journal* 26 (2013): 1-38, at 14, 15.

consists of three aspects: non-rejection at the border, breaking the link between claim and place, and relocation of the refugee population among the Member States.[282]

Non-rejection at the border ensures that the asylum seekers effectively enjoy the right to seek asylum. It diminishes the distinction between those who have already entered the territory of a Member State and those at the border who wish to enter.[283] The border protection measures that have been implemented to block air, sea and land routes are removed. The asylum seekers are exempt from visa procedures that may still be implemented for other kinds of migrants.

The second component is to remove the link between the Member State where the asylum seeker makes the claim and where she receives refugee status. There are two advantages of this move. First, it removes the incentives for the asylum seeker for asylum shopping. As Carens correctly questions, "Why travel thousands of miles to file a refugee claim if that does not enhance one's chances of being able to live in the state where the claim is filed?"[284] Second, if the link is removed, then the rich states have less incentive for preventing asylum seekers to enter their territory, rendering the first component more feasible. Third, the resources for implementing preventive measures can be allocated for better protection of refugee rights.[285]

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[282] Compare it to regional responsibility sharing schemes: ""With agreements in place that authorize the asylum-seeker to be sent to a safe country in his or her region of origin for refugee status determination, there would be no incentive to make a fraudulent claim in a country outside the region. James C Hathaway and Alexander R. Neve, "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection." *Harvard Human Rights Journal* 10 (1997): 115-211, at 146.

[283] As Tally Kritzman-Amir and Thomas Spijkerboer argue there are three different justifications for this move. "*Firstly,* this duty corresponds with the right to asylum, and without it the right to asylum would effectively be meaningless. *Secondly,* if a state *refoules* asylum seekers who arrive at its border, this would be an abuse of the state's coercive power. *Thirdly,* states have this duty because borders are morally arbitrary and therefore meaningless for determining states' duties toward refugees." Kritzman and Spijkerboer, "On the Morality and Legality of Borders: Border Policies and Asylum Seekers," 10.

[284] Carens, *The Ethics of Immigration*, 216.

[285] This point is raised by Hathawway and Neve regarding a worldwide collective responsibility proposal. See, Hathaway and Neve 1997, 154.

The third component, relocation, distributes the responsibility to protect the rights of refugees fairly across the Member States according to their absorption capacity.[286] Kritzman-Amir defines absorption capacity as "a State's ability to endure additional responsibility in a way that, from a functionalist point of view, will not dramatically affect the State or will not radically influence its economy."[287] It depends on a number of criteria whose relative strength needs to be determined in relation to particular cases. I here take as reference the relocation scheme proposed by the European Commission within the emergency response system for the arrival of Syrian refugees. The distribution of responsibility rests on four criteria: GDP, size of population, unemployment rate and the number of asylum seekers in the previous years.[288] The last two criteria are inversely applied: the higher unemployment rate and the number of asylum seekers in the previous years, the lesser number of asylum seekers for which the host country is responsible. For example, while France and Germany respectively receive 14,17% and 18,42%, Greece and Hungary receive respectively 1,9% and 1,79% of the total number of asylum seekers.[289] Moreover, the country of relocation is identified according to a number of qualifications of the asylum seekers such as "language and professional skills, and other criteria based on demonstrated family, cultural or social ties which could facilitate their integration.[290] The European Commission proposes to relocate in total 160000 refugees from Italy, Greece and Hungary, while still keeping the first country of entry rule as the baseline.

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[286] Relocation mechanism is different from the traditional resettlement mechanism utilized by the UNHCR, which I have pointed was inadequate to meet the number of refugees coming from Syria. First, it is a regional mechanism only concerning the EU Member States. Second, it assigns binding duties for the Member States.

[287] Tally A. Kritzman, Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law. Brooklyn Journal of International Law 34, 2 (2008): 355-393, at 372.

[288] European Commission, "Refugee Crisis: European Commission takes decisive action - Questions and answers" *European Commision Fact Sheet* 9 September 2015, at 4.

[289] European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration." *COM(2015)* 5 May 2015. 240 Brussels: European Commission, at 21.

[290] European Commission, "Refugee Crisis: European Commission takes decisive action - Questions and answers," 6.

The Fair Share policy considered here differs from the relocation scheme as Fair Share does not presuppose a limit to the number of refugees consistent with the first component.

4.5 Assessing the proposals by ethical perspective

The descriptions of the social states implied by the three proposals are just rich enough to go on to the second step of the social choice approach. My aim is to determine how the social states implied by the three policies are valued from different ethical perspectives. I consider six ethical perspectives: libertarian, basic rights, utilitarian, equal respect, state sovereignty and solidarity. They all provide distinct reasons for alternative rankings. As I have discussed in Chapter Two, each ethical perspective has a claim to objectivity to the extent that it survives public scrutiny. In each subsection, I show in what ways each perspective is reasonable as well as how the policies are valued by them. The valuations grounded on personal interests or prejudices regarding race, religion or ethnicity are excluded.[291]

4.5.1 Libertarian Perspective

The libertarian perspective is concerned with the negative duty not to harm others, and compensate them for harm already done. In the context of asylum policies, we have "duties to refrain from the harmful actions which serve to create refugees and to compensate those whom one has harmed in this fashion."[292] If the EU Member States have acted in ways that contributed to the flight of refugees from Syria, then they have a duty to compensate. The compensation may be in a number of different forms that might help the Syrian asylum seekers. Nevertheless, with the Syrian conflict entering its fifth year, asylum seekers need

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[291] For example, the perspective referring to the protection of the Christian identity of Europe, emphasized by the Prime Minister of Hungary should not be included. Ian Traynor "Migration crisis: Hungary PM says Europe in grip of madness," *Guardian*. 3 September 2015.
[292] Matthew J. Gibney, *The Ethics and Politics of Asylum*, (New York: Cambrdige University Press, 2004), at 51.

long term solutions. And, as I have discussed in Section Two, classical long term solutions such as repatriation, resettlement or integration to the neighboring countries are unavailable to them. The only way of effective compensation is then to allow them to have access to the EU asylum system.

