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**GLOBAL JUSTICE
BETWEEN
JUSTIFICATION AND FEASIBILITY**

Ph.D Thesis
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INTRODUCTION

The aim of this dissertation is to address the problem of global poverty and inequalities through a philosophical defense of what I take to be the most appealing normative view with respect to these issues, namely *global egalitarianism*. In the first chapter I outline the theoretical essentials of an *institutional* or *practice dependent* conception of global egalitarianism. Such a view is based on the assumption that our present international order and the institutions comprising it significantly shape people's life prospects and have important distributive effects in determining terms of ownership, production and transfer, access to global public goods and life opportunities across the globe. Insofar as these distributive effects are morally significant in shaping people's life prospects, their normative underpinnings must be made explicit and ought to be subjected to standards of justice, which are moral constraints on the permissible inequalities in the effects of those global institutions.

My view of global egalitarianism is strongly inspired by John Rawls' domestic political conception of justice, at the same time, aims at overcoming the weaknesses of his international theory. The theoretical essentials of a global egalitarian conception of justice I argue for are the following. i.) A practice-dependent methodological commitment according to which global institutions and practices are the primary subjects of justice; ii.) A principle of global justice is an egalitarian moral constraint, in other words, it sets limits to the inequality generating effects of global institutions. iii.) Justification of a global egalitarianism must rest on

global public grounds; iv.) All persons are equally valid sources of moral claims upon the terms of global cooperation.

Global egalitarianism has been subject to various philosophical challenges. Prominent amongst them is the claim that duties of egalitarian distributive justice are confined to members of a nation-state due to the normative features underlying the scheme of domestic social and political institutions, the so called, basic structure. In the second chapter of this dissertation I address three different variants of this critique. The *bounded contribution view* assigns special importance to domestic institution on grounds that its members mutually contribute to the production of the relevant social goods. As a result they owe each other fair return on the goods that they jointly produce. The *bounded constituency view* maintains that members of a political association owe each other egalitarian concern based on the idea that its members are participants in a legal and political system of self-legislation, and they are co-authors of coercive laws through which they mutually determine each others' fates. On the *bounded cooperation view* the institutions of the basic structure are necessary for the development of our moral powers and social capacities that make social cooperation possible. I argue that none of these critiques warrant restricting the scope of justice to the domestic context. While these underlying normative features might be relevant reasons that ground distributive duties, they either do not constitute *necessary* conditions for the application of egalitarian duties, or the morally relevant feature in question can be shown to be equally compelling at the global level.

In the third chapter I make an inquiry into the appropriate form of justification a global egalitarian conception requires. Global egalitarianism has been most notably justified through an extension of Rawls' *A Theory of Justice*, by grounding global principles of justice in comprehensive liberal commitments. I

challenge this view, by showing why such an extension is insufficiently justified to a global public, and why global egalitarianism must rest on *public* grounds. Drawing on Rawls' political conception of justice in his *Political Liberalism*, I explain why the appropriate way to justify principles under conditions of moral and religious pluralism is reasoning from political ideals embedded in the public culture of a society. Then, I proceed by demonstrating that public justification ought to be taken seriously not only in the domestic case, but even more so in the global case, due to a rich diversity of moral and religious doctrines characterizing the international public sphere.

I then argue that global egalitarianism must rest on an egalitarian theory of justification, which I call *justificatory egalitarianism*. Justificatory egalitarianism is a form of justification that treats people as equally valid sources of moral claims, and does so by taking people seriously in their plurality of moral views and religious beliefs. Under conditions of global pluralism, this doctrine requires us to justify the norms underlying a social scheme to others on global public grounds, to reason from broadly shareable global public ideals, thereby offering justification the relevant others cannot reasonably reject. While this requirement of global public justification is a plausible conclusion for normative theorizing, whether those global public ideals are robust enough to support a global egalitarian conception is a case that still needs to be made. I will limit myself to theoretical speculations about the problem, although a strong scientific proof would require an extensive case study on global public culture, its relevant sources and actors.

In chapter four I address the, so called, feasibility challenge to global egalitarianism, according to which the normative ideal it promotes or the institutional scheme it envisions is infeasible. The feasibility challenge for a theory of justice is

the following. Certain aspects of our social world are relevant in order normative theory to be action guiding, while other aspects of our social world are exactly what we need to be critically assessing. Therefore, a theorist needs to discern which facts to account for as unchangeable, hence as relevant feasibility constraints on the theory, and which ones to consider as object of critical assessment and social change. Some feasibility constraints are related to facts about human psychology and motivation while others are related to facts about our social world, institutions and resources. Given the scope and focus of my dissertation, I addressed one type of feasibility constraint, the fact of pluralism about moral views, which is likely to constrain the kinds of principles that can be accepted by others and hence the kind of justification that can be given in their support. Feasibility critics challenge global egalitarianism at the level of application and institutional design. Taking pluralism as a feasibility constraint, however, I aim to show that part of the feasibility charges can be already addressed at the level of justification. I argue that public justification is the kind of justification that is able to account for pluralism as a feasibility constraint, and brings a normative political ideal closer to a feasible ideal.

The originality of the thesis advanced here consists in the idea that global egalitarian principles must be justified on global *public* grounds. While maintaining that the scope of justice must be global, it challenges those theories of global justice that justify their conception on cosmopolitan or comprehensive liberal grounds. Global egalitarian conceptions of justice, in particular the ones that promote a global difference principle have been developed already in the very first accounts of global justice. I believe that these views are on the right track in the normative requirements they promote, however, they are insensitive to the problem of justification under conditions of pluralism. In my view they fail to respond to the fact of reasonable

global pluralism, a relevant fact which limits the kind of justification that can be offered to global agents of justice. In order for global egalitarianism to be properly egalitarian in its justification, it must treat people as equals by taking them seriously in their different moral views and systems of beliefs. In other words global egalitarianism must take global pluralism seriously in the kind of justificatory argument it advances.

Working out the concrete normative requirements of justice for the global institutional order is beyond the scope of this dissertation. For the purpose of this thesis, I limit my inquiry to the philosophical analysis of the reasons that ground the extension of the scope of justice, followed by an account of the appropriate kind of justification global egalitarianism requires under conditions of global pluralism, and finally to working out the conditions that need to be met globally for global egalitarianism to be a feasible ideal.

CHAPTER I

Theories of Distributive Justice: Towards a Global Egalitarian Conception

1.1. Elements of a Theory of Distributive Justice

Theories of social or distributive justice have dominated contemporary political philosophy since the publication of John Rawls' *A Theory of Justice* in 1971. Problems of “social justice, in the broadest sense, arise when decisions affect the distribution of benefits and burdens between different individuals or groups.”¹ The theoretical spectrum is excessively broad, the solutions are complex, hence a full review of the various positions would take us beyond the scope of this dissertation. However, let me discuss the essential elements of a theory of distributive justice and point to some of the main distinctions at stake within the literature.

Various types of questions can be asked with regard to distributive justice. Firstly, one needs to decide on what basis we owe distributive concern to others. That is, on what *grounds* can principles be justified? Secondly, one must settle the problem concerning the kind of things that are to be just or unjust, in other words the kind of things to which principles of justice should apply to, and ask what is the relevant *subject* of justice. A theory of distributive justice can morally assess the conduct of persons, an outcome state of affairs in terms of a distributive profile, a scheme of social and political institutions, or a social ethos that prevails in a society.

¹ Matthew Clayton and Andrew Williams (eds.), *Social Justice* (Oxford: Blackwell Publishing,) p.1

All of these *judicanda* (things that are to be evaluated) can in theory be just or unjust.² Thirdly, one must ask how far these obligations reach and where boundaries of a distributive community are to be drawn. The question we are concerned with here is the adequate *scope* or the *boundary* of distributive justice. The various accounts include domestic, international or global solutions. Fourthly, we need to decide what is the basis of comparison among different persons' social positions, and what sort of goods are we taking into account when assessing aggregate human well-being in a society. This is an inquiry into the relevant *currency* or *metric* of justice and the most prominent accounts include primary social goods, happiness, welfare, resources, or capabilities.³ Finally, one needs to determine the rules according to which the relevant goods are to be distributed, and ask: What principles distribution does justice require? Egalitarian, sufficientarian and prioritarian principles constitute the most influential accounts concerning the requirements of justice. Reasoning about these five aspects of distributive justice involves different levels of analysis and the solutions reached constitute the different elements of a theory of distributive justice: *ground*, *subject*, *scope*, *metric*, and the *principle* of distributive justice.

All of these elements would deserve an in-depth discussion if the aim of this thesis were to develop a full blown theory of justice. My aim, however, is much more modest. This thesis focuses on the question concerning the appropriate *scope* of

² The term *judicandum* is used by Thomas Pogge, *Relational Conceptions of Justice: Responsibilities for Health Outcomes*, in Sudhir Anand et al. (eds) *Public Health, Ethics and Equity* (Oxford: Oxford University Press, 2006) p. 141. For further insight into the subject or site question see the debate in *Philosophy & Public Affairs*, following the article by Gerald A. Cohen, "On the Site of Distributive Justice," *Philosophy & Public Affairs*; Liam Murphy, "Institutions and the Demands of Justice," *Philosophy & Public Affairs*; Thomas Pogge, "On the Site of Distributive Justice: Reflection on Cohen and Murphy," *Philosophy & Public Affairs* 29, no. 2. pp. 137-169

³ For primary social goods see John Rawls, *A Theory of Justice*, for an in-depth discussion on the welfarist account see Ronald Dworkin, "What is Equality? Part 1: Equality of Welfare," *Philosophy & Public Affairs* 1981. For a resourcist view see Ronald Dworkin, "What is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 1981. For the capabilities account see the works of Amartya Sen and Martha Nussbaum. Amartya Sen, *The Equality of What?* Tanner Lectures at Stanford University, 1979. "Capability and Well-being" in Martha Nussbaum and Amartya Sen eds. *The Quality of Life* (Oxford: Clarendon Press, 1993)

justice in the hope of convincing the reader that not only the domestic institutions also the global institutions are relevant domains of distributive justice, albeit the difference that might occur concerning the requirements of justice. While the focus of the thesis is on the scope of justice, other theoretical elements, such as the grounds of justice and the subject of justice will be scrutinized.

1.2. Moral Concerns and Principles of Justice

Our concern with global poverty and excessive inequalities is motivated by two different moral concerns: *absolute* deprivation and *relative* deprivation. That is, we are either concerned with how badly people are faring compared to an absolute standard of decency or basic needs, or we might object to the excessive inequalities in social positions based on a standard of permissible inequalities. According to our moral concern with inequality, we might consider it bad in itself or we might object to it on independent grounds. Moral assessment of both absolute and relative deprivation might proceed either by justification of an objective standard of evaluation, or by a comparative assessment between the current state of affairs and an alternative feasible state of affairs, in which aggregate human well-being is enhanced. So the fact that people's life do not meet a certain standard or experience gross inequalities might be wrong in itself, or wrong compared to an alternative state of affairs in which they could be better-off. Theoretically both kinds of moral concerns could be combined with both types of moral assessments. Nevertheless, in the dominant political theory literature of world poverty and inequalities, our concern with absolute deprivation is often matched with an objective account of the

threshold of decency, while permissible inequalities are worked out through a comparative assessment of feasible alternative institutional schemes under which the worst off might be better-off.

The various absolute deprivation views, primarily focusing on the problem of extreme poverty, have given alternative accounts of the metric of human well-being, such as suffering in terms of pain and pleasure, basic needs, basic rights, fundamental human rights, or capabilities to achieve valuable human functionings. In making an evaluative judgment concerning human well-being one has to establish a threshold, a standard of decency or a standard of a life lived with dignity that every human being must meet with regard to the proposed metric. Our duty of justice, on this account, consists in alleviating poverty and promoting a state of affairs where every human being meets the established standard, and our duty is discharged when this standard is met by all. Since justice requires from us to reduce human suffering or eradicate world poverty up to a certain threshold, this conception of justice is referred to as *sufficientarianism* or *threshold egalitarianism*. Justice requires that everyone meets a threshold of sufficiency independently of the inequalities that might occur beyond the threshold.⁴

On an alternative account we might be concerned not only with how people fare in absolute terms, but in comparison with others. In this case we are making an assessment of people's relative deprivation compared to other people on a global scale. Extreme poverty, according to this position, is objectionable in the face of a

⁴ For the basic rights account see Henry Shue, *Basic Rights*. Princeton: Princeton University Press, 1980; for a human rights account see Sebastiano Maffettone, "Universal Duty and Global Justice." in Robert. E. Goodin, Philip Pettit and Thomas Pogge (eds.) *Blackwell Companion to Contemporary Political Philosophy*, Oxford: Blackwell Publishing, 2007; for the capabilities account see Amartya Sen, Sen, Amartya. "The Equality of What?" Tanner Lectures at Stanford University. 1979 and "Capability and Well-being" in Martha Nussbaum and Amartya Sen eds. *The Quality of Life*. Oxford: Clarendon Press, 1993. pp. 30-54.

significant progress and development in the life-prospects of many. As Thomas Pogge poses the moral question,

[h]ow can severe poverty of half of humankind continue despite enormous economic and technological progress and despite the enlightened moral norms and values of our heavily dominant Western civilization?⁵

The reason why we object to inequalities on moral grounds have relatively little to do with the substantive value of equality itself. That is, we do not necessarily have to favor equality for the sake of equality, but, as Thomas Scanlon has famously pointed out, most of our reason for concern with equality can be established on independent moral grounds. Scanlon's account of the diversity of objections to inequality develops four of these independent moral grounds, namely human suffering, stigma, domination, and procedural fairness.⁶

The moral assessment of inequalities is based on a comparison between alternative institutional schemes governed by different principles of justice. The standard of justice is given by the principles regulating an institutional scheme under which the least advantaged group can be no better off.⁷ Among the feasible alternative institutional schemes, all of which involve certain extent of inequality among different social groups, justice requires of us to promote the one under which the expectation of the worst-off group is higher. A principle that places limits on permissible inequalities in a society is an *egalitarian* principle of justice.

Our moral concern with global poverty and inequalities is further complicated by an account of the *source* of injustice. Disadvantage might result from the poor

⁵ Thomas Pogge, *World Poverty and Human Rights*, p. 3

⁶ For an in-depth discussion on the different objections to inequality see Thomas Scanlon, *The Diversity of Objections to Inequality*, in his *The Difficulty of Tolerance*, Cambridge: Cambridge University Press, 2003. pp. 202-218.

⁷ See John Rawls, *A Theory of Justice*; Thomas Scanlon, "Rawls' theory of Justice," in Norman Daniels (ed.) *Reading Rawls* (New York: Basic Books Publishers, 1985. pp. 169-206; Thomas Pogge, *Realizing Rawls*, Ithaca: Cornell University Press, 1989. esp. Ch 1.

capacities and talents one is born with, i.e. from natural and social lottery, from the bad life-choices one has made, or they might originate in social arrangement that have distributive effects on person's life-chances. Whether we are concerned with disadvantage as a matter of chance or choice or whether we are concerned with the social institutions that relevantly affect life-chances, two types of arguments can be made with regard to justice. According to the first, *natural or social luck* can result in morally arbitrary disadvantages in a society, where justice implies a design of social institutions which compensate for these morally arbitrary disadvantages. The luck egalitarian argument with regard to global (in)justice makes the case for the country of birth as a morally arbitrary disadvantage. A person born in a very poor country with little or no natural resources, with inefficient systems of governance and production, in an oppressive regime further diminishing the already scarce life-options, has grave consequences for her life-prospects. Assessing only one of the many indicators of human well-being, average life-expectancy in certain parts of the world is between 35-40, while the most well-off citizens in the world enjoy an average span of 75-80 years. According to global luck egalitarians, such systemic radical inequalities are morally impermissible. Assuming that one's country of birth is a matter of luck, radical global resource redistribution is called for in order to compensate for the resulting disadvantages.⁸

In the second type of argument about the source of injustice *social cooperation* and the *institutions* governing it produce winners and losers, whose disadvantageous effects must be subject to moral assessment through a standard of justice. With regard to global injustices, theorists argue that *global social cooperation* produces winners and losers, whereby the disadvantageous effects must

⁸ See Charles Beitz, *Political Theory and International Relations*. 1979. esp. Ch 3;

subject to moral assessment. The empirical evidence supporting this claim is strongly contested and constitutes a continuous struggle between experts of international organizations and experts of global social movements, academics and activists alike. Providing a full proof of the empirical validity of such an assumption and engage in the debate with the skeptics is beyond the scope of this dissertation.

For the purpose of this dissertation I take for granted that insofar as global institutions and practices have morally significant distributive effects on people's life prospects across the globe, they constitute a relevant subject of justice.

1.3. The Subject (Site) of Justice

1.3.1. Justice as an Institutional Virtue

The basic structure is one of the fundamental notions in the Rawlsian theory of justice. Understanding why it constitutes the *primary subject* of justice is one of the keys to grasping the Rawlsian theoretical apparatus in its operation. The basic structure is the way in which the major social institutions fit together into one unified scheme of social cooperation. Major social institutions, such as the constitutional system, the most important legal and political norms and procedures, the economic system, the education system or the family structure present in a society, working together, influence the individuals' life prospects, and what sort of status they will possess in a social scheme of complex hierarchies.

The Rawlsian notion of an *institution* is a special one. By an institution, Rawls means "a *public system of rules* which defines offices and positions with their

rights and duties, powers and immunities, and the like.”⁹ Compared to other sets of rules, a Rawlsian institution incorporates a normative element: the idea of *publicity*. That is, if the requirements of these rules are mutually recognized by each and every participant, and constitute a “common basis for determining mutual expectation,”¹⁰ only then can we talk about an institution in the Rawlsian sense.

As Rawls distinguishes, a public system of rules can be thought of in two ways: 1.) in the abstract, and 2.) in practice, as the realization of that abstract ideal¹¹. When we are to judge an institution as just or unjust, which meaning are we referring to: to the institution as an abstract set of rules, or to the realization of that abstract idea? What we need to assess with the standards of justice are potential institutions, that is, institutions thought of in “a certain time and space when the actions specified by it are regularly carried out.”¹² Following Rawls’ example, the difference between an abstract and a realized set of rules can be demonstrated as follows. A national parliament is a public system of rules and procedures (party system, election, mandate, law-making procedures etc.). As a set of rules in a constitutional text, it is not yet an institution in the Rawlsian sense. Mere examination of the constitutional paragraphs will not tell us much about whether it is just or not. We are to make our judgments at a given time in a society under specific circumstances. People need to potentially exercise those rules and follow the procedures, in order for the parliament to be an institution in the Rawlsian sense.