Do the EU Member States have any responsibility in the flight of Syrian refugees? Matthew Gibney discusses two different ways that the Westerns States may contribute to the flight of refugees: military intervention or sale and supply of military weapons, and participation in the global economy.[293] In addition, Carens remarks that the rich states may be contributing to the condition of asylum seekers by playing a role in major environmental changes such as global warming.[294] To a certain extent, a causal connection between the EU countries and the conflict in Syria can be established in all these three ways. First, the North Atlantic Treaty Organization (NATO) has been conducting military operations in the region for decades. The 2003 campaign in Iraq is especially considered as a key element in the destabilization of the region. In addition, NATO has been supplying military equipment to the diverse groups who are now part of the conflict in Syria. Second, the region has suffered from authoritarian regimes funded by oil based economies, a phenomenon which has been identified in the literature as the Resource Curse.[295] Moreover, the EU, as an important actor in the world economy, is responsible for the existence of regimes that are part of the conflict. Third, the extreme draught that Syria has suffered between 2006 and 2009 is considered as one of the phenomena that has paved the way for the Syrian conflict.[296] The unusual duration

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[293] Ibid., 51-54.
[294] Carens, *The Ethics of Immigration,* 195.

[295] For a detailed discussion of the resources curse, see Leif Wenar Leif "Fighting the Resource Curse" *Global Policy* 4. n. 3(2013): 298-305
[296] http://www.nytimes.com/2015/03/03/science/earth/study-links-syria-conflict-to-drought-caused-by-climate-change.html

and intensity of the draught is related to rising temperatures due the global warming, to which the affluent industrial states are the major contributors.

Establishing such connection requires extensive empirical analysis that is beyond the aims of this research. Furthermore even if the connections are established, it is very hard to quantify the precise harm done to the Syrian asylum seekers that needs to be compensated by the EU states. Nevertheless, the demand for compensation to the Syrian asylum seekers is genuine. As I describe in Section Two, they have no long term solutions in the neighboring countries, and they have no access to basic rights. Preventing asylum seekers from claiming Convention Refugee status implies a major harm for the already disadvantaged population. In such cases where the responsibilities to vulnerable people depend on the assessment of the relevant empirical information, Christian Barry argues that we should apply a ''vulnerability presumption principle''. According to this principle, we are to use standards of proof that "express a willingness to err in favor of the acutely deprived subjects"[297] In assessing the empirical information regarding the contribution of the EU to the flight of Syrians, we should be more favorable to the possibility of harm. If any of the Syrian asylum seekers are harmed by the policies of the EU Member States, they need to be compensated. Turn Back (Pt) allows the least number of asylum applications and does not offer any compensation for the possible harms done by the EU Member States. Fair Share (Pf) on the other hand allows the most number and the CEAS (Pc) allows an intermediate number. Hence, we can establish a ranking by the libertarian perspective (L) as Pf>Pc>Pt.

4.5.2 Perspective of Basic Rights

In addition to the duties that are grounded on the principle of harm, Gibney argues that there are "duties to prevent, at least when the costs are low, serious harm coming to those who have

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[297] Christian. "Applying the Contribution Principle," 221.

already been made refugees by the actions of others."[298] Asylum seekers are one of the most vulnerable parts of the world population. As I discuss in Section Two, the Syrian asylum seekers have no legal standing in Jordan and Lebanon, and temporary protection status in Turkey, which significantly constrains their means to have safety and subsistence in the long term. Moreover, in the dangerous journey to the EU, thousands of asylum seekers put their lives in danger. If they do not have effective access to the EU asylum system, they will be seriously harmed. As Carens explains, "We have a duty to admit refugees simply because they have an urgent need for a safe place to live and we are in a position to provide it."[299]

Nevertheless, this duty is conditional on the costs it imposes on the citizens of the EU states. Hence we need to consider whether allowing in the Syrian asylum seekers imposes heavy costs or not. In order to have an idea of the extent of the costs, let's look at how many asylum seekers the Member States are required to take responsibility of in the context of the Fair Share, the policy that allows the highest number of asylum seekers. According to the UNHCR, there are more than four million people of concern in the neighboring countries of Syria. In the case of the implementation of the Fair Share, not all of this population will claim asylum in the EU. A part of the Syrian asylum seekers settled in the neighboring countries has adapted to the living in the local communities. Considering that the process of moving from one of the neighboring countries to an EU Member State will be burdensome, if better living conditions can be provided, the asylum seekers would rather stay in the neighboring countries. The capacity of the neighboring countries to host the asylum seekers depends on the number of asylum seekers in their territory. Hence, if a significant number of asylum seekers are transferred to the EU Member States, a significant number of asylum seekers will prefer to stay. In line with these considerations, let's assume roughly half of the Syrian

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[298] Gibney, *The Ethics and Politics of Asylum*, 51.
[299] Carens, *The Ethics of Immigration,*195.

asylum seekers prefer to apply for refugee status in the EU under the Fair Share. According to the criteria established by the Fair Share, out of two million asylum seekers, Hungary is required to take responsibility of roughly 35000 asylum seekers and Germany 360000 asylum seekers. These numbers do not imply major costs to the citizens of the Member States. Germany is already hosting more than it is required by the Fair Share, without major costs on its own population. Additionally, Hungary's limited quota is manageable without major costs to its population.

As I discuss in Section Three, providing an effective opportunity for Syrian asylum seekers to apply for asylum guarantees a series of basic rights before, during and after the assessment procedures established by the Refugee Convention. Hence there is a big difference in terms of realizing basic rights between Pt, which prevents access to asylum procedures, and Pc and Pf which do not. Pf allows more asylum seekers in the asylum system than does Pc due to the differences in border policies. In addition, Pc fails to provide protection to the part of the asylum seekers who try to cross the border Member States without registration. Hence, Pf is valued higher than Pc by the basic rights perspective (B). Lastly, we can establish a ranking by the basic rights perspective (B) as Pf>Pc>Pt.

4.5.3 Utilitarian Perspective

The utilitarian perspective is concerned with neither the causal connection between the host countries and the plight of the asylum seekers, nor their relative position. Instead, it is concerned with the aggregate benefit the policies imply. There are two important aspects of the calculation. First, the interests of all within the scope of the policies are equally valued. Second, the aggregate benefit is determined by a cost benefit analysis.[300] The benefits to the

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[300] Gibney, *The Ethics and Politics of Asylum*, 62, 63.

citizens of the host states, the asylum seekers and those who are affected indirectly by the policy are included in the assessment.

First, the more pressing problems of the asylum seekers, such as enjoyment of basic rights are valued more than are the less urgent interests of the citizens of the host states. Hence, in line with the analysis in the previous subsection, the benefits of Turn Back are lower than are those of CEAS, and CEAS benefits are lower than those of Fair Share. The benefits gained by the realization of the basic rights needs to be further moderated in terms of the economic benefits and losses each policy implies.