Having clarified the Rawlsian understanding of an institution, I move on to discuss what role institutions play in his conception of distributive justice. The first thing we learn from *A Theory of Justice* is that “Justice is the first virtue of

⁹ John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, 1971. p. 55.

¹⁰ *Ibid.* p. 56.

¹¹ *Ibid.* p. 54.

¹² *Ibid.* p. 55.

institutions,”¹³ that is, the two principles of justice directly apply to institutions (a public system of rules) and not to other possible subjects, such as actions and judgments of individuals, or to persons themselves.¹⁴ The principles of justice are to be located in a public system of rules, that is, in the major social institutions of a society. But, can we single out basic institutions of a society and assess them one by one? This is a common, however in my view, a misleading reading of the Rawlsian theory of justice. Assessing single institutions for their contribution to social justice is an inaccurate application of Rawls’ conception of justice.

Rawls developed his idea of distributive justice in order to answer the following question:

[H]ow are the institutions of the basic structure to be regarded as *one unified scheme* of institutions, so that a fair, efficient, and productive system of social cooperation can be maintained over time, from one generation to the next?¹⁵

Rawls makes an important distinction between a *single* institution and the basic structure of the society *as one unified scheme*, and argues that a theory of justice ought to be concerned with the latter. Justice of a social system taken as a whole depends on the combined effects of the fundamental social institutions it encompasses. Therefore, a theory of social justice must take as its primary subject “the basic structure of a society [that is] the *arrangement* of major social institutions into one scheme of cooperation.”¹⁶ In another formulation:

The basic structure is understood as *the way* in which, the major social institutions *fit together into one system*, and how they assign fundamental

¹³ Ibid. p. 3.

¹⁴ Ibid. p. 7.

¹⁵ John Rawls, *Justice as Fairness: A Restatement*, Erin Kelly (ed.) Cambridge, Mass.: The Belknap Press of Harvard University Press, 2001. p. 50. (emphasis added)

¹⁶ Ibid. p. 54.

rights and duties, and shape the divisions of advantages that arises through social cooperation.¹⁷

If an institution is to be understood as a public system of rules, and the basic structure is the way in which major social institutions fit together into one scheme, then, the basic structure is a complex web of the most fundamental public system of rules in a society. The basic structure is to be understood as background rules or *ground rules*¹⁸ through which other, less fundamental rules are shaped. The two principles of justice constitute a standard for these basic rules, as Samuel Freeman put it, a “rule for making the rules.”¹⁹

“The basic structure is the primary subject of justice.”²⁰ This might seem, at first, a form of “methodological modesty”²¹ on the part of Rawls, whose aim is to specify a limited domain, as a starting point, for considerations of justice. However, there is more to it than that. As the analysis proceeds, it will become clear how the basic structure as subject fits together with other fundamental ideas of justice as fairness. Four arguments are considered: a.) the division of moral labor, b.) the institutional division of labor, c.) its pervasive effects on life chances, and d.) the idea of social cooperation.

Let us first reflect on the *primacy* of the basic structure. Over what other considerations does the basic structure deserve priority? Samuel Scheffler draws an important distinction to clarify this point.²² He claims that there are two different

¹⁷ John Rawls, *Political Liberalism*, New York: Columbia University Press, 1993. p. 258. (emphasis added)

¹⁸ The term is used by Thomas Pogge, in his *Realizing Rawls*, Ithaca: Cornell University Press, 1989. p. 8.

¹⁹ Samuel Freeman, *Rawls*, London: Routledge, 2007. p. 99.

²⁰ Rawls, *A Theory of Justice*, p. 7.

²¹ Samuel Scheffler, “Is the Basic Structure Basic?” in Christine Sypnowich (ed.) *The Egalitarian Conscience: Essays in Honor of G.A. Cohen*, Oxford: Oxford University Press, 2006. pp. 102-129

²² *Ibid.*

ways in which Rawls prioritizes the basic structure as the first subject of justice: 1.) “the division of moral labor,” and 2.) “the institutional division of labor.”²³

a.) *Division of moral labor*: First, according to the division of moral labor²⁴, the principles that govern the basic structure are distinct from, and must be established prior to, those that govern the conduct of individuals or their associations.²⁵ In its most general form, Rawls makes a distinction between norms of *morality* in general, and norms of *justice*. In an early formulation, Rawls provides the underlying reasons in the following way.

That principles for institutions are chosen first shows the *social nature* of the virtue of justice ... [A] person’s obligations and duties presuppose a moral conception of institutions and therefore ... the content of just institutions must be defined before the requirements for individuals can be set out.²⁶

Rawls further elaborates this idea in his essay, *The Basic Structure as Subject*.²⁷ He argues that the two principles of justice are not super-principles that provide an answer for every moral question. They are not at all principles for guiding individual conduct directly. Rather, the principles are to regulate the fundamental public system of rules with the aim of guaranteeing just background conditions, within which individual transactions take place. Their role is to regulate the basic structure of a society, without aiming at providing general principles that also regulate the internal

²³ Scheffler, “Is the Basic Structure Basic?,” p.108

²⁴ First labeled “the moral division of labor,” by Thomas Nagel.

²⁵ This idea has generated the debate between monism and dualism. Despite its relevance, the scope of this chapter does not allow for an exhaustive reflection on the matter. I discuss the problem only insofar as it is relevant for the basic structure as primary subject. For reference, see fn. 24.

²⁶ Rawls, *A Theory of Justice*, p. 110.

²⁷ John Rawls, “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, (1977): 159-165. For an extended version see his *Political Liberalism*, Lecture VII, “The Basic Structure as Subject,” pp. 257-28.

life of associations (such as churches, universities, sport clubs) and the conduct of individuals.²⁸

b.) *Institutional division of labor*: A second distinction that supports the priority of the basic structure rests on, what Rawls calls, the ‘institutional division of labor.’ Despite being rather vague in defining the constitutive institutions of the basic structure, Rawls is rather clear on the *criterion* for drawing the line between what belongs and what not to the basic structure. He draws a clear theoretical distinction between institutions that are part of the basic structure and guarantee that the background conditions are fair over time, and those rules that directly regulate the transactions between individuals and their associations. Principles of justice only apply to the background rules that regulate normal rules; or better, they apply to a “system of commonly accepted second-order rules ... with offices and rules for identifying, applying and revising the many first-order rules.”²⁹

Elaborating on the institutional division of labor Rawls argues that,

the accumulated results of many separate and seemingly fair agreements entered into by individuals and associations are likely over an extended period of time to undermine the background conditions required for free and fair agreements.³⁰

When we judge single transactions in isolation we are assessing, what Rawls calls, *local justice*. Theorizing justice in such an isolated form does not correspond with his purpose. An agreement or an exchange might seem fair in itself, but evaluating it as fair does not really make sense until we do not know what fairness entails. Furthermore, if the purpose of the theory is to maintain fair background conditions generations over generations, initially fair agreements over time might accumulate

²⁸ Rawls, *Political Liberalism*, p. 268.

²⁹ Freeman, *Rawls*, p. 102.

³⁰ Rawls, *Justice as Fairness: A Restatement*, p. 53.

results that undermine the fairness of background conditions. It is enough to think about capital concentration as a result of free and fair market exchange. We start with an initial standard of fairness (i.e. a fair distribution of assets), then market actors make their free and fair exchanges (local justice). “For the outcome of these transactions taken together is affected by all kinds of contingencies and unforeseeable consequences,” Rawls figures, the only way to maintain justice over time, if his principles are directly applied to second-order rules, the institutions of the basic structure.

Why this distinction between two kinds of rules? What are the underlying reasons for the institutional division? Rawls argues, that since his aim is to establish and sustain fair background conditions, discharging this duty to individuals runs into several problems. Many think that the institutional division of labor is due to considerations of *demandingness*. That is, individuals are to be left alone to further their ends while the basic structure ‘works out’ justice for them.³¹ However, as Scheffler points out, the reason why the problem of background justice is reserved for the basic structure is not because it would be *burdensome* on individuals, but because discharging this task from the structure to individual actions constitutes an *impossibility*. The assessment of background justice requires a wide informational basis that everyday individual actions cannot reasonably be expected to take into account. As Scheffler puts it, “rules of individual conduct are insufficient to preserve background justice.”³² It is the task (background justice) that determines the locus of justice, and since many individual acts cannot properly carry out the task, their guiding rules cannot be the adequate subject of justice. To summarize, the

³¹ This position is attributed to Liam Murphy, “Institutions and the Demands of Justice,” *Philosophy & Public Affairs* 27 (1999): 251-291.

³² Scheffler, “Is the Basic Structure Basic?” note 6. is very clear on this point.

institutional division of labor is not a matter of discharging responsibility from individuals to institutions; rather it is a matter of theorizing about what is *possible*.

c.) *Pervasive effects* on life chances. An often emphasized rationale behind the special role of the basic structure might be labeled the '*pervasive effects claim*.' It is based on the fundamental idea that the form of society in which we live, pervasively affects our life chances, it affects our ambitions and hopes and, in part, determines the kind of persons we become.³³ How are people's deepest desires and lifetime goals be the effects of the social forms in which we are born and live? Rawls appeals to widely acknowledged sociological facts concerning the production and reproduction of culture over time.³⁴ People's desires are partly shaped by fundamental institutions, by the norms embedded in the political constitution, by the form the economic system takes, and in which individuals inherit, own, produce and consume. Often our ambitions are heavily influenced by acknowledging our starting position in society, the means available to us, or the goals reasonably reachable over our lifetime.

Considering the problem of *talents*, Rawls further emphasizes the pervasive effects of the social order on people's life-chances. As he points out, what is often considered a matter of luck is in effect, in part, a product of complex social contingencies. What are we acknowledging in a person when we say that he or she is talented? In the common sense of the term it has a connotation of luck, or of something undeserved; something that helps us to advantage, but we cannot take credit for it. Is this all there is to it? In demonstrating the effect of the basic structure on inequalities connected with talents, Rawls asks us to distinguish between two aspects of a talent. They might be called: a.) talent as *natural capacity* and b.) talent

³³ Rawls, *Political Liberalism*, p. 269 (emphasis added)

³⁴ Ibid.

understood as *realized capacity*. Talents viewed as the person's natural capacity, in the Rawlsian framework are considered "natural facts" therefore the unequal distribution arising from it "is neither just nor unjust."³⁵ However when we consider talents as realized capacities, the basic structure of a society takes on a significant role in determining the actual effects of the natural lottery on persons' social positions and life prospects. Although a talent as mere genetic gift is considered a natural fact, thus not a problem of justice, it becomes a problem of justice as soon as we consider talents as realized capacities in an ongoing social cooperation. Quoting Rawls: "What is just or unjust is the way institutions deal with these facts."³⁶

Imagine how many factors affect a natural born violin-genius' chances to become a famous violinist, apart from her natural talents and the efforts she makes through daily practice. Among the relevant social contingencies are parental encouragement, social starting position that allows for private musical education, the existence of high level academies, and a society that values talents for classical music, just to mention a few. It is rather clear, that besides personal traits, social positions and the social forms in which they occur determine, in large part, the realized talents of persons. It is this *effect* of institutions, the way institutions deal with natural luck and social starting position is what Rawls' theory of justice is set out to regulate. With Rawls' words, "[w]hat the theory of justice must regulate is the inequalities in life prospects between citizens that arise from social starting positions, natural advantages, and historical contingencies."

d.) *Social cooperation*. The influence of institutions on life-chances is only part of the story. As Freeman points out, many other, non-basic institutions have pervasive effects on people's lives, such as religious institutions, universities or the

³⁵ Rawls, *A Theory of Justice*, p. 102.

³⁶ Ibid.

media. They shape people's hopes and desires and influence the persons they become. So what makes the scheme of fundamental institutions the distinguished subject of justice? Freeman draws our attention to the point that the special role reserved for the basic structure is inherently connected with another fundamental idea in justice as fairness: the idea of *social cooperation*. He argues that basic institutions that make up the basic structure are "essential to social life ...[and] necessary for productive social cooperation."³⁷ That is, what distinguishes basic institutions from normal institutions (what Rawls terms *associations*) becomes clear once we have understood how it fits with a procedural understanding of justice as fairness and the role it plays in the Rawlsian social contract doctrine.

1.3.2. The Practice-dependence Thesis

Rawls' *A Theory of Justice* has shifted the focus concerning the task of political philosophy. According to Rawls, the question of theorizing about justice is not whether we could conceive of the best conception of justice for the best possible world starting from scratch. A question that has inspired philosophers since Plato. The question, in Rawls' view is whether we can work out from where we stand, from here and now, a criterion for evaluating the justice of our historically evolved social institutions. Hence, Rawls takes the "real task" of the political philosopher to be the construction of "a social point of view that all can accept," a conception of justice "that all can live with."³⁸ Reasoning about justice is rooted in our society and in our

³⁷ Freeman, *Rawls*, p. 101-102.

³⁸ John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77 (1980) p. 517.

time, it starts from moral ideals congenial to a profound understanding of ourselves. It is a *view from somewhere*, not a *view from nowhere*. This somewhere, a specific institutional context or social practice provides the source of justification for principles of justice.

The *practice-dependence thesis*³⁹ conveys the Rawlsian methodological commitment to reasoning about justice for institutions or social practices already in place. As a prominent Rawls scholar has recently put it, reasoning about justice *à la* Rawls consists in “constructing justice for existing practices.”⁴⁰ According to this *practice-dependent* methodological commitment, the requirements of justice vary according to the social practice in consideration. Principles of justice are thought to be yielded by a suitably characterized method of reasoning, the so called original position. The characterization of the original position, however, importantly depends on the *nature* and *purpose* of the social practice in question. Based on this commitment, Rawls has argued that constructing principles for different social practices yields different principles of justice. What determines the normative requirements for one context or another, as Rawls put it,

is the distinct structure of the social framework and the purpose and role of its various parts and how they fit together, that explains why there are different principles for different kind of subjects.⁴¹

Rawls’ constructivist procedure can be applied to various subjects: to the basic structure of a self-contained society, to the international subject, the political

³⁹ The term is used by Andrea Sangiovanni, “Justice and the Priority of Politics to Morality.” *Journal of Political Philosophy* (2008): 137-164.

⁴⁰ Aaron James, “Constructing Justice for Existing Practices.” *Philosophy & Public Affairs* 33 (2005): 281-316.

⁴¹ John Rawls, “The Law of Peoples” in Rawls, in *John Rawls: Collected Papers*. Samuel Freeman (ed.). Cambridge, Mass: Harvard University Press, 1999. p. 533.

society of the peoples, or to a society conceived over time in order to include the claims of future generations.

Each time the constructivist procedure is modified to fit the subject in question... A constructivist liberal doctrine is universal in its reach once it is extended to give principles for all relevant subjects including ... the political society of peoples. Its authority rests on the principles and conception of practical reason but always on these as suitably adjusted to different subjects ..., and always assuming as well that these principles are endorsed on due reflection by the reasonable agents to whom the corresponding principles apply.

In developing a conception of justice for the basic structure or for the law of peoples, or indeed for any subject, ... it is the distinct structure of the social framework and the purpose and role of its various parts and how they fit together that explains there being different principles for different subjects.⁴²

An original position between 'free and equal persons' is how Rawls characterizes the domestic original position as the appropriate way to reason about the justice for a liberal democratic society. However, when shifting the context of analysis from the domestic to the international level, one must also consider the relevant disanalogies between the purpose of and the participants to the social practice in question. Rawls maintains that the relevant characteristics of the international society is primarily serving the purpose of peace as the background conditions for the prosperity of all nations, and as made up of more or less self-contained nation states. Then he designs an international original position whose aim is to work out the requirements of just international conduct between nations or peoples.

In brief, the practice dependence thesis relies on the assumption that reasoning about justice starts from existing practices. First of all, one needs to

⁴² Rawls, *The Law of Peoples*, pp. 39-40.

identify a social practice and account for its relevant characteristics. Then, based on these characteristics that constitute the grounding elements for a constructivist argument, reasoning about the requirements of justice can begin. It proceeds by setting up a hypothetical choice situation among the relevant agents whose choice is constrained by the nature and purpose of the existing practice.

1.4. The Scope of Justice

What is the relevant scope of distributive justice and what are the reasons that bound or extend the scope of justice, has been of significant concern to philosophers in the past three decades.⁴³ When discussing the scope of justice, one must, first of all, clarify what sort of boundary is the subject of assessment. As Robert E. Goodin famously put it, “boundaries about people, not boundaries about territories that really matter morally.”⁴⁴ That is, in order to make sense of the compound arguments claiming the rightness of existing state boundaries, we must critically assess, not the physical boundaries themselves, but rather the *normative elements* underlying their justification. What is at issue, then, is on what moral grounds can the boundaries of different human associations be justified, and which type of community provides the relevant context of distributive justice.

⁴³ See for example Charles Beitz, *Political Theory and International Relations*. Princeton: Princeton University Press, 1979; Thomas Pogge, *Realizing Rawls*, Ithaca: Cornell University Press, 1989; Ononra O’Neill, *Bounds of Justice*; Cambridge: Cambridge University Press, 2004; Darrel Moellendorf, *Cosmopolitan Justice*, Boulder: Westview Press, 2002; Kok-Chor Tan, “The Boundary of Justice and the Justice of Boundaries: Defending Global Egalitarianism,” *The Canadian Journal of Law and Jurisprudence* 19 (2006); Michael Blake, “Distributive Justice, State Coercion and Autonomy,” *Philosophy & Public Affairs* 30 (2001); Andrea Sangiovanni, “Global Justice, Reciprocity and the State,” *Philosophy & Public Affairs* 35 (2007): 3-39; Arash Abizadeh, “Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice,” *Philosophy & Public Affairs* 35 (2007): pp. 318-358.

⁴⁴ Robert E. Goodin, “What is So Special about Our Fellow Countrymen?” *Ethics* 97 (1988) p. 686.

On the most common view the scope of distributive justice is domestic. Let us call this the *domestic thesis* held by social liberals or domestic egalitarians. Challenging this view, cosmopolitan liberals or global egalitarians hold that the relevant context of distributive justice is the global order. Let us call this the *global thesis*.⁴⁵ According to an third, intermediate position, both domestic institutions and the global order are relevant contexts of justice, but fundamentally different principles apply in the two contexts. Let us call this the *international thesis* or the *discrepancy thesis* between social and global justice.

Theorists of the domestic thesis hold that the relevant context of justice is the nation-state due to the normative features underlying the scheme of domestic social and political institutions, the so called, *basic structure*. The relevant normative feature might be contribution to a mutual production of social goods, it might be joint authorship of the mutually binding laws, or it might be shared social meanings.

The domestic thesis on distributive justice might be complemented by Hobbesian thesis concerning international morality, according to which outside of the state there is no justice. This is not necessarily the case, however. Most social liberals hold that due to normatively relevant differences in the domestic and the global contexts, the requirements of justice *differ*. In other words, what we owe to our fellow citizens and those living outside of our state borders rest on different normative grounds and consist in different normative requirements. This dualist view of morality results in the *discrepancy thesis*⁴⁶ between social and global justice, according to which some normatively relevant features that trigger our egalitarian duties of distributive justice are present in the domestic institutional context, while they are absent in the global context. The difference in the normative character of the

⁴⁵ The distinction between social and cosmopolitan liberalism is due to Charles Beitz, "Social and Cosmopolitan Liberalism." *International Affairs* 75 (1999): 515-529.

⁴⁶ For the term discrepancy thesis see Thomas Pogge, *World Poverty and Human Rights*.

context yields different kind of duties. *Special* duties apply among fellow citizens while our relations towards outsiders are guided by *general* duties we owe to all human beings. Many domestic liberal egalitarians, thus, endorse a dualist thesis according to which egalitarian distributive duties of justice apply within our state borders while humanitarian duties of justice apply among all human beings.

. The distinction between *humanitarian justice* and *distributive justice* is based on the grounds according to which we owe a duty to another person. Social or distributive justice is owed on the basis of shared social arrangements while the duty of humanity is owed on the basis of personhood or humanness, independently of and prior to the institutions and practices that bind us. Accordingly, they are owed to all human beings. Such humanitarian duties of aid or assistance might have distributive effects, but the moral grounding makes the important difference between the two concepts.

According to the dualist view distributive justice is grounded in the underlying normative features of shared institutions and their requirement consist in justifying the departure from equality in the effects of those institutions on people's life prospects. Humanitarian justice is grounded in moral personhood attributing equal moral status to all human beings, and its requirement consist in guaranteeing for all whatever human goods are necessary for the exercise of such a moral status. Rawls' account of a *natural duty* is illuminating to understand the kind of duty in question. Natural duty is a kind of duty owed prior to and independent of the institutional relations and the social practices that bind us together. "They obtain between all as equal moral persons."⁴⁷ Mutual aid is one such duty, and it requires us to help "another when he is in need or jeopardy, provided that one can do so without

⁴⁷ See Rawls, *A Theory of Justice*, p. 98.

excessive risk or loss to oneself.”⁴⁸ The duty is typically discharged once the suffering is alleviated or the need fulfilled on the recipient side. The requirements of justice, then involve some sort of a threshold or sufficientarian principle.

Challenging this discrepancy thesis cosmopolitan liberals argue that the normatively relevant feature in the domestic context is similarly relevant or analogous in the global context, hence the principles that apply socially should also apply globally. In the following sections, I further explore this debate and point to the main differences by analyzing the Rawlsian domestic thesis extended to an international thesis, and the challenges raised by the most prominent cosmopolitan liberals.

1.4.1. The Discrepancy-thesis: Domestic vs. International Justice

As we have seen above, according to the Rawlsian notion of social justice, justice is the first virtue of social institutions, and it primarily applies to domestic social institutions, the so called basic structure. The question posed in his *A Theory of Justice* is what principles of justice should govern the fundamental institutions of liberal democracies. In order to answer the question, Rawls runs a thought experiment, and imagines a hypothetical contract situation, and asks: What principles would parties adopt when symmetrically situated and having the relevant information for reasoning about justice? So construed, the original position is the appropriate normative point of view, from which one can derive the two principles of justice: 1.) maximum scheme of *equal basic liberties* for all and 2.) inequalities are organized

⁴⁸ Ibid.

such that they are to the advantage of the worst-off group in society (difference principle); attached to positions that are open to all under fair equality of opportunity. In order for his theoretical conclusion to hold, Rawls makes three relevant assumptions: 1.) the societies in question are in favorable socio-economic conditions; 2.) full compliance: the principles are observed by all; 3.) the relevant scheme of social cooperation occurs in a more or less self-contained society with fixed membership.

The *Law of Peoples*, John Rawls' latest book is his most comprehensive account of his international thought: he discusses the problem of "international justice," more precisely, the international conduct of liberal societies. He basically works out an international charter, a set of norms that ought to guide the foreign affairs of a Just International Society. It is explicitly aimed to be continuous with the political theory of a liberal democratic society, that is, political liberalism. Indeed, according to Rawls, a domestic political theory is incomplete without an adequate account of how liberal states, in their foreign affairs, ought to conduct their relations to other states. So, having elaborated his domestic theory of justice, which was rethought in order to account for "the fact of reasonable pluralism," Rawls, with the *Law of Peoples*, in 1999, brings to completion his liberal political theory, with a comprehensive account of just international conduct for liberal societies.

The fundamental problem for Rawls in the *Law of Peoples* is the following: how to find mutually acceptable norms of international conduct for peoples so different in their institutions and political cultures.

The roots of the *Law of Peoples* can already be found in *A Theory of Justice*. In §58, Rawls briefly sketches the idea of the *Law of Peoples*, which at that time he calls "the law of nations." Extending the original position to the international realm,

where parties to the agreement are representatives of nations, will acknowledge a set of principles that are already familiar to us in international law, such as the principle of self-determination, the right to self-defense, or the compliance with international treaties. These principles ideally would serve the purpose of adjudicating conflicting claims among states.⁴⁹ Rawls elaborates on this idea in a lecture with the title, *The Law of Peoples*, given in 1993, at the University of Oxford, within The Oxford Amnesty Lecture Series, extended and revised in the form of a book with the same title, “*The Law of Peoples*,” published in 1999.

Why is it more accurate to say that *The Law of Peoples* is a theory of *international conduct* rather than a theory of *international justice*? It is a theory of a just liberal foreign policy, not a theory of justice, as it is understood by justice as fairness. Rawls puts forward an idea of a just foreign policy for liberal societies. He always wears the glasses of liberalism, through which he contemplates on the possibilities of a just international society. In order to arrive at the principles of a just international society, we first need to understand starting from a just liberal democratic society, what its just international conduct would imply. So, his aim is to work out a set of principles, the Law of Peoples, which guide the foreign policy of just liberal societies:

...the Law of Peoples is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples. I emphasize that, in developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the foreign policy of a reasonably just liberal people.⁵⁰

The point that Rawls emphasizes in the introduction is that he proposes a liberal theory of foreign policy. While reading through the book we should always

⁴⁹ Rawls, *A Theory of Justice*, p. 378.

⁵⁰ John Rawls, *The Law of Peoples*, Cambridge, Mass.: Harvard University Press, 1999. p. 9-10.

remember that he is examining the possibility of just international relations from the viewpoint of political liberalism.

Rawls approaches the problem of international justice through ideal theorizing, which he then extends to non-ideal circumstances. The problem of ideal theory and non-ideal circumstances is a classical problem in political theory, and goes back as far as Plato's Republic, where Socrates defends his ideal theory of a just polity from Galucon's challenge. Socrates defends his case for ideal theory, where he works out the idea of perfect justice for an ideal polity, by assuming that citizens fully comply with the laws of the polity. As a response, Glaucon challenges the practical feasibility of any society conforming to laws arrived at in such a way. Socrates defends his case by claiming that a perfectly just polity is a regulative ideal. Only by postulating that all members are equally motivated in promoting the ideal, can we envision the best possible scheme for a polity. An Ideal theory aims at building a normative model for ideal circumstances, by assuming full compliance of the agents involved.

In the Rawlsian literature, the reference to the distinction between ideal and non-ideal theory can already be found in TJ. By ideal theory Rawls means a theory that assumes two conditions: full compliance and favorable conditions. The members of this ideal international society, the Liberal and Decent Peoples, as they are construed by Rawls, they satisfy both conditions. First, full compliance: Liberal and decent peoples are cooperative members in the Society of Peoples and are willing to obey the laws agreed on in the original position. These societies are equally motivated to establish a stable and peaceful international framework. Second, these are societies under favorable conditions, which is due to their socio-economic developments, social institutions are able to meet the basic needs of their people. So,

Rawls works out the principles that ought to regulate international society, by making the above two assumptions. Then he asks: given these ideal circumstances, what are the just principles of international conduct?

The structure of the argument is the following. First, Rawls extends “the general social contract idea to the society of liberal democratic peoples.”⁵¹ Then he further extends the same idea to the decent peoples, which, though they are not liberal, due to certain minimal requirements met they are nevertheless acceptable in the Society of Peoples. Rawls then moves onto Non-ideal theory by lifting up the two assumptions. First, he accounts for the cases where the assumption of compliance does not hold. Rawls calls these societies outlaw states, states that do not comply with the Law. Then, he leaves the second assumption of ideal theory, and accounts for the just international conduct towards societies in unfavorable conditions, i.e. “societies whose historical, social and economic circumstances make their achieving a well-ordered regime difficult if not impossible”⁵². Rawls calls these societies burdened societies, burdened by unfavorable conditions.

When working out the principles of international justice, Rawls extends his domestic thought experiment to the international level with important modifications. The inquiry he makes in the international original position is: What principles would parties symmetrically situated agree to, in order to regulate their affairs at the international level? One of the most important discrepancies between Rawls domestic and international original position is the characterization of the parties to the hypothetical choice situation. While the domestic hypothetical contract is made between *persons*, the relevant parties to the international agreement are *Peoples*, as it is already apparent from the title, The Law of Peoples. A People is “an idealized

⁵¹ Ibid. p. 4-5.

⁵² Ibid. p. 6.

nation-state.” In international relations we are used to working with the notion of states or nations. So why does Rawls depart from these notions?

Three features distinguish a People from a traditionally understood Nation or State: 1.) Institutional feature: it has “a reasonably just constitutional democratic government,” Why is this important? This feature, a democratic government, guarantees that it adequately represents its citizens fundamental interests. How a government signing international treaties ideally ought to be. 2.) Cultural feature: member of a People united by ... common sympathies.” These common sympathies are not necessarily rooted in national, ethnic or religious ties. It is enough, for Rawls, to make his ideal case for a People, that citizens view themselves as participants in a common public institutional scheme and political culture. This assumption contains that there are no ethnic conflicts, and no groups aiming at secession, and postulates a fundamental integrity in the ideal of a People. 3.) Moral character: In international relations theory, states are concerned with advancing their rational interests in their international affairs. Departing from this realist stipulation, Rawls characterizes people to have a moral character. Peoples have a moral nature that limits the pursuit of this interest, in accordance with the basic principles of international society. People are not solely rational entities, they are more complex in character. Peoples want to cooperate with each other at the international level on mutually accepted terms.⁵³

Rawls’ international original position is a hypothetical contract between peoples, so construed. Representatives of peoples equally situated behind the international veil of ignorance reason about the principles that ought to govern their international affairs. In order to ensure the fairness of the choice situation, the parties

⁵³ Ibid. p. 24.

representing governments are behind the veil, do not know which People they are representing, what is the size of the population or its geopolitical status in terms of power. Since every representative can turn out to be representing small and weak states, they will choose principles that will guarantee that no-one falls below a certain minimum prosperity.

The most powerful explanation for such a disturbing discrepancy between the domestic and the global original position lies in properly understanding the Rawlsian methodological commitment to reasoning about justice. As a prominent Rawls scholar has recently put it, reasoning about justice *à la* Rawls consists in “constructing justice for existing practices.”⁵⁴ An original position between free and equal persons might be the right way to reason about the justice for a domestic society. However, when shifting the context of analysis from the domestic to the international level, one must also consider the relevant disanalogies between the purpose of and the relevant participants to the social practice in question. Rawls claims that the international context is relevantly *inter-national*, i.e. consist in relations among nations, hence reasoning about the requirements of justice must be adjusted to such a context by appropriately characterizing its relevant participants among whom the problem of international justice arises.

The Law of Peoples is, then a *realistic* utopia in its assumption of taking seriously the limits of the ideals embedded in the current international context. By concentrating on peoples as units of moral concern, and not on individuals, Rawls stays true to his ongoing commitment of reasoning about the requirements of justice by “starting form the political world as we see it.”⁵⁵ If international law and international relations are dominantly constituted by nation states, as Rawls

⁵⁴ Aaron James, “Constructing Justice for Existing Practices.” *Philosophy & Public Affairs* 33 (2005): 281-316.

⁵⁵ Rawls, *The Law of Peoples*, p. 83.

maintains, then a suitable original position, on his view, must indeed reflect such an account of its participants.

This discrepancy in the two original positions then leads to the discrepancy between the requirements of domestic and international justice. Instead of adopting a global difference principle, representatives of Peoples behind the international veil of ignorance adopt the principle of the *duty of assistance*. The duty of assistance is Rawls' account of what affluent societies owe to poor countries. According to him, every people has a well-founded interest in achieving an international order that contributes to peace and prosperity among peoples. There are, however societies in the world, the so called Burdened Societies, which, as Rawls holds, due to their political institutions and corrupt political elites, their religious and moral traditions that support those institutions, the choices that they made in the past live in unfavorable conditions. Following Rawls' reasoning, representatives of peoples symmetrically situated behind the international veil of ignorance, would agree to the duty of assistance, according to which every affluent People has a duty of assistance to help Burdened Societies in unfavorable conditions to achieve just domestic institutions that allow them to achieve prosperity within and peace outside of their borders. The international veil of ignorance that blocks all the information about the size, political power or the level of affluence of the specific people one is representing generates the rationale for such a choice. Since the purpose of assistance is international peace and stability, once a people has reached its target and became a well-ordered society no further assistance is required. In short, the duty of assistance for our international affairs has a target or cut-off point beyond which the duty is discharged.

1.4.2. The Critique of *Inter-national Justice*

The idea of international justice or the discrepancy thesis between social and global justice has been the subject to criticism on numerous grounds. Let me consider here, what I take to be, the three most powerful critiques. 1.) *Explanatory nationalism*; 2.) *Normative individualism*; and the 3.) *Status quo* challenge.

According to the explanatory nationalism charge, advanced by Thomas Pogge, the idea of a people relies on false empirical assumptions concerning the self-contained nature of domestic societies. The moral assessment of international inequalities in *The Law of Peoples* is based on the so called “purely domestic poverty thesis,” according to which world poverty and radical inequalities are due to solely domestic factors. Poor countries are poor due to choices they themselves made, such as bad economic choices, lack of democracy that would otherwise hold elites accountable to the poor masses, lack of political and economic virtues of its members due to cultural background, bad population policy, or corrupt elites. They might also be poor because of their unfortunate natural environment, such as, desert, barren land, mountain area or natural catastrophes. As Rawls says in *The Law of Peoples*,

... the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues ...⁵⁶

According to Pogge, Rawls misconstrues the causes of poverty and overlooks the fact that domestic factors are themselves significantly shaped by global factors. As Pogge writes,

⁵⁶ Rawls, *The Law of Peoples*, p. 108.

A society's economic position arises from the interplay between national and global factors. With economically weak societies especially, global factors are dominant, even shaping such national factors as what kinds of persons gain political power, what incentives these leaders face, what options they have, and how implementation of any of the options would affect national economic performance.⁵⁷

Pogge describes at length two international institutions that are particularly worrisome in contributing to severe deprivations in the world. Any group who exercises power in the country (dictators and oppressive regimes), independently of how they come to power and how they exercise that power, are recognized as legitimate actors in the international arena. According to the *International Borrowing Privilege*, dictators may borrow freely huge amounts of money, thereby indebting future generations of the country, the might use it for weapons to oppress its people, however the obligation to repay the debt falls on the people often future generations.

Similarly in the case of *International Resource Privileges*, oppressive regimes may act upon the natural resources of the country, selling them to global corporations, or other governments, even up to the level of irreversibly depleting those resources. Dictators may drain the resources of an already very poor country, use the gain for military purposes externally or internally to oppress their people, which often leads to the full impoverishment of regions.⁵⁸

The *normative individualism* challenge is based on the liberal tenet according to which the ultimate units of moral concern are persons or individuals. As many critics have pointed out, while Rawls endorses normative individualism in his domestic theory and takes free and equal moral persons to be the unit of moral

⁵⁷ Thomas Pogge, "Rawls on International Justice," *The Philosophical Quarterly* 51 (2001) p. 253. For a detailed account of the idea of explanatory nationalism see Thomas Pogge, *World Poverty and Human Rights*, pp. 140-144.

⁵⁸ Ibid. and Leif Wenar, "Property Rights and the Resource Curse" *Philosophy & Public Affairs* 36 (2008): 2-32.

concern, he departs from this important assumption by postulating peoples as relevant units for the Law of Peoples.⁵⁹ Although in the description of a people Rawls emphasizes that an ideal people will perfectly represent the interest of its members, thereby assuming a full match between the interest of persons and the interest of a people representing those peoples, critics have shown that this assumption involves a false idealization: the interest of a people and its members do not necessarily coincide.⁶⁰ If it is the interest of persons that ultimately matter morally, as Rawls notes even in his Law of Peoples,⁶¹ then the international original position among peoples will fail to represent such a consideration.

It is enough to think of the difference between international poverty and inequalities measured between states as average well being in a country, and global poverty and inequalities measure between individuals or households across the globe. If an account of distributive justice is based on the former measure it remains insensitive to the enormous intra-country inequalities that are deeply characteristic of developing countries as well as developed ones, and fails to adequately represent the interests of the worst-off population in the world.