Second, from the perspective of the asylum seekers, their economic situation will be improved once they enter a host country where their application is assessed. This change in status/improvement is due to the series of rights they are entitled to before, during and after their asylum claim is processed. As I discuss in Section 4.3, as asylum seekers proceed in the process, they gradually receive better economic rights from self-employment to work permit and welfare benefits. The amount of benefits the asylum seekers receives depends on the affluence of the host country as well as the number of asylum seekers the host country receives. The Fair Share takes into consideration these two factors by applying the four criteria for distribution of responsibility among states. The fair distribution of the asylum seekers creates more economic benefits for the asylum seekers than does the CEAS which transfers the most asylum seekers to the less affluent the EU border states.

Third, from the perspective of the host countries, "there is reason to expect an income increase for the natives of the State to which these immigrants arrive."[301] First, the arrival of asylum seekers may be beneficial for the EU Member States in that the Syrian asylum seekers, predominantly composed of young people, can join their labor force. Second,

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[301] Tally A. Kritzman, "Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law." *Brooklyn Journal of International Law* 34, 2 (2008): 355-393, at 367.

contrary to the economic migrants, not all of the Syrian asylum seekers are economically disadvantaged. Nevertheless, the economic benefits to be derived from the arrival of the Syrian asylum seekers are conditional on the economies of the Member States. Border states such as Hungary and Greece are less affluent and currently deal with economic problems such as unemployment. Hence, the presence of the asylum seekers might be a burden on the economy rather than helping it improve. While CEAS requires them to receive the biggest portion of asylum seekers, Fair Share distributes the asylum seeker population according to the relevant criteria: for example, GDP and unemployment rates. Hence, with Fair Share, the host states benefit from the arrival of asylum seekers; while with CEAS, they suffer.

Last but not least, the Fair Share and the CEAS benefit the neighboring countries of Syria in proportion to the number of asylum seekers admitted in the EU. First, both polices ease the burden on the local population and economies. Second, as these policies ease the burden on the neighboring states, stability is brought to the region. Bringing together all four considerations, we can establish a ranking by the utilitarian perspective (U) as Pf>Pc>Pt.

4.5.4 Perspective of Equal Respect

The perspective of equal respect (R) is related with how the policies respect the agency of the asylum seekers.[302] Carens emphasizes that the asylum seekers "are not just passive victims to be assisted in whatever way the receiving states deem best. They are human beings whose agency deserves respect."[303] In this sense, the distribution of the asylum seekers among the Member States needs to take into account their decision as well as their diverse needs and qualifications. Respecting the agency of the asylum seekers has also instrumental value. Asylum seekers do not always aim for the countries with better reception condition and

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[302] The perspective of equal respect I discuss differs from the one I discuss in the previous Chapter. Nevertheless, they are different aspects of the value of equal respect.
[303] Carens, *The Ethics of Immigration*, 213.

affluent economies. Instead, they look for countries where they have ties with the already existing communities. Their considerations point at countries where they can find comfort and assistance and have better integration opportunities.[304]

In Turn Back policy, the asylum seekers have to return to a safe country where they have already passed. The element of agency does not play a role at all. Fair Share policy applies quotas in the relocation of asylum seekers. The country of relocation is identified by a number of qualifications of the asylum seekers such as "language and professional skills, and other criteria based on demonstrated family, cultural or social ties which could facilitate their integration."[305] These considerations take into account the diverse needs and qualities of individual asylum seekers. Nevertheless, their decision is not included in the assessment. Considering the CEAS, out of the four criteria that are applied in determining the responsibilities of the Member States, three are related with the agency of asylum seekers. The first two criteria regarding family unity and the existence of visa or residence permits are related to the particular qualifications of the asylum seeker. The last criteria regarding the place of the first asylum application is related with the decision of the asylum seekers. Hence among the three policies, we can establish a ranking by the perspective of equal respect (R) as Pc>Pf>Pt.

4.5.5 Perspective of State Sovereignty

The next perspective provides a valuation of the three policies with respect to their effect on state sovereignty (S). State sovereignty is important for at least two reasons related with the arrival of asylum seekers. The first refers to the importance of authority of the states in their own territory. Carens stresses that "the principle of state sovereignty entails that states are

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[304] Fratzke, "Not Adding Up: The Fading Promise of Europe's Dublin System," 20.
[305] European Commission, "Refugee Crisis: European Commission takes decisive action - Questions and answers," 6.

normally responsible for what goes on in their own territory and not responsible, or at least not nearly as responsible, for what goes on in the territory of other states."[306] According to David Miller, such demarcation of authority has important instrumental value. It makes "possible for people at any given location to know which legal regime they are subject to, and which other policies apply to them."[307] Many human activities, such as economic activities that require cooperation and collective problem solving, depend on the fact that the state has the final word.[308]

In addition to instrumental value, sovereignty within the borders of the states guarantees the citizens a territorial right to self-determination. Miller argues that nations that have occupied and transformed a certain territory for a substantial period of time have the right to determine the future shape of that territory.[309] The relationship between a nation and its territory involves not only the material transformations such as those that that relate to economic growth or environmental values,[310] but also the production of the culture.[311] The territorial right to self-determination gives the citizens of a nation the right to continue this activity without the interference of outsiders.

Miller recognizes that asylum seekers have strong claims for acceptance in a territory of a nation based on the threat to their basic rights. Nevertheless, in practice, the extent of the protection that the asylum seekers are entitled to and the distribution of responsibility among the states need to be considered contextually. "Realistically, therefore, states have to be given

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[306] Carens, *The Ethics of Immigration*, 207.

[307] David Miller, *National Responsibility of Global Justice*.(New York: Oxford University Press, 2007), at 214.
[308] Ibid., 214.
[309] Territorial rights are not absolute. For example, the territory of the state needs to be rightfully acquired in the first place. Moreover, the strength of the right may vary according the period of time a nation has occupied and transformed it. (Ibid., 218-222) Here I cannot engage with Miller's argument in detail. Yet, it suffices to assume that the EU Member States have legitimate claims to the territories that they occupy and that they have transformed them to an extent that they have a right to self-determination.
[310] Ibid., 223.
[311] Gibney, *The Ethics and Politics of Asylum*, 25.

considerable autonomy to decide on how to respond to particular asylum applications."[312] For the case of Syrian asylum seekers, recognition of Turkey and Serbia as safe third countries might diminish the responsibilities of the EU Member States in providing asylum. Both for sustaining the authority of the states and the right to self-determination imply conditional entry of the asylum seekers.