⁵⁹ See for example, Charles Beitz, Beitz, Charles R. "Social and Cosmopolitan Liberalism," *International Affairs* 75 (1999): 515-529; Thomas Pogge, "The Incoherence between Rawls' Theories of Justice," *Fordham Law Review* 72 (2003-2004): 1739-1760; Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism*. Cambridge: Cambridge University Press, 2004.

⁶⁰ Andrew Kuper, "Rawlsian Global Justice: From *The Law of Peoples* to a Cosmopolitan Law of Persons," *Political Theory* 28 (2000): 640-674

⁶¹ Rawls, *The Law of Peoples*, p. 115.

1.4.3. The Idea of Global Justice

The idea that the scope of distributive justice is global was first developed three decades ago by prominent critics of *A Theory of Justice*, such as Thomas Scanlon, Charles Beitz and Thomas Pogge.⁶² They have argued that the kind of social cooperation that triggers the demands of distributive justice is relevantly present in the global context due to the level of interconnectedness brought about by economic, political and social globalization. The distributive effects of global institutions and practices should, therefore, be morally constrained by a global difference principle worked out through a global original position among free and equal moral persons. We might call this the *global basic structure* view.

This view has been strongly contested on the basis of weak empirical evidence for the analogy between the domestic and the global context, or based on the flawed understanding concerning the normatively relevant features of the basic structure. Critics point out that the normatively relevant feature of the domestic basic structure is either absent, too thin or irrelevant in the global institutional context. By now, conceptions of global justice have become much more sophisticated, based on strong empirical evidence from the practices of international law, global institutions and decision making, and global civil society social movements.

While most of the global justice scholars refrain from advocating a global difference principle, they argue that global justice requires more than a humanitarian minimum, and that global institutions and rule making, insofar as they have distributive effects on people's lives, must be morally constrained by principles of

⁶² Thomas Scanlon, "Rawls' theory of Justice," In Norman Daniels (ed.) *Reading Rawls*. New York: Basic Books Publishers, 1976. pp. 169-206; Charles R. Beitz, *Political Theory and International Relations*. Princeton: Princeton University Press, 1979; Thomas Pogge, *Realizing Rawls*. Ithaca: Cornell University Press, 1989.

justice. The varieties of justice triggering reasons include the claim that international agreements are morally consequential on people's lives all over the world; that international rules of trade, security or the environment are not mere inter-state agreements, but the practice of international institutions has evidenced *de facto* independence from states; or the idea that our everyday conduct depends on other peoples actions and everyday labor that put us in a morally significant relation *vis à vis* distant people.

1.5. Towards a Global Egalitarian Conception of Distributive Justice

The idea of global justice, that is to be defended in the following chapters of this dissertation, is both strongly inspired by John Rawls' domestic *political liberalism*, and at the same time involves a departure from his view. Firstly, it follows the Rawlsian *institutional* or *practice-dependent* view of justice, according to which principles of justice are to regulate social and political institutions and their distributive effects on people's life chances. Secondly, it is an *egalitarian* view, in the broadest sense of the term, according to which inequalities in life-chances are to be morally assessed through standards of justice. That is to say, what matters morally is not merely how people fare in absolute terms, but how they fare *vis-à-vis* each other. Thirdly, it endorses the idea of Rawlsian *political* justification, according to which, under conditions of pluralism, standards of justice are to be justified on *public* grounds, starting from commonly shared political ideals.

The departure from Rawls consists in a challenge to the *domestic scope thesis*, according to which principles of distributive justice apply to the basic

structure of a self-contained society. In chapter two I will argue why the different versions of the domestic scope thesis fail to limit the scope of justice to a domestic society, and why those reasons fail to warrant a domestic scope of justice. This challenge is based on the assumption that our present international order and the institutions comprising it significantly shape people's life prospects and have important distributive effects in determining terms of ownership, production and transfer, access to global public goods and life opportunities across the globe. Insofar as these distributive effects are morally significant, they ought to be subjected to standards of justice, which limit permissible inequalities in the effects of those global institutions on people's life-chances. Secondly, it aims to complement the Rawlsian idea of political justification, with a moral defense of why public justification is the appropriate justification to offer to others under conditions of pluralism. As the argument of chapter three will demonstrate, public justification can be supported by, what I call, *justificatory egalitarianism*, i.e. taking people as equally valid sources of moral claims under conditions of pluralism.

The originality of the thesis advanced here consists in the claim that global egalitarian principles must be justified on global *public* grounds. Global egalitarian conceptions of justice, in particular the ones that promote a global egalitarian principle have been developed already in the very first accounts of global justice.⁶³ I believe that these views are on the right track in the normative views they promote, however they are insensitive to the problem of justification under conditions of pluralism. In my view they fail to respond to the fact of global pluralism, a relevant fact which limits the kind of justification that can be offered to global agents of justice. In order for global egalitarianism to be egalitarian in the right sense, it must

⁶³ See Beitz, *Political Theory and International Relations*; Pogge, *Realizing Rawls*.

treat people as equals by taking them seriously in their different moral views and systems of beliefs they hold. In other words global egalitarianism must take global pluralism seriously in the kind of justificatory argument it advances. The thesis advances in the following chapters, especially in chapter three, is an attempt to work out the conditions of global public justification, a form of justification that treats people as equally valid sources of moral claims.

To sum up, the conception of global justice supported in this dissertation is an *institutional egalitarian conception of global justice* that rest on four fundamental claims.

- i.) A practice-dependent methodological commitment according to which global institutions and practices are the primary subjects of justice;
- ii.) A principle of global justice is an egalitarian principle, i.e. inequalities in the distributive effects of those institutions on people's life prospects requires moral justification;
- iii.) Justification of a global egalitarian principle of justice must rest on global public grounds;
- iv.) All persons are equally valid sources of moral claims upon global institutional arrangements.

An important point must be made here. Although the conception of justice that I am arguing for is a global egalitarian conception, it does not necessarily lead to endorsing a global difference principle. According to the Rawlsian *institutional* or *practice-dependent* methodological commitment, the requirements of justice vary according to the social practice in question. Principles are constructed for existing practices, that is, they are yielded by a suitably characterized method of reasoning,

the so called original position. The characterization of a suitable original position depends on the nature and purpose of the social practice in question. Based on this methodological commitment Rawls has argued that constructing principles for different social practices yields different principles of justice. What determines the normative requirements for one context or another, as Rawls put it,

is the distinct structure of the social framework and the purpose and role of its various parts and how they fit together, that explains why there are different principles for different kind of subjects.⁶⁴

On a public view of justification, the principles a constructivist procedure yields, depend on the political ideals present in the public culture of the relevant context. Through a careful analysis of the political ideals present in the domestic and the global context one must examine the relevant analogies and dis-analogies of the two public contexts in question. What principles ought to regulate global institutions and their distributive effects on people's life chances will depend on the global public ideals one can take for granted as fundamental ideas grounding the edifice of justification.

Working out the concrete normative requirements of justice for the global institutional order is beyond the scope of this dissertation. For the purpose of this thesis, I will put aside this very relevant normative question and limit my inquiry to the philosophical analysis of the reasons that ground the extension of the scope of justice, followed by an account of the appropriate kind of justification global egalitarianism requires under conditions of global pluralism, and finally to working out the conditions that need to be met globally for a global egalitarianism to be a feasible ideal.

⁶⁴ John Rawls, "The Law of Peoples" in *John Rawls: Collected Papers*. Samuel Freeman (ed.). Cambridge, Mass: Harvard University Press, 1999. p. 533.

CHAPTER II

The Basic Structure as Boundary?

2.1. The Basic Structure Argument

Since its first formulations, concentrating on a global difference principle, global egalitarianism has had to tackle various philosophical challenges. Among the most often raised criticism is the claim that distributive justice is a duty confined to members of a nation-state due to the normative features underlying the scheme of domestic social and political institutions, the so called, *basic structure*. Justifying the discrepancy or the continuity between social and global distributive justice often stands or falls by the use one makes of the basic structure argument. With the basic structure argument, I refer to those views, which maintain that principles of distributive justice apply only among members of a society in virtue of the basic social institutions they share in. Arguments for the domestic scope of the basic structure contain a rich diversity of *bounding reasons*, yet they all conclude that the basic structure of a more or less self-contained society constitutes the adequate context of distributive justice, hence the extension of the scope to the international context is an implausible move. Theorists argue that the global institutional context is disanalogous to the domestic one, insofar as the relevant features that trigger the duties of justice are not properly present, too thin, or irrelevant in the global

context.⁶⁵ Theorists arguing for a global scope of justice challenge this position by showing that the normatively relevant feature of the basic structure is equally or partially relevant in the global context, hence an extension of the scope of justice is required.⁶⁶

Taking a step back from this discrepancy debate seems to me a necessary theoretical move. Before we can examine whether the normatively relevant feature of the basic structure is or is not a relevant feature in the global context, we need to provide a sound account of what exactly makes the Rawlsian basic structure the adequate context of justice. In order to engage with the global justice debate, properly understanding the crux of the basic structure argument seems to me unavoidable. Therefore, the question to be examined in this chapter is the following. ‘What *reasons confine* the duty of justice to a shared institutional scheme in the basic structure view on social justice?’ In another way: ‘What is so special about the basic structure for considerations about the scope of justice?’

Examining the global justice debate in light of the basic structure argument allows me to narrow the scope of the discussion to conceptions of distributive justice referred to as *relational-institutional* account or, more recently, as the *practice dependence thesis*⁶⁷ on distributive justice. According to this view, the distribution of

⁶⁵ John Rawls, *A Theory of Justice*, Revised Edition (Cambridge, Mass: The Belknap Press of Harvard University Press, 1999); Thomas Nagel, “The Problem of Global Justice,” *Philosophy & Public Affairs* 33 (2005); Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (New York: Oxford University Press, 2007); Michael Blake, “Distributive Justice, State Coercion and Autonomy,” *Philosophy & Public Affairs* 30, No.3 (2001); Andrea Sangiovanni, “Global Justice, Reciprocity and the State,” *Philosophy & Public Affairs* 35, No.1. (2007): 3-39.

⁶⁶ Charles R. Beitz, *Political Theory and International Relations*, (Princeton: Princeton University Press, 1979), Thomas Pogge, *Realizing Rawls*, (Ithaca: Cornell University Press, 1989); Darrel Moellendorf, *Cosmopolitan Justice*, (Boulder, CO: Westview Press, 2002); Kok-Chor Tan, “The Boundary of Justice and the Justice of Boundaries: Defending Global Egalitarianism,” *The Canadian Journal of Law and Jurisprudence* 19, No.2. (2006); Leif Wenar, “Contractualism and Global Economic Justice,” *Metaphilosophy* 32 (2001): 79-94.

⁶⁷ Andrea Sangiovanni, ‘Justice and the Priority of Politics to Morality’, *Journal of Political Philosophy*, (forthcoming, 2007) p. 2

social positions in a society is highly dependent on the institutional scheme in which individuals pursue their ends. How this institutional scheme operates and produces such distributive effects, therefore, needs to be morally assessed through standard of justice. *Institutionalism* about justice is associated with the, by now, classical work of John Rawls, *A Theory of Justice*. On his account, a conception of justice is concerned with the justifiability of the governing norms of our shared institutions. Principles of justice are to be worked out for an existing context of social cooperation, as standards publicly available to all, and used as reference points for reasoning about the normative structure supporting our scheme of social institutions. A justice-relevant relation is one that connects people through institutional practices, and whose relevance is earned by the normative account of the institutional scheme in question. What differs among the diverging institutional views of justice is how they identify the normatively relevant feature of the basic structure. The justice-relevant feature of the basic structure provides the bounding reason in virtue of which the scope of justice is marked out.

Given this assumption, I leave aside those arguments, which argue that the duty of distributive justice is owed to people independently of the institutions or practices that bind us.⁶⁸ The theoretical move of bracketing this debate between the institutional and non-institutional theories of justice, however, is not meant to downgrade its importance. This question concerning the grounds and the proper site of distributive justice is crucial, and represents one of the key divides in the contemporary philosophical debate on social justice. In this chapter, however, I assume that the case for the plausibility of the institutional view has been made in the previous chapter. From here on, therefore, I work with the institutional or practice-

⁶⁸ For such a view, see for example, Simon Caney, *Justice Beyond Borders*, (Oxford; Oxford University Press, 2005); Martha Nussbaum, *Frontiers of Justice. Disability, Nationality, Species Membership* (Cambridge, Mass.: Harvard University Press, 2006);

dependent conception of justice according to which the role of principles of justice is to regulate our public affairs mediated by social institutions and practices. Principles of justice are normative standards for assessing institutions that distribute the burdens and benefits of a social endeavor; a standard that is justifiable to all its participants. Consequently, the duty of distributive justice is owed to those with whom we share in a normatively relevant institution or practice. What exactly constitutes this moral relevance is the question to be examined in this paper. The analysis of the ‘social-global discrepancy’ that follows, takes place in this particular theoretical space.

In the following chapter, I address three different views, which argue for the domestic-scope thesis on three different normative grounds. The *contribution view* assigns special importance to domestic institution on grounds that its members mutually contribute to the production of the relevant social goods. As a result they owe each other fair return. On the *democratic self-determination view* members of a political association owe each other egalitarian concern based on the idea that its members are participants in a legal and political system of self-legislation, and they are co-authors of coercive laws through which they mutually determine each others’ fate. On the *social cooperation view* the institutions of the basic structure are necessary for the development of our moral powers and social capacities that make social cooperation possible. I argue that none of the above reasons are conclusive in limiting the scope of justice to the domestic context. While these underlying normative features might be relevant reasons that ground distributive duties, they either do not constitute necessary conditions, or the morally relevant feature in question can be shown to be similarly relevant when morally assessing the nature of international institutions.

2.2. The Bounded Contribution View

The first candidate to tie the normative feature of the basic structure to the boundaries of a nation-state, or any political organization sufficiently similar, is the bounded contribution view. According to the bounded contribution view, we owe each other egalitarian concern because we contribute to a shared scheme of social cooperation, and this common effort produces benefits that are advantageous for all. In the contemporary debate on distributive justice, contribution, as the ground for egalitarian concern, has been understood in (at least) two different ways: a) as *mutual advantage* and b) as *fair reciprocity*.⁶⁹ This distinction marks the key divide in social contract theories and would deserve a long discussion, but for the purpose of this paper I will limit myself to briefly indicating the key differences necessary for our purpose here.

Without unfolding this debate in a comprehensive manner, the key distinction for our purposes is the following. Whether the return to our fellow contributors is proportional to the contribution they have made, or the return is a ‘fair’ return, independent of any measure of input to the cooperative scheme. Scholars have shown that two different assumptions are working in the background of these distinct views.⁷⁰ In the first case, those who view the duty of justice as a proportional return

⁶⁹ The former is commonly associated with and Gauthier's theory of justice resting on Hobbesian grounds, while the latter is a reference to Rawls' theory of social justice developed on strongly Kantian and partly Rousseauian grounds.

⁷⁰ For a detailed account of the distinctions between mutual advantage and fair reciprocity see Samuel Freeman, Reason and Agreement in Social Contract Views, in Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007) pp. 17-44; Allen Buchanan, “Justice as Reciprocity versus Subject-Centered Justice,” in *Philosophy & Public Affairs* 19, No. 3. (1990): pp. 227-252; Allan Gibbard, “Constructing Justice,” in *Philosophy & Public Affairs* 20, No.3. (1991); Jonathan Quong, “Contractualism, Reciprocity, and Egalitarian Justice,” in *Politics, Philosophy & Economics* 6, No.1 (2007): pp. 75-105.

based on the idea of mutual advantage, one needs to assume a comparative baseline drawn at the point of non-cooperation, to which the benefits of cooperation are measured. Based on such comparison and one can conceptualize the fair agreement. According to the second view, justice as fair reciprocity, instead of working with a non-contribution point, the theorist assumes a benchmark of equality. The common feature in the two contribution views is that both draw on the assumption that people's support for a social order rests on some sort of gain or advantage they can draw from it. What differs, however, is what sort of gain or advantage is meant by the theorist, depending on the benchmark of comparison they offer: non-agreement or equality.

The *mutual advantage* view poses the question in the following way. It asks us to imagine a counterfactual state of affairs where people have not agreed on any terms of cooperation (state of nature; non-agreement or non-cooperation point), examine how well people would fare on their own, and uses that as the benchmark of comparison for pointing to the benefits of cooperating with others. When this so-called non-agreement point is taken as the benchmark, that is, people know how well they do without the social scheme in place, then, each individuals' contribution can be assessed. The agreement among the parties is then characterized as a bargaining game, in which parties come to the bargaining table with asymmetrical bargaining power. They bargain from these unequal positions until they reach a distributive outcome that is acceptable to all. The fairness of a distribution, then, consists in an equal gain in terms of the satisfaction or utility each obtains at the agreement point. What makes the agreement fair is that each party feels equally satisfied with the outcome when walking away from the bargaining table. Notice, however that their might be gross inequalities in starting positions, bargaining can proceed in a context

of asymmetric power relations. Consequently what might seem fair when we are assessing utility gains in bargaining outcomes, can result in gross inequalities in terms of the actual goods that were to be distributed. This conclusion however does not render justice as mutual advantage internally incoherent. Since what justice is on this account, as Brian Barry put it, is

“rational prudence pursued in the contexts where the cooperation (or at least forbearance) of other people is a condition of our being able to get what we want. Justice is the name we give to the constraints on themselves that rational self-interested people would agree to as the minimum price that has to be paid in order to obtain the cooperation of others.”⁷¹

The mutual advantage view of distributive justice has been hugely influential in game theoretical economic analysis. The various accounts of bargaining games have developed alternative non-agreement baselines, and work with slightly different utility assumptions, but their philosophical justification has been relatively untouched. The mutual advantage view might be a good account of fairness on its own right, and might be a good account of a fair agreement in bargaining games. However what is really questionable whether it is a good account of social justice. Is this what we are really concerned with when we are reasoning about principles of justice for a complex scheme of social cooperation? Should we be asking whether people with different social and economic status can or cannot come to an agreement over to distributing scarce goods? What kind of justice is the one that translates bargaining power into distributive advantages? Without settling the centuries old debate concerning what justice is, let me make a brief point about why an alternative view about the role of justice in a society might be more appealing. The alternative view on social justice might take a step back and ask the question how those initial

⁷¹ Brian Barry, *Theories of Justice: A Treatise on Social Justice Vol. 1*. (University of California Press, 1991) p. 7

inequalities in power have occurred in the first place. From this point of view, asymmetrical bargaining positions are in themselves morally arbitrary, therefore cannot constitute relevant information for reasoning about justice. When assessing the justice of a social order, that is, when we are reasoning about social justice, what we need to ask is precisely how those initial inequalities occurred, and through which social and economic mechanisms do people arrive to possess the specific social status they possess. In this sense background social schemes that determine initial endowments become the primary subject of justice.