On the one hand, Turn Back reinforces state sovereignty by refusing responsibility for the asylum seekers who are outside the borders of the EU states. The asylum seekers are not allowed to enter without proper documentation. Those who enter face detention and deportation. Nevertheless, it is still the decision of the Member States to provide the documentation of entry. On the other hand, Fair Share follows a non-rejection policy. It diminishes the distinction between those who have already entered the territory of a Member State and those at the border who wish to enter. For Miller, erosion of the distinction undermines the value of state sovereignty "since a system of territorial authority cannot function without some control over who falls within its scope."[313] (Miller 2007, 215-216) Lastly, CEAS is a midpoint between Turn Back and Fair Share. Similar to Turn Back, CEAS does not allow asylum seekers to enter without proper documentation. Yet, those who enter are protected by the Article(s) 31 and 33 of the Convention. Therefore, we can establish a ranking by the perspective of state sovereignty as Pf>Pc>Pt.

4.5.6 Perspective of Solidarity

Gibney argues that citizens of large and democratic states, such as the EU states, share "a commitment to a political culture – that is, to a framework of institutions and rights that

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[312] Miller, *National Responsibility of Global Justice*, 226.
[313] Ibid., 215, 216.

enables individuals to pursue different and diverse ways of life."[314] The commitment to such a political culture constitutes the basis of solidarity among citizens. The three policies are valued with respect to how they sustain solidarity based on political culture (P).

This solidarity is essential to maintain a system of welfare and democracy. First, "If national welfare programmes, disaster assistance, regional subsidies and the like are to find support at the national level, members must believe that they have obligations not only to those in their region, class or ethnic group but to their fellow citizens *qua* citizens."[315] And second, "Majority decisions are acceptable only under conditions of trust, meaning that citizens are sufficiently benign and reasonable as not to exploit minorities."[316] Integrating the asylum seekers into the local communities, and nourishing the political culture where it is lacking is an important aim of asylum policies. Nevertheless, the arrival of asylum seekers who do not share such solidarity might disrupt both democratic mechanisms and the welfare system.

The evaluation of the three policies from the perspective of solidarity then depends on the number of asylum seekers and their political culture. In discussing the basic rights perspective (Section 4.5.2), I consider a case where roughly half of the Syrian asylum seekers prefer to apply for refugee status in the EU under Fair Share. Accordingly out of the two millions asylum seekers, Hungary is required to take responsibility of roughly 35000 asylum seekers; Germany, 360000. I argue that in terms of sustaining basic needs, these numbers of asylum seekers do not constitute heavy costs for the rest of the population. Nevertheless, if such a number of asylum seekers do not share a political culture with the Member State, then

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[314] Gibney, *The Ethics and Politics of Asylum*, 43.
[315] Ibid., 46.

[316] Veit Bader. "The Ethics of Immigration" *Constellations* 12, 3 (2005): 331-361, at 349.

the discrepancy is sufficient enough to disrupt both the democratic mechanisms and the welfare system.

We need to consider if the Syrian asylum seekers share a political commitment to a liberal and democratic framework of institutions and rights. A definitive answer to this question is beyond the aims and abilities of this research. Nevertheless a number of remarks are relevant. First, our judgment in considering the questions needs to be clear of the narrative that portrays the asylum seeker as the culturally, ethnically and religiously different other. The stigmatization included in such narratives needs to be excluded from ethical perspectives. Second, we need to consider that the Syrian asylum seekers are fleeing the authoritarian governments of the region. In this regard, we should not expect them to face democratic processes with hostility. Third, we should not envision either the citizenry of the EU Member States or the Syrian asylum seekers as a homogenous community that shares complete solidarity. There are and will always be some who refuse to become part of the political culture if both of the groups that need to be respected without disrupting the democratic procedures and the welfare systems. In relation to the number of asylum seekers each policy allows, we can establish a ranking by the perspective of shared political culture as Pt>Pc>Pf. Yet, the difference between the policies is not extensive.

L	B	U	R	S	P
Pf	Pf	Pf	Pc	Pt	Pt
Pc	Pc	Pc	Pf	Pc	Pc
Pt	Pt	Pt	Pt	Pf	Pf

Table 1

4.6 Rankings by Impartial Spectators

At the end of the second step of social choice approach, we have at hand valuations by the six ethical perspectives. The next step is to single out the rankings relevant for determining the policy that leads to a less unjust social state. The reasoning consists of two further steps. First, we identify impartial spectators who give relative valuations of the rankings. Then, we look for overlaps in terms of pair-wise valuations. Over lapping valuations are the choices that the impartial spectators mutually agree on without an agreement on the overall rankings. They guide our choice in determining the less unjust alternative.

In the previous chapter I reconstructed the views of Paula Casal, Thomas Pogge and Hillel Steiner as the views of impartial spectators from the proposals they put forth. In a similar way, here I reconstruct three impartial spectators from the proposals in comparison.[317] I call them T, C, F with respect to Turn Back, CEAS and Fair Share. Yet, before going on to identify the rankings by impartial spectators, in the following subsection I discuss a relevant point regarding which views should be included as impartial spectators.

4.6.1 Open vs. Closed Impartiality

In the previous chapter, I discuss an objection of Gerald Gaus regarding the social choice approach. Gaus reasons that we may "disagree on who counts as an impartial spectator."[318] (2.4.2). As a response, I argue that since the distribution of global natural resources has consequences for all throughout the globe, the evaluations of the focal group that we need to consider are those of the globe. Therefore, we should include all reasonable rankings of the ethical perspective that are proposed. This assessment is compatible with the view Sen calls 'closed impartiality'. For comparison of the EU asylum policies, this is not the case,

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[317] Here I suggest that so far as a proposal is reasonable, it signifies an ordering of valuations. If we can identify the ordering and the valuations, we can then pose them as impartial spectators.
[318] Gaus, "Social Contract and Social Choice," 248.

however. The focal group consists of the citizens of the EU Member States, the asylum seekers and the citizens of the neighboring countries who are affected by the flight of the asylum seekers. Then, according to 'closed impartiality' we should only include reasonable rankings that derive from the limited focal group.

However, including only the viewpoints of those affected has important limitations. Sen points out that "If we live in a local world of fixed beliefs and specific practices, parochialism may be an unrecognized and unquestioned result."[319] The rankings of the impartial spectators of a particular focal group may be prone to containing local prejudices, which cannot be revealed by scrutiny of the same focal group. In overcoming this problem, Sen suggests that we include the views and experiences of those who are distant because they may help identifying the limitations of closed impartiality by bringing in new experiences.[320] This approach is called 'open impartiality'. For our case at hand, we need to go beyond the experiences of the citizens of the EU Member States, the asylum seekers and the citizens of the neighboring countries. Any reasonable ordering of the rankings should be welcome as an impartial spectator.

4.6.2 Impartial Spectators

Having specified grounds of the grounds, I turn to their specific orderings in assessing the three proposals. Recall that in previous chapter (3.5), I provide a general rule to capture the comparative aspect of the assessment. I suggested that when an ethical perspective is valued more or less equally by all impartial spectators, it is ranked relatively lower in the general ranking by all impartial spectators. When there is a stark difference between the valuations, then it ranks higher in the ranking of the impartial spectator who values it more, lower in the

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[319] Sen, *The Idea of Justice*, 130.
[320] Ibid., 130.

ranking of the one who values it less. This outcome is because what is important for impartial spectators is to bring forth their different valuations.

When we consider the impartial spectators in isolation, in line with my discussion in 4.5, we can state a number of relations. The impartial spectator F values b, u and l; C values r, and T values s and p more than the rest of ethical perspectives. Moreover, in relation to the extent of difference between the three policies, F ranks u, b and l as u>b>l, and T ranks s and p as s>p. When we consider the impartial spectators in the comparative analysis, we can state a number of further relations. There is a stark difference between the three policies in terms of state sovereignty. Hence, T ranks it generally higher, and F and C ranks it generally lower. In addition, my discussion regarding the political culture of the Syrian asylum seekers in 4.5.6 significantly limits the difference between the three policies. Hence, p is ranked generally lower by all the impartial spectators.

Table 2

F	C	T
U	R	S
B	L	L
L	B	B
R	S	U
S	U	R
P	P	P

Consistent with these relations we can establish rankings of the impartial spectators as F(U>B>L>R>P>S), C(R>L>B>U>S>P) and T(S>L>B>U>R>P). In the above rankings there are five pair-wise valuations: U>P, B>P, L>P, R>P and S>P. These are the valuations upon

which each of the impartial spectators agrees. Thus, we can claim that it is morally wrong to choose any one of P when there is the chance to choose any one of the others: U, B, L, R and S.

As I discuss in Section 3.5, depending on the extent of similarity among the rankings, we can have different levels of guidance.[321] In some cases, the similarity may be to an extent that it determines a morally better option or options. In other cases, such as the one at hand, pair-wise valuations do not point to a determinate choice. Nevertheless, they still provide guidance for reforming policy options. The five ethical perspectives that the impartial spectators agree to are superior to P. As I have discussed in Section 4.5, utilitarian, basic rights and libertarian perspectives rank Pf over Pc and Pt, while perspective of equal respect ranks Pc over Pf and Pt and perspective of state sovereignty ranks Pt over Pc and Pf.

There may be multiple ways of articulating this similarity as valuable information for reforming policy alternatives. The easiest way to arrive at a mutually agreed choice seems to me to reform Pf to the extent that it is ranked at least as good as the others from the perspective of equal respect and state sovereignty. For the perspective of equal respect, we need to reform Fair Share to an extent that it takes into consideration the decisions of the asylum seekers as much as CEAS. This may be possible by including in the criteria for determining the country of relocation, the choices of the asylum seekers.

For the perspective of state sovereignty, we need to reform Fair Share to an extent that it respects the right to self-determination and state sovereignty. However, non-rejection at the border is an essential component of the Fair Share. We cannot moderate without significantly influencing valuations of other perspectives. Even so we need to emphasize that whether the right to self-determination is breached by Fair Share depends on the context. The citizens of Member States may choose to allow all Syrian asylum seekers into their territory. Then, Fair

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[321] Ibid., 104, 105.

Share is valued as much as are Turn Back and CEAS from the perspective of state sovereignty. Considering that many of the valuations favor Fair Share over CEAS and Turn Back, this outcome may be expected. State sovereignty does not value Fair Share as it implies the citizens of the Member States to share sovereignty, but at the same time it is not an obstacle for the mutual agreement on Fair Share.

4.7 Conclusion

The need to reform European asylum policies is urgent. Millions of Syrian asylum seekers are not within reach of long term solutions to their deteriorating circumstances. The EU Member states should face up to their Refugee Convention responsibilities. The contextual comparison I offer in this Chapter aims to offer a clearer understanding of the many proposals aired in this regard. By laying out impartial perspectives, we can overcome biased claims of interest groups. By focusing on mutually agreed points of view, we can make progress in reaching a less unjust solution.

5. Conclusion

5.1 Introduction

In this concluding chapter, I highlight a number of aspects of the social choice approach to theorizing justice that I have developed throughout the thesis. In Section 5.2, I emphasize that the method can incorporate pervasive disagreement within society regarding injustices better than its alternatives do. I point out that Rawlsian constructivism and Cohen's intuitionism take into consideration the point of view of others on two different levels of theorizing. While the former looks for mutual agreeability in identifying principles of justice, the latter does so in arguments for implementing policies. The social choice approach, by bringing together these two aspects, is better able to respond to pervasive disagreement. In Section 5.3, I emphasize the importance of following a social choice approach in refraining from making authoritarian judgments. The method appeals to citizens rather than policy makers in comparing social

states. The judgments delivered by the social choice approach are moral judgments. Nevertheless, so far as such judgments are concerned with social morality, they are authoritative. I demonstrate that if we do not go as far as we can with moral reasoning, we are prone to make authoritarian judgments. As an example I show how the Rawlsian method I discuss in Chapter 2 suffers from this problem. Then, I discuss the cases of implementing global taxes on natural resources and reforming EU asylum policy. Finally, in Section 5.4, I emphasize that the judgments of the social choice approach can always be improved with new perspectives and information. A stronger social choice is possible it by sustaining an environment for free and open-ended discussion.

5.2 Social choice approach as realizing disagreement

Gerald Gaus recognizes the importance of realizing pervasive disagreement regarding actual problems of the world, such as discrimination, human rights violations, severe poverty or global warming when theorizing justice. He writes that

> Reasonable and rational good-willed people often order proposals about justice differently—when they can order them at all. The claim that if we only think hard enough we will see that everyone actually will agree on the optimal conception of justice is, I think, beyond credulity. The harder we think, the more we disagree. [322]

Throughout this study I demonstrate the ability of the social choice approach through theorizing to incorporate the pervasive disagreement that Gaus mentions . Here I aim to emphasize in what way the approach can accomplish this task better in comparison to its alternatives.

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[322] Gaus,"Social Contract and Social Choice," 275.