The most influential contemporary political philosopher who has defended this alternative view on social justice is John Rawls. In his theory of justice, justice as fairness or justice as fair reciprocity, Rawls makes a strongly appealing case against justice as mutual advantage or prudential self-interest. Assuming away power or threat advantage as relevant considerations for reasoning about justice, he makes a case for a moralized notion of the social contract based on symmetrically situated parties behind the veil of ignorance. Instead of starting postulating inequality as the benchmark of comparison at the non-agreement point, he makes a strong case for the benchmark of equality. Which assumptions allow Rawls to stipulate this benchmark of equality?

One of the constraints on the Rawlsian procedure of construction is the idea of a self-contained society. An important feature of the hypothetical contract is that the idea of the parties to the original position is so construed that membership is fixed. Individuals are considered from birth to death as fixed members of an ongoing society, thus the dilemma whether another social scheme would be more advantageous for us to pursue our goals, does not arise. So the first assumption is that membership is fixed. Rawls elaborates that “membership in our society is given, and

we cannot know what we would have been like had we not belonged to it (perhaps the thought itself lacks sense).”⁷³ How we would fare in another scheme, is irrelevant to ask, insofar as the social structure affects which of the many possible persons we become. “[O]ur nature apart from society is but a potential for a whole range of possibilities.” What follows is that our contribution to society cannot be disentangled from the form of society in which we pursue our plans and realize our talents. As Freeman explains,

The question driving Rawls’s social contract is not whether it is mutually advantageous to enter into cooperation with others or how much we have to gain by cooperation as opposed to noncooperation. Instead, members of a society have no choice but to cooperate with others and indeed are presumed to want to cooperate with others on terms that are fair.⁷²

Assuming that we are part of a self-contained, ongoing scheme of cooperation through generations, there is no merit, no social advantage, and no initial endowment without the underlying social institutional scheme that assigns those benefits, advantages and entitlements. Therefore, Rawls argues, a conception of justice, in the first place, is to assess and regulate those fundamental norms that shape our advantages and disadvantages in a significant way. Instead of bargaining advantage, this “social aspect of human relationships is reflected in the content of the principles of justice.”⁷³ We cannot know how we would each fare without the cooperative scheme, hence the best we can do is to assume that all participants to upholding such a social scheme are equal participants. Each and every one of them owes a fair return to the other for maintaining the scheme.

⁷² Samuel Freeman, “Frontiers of Justice: The Capabilities Approach vs. Contractarianism” *Texas Journal of Law Review* (2006)

⁷³ *Ibid.*

Another assumption that allows Rawls to assume the benchmark of equality and situate the parties symmetrically behind the veil of ignorance is due to his moralized conception of the person as free and equal. The conception of the person as free and equal is first drawn from Kantian foundations, which Rawls later modifies as our self-conception as citizens embedded in the public political culture of a liberal democracy.

Rawls assumes equality as the standard compared to which inequalities are to be justified. That is, when choosing principles of justice that would permit inequalities, those inequalities are to be justified, not compared to how people would fair without cooperation, but how they would fair compared to the benchmark of equality. As Rawls' well-known second principles states, inequalities are permissible insofar as they are to the benefit of the least advantaged group in society. Assuming that inequalities are incentive-generators, and the whole society as such would be better off compared to strict equality in social positions, Rawls places limits to what kind of inequalities are morally objectionable and which are morally permissible, given that he has made an appealing case in justifying his choice procedure, the original position.

The moral equality of persons built into the characterization of the parties and the choice situation in the original position, besides reflecting important Kantian liberal moral foundations, also reflects the idea that in an ongoing system of social cooperation, i.e. the Rawlsian conception of a society, the contribution of a single individual is difficult, if not impossible, to disentangle from the scheme as a whole. Each person's social position, “the kind of persons we are and the kind of persons we want to be,”⁷⁴ depends on a social scheme upheld by all of its members. How well a

⁷⁴ John Rawls, The Basic Structure as Subject, in John Rawls, *Political Liberalism*, p.

single individual is doing depends on the overall operation of a complex social scheme. Furthermore, given the temporal dimension in the notion of Rawlsian social cooperation, current generations' burdens or benefits depend on the contribution of past generations and affect the distribution of social positions of future generation. So, if we find Rawls' basic idea of the society as an ongoing system of social cooperation appealing, then it is easy to see why justice as fair reciprocity is a more plausible understanding why we owe a fair return for all those participating in upholding a common social scheme of cooperation, and why justice as fair reciprocity the more plausible view on distributive justice.

In the global justice debate Andrea Sangiovanni's account⁷⁵ echoes the idea of distributive justice as fair reciprocity. According to him the state provides the relevant context of distributive justice in virtue of our mutual contribution in the production of basic social goods. As Sangiovanni puts it, the duty of distributive justice is a requirement of “reciprocity in the mutual provision of the basic collective goods necessary for acting on a plan of life.”⁷⁶ While each of us is carrying out a life-plan based on individually chosen ends and means, the realization of our plans depend on a background social framework that all of us rely on, and that partly shapes our goals and determine the available means for us. This mutual contribution requires fair reciprocity from our fellow contributors. Contribution to such a common endeavor is the triggering reason for the duty of justice, but which is the relevant context in which the production of basic collective goods occur?

Sangiovanni claims that the relevant context is the state, or any organization sufficiently similar from a social goods producing point of view, such as the

⁷⁵ Sangiovanni, “Global Justice, Reciprocity and the State;” and Sangiovanni, ‘Justice and the Priority of Politics to Morality’,

⁷⁶ Andrea Sangiovanni, “Global Justice, Reciprocity and the State,” p. 22.

European Union. In order to support the claim that the state provides the adequate context of justice, Sangiovanni relies on a methodological commitment, the so called *practice-dependence thesis* on justice. According to this thesis, “[t]he content, scope, and justification of a conception of justice depend on *the structure and form of the practices* that the conception is intended to govern.”⁷⁷ His practice-dependence thesis is based on a well-known Rawlsian tenet, according to which, a conception of justice depends on the nature of the thing it is intended to govern. Rawls explains that a special feature of his constructivist theoretical structure is that it is to be adjusted according to the different domains or subjects of justice that the principles ought to govern. Domestic justice, international justice, or justice between generations are all different domains. Hence the principles adopted will also differ, as the procedure is fitted to each problem as they arise. What distinguishes the different subjects is to be found in a rather complex passage in *A Theory of Justice*

it is the distinct structure of the social framework, and the purpose and the role of its various parts and how they fit together, that explain why there are different principles for different subjects.⁷⁸

One ought to single out relevant social practices and work from a context through a constructivist methodology in order to conclude what are the right principles for the practice in question.

This methodological commitment relies on a substantive claim according to which justice is owed in virtue of the social practices and institutions that bind us into a common fate. That is, inequality or poverty is not a problem of justice *per se*; they become problematic from a justice point of view only when they are the product

⁷⁷ Andrea Sangiovanni, “Justice and the Priority of Politics to Morality,” (forthcoming) (emphasis added)

⁷⁸ John Rawls, “The Law of Peoples,” in Samuel Freeman (ed.), John Rawls, *Collected Papers* (Cambridge, Mass. Harvard University Press, 1999) p.533.

of social practices. The role of justice is to provide a common standard through which we can justify the rules and norms underlying those shared practices. According to the Rawlsian social justice framework, morally arbitrary inequalities do not in themselves constitute the problem of justice.⁷⁹ What Rawls and his followers would say is that inequalities are not be “improperly” influenced by morally arbitrary factors. What do we mean by improper influence? In *Justice as Fairness: A Restatement*, Rawls answers his critics explaining very clearly⁸⁰ why his difference principle is not designed to be a redress principle; it is not meant to compensate people for their bad luck. Bad luck, or a “natural distribution is neither just nor unjust ... , these are simply natural facts. What is just or unjust is the way institutions deal with these facts.” So, institutions profoundly affect people’s social positions, they play a role in determining in part which natural traits they can make good use of and which social starting positions will they favor over others, and it is this affect, the way institutions *deal* with natural luck and social starting positions, is what Rawls’ principles of justice are intended to regulate. His conception of justice provides a standard for the institutions’ permissible effects on people’s social positions and life prospects.

The relevant practice that conditions a conception of distributive justice, in Sangiovanni’s view, is the modern nation-state. Why is this relationship relevant for justice? He argues that we owe duties of justice to co-citizens and co-residents, given our *mutual contribution* in upholding basic social institutions. This mutual contribution transforms into, what he calls, *basic state capacity*: the basic capacity of the state to guarantee for its citizens and residents common social institutions which

⁷⁹ This point I learned from Samuel Scheffler’s article “What is Egalitarianism?,” also see Samuel Freeman, Rawls and Luck Egalitarianism, in *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007)

⁸⁰ See also TJ §17.

are necessary for all to pursue their goals. Both citizens and residents are co-contributors to the well-functioning of this social arrangement, and this contribution, according to Sangiovanni, gives all the participants a mutual basis for claims of distributive justice upon each other. We mutually contribute to a system that provides the necessary conditions to realize our goals in life, for which we owe something in return to our fellow contributors.

What is problematic about the contribution view? Firstly, the contribution argument has called forth some of its harshest critiques concerned with the most vulnerable groups in society.⁸¹ If *actual* contributors are the subjects of justice, then clearly a wide range of people remain beyond the scope of justice even in a domestic setting. Most importantly, children, the severely disabled or entire future generations. On a more charitable reading *potential* contributors (and not actual) might be the ones justice is owed to, the circle can be enlarged, but still would exclude those whose capacities are insufficient. The case of non-contributors clearly poses a problem for the contribution view of social justice, and this applies independently of the scope one is arguing for.

Secondly, I argue that while the contribution argument seems to be doing part of the work in grounding the claims of distributive justice, it does not tell us much about the *boundaries* of justice. Recalling Sangiovanni's claim, basic social institutions have a peculiar role, because their effects amount to state capacity that is necessary for all to pursue their life plans. In fixing the boundaries, however, too much of the argument depends on how one defines the *necessary social goods* for pursuing life-plans. It seems that in order to determine the scope and content of justice, we would need to assess which are the basic goods necessary for anyone to

⁸¹ See for example Robert E. Goodin, What is so Special About Our Fellow Countrymen?,

carry out their life plan, then to identify which institutional context has the capacity to produce it, and finally conclude that, therefore it is the *right* context for owing a fair return. The necessary goods are connected with the nation-state without any further argument, assuming that the kind of goods the state provides for its citizens are the goods necessary for pursuing our ends.

Domestic social institutions clearly play a crucial role in providing necessary social goods, such as the constitutional guarantees, property and ownership rules, a system of economic production and transfer, or the education system all of which are backed up by sanctions and enforcement mechanisms. Our contribution in upholding such a scheme, thereby guaranteeing the basis for the life of others, is owed a fair return. This is a plausible claim about the reasons for justice, but does this settle the problem of scope? Is it really the case that the only relevant context from the social goods producing point of view is the nation-state? I take it not. Firstly, because nation states are operating in an international context and domestic state capacity, i.e. its capacity to produce such relevant social goods, strongly depends on a system of international norms and rules.⁸² Secondly there are certain social goods, the so called global public goods, that are necessary social goods for individuals across the globe to pursue their life-plans and whose ‘production’ depends on global rules and worldwide contribution.

So, what still needs to be explained by Sangiovanni, is the reason why the state is the *only* relevant practice for considerations of justice. The peculiarity of the context still needs to be justified. He has showed us why a domestic society seems to matter for considerations of justice, because it is *a* context of mutual contribution.

⁸² See Thomas Pogge, *World Poverty and Human Rights*.

However, he has not shown us that it is the *only* context where mutual contribution gives rise to reciprocal claims.

2.3. The Bounded Cooperation View

Samuel Freeman's view on the 'boundary problem' can be reconstructed from the passages where he engages with the cosmopolitan challenge to the limited scope thesis.⁸³ Freeman first examines the *profound effect season*, but acknowledges that that it will not settle the boundary problem. He argues that many other non-basic institutions have pervasive effects on people's lives, such as religious institutions, universities or the media.⁸⁴ They shape people's hopes and desires and influence the persons they become. One might also object, Freeman says, that in an age of global interdependence, global institutions also significantly affect our life prospect. This worry seems to be in place. The contribution account might yield a global scope of justice, insofar as values attributed to abilities and talents are more and more developed in a global society and culture, while their realization and the institutional setting for developing them is very much influenced by global market tendencies. So what really makes the scheme of fundamental social institutions the distinguished subject of justice?

Freeman argues that the special role reserved for the basic structure is inherently connected with another fundamental idea in justice as fairness, namely, *social cooperation*. He argues that basic institutions that make up the basic structure

⁸³ Samuel Freeman, *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (Oxford: Oxford University Press, 2007); Samuel Freeman, *Rawls*, (London: Routledge, 2007); Samuel Freeman, "Frontiers of Justice: The Capabilities Approach vs. Contractarianism" *Texas Journal of Law Review* (2006)

⁸⁴ Freeman, "Frontiers of Justice" p.?

are “essential to social life,” they are “necessary for productive social cooperation, and hence for the continued existence of any society.”⁸⁵ Social institutions, he continues, are necessary for our personal development, especially in fostering our two moral powers and social capacities. I take it that Freeman refers here to the role of basic institutions in a well-ordered society. Having fulfilled the requirements of justice, they play an essential role in the development of moral powers, and in the education of citizen’s self-conception as free and equal persons.

Freeman further argues in order to justify the social and global discrepancy. According to him, while global cooperation clearly has *benefits*, what social cooperation provides us with, are the essential attribute of being human: language, reason, and morality. That is, in his view, the breakdown of global cooperation would only lead to insignificant economic and cultural losses from trade, and we could do well without it as we did for centuries before. However, as he says, if social cooperation collapsed, we would lose something morally significant, civilization itself.⁸⁶ It seems that Freeman is providing an account of what makes human beings essentially human, followed by an empirical argument concerning the type of the institutions that foster these human capacities. To sum up, the reason Freeman brings into play is that social cooperation is “central to who and what we are,” hence the limited application of principles of justice to a single society, and not further.

Freeman points out in several places a third, and most convincing, reason that might settle the boundary problem. Rawlsian social cooperation is often understood, by cosmopolitan scholars, as an institutionally mediated social and economic engagement. Given the fact of economic globalization social cooperation gains global relevance, hence an extension of the scope of justice must follow. Freeman

⁸⁵ Freeman, Rawls, p. 101-102.

⁸⁶ Ibid. p. 422.

insists, however, that “trade alone or causal influences of consumption patterns on other people do not amount to social cooperation.”⁸⁷ Basic social institutions are *political products*, embedded in a legal-political framework, whose power is derived from the public will of a bounded constituency. As he says, Rawls “transforms the problem of distributive justice into the problem of political design of basic social institutions,” working out standards for assessing and designing those institutions.⁸⁸ Rawlsian distributive justice, on Freeman’s account is grounded in the idea of *social and political cooperation*. It seems to me, however, that the reason which Freeman explores for justifying the limited scope thesis through social cooperation, essentially falls back to the argument from political cooperation. Or, we might say, social cooperation, in his view, is essentially political.

2.4. The Bounded Constituency View

On the *bounded constituency view* members of a political association, and only them, owe each other egalitarian distributive duties, based on the idea that its members are participants in a legally grounded political system of self-legislation, and they are co-authors of coercive laws through which they mutually determine each others’ fates. The domestic basic structure is the relevant context of justice insofar as it is the only domain of human associations, currently available to us, in which we can exercise legitimate political authority over each others’ life. The position is ascribed to Thomas Nagel, who has firstly articulated such a challenge to

⁸⁷ Freeman, *Justice and the Social Contract*, p. 307.

⁸⁸ *Ibid.* p. 306.

egalitarian accounts of global justice, limiting his analysis to constitutional liberal democracies.

In his article “The Problem of Global Justice”⁸⁹ Nagel has put forward a serious challenge for advocates of global justice. Perhaps the most controversial about his view is his conclusion, according to which global poverty is “not a matter of justice.”⁹⁰ This conclusion is especially striking for those 800 million people currently suffering from lack of food, shelter, hygienic condition or access to life-saving medicine. Assuming away the element of justice from their plight is a serious charge with grave consequences. In order to clarify this claim, one must open up the implicit assumptions behind Nagel’s thesis, thereby making the conclusion less troubling than it would seem for the first sight. How must we understand that this enormous suffering worldwide is “not a matter of justice”? On what grounds can Nagel claim away the element of justice from our relations to people living in extreme poverty worldwide?

In defense of Nagel, let me first qualify his statement. First, what he means by “justice as ordinarily understood” is social justice as egalitarian concern, commonly understood within the Rawlsian tradition.⁹¹ Second, what is or is not a matter of justice very much depends on the particular conception of justice one endorses. Nagel seems to be endorsing an institutional conception of justice, strengthened with the idea of a democratic political association of self-legislating individuals. On his view, principles of justice provide a standard for justifying to each other the terms of our political association, through which we exercise power

⁸⁹ Thomas Nagel, “The Problem of Global Justice”, *Philosophy & Public Affairs* 33, no.2, (2005) pp. 113-147.

⁹⁰ Nagel, “The Problem of Global Justice”, p. 145.

⁹¹ Although it is rather misleading to identify one’s conception of justice with that of all, the fact that Nagel is taking justice as fairness as the most widely shared understanding of justice in contemporary political philosophy can be made sense of through a charitable reading.

over each others' life, hence the duty of justice is owed to those together with whom we establish and maintain such political institutional ties. So Nagel's conclusion reformulated with the help of these qualifications goes as follows. The problem of global poverty, then, is not a matter of *egalitarian* distributive justice grounded in an *institutional* conception of justice, qualified as the institutional scheme of *legitimate political authority*.