There are two main approaches that in the contemporary literature that I want to discuss here distinguished by their particular method of theorizing principles. The first is Rawlsian constructivism,[323] which I discuss in Chapter 2, and intuitionism. The aim of theorizing, for both approaches, is to show the validity of a set of principles of justice. In the process they both take the point of view of others, though at different levels of theorizing. On the one hand, as Cohen describes, constructivists theorize principles of justice as "those that epistemically and/or morally privileged choosers would select in answer to the question, "What are the right principles for the regulation of social life?"[324] Specifically for Rawlsian constructivism justice is denoted as impartiality; furthermore, the aim of theorizing is to identify impartial principles for regulating social life.   Impartiality is achieved by bringing together, on equal terms, the others' point of view. A convergence of different points of views on a set of principles is expected to emerge by a set of epistemic limitations on the agents in the choice situation. Different conditions are spelt out by different constructivist accounts such as Rawls' original position, or Scanlon's reasonable rejection test, or Ideal Observer theories.[325] In Rawls original position, for example, the agents in the original position deliberating over the choice of a set of principles possess information regarding the facts about human nature and society, yet they do not know their place in it.

On the other hand, at the level of formulation of principles, intuitionists do not include the point of view of the others. Cohen describes the intuitionists including himself as the following:

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[323] Here I only consider the constructivism of Rawls, which Stephen Darwall calls contractualist in distinction to the contractarian theorizing of Gauthier. Stephen Darwall ed. *Contractarianism/Contractualism*, (Oxford: Blackwell Publishing, 2003) The reason is that while the former shares with the social choice approach theorizing of principles based on impartiality, the latter theorizing is based on self-interest.

[324] Cohen, *Rescuing Justice and Equality*, 21.

[325] For a discussion of the different accounts, see Ibid, 295.

we determine the principles that we are willing to endorse through an investigation of our individual normative judgments on particular cases, and while we allow that principles that are extensively supported by a wide range of individual judgments can override outlier judgments that contradict those principles, individual judgments retain a certain sovereignty.[326]

Intuitionists aim to have a clear understanding of their own normative convictions. The theorists proceed by considering counter examples to their intuitions, next revising their claims and then considering further counter examples.[327] The points of view of others are not relevant in the justification of principles. For, contrary to constructivism, the aim of principles is not the regulation of social life, but to reach a deeper understanding of what justice requires. Nevertheless, at the level of justifying a particular policy, which includes references to not only principles of justice but also other values and facts concerning the policy, the points of view of others is introduced. As I have discussed in Section 3.5.2. Cohen proposes the *interpersonal test* in evaluating the arguments for the implementation of a particular policy. Each given reason for the policy needs to be uttered and listened to by every segment of society. Only in so far as the reasons given are acceptable from every perspective of society can they be accepted as part of the justification.[328]

Cohen antagonistically argues against fact-sensitive principles derived by the Rawlsian constructivism. He maintains that principles of justice are fact-insensitive and argues that including in the choice mechanism contingent facts and other values leads us away from justice. Principles derived by the constructivist method are not principles of justice, but

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[326] Cohen, *Rescuing Justice and Equality,* 4.
[327] For a discussion of the method see, Wolff, "Fairness, Respect and the Egalitarian Ethos," 97-122; Wolff, "Fairness, respect and the egalitarian ethos revisited," 335-350.
[328] Cohen, *Rescuing Justice and Equality,* 42.

rather rules of regulation.[329] Here I cannot discuss Cohen's argument in detail, but I want to emphasize, regardless of what is the correct conceptualization of a principle of justice, both approaches to theorizing include at different levels the point of view of others when considering real world problems.[330]

The social choice approach I develop brings together the two kinds of requirements at both levels of the formulation of principles and justification of policies. As I discuss in Section 2.4, Sen draws on "Rawls' lead on the basic connection between objectivity, public reasoning and the theory of justice."[331] Sen shares the idea of fairness based on mutual acceptability. Yet, he also maintains that even within the epistemic constraints of a constructivist mechanism, multiple principles, which all have a claim to impartiality, survive. Moreover, the social choice approach recognizes that the implementation of each principle is also prone to reasonable disagreement. To this end, the ethical perspectives are scrutinized by Scanlon's reasonable rejection test and the assessment of the rankings of the impartial spectators with Cohen's interpersonal test.

Moreover, taking into account this further pervasive disagreement at both levels is neither a strategic move, nor a demand of feasibility. The requirement is not due to the fact that in real world circumstances we actually need to make a decision together with others, for others, or that our decision has consequences for others. Rather taking into account the disagreement at two levels is due to the idea that other people's perspectives and values, as long as they are reasonable, are constitutive of the judgment regarding the more just alternative in an unjust situation. As I explain in the following, this idea relates to respecting

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[329] Cohen, *Rescuing Justice and Equality*, 274-344
[330] Moreover, the social choice approach is consistent with both fact-sensitive and fact-insensitive approaches to justice, since the aim of theorizing is not to identify ideal principles of justice but to determine the more just social state among its alternatives.
[331]Sen, *The Idea of Justice*, 216.

others as equals and refraining from making moral demands that are authoritarian, that is to say, authoritative for the wrong reasons.

5.3 Social choice approach as identifying authoritarian judgments

Throughout the thesis, I examine three cases of comparative policy reform: the hypothetical case for health care policy in Chapter Two, implementing global taxes on natural resources in Chapter Three and reforming the EU asylum system in Chapter Four. Contrary to the immediate impression that these cases might create, the social choice approach I aim to develop is not a decision making mechanism for policy makers. Rather, the approach is meant to offer a method for individuals to judge a social state as more just among its alternatives. The judgment then constitutes a reason for the individual taking a particular course of direct action, participation in a social movement, or voting for a political party. In addition it supplies a rationale for expecting that others do the same.

The judgments we reach by employing the social choice approach are moral judgments. In particular, they are judgments of what Gerald Gaus calls 'social morality ' as they are aimed to determine the rules that we are to act upon for a shared social life .[332] Gaus argues that 'social morality' allows us to live together in cooperative, mutually beneficial, social relations."[333] Yet in order to achieve this task, rules of social morality have to be imperatival. Such rules must enable one agent to issue demands on what to do based on moral authority. This system must give the former a higher standing in her judgments, so

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[332] The account of social morality that I employ through this subsection is offered by Gaus. It refers to the " set of social-moral rules that require or prohibit action, and so ground moral imperatives that we direct to each other to engage in, or refrain from, certain lines of conduct." Gaus, *The Order of Public Reason—A Theory of Freedom and Morality in a Diverse and Bounded World*, 2. I follow Gaus in developing the problem of authoritarian judgments in social morality. Although I cannot here compare his approach to the social choice approach, I believe the latter is a genuine candidate for the overcoming the problem.
[333] Ibid., 4.