The above clarification allows us to better understand Nagel's conclusion and to assess his discrepancy thesis between social and global justice. It is a dualist or, as he calls it, a "multilayered" conception of morality, according to which social justice among fellow citizens is one thing and global justice among fellow human beings is another. They are two different duties that rest on different normative grounds and incorporate different normative requirements. Nagel argues that we have universal ties to all human beings from which general duties of *political* justice can be derived. Beyond such general duties to all, we also have special obligations to our fellow citizens such as distributive or economic justice. That is, the objection to human rights violations and the critical assessment of socio-economic inequalities are derived from different moral sources; the former being a universal duty while the latter is a special institutional duty among fellow countrymen.⁹²

Egalitarian social justice, according to Nagel, is about justifying our institutional scheme of legitimate political authority that exercises control over our lives, and the duty is owed to the *putative joint authors* of the laws that constitute such a scheme. The relations that fall outside this category will be morally assessed through another normative category: a humanitarian moral minimum. He then claims that until there is not a similar institutional scheme at the global level through which

⁹² Nagel, "The Problem of Global Justice," p. 131.

we can exercise legitimate political authority over each others' fate across the globe, world poverty is not a matter of justice, but a matter of *humanitarian assistance*, which guarantees a minimum level of decent living for all human beings. He does not provide us with a normative account grounding the duty and specifying its requirements. One might, however, think of Rawls' account of a *natural duty*, which is a kind of duty owed prior to and independent of the institutional relations and the social practices that bind us together. "They obtain between all as equal moral persons."⁹³ Mutual aid is one such duty, and it requires us to help "another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself."⁹⁴ Similarly to Rawls' natural duty account Nagel holds that humanitarian assistance is a general duty we owe to all human beings dire poverty and need, independently of global institutional arrangements. It is a global sufficientarian position, insofar as he points out that the duty is discharged once the group suffering has reached a level of decency, so the duty has a threshold, a cut-off point Both the grounding and the requirements of humanitarian assistance is rather vague on Nagel's account. He is not so interested in specifying the natural duty as much as drawing a conceptual distinction between egalitarian justice and a humanitarian moral minimum, and more importantly, a distinction between the different reasons grounding the two types of duties, in order to show why the scope of egalitarian distributive justice is domestic.

Having understood Nagel's dualist account of the duty of justice, characterized by *institutional egalitarian justice* within our state borders and *sufficientarian humanitarian assistance* outside our political association, let us now scrutinize the more profound reasons grounding his domestic account. What justifies

⁹³ See Rawls, *A Theory of Justice*, p. 98.

⁹⁴ Ibid.

Nagel's discrepancy thesis between the requirements of domestic and global justice? How can he tie down the duty of distributive justice in basic structure of a nation state, and there alone? Why are claims of justice only conceivable within a democratic nation-state? A fundamental tenet of Rawlsian political philosophy is that morally arbitrary inequalities do not in themselves constitute the problem of justice.⁹⁵ The challenge of social justice is that inequalities are not be "improperly" influenced by morally arbitrary factors. The substantive criterion of permissible inequalities is incorporated into Rawls two principles of justice that are worked out through the theoretical device of the original position. How the substantive theory works is less important for us now, than understanding that what ought to be justified according to this conception is the *way* institutions channel the morally arbitrary sources into unequal life-prospects in a society.

Why is this requirement of special justification for our shared institutional scheme hold only among fellow citizens, on Nagel's view? In a first formulation Nagel argues that special justification is owed in the case of domestic institutions because they exercise "comprehensive control over the framework of their citizens' lives."⁹⁶ This echoes the classical Rawlsian tenet, according to which the basic structure has a *profound effect* on people's life prospects. The claim that social institutions profoundly affect our social positions and life-prospects, and hence their moral assessment, the rules according to which such a distribution occurs must be the first instance of a theory of justice. This is a clearly an argument for the basic structure as primary *subject* of justice, but does it tell us much about the *scope* of justice, though? In order for the pervasive effect reason to yield the boundaries of

⁹⁵ This point I learned from Samuel Scheffler's article "What is Egalitarianism?," also see Freeman's chapter 4 on Rawls and Luck Egalitarianism. But I am sure you know much better than me the debate between luck egalitarians and the rawlsian school.

⁹⁶ Nagel, "The Problem of Global Justice," p. 123.

justice, one must be able to show that there are certain institutions with a domestic scope that pervasively affect our lives while other institutions with global or local scope less important in their effect on our social positions. There are many types of institutions that affect our lives, some of them domestic in their reach, others are global, again others manifest their effects in our local surroundings. Besides the so called domestic basic structure, comprising the fundamental legal and political institutions, the economic system, the educational system and the family, at the supra-national level, international institutions regulating trade and finance, global agreements concerning the environment, the patenting of life-saving drugs, determining the future of natural resources and public services have incremental effects on our lives and provide the framework of our everyday choices, despite the fact that often we are often not aware of their concrete effects. If the pervasive effect reason were to tie down the scope of justice, then it is possible to show why we might owe justification to people on the other side of the planet whose life-prospects are affected through the working of international rules and institutions.⁹⁷ I argue, then, that the pervasive effect reason does not seem to capture what is normatively peculiar about social institutions, it only tells us why we should focus on institutions and their effects in our moral assessment. Furthermore, if it were the only triggering reason for distributive concerns, provided that a strong empirical case can be made for global institutions affecting peoples' lives all over the world, it might well yield a global scope.

So what gives basic social institutions such a morally distinguished place? Why do their effects require special justification, while the other type of institutions do not? Nagel complements the pervasive effect reason with a further condition. So

⁹⁷ See A.J. Julius, Nagel's Atlas, *Philosophy & Public Affairs* 34 (2006)

while institutionally mediated mutual affectedness is a necessary condition for the problem of social justice to arise, any kind of institution will not be enough to support the claim to distributive justice. He qualifies the kind of institutions for which we owe each other distributive justification in the following way. “What is objectionable is that we should be fellow participants in a collective enterprise of coercively imposed legal and political institutions that generate such arbitrary inequalities.”⁹⁸

The key is to be found in the idea of “collective enterprise of coercively imposed ... institutions” where at least two different cases can be made, depending on our focus: *collective enterprise*, or the *coercively imposed* component. Which of the two provides us with sufficient reasons to demand justification through a standard of social justice?

Let us start first examine whether the coercive imposition of rules is a good enough reason to confine justice to the domestic context. At a first glance what is objectionable when examining the normative apparatus behind legal and political state institutions is the coercive imposition of norms. Coercion can be understood in two ways. First, it can be understood as a *capacity* of the coercer for ‘getting people to do things.’ Second, it can also be understood as a *reason* for the coerced to comply with rules. Taking the first sense, the capacity of the state to coerce, would imply that we are owed justification because the state apparatus has its own law-enforcing mechanism such as local police forces and exclusive command over the army. It would be an easy way to dismiss global institutions as subjects of justice, clearly not having the traditional enforcement mechanisms in place. An authoritative regime has the capacity to coerce us to do certain things, this in itself however, does not give us

⁹⁸ Nagel, “The Problem of Global Justice,” p. 128.

a sufficient reason to demand justification for the rule it imposes on us. What is lacking in these cases is exactly our normative grip on the system, the moral ground on which the system lies on.

So clearly, if coercion is the morally relevant feature of the basic structure, the justice triggering element lies in the *reasons* we have to comply with the law. Our compliance rests on the recognition of the right kind of coercion, i.e. *legitimate political authority* exercised over our lives.⁹⁹ So what is normatively relevant about the basic structure is that it exercises legitimate political authority over our lives. The reason why we that the state owes us justification for the rules it imposes on us is because at its normative foundation lies the claim of legitimacy, i.e. that it imposes those rules *in our name*. So, the act of political authorization gives us sufficient grounds for demanding justification for the laws that bind us into a common fate. In Nagel's words "the putative joint authorship" (cit) of the terms of our institutions that gives us standing to demand justification for the burdens it imposes on us. "...we are expected to accept their authority even when the collective decision diverges from our personal preferences ..."¹⁰⁰ So as co-authors of those coercive rules through which we mutually determine each other's social position, we owe and we are owed justification for the kind of rules we impose on one another. In Nagel's words,

given that [the state] exercises sovereign power over its citizens and in their name, those citizens have a duty of justice toward one another through the legal social and economic institutions that sovereign power makes possible.¹⁰¹

⁹⁹ Sebastiano Maffettone,, "Universal Duty and Global Justice." in Robert. E. Goodin, Philip Pettit and Thomas Pogge (eds.) *Blackwell Companion to Contemporary Political Philosophy* (Oxford: Blackwell Publishing, 2007)

¹⁰⁰ Nagel, "The Problem of Global Justice," p. 128-129.

¹⁰¹ Ibid. p. 120.

Distributive justice extends only to our co-citizens, the relevant constituency in a state, given that persons belonging to that group are the only ones who are both authors and subjects of the rules at the same time.

CHAPTER III

Justification: Global, Public and Egalitarian

3.1. Justifying Global Egalitarianism

In this chapter I make an inquiry into the appropriate form of justification a global egalitarian conception requires. Global egalitarianism has been most notably justified through an extension of Rawls' *A Theory of Justice*, grounded in Kantian liberalism. I challenge this view, by showing why such an extension is insufficiently justified to a global public, and why global egalitarianism must be justified on *public* grounds, rather than drawing on a specific comprehensive doctrine, often ascribed to the Enlightenment tradition of the West. Drawing on Rawls' *political* conception of justice in his *Political Liberalism*, I explain why the appropriate way to justify principles under conditions of moral and religious pluralism is reasoning from political ideals embedded in the public culture of a society. Then, I proceed by demonstrating that *public justification* ought to be taken seriously not only in the domestic case, but even more so in the global case, due to a rich diversity of moral and religious doctrines characterizing the international public sphere. I argue that global egalitarianism, in order for it to be consistently egalitarian, must rest on an egalitarian theory of justification, which I term, *justificatory egalitarianism*.

Justificatory egalitarianism is a form of justification that treats people as equals in the relevant sense, namely as equally valid sources of moral claims. Under conditions of global pluralism, it requires us to rest our justificatory argument on

global public grounds, to reason from global public ideals that could be shared, thereby offering justification the relevant others could not reasonable reject. A global conception of justice has to appeal to those global agents the justification is addressed to and whose actions are to be guided by the principles of justice. Global egalitarianism, if it aims to be egalitarian all the way down, must rest its justificatory argument on *global public* grounds.

3.2. Rawlsian Constructivism: Moral vs. Political¹⁰²

In moral and political theorizing, constructivism is a thesis about the objectivity of principles. In general, constructivism is the claim that normative principles are objective insofar as they are the outcome of a suitably specified procedure of construction, and not because they refer to some order of moral truths independent of moral agents and prior to political institutions. So conceived, constructivism opposes moral *realism* (the claim that judgments are true of an independent moral order), *skepticism* (according to which there are no truth conditions for normative statements) and *relativism* (the view that there are no objective moral standards, or universally valid principles). Constructivists claim to do this through a suitably specified method of justification.

This method of justification is based on a procedural approach that takes agents from un-constructed elements (such as the conceptions of persons and society and the role of a conception of political morality) to constructed normative principles. Constructivism can do without controversial metaphysical assumptions because it is a pure procedural approach. Indeed, it does not require any ex-ante

¹⁰² This section draws on an article I co-authored with Michele Bocchiola published in Italian, “Il punto di vista Normativo: Note sul costruttivismo rawlsiano” (“The Normative Point of View: Notes on Rawlsian Constructivism”), *Filosofia e Questioni Pubbliche* (2008: 1).

criterion of justification, but only the correct application of a fair procedure, which responds to the relevant facts (subjective and objective circumstances of justice¹⁰³) and embeds all the requirements of practical reasoning. The fairness of this procedure will be transferred from the premises to the outcomes. Consequently, whatever is constructed by a suitably conceived procedure (as the original position) has to be regarded as justified. In this way, constructivists can aim at a conception of objectivity as robust as moral realism, but holding the same metaphysically parsimony of non-cognitivist approaches (such as skepticism and relativism).

Now, what kind of procedure can accomplish this task? Rawls famously thinks that principles governing the basic institutions of a society are best accounted for as a choice of hypothetical agents under the suitably specified constraints of the so-called “original position.” The denizens of this initial choice situation are deprived of knowledge of their social status and natural abilities, hence equally situated in order to choose principles that could be accepted by all. The original position is an ideal situation where social and economic differences are hidden by a veil of ignorance, since they depend on mere social luck, and so irrelevant from a moral point of view. Under these constraints, Rawls argues, agents of construction would choose principles guaranteeing equal basic liberties and equality of opportunity, and a principle that allows for inequalities only if they are not detrimental to the worst off in society.

What makes the original position the correct procedural device in the choice of the principles? Since the rightness of the initial assumptions transfers to the rightness of the principles, the stakes involved in the setup of the choice situation are high. Given that the procedure is not itself constructed, but it is rather “laid out” from

¹⁰³ See Rawls, *A Theory of Justice*, §22.

grounding elements, it constitutes the suitable viewpoint insofar as it incorporates the right grounding elements. The overall conception stands or falls on these grounding elements. Therefore, they are to be considered as the essentials of the theoretical structure. The grounding elements, as Rawls says, are neither “ethically neutral” nor “self-evident;” nevertheless he urges us to accept them to be “widely recognized as reasonable” conditions on the rational choice of the principles.

In both TJ and PL, the grounding elements are the conceptions of person and society, and the role of a conception of justice. Persons are characterized as having two moral powers, namely a capacity for a sense of justice and the capacity to have, form, revise, and pursue a conception of the good. The role played by a conception of justice is to provide a public basis of justification in a society marked by permanent disagreement about moral and political views. So conceived, principles are not derived from an independent order of moral values; rather, they are *constructed* out of these grounding elements. For this reason, Rawls labels his justificatory method as *constructivist*. But while in TJ Rawls makes reference to a liberal comprehensive view, in PL he draws on implicitly shared values present in the public political life of a democratic society. Indeed, in the later works, his aim is to come up with a political conception of justice that could possibly be accepted by adherents of reasonable comprehensive doctrines, which are the many religious and philosophical beliefs characterizing a complex society.

Depending on the kind of society and the relevant agents for whom the principles are to provide a public basis of justification, the suitability of the viewpoint from which the objectivity of the principles derives, is supported in a different way. The source for suitability changes according to the task of political theorizing in question. While in TJ the task is to work out a conception of justice that

can be accepted by essentially liberal moral agents, PL aims at a *practicable* political conception justifiable to the citizens of a pluralistic society. In short, it is possible to maintain that while the content of a conception justice remains the same, a shift in the source for the grounding elements occurs, which results in a discrepancy between the objectivity of the principles in question.

As said, Rawls presents two versions of constructivism. The first version, namely moral constructivism, is presented as a comprehensive moral doctrine. It claims that the only source of our moral values is the activity of practical reason and nothing else. Moral constructivism is the claim that

the order of moral and political values must be made, or itself constituted, by the principles and conceptions of practical reason [...] by the activity, actual or ideal, of practical (human) reason itself.¹⁰⁴

In this way, Rawls aims at establishing a shared basis of discussion and agreement in a genuinely *liberal* framework, where members of a political community can justify to each other principles regulating their affairs without invoking any superior authority. In other words, these principles are not imposed upon them from an external (or heteronomous) source. Principles of justice are the outcome of a deliberative process among free and equal citizens of a democratic society. In this way, principles can be considered as autonomously selected. Even if liberal, this approach falls short when we face the fact of pluralism, namely the fact that people disagree about how we *ought to live* and, more problematically, how we ought to live *together*. Political constructivism, the other variety presented by Rawls, addresses this question. Indeed, it is presented as a non-comprehensive view. It

¹⁰⁴ Rawls, *Political Liberalism*, p. 99.

admits that our moral values can have different sources, and not necessarily practical reason. So, political constructivism

represents, or displays, the order of political values as based on principles of practical reason in union with the appropriate political conceptions of society and person.¹⁰⁵

Now, how is this political understanding of constructivism different from the moral one? In both moral and political constructivism, Rawls refers to the role of practical reason. The point is that in the case of political constructivism, the claim is more modest than in the moral version. Indeed, while moral constructivism claims that only practical reason “constitutes” or creates the order of moral values (to which we refer in our practical decisions), political constructivism

accepts the view that the principles of practical reason originate, if we insist on saying they originate anywhere, in our moral consciousness as informed by practical reason. They derive from nowhere else. [...] Still, accepting this, it is a separate question whether the principles of practical reason constitute the order of values.¹⁰⁶

Now, if principles of justice originate from practical reason, but practical reason does not constitute the order of values, where do these values come from? How can we address this question on constructivist grounds? To this aim, it might be helpful to distinguish between what one could call the “origin” of a conception of justice and its justification. According to Rawls, political philosophy should serve the aim of establishing a public standard for adjudicating conflicting claims of justice.¹⁰⁷

This undertaking entails a practical conception of justification (rather than a

¹⁰⁵ *Idem.*

¹⁰⁶ *Ibid.* p. 100.

¹⁰⁷ In his words, “The social role of a conception of justice is to enable all members of society to make mutually acceptable to one another their shared institutions and basic arrangements, by citing what are publicly recognized as sufficient reasons, as identified by that conception.” J. Rawls, “Kantian Constructivism,” p. 517.

theoretical one), since its aim is not related to the knowledge of objects but to working out principles of justice. The philosophical work to be carried out, on this practical interpretation, is to provide a suitable point of view for adjudicating conflicting moral claims. The *suitability* of this point of view makes the case for the objectivity of the conception of justice. In TJ, Rawls claims that a conception of justice is objective when it issues universally valid norms, namely norms that apply to all members of society and that all can accept. In PL, while the justificatory strategy remains the same (principles are justified and, therefore objective, if they can be accounted for as outcome of a suitably specified procedure), what generates demands of justices varies. For *moral* constructivists, practical reason originates moral values or (at least) requirements of justice. *Political* constructivism, instead, “leaves open (‘brackets’) philosophical questions about the real origins of moral principles and their ultimate epistemic status.”¹⁰⁸ On Rawls’s view, a *political* conception of justice allows that the sources of normativity can be found in some deity’s commands, in the nature of things, in our emotional response to states of affairs, in some utility function, and so forth. In other words, it takes seriously the fact of pluralism. What bearing does this bracketing the origins have on the objectivity of principles?