that the other has reason to obey.[334] The situation leads to problems when we have disagreements over judging courses of action. As Gaus writes,

> When you assert your demand as authoritative – something that overrules my view of the matter – our private reason leads us to disagree on what morality requires. Morality does not fax its demands down from above; you are asserting your interpretation of the demands of morality as that which should be followed by me over my own interpretation. In your eyes, your demand that I must φ is not undermined simply because I reply that on my view of morality, I have no duty to φ. My reply may lead you to pause and reconsider, but if on reflection you determine that you were correct on this matter, you will go ahead and press your demand. But that means that, in the end, you are asserting that my action must conform to your judgment even though you cannot get *me* to accept that it should – you are overriding what I see as the thing to do and claiming that your private judgment is authoritative over me. You are staking a real claim to authority over me: your judgment on this matter is to pre-empt mine"[335]

Making moral judgments within social morality is necessarily authoritative in the sense Gaus describes. When we do not share the same values and interpretation of situations, our moral judgments are authoritarian, that is to say, authoritative for the wrong reasons, regardless of how reasonable or legitimate is the demand The reason is that the relationship between the one who claims to have better moral judgments assumes a position of superiority over the other. This imbalance is antithetical to equally taking the point of view of others which is the first condition of impartiality.

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[334] Ibid., 6-9
[335] Ibid., 11.

In my discussion of the Rawlsian social contract approach in Chapter 2, I show that the deliberative framework enables individuals to demarcate a set of legitimate actions. Although after reasoning, the set of morally legitimate choices is significantly constrained, this method does not give us the means to distinguish within the legitimate set. The prior step of Rawlsian method is ideal theorizing, which specifies the first general principles that govern the basic structure of an ideal society. Then, in employing transitional and non-transitional reasoning, more particular subjects in actual circumstances are respectively theorized based on ideal principles. Nevertheless, I argue that due to disagreement in both identifying ideal principles and competing valuations in tradeoff situations in the reasoning, the method does not provide a determinate choice within the set of legitimate actions. Any social state implied by the legitimate set is morally as good as is the other.

Within the Rawlsian framework, when someone claims that a policy is the morally superior one, then she is making an authoritative judgment based on a belief on a set of specific ideal principles and a particular kind of reasoning that is applied to the principles in real world circumstances.[336] Theorists such as Laura Valentini have recognized the limitation of the Rawlsian method. She writes that

> Although we cannot identify with precision what distributive criterion counts as universally acceptable, because in principle the more than one does, we can still plausibly establish which distributions of freedom a just society must *exclude*, since rational agents concerned with furthering their life plans could never consent to them. Hypothetical consent does not enable us to determine what is perfectly just, but is of great help in establishing what is *reasonably just or legitimate*. [337]

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[336] The two kinds of reasoning, transitional and non-transitional I discuss in Section 2.2
[337] Valentini, *Justice in a Globalized World: A Normative Framework*, 177.

Valentini's response to the inability of the Rawlsian framework to make determinate rankings of policies is to supplement the framework with democratic decision making procedures. She delineates the process as follows:

> If the outcome of hypothetical consent is underdetermined, to identify what might count as a mutually justifiable distribution of freedom, we should resort to democratic deliberation and decision. This is not to say that democratic processes succeed in concretely realizing the ideal of universal justifiability. As we all know, such processes are imperfect, and most commonly operate on the basis of majority rule, rather than unanimity. The point I am making is rather that such processes offer us the best approximation of universal justifiability in real-world circumstances. When hypothetical consent runs out because of reasonable disagreement about its outcomes, democracy begins. [338]

Yet, Valentini's response does not resolve the problem of authoritarian judgments relating to social morality that I have put forth. First, the authoritative judgments we discuss are not related to the political authority of the state or a similar sovereign institution, but to the moral authority of the agents who have made a moral demand. A decision making procedure, so far as it is inclusive, may in fact render the former kind of authority legitimate, but not the latter. Second, we need to determine which decision making procedure is the appropriate one for the problem. As Andrew Mason argues, "Existing procedures are likely to fall short of the standards set by a democratic conception, and there will be disagreement over the merits of different models of democratic decision making that is likely to be as intractable as

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[338] Ibid.,

disagreement over conceptions of justice—indeed the latter will feed the former"[339] The judgment for a specific decision making procedure will emerge as a judgment of social morality. In the context of disagreement, we will have the same problem of authoritative judgments back in our hands.

Gaus argues that the only instance when an authoritative judgment can be made for the right reasons is when the both sides of the judgment are in agreement regarding the course of action, yet one side is not acting according to the rules of social morality. He explains this kind of situations as follows;

I am dictating to you the precepts of public reason, and calling on you to act according to the rules of your own judgment, and not to behave inconsistently with yourself. A real inequality between actual persons is, of course, now being asserted. I claim that you are failing to live up to your own rational moral commitments: you are acting wrongly by your own lights as well as mine. My demand is based on appeal to your own reasons and your own rational moral autonomy. It is your failure to exercise your rational moral capacities to which I object, I am not seeking to override them. In this way a moral equal can make moral demands, and so claim moral authority over another."[340]

Even though, also in this situation, the one who is making the demand based on moral authority is still claiming to have a superior position than the other, the justification of the demand is shared by both of them. Gaus gives an analogy between authoritative judgments for the right reasons with promise keeping, "If a person makes a promise, one of the things she does is to give me standing to demand that she keep it: the act of promise making is one that

[339] Andrew Mason, *Rawlsian Theory and the Circumstances of Politics*, Political Theory 38, n. 5 (2010): 658–683
[340] Ibid, 29.

recognizes the standing of others to make demands."[341] The novelty of the social choice approach is that it brings out the similarities in different judgments regarding specific questions that, at first glance, conflict. Even though there is no prior contract, the approach points out the ways we in fact are in agreement, but do not recognize it in the first instance. We may prioritize different reasonable principles of justice in general. However, when we are confronted with a particular situation, we will have relative valuations of first principles depending on the specificities of the context. We may not see the extent of agreement due to our commitment to the first principles we endorse. Political rhetoric, ideological conflicts or simply a lack of reasoning may prevent us from recognizing the mutual agreeable choice. Once the similarities between the two views are revealed by employing the social choice approach the demand made based on the method is authoritative for the right reasons.