For better understanding the shift from moral to political constructivism, and the bearing of it on our theorizing about justice, we need to focus on the elements out of which the theorists constructs principles of justice, and in what sense they constitute the appropriate starting point for theorizing.

As said, according to constructivists principles of justice are justified if they can be accounted for as the outcome of a suitably specified procedure of

¹⁰⁸ Samuel Freeman, “The Burdens of Public Justification”, p. 9.

construction. Recall that a procedure constructing normative principles is given to the theory, and it is not itself constructed (as Rawls says, it is “laid out”). A procedure is the theoretical device that leads from un-constructed elements to constructed principles. So, what are these un-constructed elements that constitute the material of construction?

The fundamental conceptions that Rawls takes as theoretical starting points for laying out his procedural device of representation are concerned with how we ideally conceive of ourselves (ideal conception of the person), and how we might come to understand, at a very basic level, the goal and purpose of our society (fundamental organizing idea of society). In “Kantian Constructivism,” Rawls presents this conception of the person as a model conception that expresses our self-understanding as free and equal moral persons. Rawls proposes this account of the person ideally construed as a reflection on the values present in our public life.

This conception of the person is further supported by another ideal conception, that of a society as we ourselves understand it. The relevant features of a person are selected with the help of a more fundamental core idea of a society. Once we have a grasp on what is a society, at the highest level of generality, we can conclude what are the most important features of persons that take part in such a society. This fundamental idea of society that he takes to be an uncontroversial starting point for political constructivism is “a fair system of social cooperation over time, from one generation to the next.” Rawls describes this idea as “the fundamental organizing idea of justice as fairness, within which the other basic ideas are systematically connected.” Three characteristics are crucial. First, a social cooperation is distinct from any coordinated action due to the rules and procedure it involves. Second, its members offer each other fair terms. His point is that in social

cooperation, people conceive of the rules of cooperation as fair, and do not think of them as simply based on a compromise according to each person's power or threat advantage. Third, every member has an idea of his or her ends rationally pursued. This is a basic idea of society that Rawls takes for granted. However, what fairness entails, what its fair terms might involve, must be given a specific content. It is the role of a conception of justice to specify the fair terms of social cooperation.¹⁰⁹

In his early writings, Rawls theory is meant to address the problem of just institutions in a liberal democracy, where some political values, such as liberty and equality, are somehow already shared. This means that their sources are not to be considered in some external authority (such as a deity or some moral belief endowed of some special philosophical status), but in the same persons taking part to the society. So, the philosophical project carried out in TJ is to prove his conception of *justice as fairness* to be a better alternative compared to other political philosophical views. In order to do this, Rawls deploys many argumentative strategies, among which constructivism.¹¹⁰ Roughly, Rawls is trying to show that in a genuine liberal society individuals are to be considered as "self originating sources of valid claims." Other approaches to the question of justice (such as rational intuitionism, which move from some self-evident premises) are highly problematic on a philosophical level. Moreover, they will contrast his Kantian project of a conception of political morality based on the idea of autonomy. Indeed, theories of justice grounded on ideals that are independent of persons and prior to social institutions are heteronomous. For a real autonomous view, persons, provided with the two moral

¹⁰⁹ Rawls, *Political Liberalism*, p.15-16

¹¹⁰Note that Rawls does not label his theory as "constructivist" until his 1980 paper. Nevertheless, textual evidence can be found to show that TJ is already a constructivist theory. Moreover, Dworkin defines Rawls as a "constructive theorist" in his review of TJ, dated 1972. See Ronald Dworkin, "The Original Position", in N. Daniels (ed.), *Reading Rawls*, Stanford University Press, Stanford, 1989, pp.16-52.

powers, are the sources of normativity. Or, in more Kantian terms, practical reason generates our moral values.

Later on, Rawls comes to recognize that a Kantian interpretation is too demanding when we face the problem of pluralism. As already said in the introduction, our societies are characterized by profound disagreement concerning the way we ought to live together. Due to enduring conflict upon different moral views, a strictly liberal conception of justice based on a comprehensive ideal (namely, Kantian autonomy) would unlikely be justifiable in a society so conceived. The possibility of implementing a comprehensive liberal ideal in a society marked by reasonable pluralism would involve serious moral costs. For a social arrangement based on a comprehensive justification is most likely to lead to oppression over time, and therefore unfeasible.

Now, what seems to be the major difficulty is to find an appropriate starting point, a fundamental idea that is more or less uncontroversial despite our deep disagreements. In light of this fact of pluralism, in order to find “starting points that are mutually recognized,” the philosopher needs to refer to those minimally shared understandings within public life, the locus of which is to be found in our political institutions and in their widely shared interpretations. The political philosopher’s task, in other words, is to properly identify the shared values embedded in those institutions and understand what principles they lead to. “Society’s main institutions and their accepted forms of interpretation are seen as a fund of implicitly shared ideas and principles”¹¹¹ This fund of shared ideas seems to be the only possible starting point in reasoning about justice for a society characterized by deep moral and religious cleavages. The basic idea of the society and the accompanying conception

¹¹¹ Ibid. p. 14.

of the person are at the highest level of generality representations of those shared values.

While in TJ it received little attention, from his Dewey Lectures onward (1980) Rawls makes it more explicit that he is pursuing his political philosophy with a practical purpose. According to him, the work of the philosopher, “the work of abstraction” is not a pure conceptual concern, but it is “set in motion by deep political conflicts.”¹¹² Abstraction is not carried out for abstraction’s sake, but it serves the purpose of public discussion insofar as its aim is to point to what could be accepted as a basis for reasoning in public. When what counts as sufficient or insufficient reason for justification is itself the object of contestation is when political philosophy is called for. Rawls’s theoretical quest for the appropriate basis of criticism is put in service of reducing practical political disagreement or at least in service of a continued public discussion when agreement is out of sight.

The aim of political conception of justice “practical, not metaphysical” or epistemological.¹¹³ The traditionally important task of political philosophy, that is, finding the best conception of justice for the best possible world becomes secondary, if not irrelevant for Rawls. The question is not whether we could conceive of just society starting from scratch. The question is whether we can work out from where we stand, from the society in which we live in, a criterion for evaluating the justice of our historically evolved social institutions. Hence, Rawls takes the “real task” of the political philosopher to be the construction of “a social point of view that all can accept,” a conception of justice “that all can live with.”

¹¹² Ibid. p. 44.

¹¹³ Idem. See also, J. Rawls, “Justice as Fairness: Political Not Metaphysical”, *Philosophy & Public Affairs* 14 (1985).

3.3. The *Political Turn*: Prudential vs. Moral Considerations

Critiques of the Rawlsian political turn have voiced their concern about grounding principles of justice in public ideals embedded in the political culture of a society.

G.A. Cohen has forcefully argued that facts in themselves cannot ground principles of justice. “There is always an explanation why a ground grounds what is grounds.” That is, there must always be a further consideration that makes those facts relevant in a justification. According to Cohen, “it is always a further principle that confers on a fact its principle grounding power.” The moral considerations that support a certain justificatory strategy over another, when systematically worked out, amount to a normative theory of justification. My aim here is to point out how Rawls’ selection criteria for public justification reveal more profound liberal and egalitarian commitments. These commitments, which together amount to the normative theory of public justification, select pluralism as a relevant constraint, and public culture to be the appropriate starting point for reasoning about justice.

There are, at least, four different considerations supporting the political turn as the appropriate response to the fact of pluralism: 1.) the liberal commitment of not coercing people into holding our own views; 2.) treating people as equals in their relevant beliefs and offering them justification on terms they can accept; 3.) publicity; 4.) the meta-theoretical commitment towards justice as a practicable conception, as a ‘view from somewhere.’ I discuss these four considerations briefly.

P1: *Non-coercion*. The principle that confers on the fact of pluralism its reason giving status, is the liberal commitment, according to which it is wrong to impose our moral views on other people. Our prior commitment to non-coercion makes pluralism a relevant fact. If this underlying meta-commitment was not present,

and if coercing people into believing our (liberal) truth is what we were after, then the fact of pluralism would not be a relevant fact. Conversely, if we lived in a doctrinally homogeneous society, then a non-coercion principle would not select the ‘fact of homogeneity’ as a relevant fact, since given such a fact about society, the problem of disagreement does not occur.”

P2: *Reasonable justification*. Treating people as equals requires that we justify our views to them on terms they can reasonably accept. Offering reasonable justification to others is exactly what offering fair terms of cooperation entails. While promoting what we believe is the ‘truly just’ way to organize social institutions is the most rational thing for us to do from a first person perspective, given that our practical reason operates in a social space, the second person perspective, what is reasonable for other to accept (not to reject) must be taken into consideration.

Why is this justification of political principles to others so relevant? One way to respond is by saying that justifying principles to others on terms they can reasonably accept or cannot reasonably reject is the essence of treating people as equals. Offering others justification, a specific kind of justification that is meaningful to them, concerning the basic norms of our social arrangement, is motivated by our deepest egalitarian concern, concern for the equal moral and public status of persons.

P3: *Publicity*.

P4: *Practicability* (justice as the ‘view from somewhere’) What seems to be making pluralism a relevant fact (i.e. the ground that grounds the ground) is the idea that justice is to be a workable or practicable idea, it is to play a social role in a society. Through this assumption, Rawls redefines the task of political philosophy together with the role of a conception of justice in society. The quest of a Rawlsian political philosophy is not whether we could conceive of the best conception of

justice for the best possible world, starting from scratch. The question is whether we can work out from where we stand, from here and now, a criterion for evaluating the justice of our historically evolved social institutions. Hence, Rawls takes the “real task” of the political philosopher to be the construction of “a social point of view that all can accept,” a conception of justice “that all can live with.” Reasoning about justice is rooted in our society and in our time, it starts from moral ideals congenial to a profound understanding of ourselves. As Rawls says, is a ‘view from somewhere’ not a ‘view from nowhere’ (Nagel). The requirement that a conception of justice must be a view from somewhere is the grounding consideration for Rawls’ principles of justice. If justice is to have a social role, if it is to provide a common viewpoint for adjudicating conflicting claims and make mutually acceptable the terms of our basic arrangements, then pluralism will be a relevant constraint and public culture will be the appropriate starting point for reasoning about justice.

3.4. Public Justification: A Defense

As we have seen, the kind of justification appropriate to offer to others must start by premises that can be mutually recognized by the relevant others. If it is so, then the fact of reasonable pluralism poses a real challenge to justification. The major difficulty is to find an appropriate starting point that is more or less uncontroversial despite our deep religious and philosophical disagreements. Comprehensive philosophical views, such as Rawls’ Kantian Constructivism, cannot serve its justificatory role in a pluralist society, insofar as the underlying premise, most importantly the relation between personhood and autonomy, are likely to be rejected

by many. We can anticipate from a first person-perspective that the reasons that we are offering to others are likely to be no reasons for them at all. However, as Rawls argues, these controversial foundational questions might be bracketed in a justificatory argument. Putting aside philosophical controversies about moral truth, Rawls identifies the *public political culture* as an appropriate source for reasoning about justice. We might call this the *political turn*¹¹⁴ in the Rawlsian theory of justification, according to which, the appropriate way to justify principles of justice under conditions of pluralism is by resting the argument on “fundamental ideas latent in the public political culture.” As noted by many, this is an important sense in which Rawls’ conception of justice is political: in its *method* or *source*.¹¹⁵ What makes a method of justification political or public is that it rests on a public source.

Some welcomed Rawls’ political conception of justice as ‘epistemic humility,’ or as well-founded ‘epistemic restraint,’ others rejected it as ‘epistemic abstinence,’ or liberal skepticism, while still others took it to be a move towards grounding principles of justice in historically contingent facts *qua* facts alone. I argue that Rawls’ turn towards public justification neither amounts to founding principles of justice on contingent facts alone, nor is it a mere prudential concern with the practicality and stability of justice. Rawls’ political turn can be interpreted as motivated by a deep meta-theoretical commitment: a concern with the *kind* of justification that is appropriate under conditions of reasonable pluralism. Before turning to the moral defense of public justification, however, let me consider two

¹¹⁴ In what sense did the Rawlsian theory change from A Theory of Justice to Political Liberalism is a rather contested issue in the literature. While some take it to be a relevant shift, others interpret it as a clarification of the view that was present all along. Without settling the debate here, let me quote how Rawls himself saw the matter. “... while I believe nearly all the structure and substantive content of justice as fairness ... is unchanged when it is seen as a political conception, the understanding of the view as a whole has very significantly shifted.” Rawls, “The Priority of Right,” p. 251. n2

¹¹⁵ Stephen Mulhall and Adam Swift, *Liberals and Communitarians*, Oxford-Cambridge, MA: Blackwell, 1992. p. 172-173; see also Samuel Scheffler, “The Appeal of Political Liberalism,” *Ethics* 105 (1994): 4-22.

kinds of skepticism about public justification, both of which can be labeled as a charge of conservatism or *status quo bias*.

Objection 1: Status Quo Bias. If reasoning about justice starts from public culture, the principles only reaffirm what people already believe and what is the dominant view in a society. This criticism comes in two different formulations. The first takes public culture to be a sort of public opinion, focusing on people's actual beliefs. I will call this the *actual assent thesis*, borrowing the term from Gerald Gaus. The second, instead (I think more accurately), takes public culture to be our historically developed institutions and their shared interpretations. I will call this the *institutional status quo thesis*.

a) The *actual assent thesis* (moral satisficing charge) holds that a moral demand is publicly justified if, and only if, the relevant others have given their actual assent to it. But does the fact that some people do not assent to a certain moral demand prove that public justification has failed? People can withhold their assent for several reasons. And only one of those reasons is the conviction that the demand is unjustified and unconvincing. Hence, actual assent, Gaus argues, does not seem to be necessary for a principle to be publicly justified. The actual assent thesis seems to suggest that what a justifier is interested in is people's actual beliefs, and wants to match her principles to the ordinary capacities of ordinary people. If this were the case, then normative theorizing would lose critical footing, and it would amount to some sort of *moral satisficing*. The aim of normative theorizing would be to satisfy the actual moral sensibilities of persons, instead of challenging it and critically guiding people towards moral progress. Surely this is not a good notion of normative theorizing.

For a better notion of normative theorizing, notice the distinction between what people *can* accept, and what people *could* accept (see section 1). Moral satisficing would only be the case if we took an appropriate notion of justification to be offering reasons that people *can* accept. Taking persons' capacities to be whatever they actually are. This is, however, not our preferred notion of justification. I have claimed that proper justification involves what people *could* accept. Moving from *can* to *could* involves idealizing assumptions that the justifier is making concerning the potential addressees of her theory. The notion of the idealized addressee that Rawls offers us is the, so called, reasonable person. The other person's assent can only be the test of justified principles if the person to whom justification is addressed to is reasoning according to her best capacity and in good faith.¹¹⁶ (considered judgments, not pre-theoretical judgment, cool hour reasoning). A proper notion of justification works with an ideal of persons in their best capacity to reason and engage with others, and see whether the justification we advance could be accepted by them on due reflection or not.

It is not actual agreement that public justification relies on, but an ideal, a stipulated agreement on political values, which serves as the basis of a hypothetical argument. The public justificatory argument goes: if you can accept the premises I am offering to you, as I am assuming you can as a participating citizen in a democratic society, then the reason I am offering must be meaningful for you.

b) The *institutional status quo thesis* objects to public justification with a slightly different charge of conservatism. Roughly, the argument runs as follows. Whatever values and institutions have developed historically cannot be a good basis of justification, because normative theory would only reaffirm and strengthen the

¹¹⁶ Gerald F. Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory*. New York: Oxford University Press, 1996.p. 130.

historical status quo. Justice would require what justice already is. One might respond that starting from the same set of core values there is more than one way to organize social institutions. Freedom and equality as fundamental democratic commitments are vague and their institutional embodiment is indeterminate. There are many ways to work out such values into principles of justice. Starting from core values, and working them out systematically into a coherent set of principles, we can develop a critical point of view to assess in what sense those institutions, as they are actually organized, fulfill the requirements of justice. Consequently, starting from public ideals one can arrive to develop a critical point of view. This answer might save public justification from its strictly conservative implications. But what if the ideals themselves (and not only their institutional embodiment) that our human history has left us with are simply wrong or bad. Surely working out a theory of justice in times of slavery or under Nazism, cannot involve starting from discriminatory norms or institutional practices that deprive certain groups of their dignity or humanness. There is a sense in which public justification has to meet a threshold in the ideas that it takes for granted. It cannot start from any *idea* or any dominant view but it has to start from *ideals*. In other words, it cannot start with what we, in fact, value but what we have *good* reason to value. Putting the problem of good and bad ideas aside for a moment, assuming that our premises meet that threshold, what is important about them is that they are ideals *for us*. We start from public ideals embedded in the political culture not because these ideals are necessarily true (in the metaphysical sense), but because they embody our self-understanding and our core commitment to society as a fair system of social cooperation.

Once I have clarified that public justification neither amounts to meeting the dominant view in society, nor to reaffirming existing institutional arrangements, thereby rebutting two of the most often raised challenges, I take on the moral defense of public justification.

The basic idea of public justification is: to reason publicly is to reason from the standpoint of others. As Gerald Gaus says,

“Because we can distinguish personal from public reason, we can address arguments to others in the sense that we can provide reasons *to them* – considerations that are reasons given their own systems of beliefs.”¹¹⁷

“Justifying your beliefs or principles to others does not involve simply *giving others reasons that they will accept*, but in some way advancing reasons that you think are good reasons for them to accept.”¹¹⁸

Justifying principles on public grounds does not amount to identifying a core set of minimal public morality as a sort of lowest common denominator among the plurality of values, in order to convince everyone. This would be a mere prudential consideration for moving from a comprehensive justification to public justification. The moral argument for the political turn runs somewhat deeper. Offering reasons that the others could accept from where they stand, is the most fundamental sense in which we can *treat people as equals*. Our concern with treating others as equals in the kind of justification that we offer them is the guiding idea behind taking pluralism seriously. Offering others justification that is meaningful to them, concerning the basic norms of our social arrangement, is motivated by our deepest egalitarian concern, concern for the equal moral and political status of persons.