In this study I show that for a number of cases we in fact have such agreements. In cases such as these, a demand of social morality is authoritative for the right reasons. Let's consider what this line of reasoning implies for the particular cases I discuss in the previous chapters. In Chapter 3, I compare three competing proposals for implementing global taxes on natural resources: Hillel Steiner's 'Global Fund', Thomas Pogge's 'Global Resource Dividend', and Paula Casal's 'Global Share'. In these comparisons, I identify eight ethical perspectives which have a claim to impartiality as egalitarian, prioritarian, sufficientarian, utilitarian, libertarian, conservation of resources, as well as considerations regarding transitional aspects and equal respect of persons. Each perspective provides reasons for alternative rankings. Egalitarian, prioritarian, and conservation of resources prioritize the Global Share, sufficientarian, utilitarian and transitional perspective prioritize the Global Resource Dividend; the libertarian perspective and perspective of equal respect prioritize

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[341] Ibid., 29.

the Global Fund. So far as the perspectives are reasonable, within the Rawlsian framework, implementation of the policy is determined by a legitimate decision making procedure. The ultimate decision will be morally authoritarian, for not all the agents in the process will share the reasons for implementing the policy; some will constitute a higher ground than do others. Of course, we should note that the judgment derived by the Rawlsian method and an inclusive decision making procedures will be less authoritarian than a judgment that does not at all take into consideration the point of view of others. As I show by working through the policy comparison, there may be two ways to go that all agree upon: first, to reforming the Global Resource Dividend to an extent that it can conserve natural resources at least as well as Global Share can; second, to reforming the Global Resource Dividend to an extent that it sustains equal respect for individuals--at least as much as the Global Fund does.

Similarly, in Chapter 4, I compare the Common European Asylum System (CEAS) with two policy proposals for reform: 'Turn Back' and 'Fair Share.' Regarding the comparison I identify six ethical perspectives by which we can value the proposals: libertarian, basic rights, utilitarian, equal respect, state sovereignty and solidarity. Each ethical perspective provides reasons for alternative rankings. Libertarian, basic rights and utilitarian perspectives prioritize the Fair Share. Perspectives of state sovereignty and solidarity prioritize the Turn Back and, equal respect, the CEAS. Reforming the CEAS concerns in the fact of the great number of refugee arrivals concerns the lives of all citizens of the EU Member States, as well as the refugees who are in great need. Many arguments are aired in the media based on political rhetoric of interest groups targeting the values such as sovereignty and solidarity which are highly respected by the citizens. As I point out, so far as the perspectives are reasonable, within the Rawlsian framework, any one of the policies can be implemented. Yet, in this context, where the stakes are so high for all concerned, it is even more important to distinguish our disagreements from the reasons we in fact share based on the particularities of

the situation. Using the social choice approach, I show that the perspective of state sovereignty does not pose a moral obstacle for democratic implementation of the Fair Share. Moreover, I argue that we need to reform Fair Share to an extent that it takes into consideration the decisions of the asylum seekers as much as those of the CEAS. One way to do it may be possible by including in the criteria for determining the country of relocation, the choices of the asylum seekers. The moral demand for reforming the CEAS that I derive by employing the social choice approach is authoritative for the right reasons.

Lastly I want to point out that the social choice approach that I develop is limited so far as we may only employ it in comparative questions case by case. Moreover, the sufficient similarity of our reasons which arises that the social choice approach aims to uncover does not exist for all cases. I doubt that even a systematic application of the social choice approach for all relevant cases can determine the basis of a social morality that is authoritative for the right reasons. Establishing that basis is the task of more comprehensive theorizing concerned with the basis of social cooperation, such as the theorizing of Rawls 'original position', or Gaus's theorizing.[342] The method I develop may be helpful in this more complicated task by identifying authoritarian judgments that should not be accepted by social morality.

5.4 Social choice approach as free and open ended discussion

Another aspect of social choice approach is that the resulting judgment is always incomplete and relative to the current perspective and information. The inquiry is always open for

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[342] Gaus proposes a *Deliberative Public Justification Principle* to test the rules of social morality that ground social cooperation in society. It reads as the following: "*L* is a bona fide rule of social morality only if each and every Member of the Public endorses *L* as binding (and so to be internalized)." ." Gaus, *The Order of Public Reason—A Theory of Freedom and Morality in a Diverse and Bounded World*, 27 The Member of the Public employed in the *Deliberative Public Justification Principle* "is an *idealization* of some actual individual; a Member of the Public deliberates well and judges only on the relevant and intelligiblevalues, reasons, and concerns of the real agent she represents and always seeks to legislate impartially for all other Members of the Public." Ibid., 26. I cannot describe the details of Gaus argument here. Yet the main different from Rawlsian theorizing is that, for Gaus, the precise rules of social morality "is a matter of the rise of a complex coordination and selection process among a large group of people." Ibid., 46.

including new perspectives and information that enriches the discussion and improves our judgment; the discussion is thus dynamic and open ended.

The main aim of working through the two cases in this study is to show that the social choice approach can offer good guidance in overcoming a number of real world problems. In my analysis, I include ample information and perspectives so as to be able achieve a genuine suggestion for reform. Nevertheless, the policy question may further be analyzed in future research. For example, in my analysis in Chapter Four regarding the question of reforming the European asylum policy, we may include additional up-to-date research on the conditions of the conflict zones that produce asylum seekers, asylum systems of the neighbor countries as well as the practices of the EU Member States in implementing the CEAS, and consider any additional perspective that evaluates social states. Moreover, what the perspectives imply for the particular question of reforming CEAS is open to disagreement. Furthermore, the information derived by pair-wise valuations that we identify may be interpreted in various ways depending on the extent of similarity. We may have a critical grip of these questions by putting them up for public scrutiny.

The same considerations are also relevant for my assessment in Chapter Three of implementing global taxes on natural resources. We may include up to date research on a number of issues that I have not addressed in my assessment such as information regarding tax competition and tax evasion or the international mobility of parts of the tax base. Additionally, disagreements regarding the valuations of social states from different perspective and evaluation of the similarities need to be further assessed from varying points of view.

Nevertheless, the fact that the judgment of social choice approach is partial and relative to the information and perspectives included in the assessment does not undermine its

normative value.   New information and values add to the previous assessment; they do not contradict it   although the latter constitutes a road map for better judgment.

Last but not least, the method of social choice approach can be achieved in practice only by means of an open and free framework of public reasoning. Each argument for a policy needs to be rigorously engaged in public for better judgment. To this end, we need to have actual access to unbiased information and adequate platforms for the free exchange of ideas. Moreover, we should be willing to incorporate the views and experiences of those who are distant and those with whom we have disagreements. Sustaining democratic practices as government by discussion, political and civil rights that enable the voice of everyone to be heard indiscriminately, as well as free speech and press freedom is central in this sense.[343]

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