¹¹⁷ Gerald F. Gaus, *Justificatory Liberalism*

¹¹⁸ *ibid.* p.139.

This meta-theoretical commitment about the appropriate way to justify principles is a higher order commitment that allows us to restrain ourselves in public and not insist on specific (liberal or other) conception of justice based on our own comprehensive views. While promoting what we believe is the ‘truly just’ way to organize social institutions is the most rational thing for us to do from a first person perspective, in public justification we examine the problem of justice from a second person perspective, and ask the question what is reasonable for others to accept.

One might object that taking such a point of view is less burdensome from a liberal perspective, than from any other religious or moral doctrine, given that it already involves a commitment to not coerce our views on others when disagreement occurs. Why, I might then ask, so many liberals insist on liberal principles of justice through comprehensive liberal justification (Kantian, Utilitarian or other), instead of promoting a truly liberal justification, that treats each and every addressee of justification as equally valid source of moral claims? If this were the case, every liberal would be a strong advocate of public justification.

The Rawlsian perspective allows liberalism to exercise self-criticism, “to apply the principle of toleration to philosophy itself,”¹¹⁹ by admitting that justice as fairness is only one among the many acceptable conceptions of justice.¹²⁰ As long as the meta-commitment to the appropriate form of justification is respected, more than one conception of justice can be arrived at. Liberalism of justification allows for a variety of liberalisms about justice. Justice as fairness might be the preferred theory of Rawls, being a strongly committed Kantian in his comprehensive view. A committed Kantian, however, recognizes others as valid sources of claims, and treats

¹¹⁹ John Rawls, *The Idea of an Overlapping Consensus*, in Samuel Freeman (ed.) *Collected Papers* (Cambridge, MA: Harvard University Press, 1999), p?

¹²⁰ Alessandro Ferrara, “Varieties of Pluralism.” Paper presented at the International Conference Dialogues on Civilizations, Istanbul Bilgi University, Turkey, June 2-6, 2008.

them as such by taking the plurality of their points of view seriously, when offering them arguments for principles of justice. This view on justification might be called *justificatory egalitarianism*, according to which treating people as equals by offering them reasons that they can accept, is the appropriate understanding of egalitarian concern. This is the deepest sense of treating others as free and equal: as equally valid sources of moral claims.

I believed I have advanced a plausible moral defense of public justification as an appropriate starting point for liberal/egalitarian principles of justice. Moving to the problem of global public justification, there are at least two challenges to be met. 1.) Whether public justification is bounded to liberal democracies or not (Onora O’Neill). 2.) Whether the global public culture robust enough to support global egalitarianism (Leif Wenar).

3.5. The Idea of Justificatory Egalitarianism

An egalitarian theory of justice, in order for it to be consistently egalitarian, must rest on an egalitarian theory of justification. Treating people as equals involves offering them justification that they can reasonably accept, or at least offering them justification that according to our best judgment incorporates a philosophical account of its potential success. Therefore, in a pluralist world, and even more so under conditions of global pluralism, reasonable justification cannot start from particular beliefs only some of us endorse as true premises. Global conceptions of justice need to make sense to those global agents the justification is addressed to and whose actions are to be guided by the principles of justice. Treating people as equal at the global level is offering them principles and justification they could not reasonable

reject. That is, before we can conclude what global justice requires we need to understand what is it that makes global justice make sense, that is, what a reasonable justification of global principles requires.

3.6. Towards Global Public Justification

In the previous section I have concluded that an egalitarian theory of justice, in order for it to be consistently egalitarian, must rest on an egalitarian theory of justification. Treating people as equals involves offering them justification that they can reasonably accept, or at least offering them justification that, according to our best judgment, incorporates a philosophical account of its potential success. In a pluralist world justification cannot start from particular beliefs only some of us endorse as true premises. A global conception of justice need to make sense to those global agents the justification is addressed to, and whose actions are to be guided by the principles of justice. Treating people as equals at the global level is offering others principles and their justification they could reasonably accept or could not reasonably reject. The conception of global justice that an egalitarian should promote is one that treats others as equals in reasoning about justice. In other words, global egalitarianism must be based on a sort of justificatory egalitarianism and given global pluralism, its source must be public and not a specific political tradition (such as comprehensive liberalism).

Objection 2: Bounded Justice. Constructing principles of justice, which could be justified to a pluralist audience, the theorist needs to work from premises already

shared, rooted in our public culture, in our public institutions and their shared interpretations.

However, if the construction of principles starts from fundamental values rooted in a society, then what follows is that the justifiability of the principles are bounded in their reach to the specific context, for which the considerations were made in the first place. As Onora O’Neill has forcefully argued, the Rawlsian political conception of justice does, indeed, seem to stop at the borders of a liberal democracy, which incorporates the moral premises of public justification. O’Neill argues that constructivist arguments, such as the Rawlsian political justification, cannot reach

“all possible audiences: they are based on the shared conceptions of citizens, so provide reasons for action only for those whose most basic commitments they presuppose.”¹²¹

If the content of the constructed principles relies on publicly embedded shared understanding, then, they will only be justifiable in a context where the initial assumptions could be shared. In other words, the public culture that informs the premises of the argument constitutes the boundaries of a conception of justice. It seems then, that the justificatory audience, the group of persons among whom certain public ideas can be taken for granted, does constitute some sort of a justificatory boundary for the principles of justice. The boundary is peculiar, however. It is a conceptual boundary, defined by the limits of justifiability.

Is public justification really bounded to a liberal democratic society, though? The limits of extension, is tied only to the *content* of the principles, which have a limited normative appeal beyond the relevant political context. Starting from a liberal

¹²¹ Onora O’Neill, “Constructivism in Rawls and Kant,” in Samuel Freeman (ed.) *Cambridge Companion to Rawls*, Cambridge: Cambridge University Press, 2003. p. 352.

public culture and liberal public ideals, it is easy to see how and why the principles constructed will have a limited appeal, and why it might be rejected by those not subscribing to such liberal democratic ideals. Even though the Rawlsian liberal conception of justice is tied to the audience of a liberal democracy, it seems that the method itself, that is, public justification, is extendable to different contexts. It seems at least theoretically plausible to think of a conception of global justice justified on global public grounds.

Objection 3: Global public culture not robust enough. Before a direct extension of public justification from the domestic to the global level, there is an argument that should make us cautious about how we proceed. In defending the rationale behind the Law of Peoples, and clarifying why Rawls is not a global egalitarian, Leif Wenar poses a powerful challenge to global egalitarians. The reason why, in Wenar's view, Rawls is not a global egalitarian lies in the nature of a global public culture and the fundamental ideas that can be found within. A full blown cosmopolitan liberalism (Beitz, Pogge) promoting a global difference principle would require a global original positions among individuals. In the domestic case, the idea of free and equal citizens and society as a fair system of social cooperation provide the underlying public ideals from which the original position is laid out. The global public culture, in Wenar's view, is an insufficient source for such ideals to be found, hence it cannot support a global original position and a conception of global egalitarianism. As he says:

“There is simply no robust global public culture which emphasizes that citizens of different countries ought to relate fairly to one another as free and equal within a single scheme of social cooperation. Much less is there in this global public culture the strongly egalitarian ideal that the distribution of global resources and wealth among individuals should not be based on

characteristics of individuals that are arbitrary from a moral point of view.”¹²²

There are two main contentions here. First, that global public culture is primarily focused on states and their relations. As Wenar says, it “is primarily *international* not interpersonal.” That is, what individuals owe each other in terms of distributive justice, what kind of justification they owe each other for their global relations, and how they ought to relate to each other across borders is primarily mediated by nation-states. There is little evidence in international law, treaties etc. that individuals and their relations to one another really matter. So the idea of free and equal global citizens is not an idea that is currently embedded in global public culture, hence a principle based on such a premise would be unjustifiable. Second, Wenar contends that a global difference principle relies on a notion distributive equality according to which a departure from equal distribution requires justification (morally arbitrary inequalities are impermissible.) Such a premise simply does not exist in form of a global public ideal. It is subject to reasonable disagreement.

I tend to agree with Wenar that a global difference principle might be out of reach. However (on his first point) whether there are sources of freedom and equality among persons of a relevant kind is still to be shown, in my view. The ideal of person in the Rawlsian framework (free and equal citizens) does not amount to anything else, but the assumption that we are all equally valid sources of claims upon the institutions that pervasively affect our lives. Why cannot global individuals be considered as the relevant agents having claims on global institutions, and ask for a justification from those who impose those rules that significantly affect their lives? Justifying our actions to others, offering them justification for the terms of our

¹²² Leif Wenar, “Why Rawls is not a Cosmopolitan Egalitarian,” in Rex Martin and Reidy ed. *Law of Peoples and a Realistic Utopia*, p. 103.

cooperation, that is, for the principles that govern our global institutions, is not merely the business of nation-states and their delegates. Insofar as global institutions affect the life-chances of individuals across the globe in a significant way and insofar as that effect can vary both between states and within states, individuals should matter. And we should not give up so easily by saying that international law, treaties and other documents are not would not support such an idea of equal claims of persons towards global institutions. If we look carefully at international sources, we might well find some good sources.

Three elements of discrepancy between the domestic and the global context seem to be crucial:

1.) Source: Global Public Culture

Could global norms and institutions and their shared interpretations in domestic and international law serve as the public ground for constructing global justice? If yes, what kind of premises would such a global public culture support?

2.) Role and purpose of global cooperation: Global Society

One needs to understand what a global society is, what it is for, and whether there could be any meaningful convergence or consensus on the moral ideal it should aspire for.

3.) Relevant agents: Members

One needs to work out a conception of the relevant members in terms of their interests and relevant capacities. Given that we can conceive of a minimally shared notion of what the global society ought to be, we need to think of the members meaningfully participating in such a society, whether individuals, states or peoples, or some other set of agents.

CHAPTER IV

The Feasibility Challenge to Global Egalitarianism

4.1. The Feasibility Problem

“Taking people as they are and laws as they might be” is a classical idea that has been guiding political philosophers for centuries. As obvious as it might seem, it incorporates a genuine dilemma for political philosophy. While aiming at standards that critically assess our current institutions and setting the horizon for social change and moral progress, principles, at the same time, aim at being action guiding. “Taking people as they are”, expresses the concern that political principles must be such that the relevant agents can be moved by them. “Laws as they might be” instead expresses the equally important concern about the suitable viewpoint for moral and political assessment and criticism. So the dilemma is: How can we come up with principles of political morality that will appeal to, and be sufficiently action guiding for the relevant agents and, at the same time, set normative standards for them to strive for? Striking this balance is challenging, but not impossible, and as I will argue, this fine balance is what a feasible theory of global justice should be concerned with. How this challenge is met by theories of justice and what are their implications for the global case, is what this chapter is set out to discover.

According to the feasibility challenge to global egalitarianism the normative ideal the conception promotes or the institutional scheme it envisions is infeasible.

The feasibility challenge for a theory of justice is the following. Certain aspects of our social world are relevant in order for the theory to be action guiding, while other aspects of our social world are exactly what we need to be critically assessing. Therefore, a theorist needs to discern which facts to account for as unchangeable, hence as relevant constraints on the theory, and which ones to consider as object of critical assessment and social change. Some feasibility constraints are related to facts about human psychology and motivation while others are related to facts about our social world, institutions and resources. Given the scope and focus of my dissertation, I addressed one type of feasibility constraint, the fact of pluralism about moral views, which is likely to constrain the kinds of principles that can be accepted by others and hence the kind of justification that can be given in their support. Feasibility critics are likely to challenge global egalitarianism at the level of application and institutional design. Taking pluralism as a feasibility constraint, however, I argue that part of the feasibility charges can be already addressed at the level of justification. I argue that public justification is the kind of justification that is able to account for pluralism as a feasibility constraint, and brings a normative political ideal closer to a feasible ideal that might be potentially successful in application.

The feasibility challenge to global egalitarianism has been formulated in a number of different ways. They can be grouped under five different categories of infeasibility.

(a) *Global Leviathan*. The first kind of feasibility challenge is motivated by a genuine fear concerning the tyrannical tendencies of a world government. Although it is not at all clear that global egalitarianism as an institutional standard must necessarily require a centralized world state.

(b) *International Status Quo*. Second, global egalitarianism is unfeasible given the current historical circumstances of the state system and power holder's (nation states) unwillingness to delegate some of their authorities to supranational bodies.

(c) *Self-regarding interest*. Third, global egalitarianism makes too strong demands on well-off citizens (of well-off nations) to share their resources with poorer citizens (of poorer nations)

(d) *Cultural Diversity*: Fourth, unfeasibility can be a claim about the inherent difficulty of arriving at a common understanding of justice given the diversity of cultures and traditions across the globe.

(e) *Utopia*. Most commonly, however, it is used simply as another way of saying that the world is not ready for so radical, idealistic or utopian ideas.

What are we to make of these challenges? In what sense is global egalitarianism unfeasible, if at all? By caching out the different meanings of feasibility motivating these charges, and critically analyzing them, we can come to a more robust understanding of what a feasible theory of global egalitarianism requires.

A distinction that lends itself to comparing these different charges draws on the classical Hume-ian distinction between the subjective and objective circumstances of justice.

i. *Subjective Circumstances Of Justice*. Some of the charges, (b) and (c), express a concern about people's (un)willingness to support proposals for change through their political influence, their votes or their taxes. It assumes that nations and their citizens have certain fundamental interests (mostly self-regarding) that move them to act in certain ways. Global egalitarianism requires them to put aside their

basic intuitions or fundamental interests in order to fulfill moral ideals that make too strong demands on them. It makes a reference to what principles can motivate people to act or what principles can be action-guiding? In this sense a feasible conception of justice is one that is sufficiently action-guiding for the relevant agents; i.e. sensitive to the relevant facts about the relevant agents.

ii. *Objective Circumstances Of Justice*. Claim (b) and (d) refer to general facts about the world, such as cultural diversity or the current international system of nation-states. These charges seem to embody more structural features, facts about the world relevant for the problem at hand. In this sense a conception of global justice is feasible insofar as it is sensitive to the relevant facts about the world.

Another distinction that has been made concerning the different feasibility charges is the one between *political feasibility* and the *feasibility condition in political theory*.¹²³ Feasibility in the political sense refers to the fact that a decision could be implemented into institutions in a foreseeable time-frame. While feasibility in political theory is concerned with “what one is justified in thinking about the moral status of ... institutions.” The idea of political feasibility is rather appealing to our common sense notion of feasibility. For a decision to be politically feasible one has to take into account budgetary, bureaucratic, institutional or socio-cultural constraints and people’s moral and political opinions (i.e. actual beliefs) that approve of or condemn institutional arrangements.

The feasibility condition in political theory is a different notion. As Raikka says,

¹²³ Juha Raikka, “The Feasibility Condition in Political Theory.” *Journal of Political Philosophy* 6 (1998): 27-40.

[e]ven if a political theory should recommend only institutional arrangements that are possible and practicable, it need not recommend institutional arrangements that are politically feasible as well.¹²⁴

Why is it so? Conceptually the distinction between the two is rather easy to prove. Take any political ideal (e.g. democracy, universal suffrage, abolition of slavery etc.) that at a certain point in history seemed very unlikely to be politically feasible and that have awaited centuries to be achieved in our social institutions. So, short-term political unfeasibility, what seems to be unrealizable in institutions here and now, does not mean that the normative idea is unfeasible. After all, it has proved to be feasible in the long run. What does feasibility of a normative idea mean, then? This feasibility in the normative sense is what this paper is concerned with.

Feasibility, in this sense, is a problem of what one ought to think about the subject matter of political theory. It is an ideal theory and what we are evaluating with feasibility is whether it is possible to achieve or not. When assessing whether an ideal is possible to achieve, we are concerned with the necessary costs of the change it would imply if it were implemented in our social arrangements. While the feasibility of a social policy (i.e. political feasibility) involves costs in economic terms, what is relevant for feasibility in political theory are the moral costs. One has to assess the “necessary moral costs of the changeover to the ideal world”¹²⁵ A feasible normative idea is based on a set of constraints one can reasonably assume about the society and its members, which are relevant to the problem at hand.

Raikka’s distinction draws on an intuition according to which the fact that some people, or even the majority, does not support (public opinion) an institutional scheme a political ideal would suggest, or that the means (resources, know-how) for

¹²⁴ Ibid. p. 28.

¹²⁵ Ibid. p. 33.

realizing such institutions are not available for the society, surely cannot disqualify a political ideal to be a normative yardstick steering social and political change. There are certain type of costs, such as the disapproval of public opinion, resources or know-how that constitute a feasibility constraints in the political sense. So what exactly makes a political ideal unfeasible in the theoretical sense? We might think of a political ideal, which, even if all the resources and means were available for a society to implement them tomorrow, it would not be able to attain the compliance of the relevant agents due to the unbearable moral costs it would impose on them.

4.2. Feasibility between Ideal and Non-Ideal Theory

Justification and feasibility are often thought of as separate concerns involved in two different levels of inquiry about justice: ideal and non-ideal theorizing. Ideal theory, at least in the Rawlsian sense, envisions a society in which all its members comply with the requirements of justice and in which the social-economic conditions are favorable. That is, the theorists makes certain idealizing assumptions concerning people's willingness and ability to comply with whatever principles of justice the theory yields, and concerning the resource base of the society as capable of supporting a variety of ways of life, neither being too scarce thereby rendering justice impossible, nor being too abundant, thereby making justice unnecessary. Constructing justice under these ideal circumstances facilitates systematic thinking towards the best set of social institutions we can hope for. This is, however, not all there is to reasoning about justice.

A theory of justice is thought of as a sequence, moving from ideal theory to non-ideal theory by relaxing the above idealizing assumptions, one-by-one, in order to face the real world challenges which set limits to the application of our principles articulated in the first phase of the theory. Insufficient human motivation and unfavorable social circumstances might constrain the potential application of our principles in institutions under non-ideal circumstances. These facts about persons and society can be referred to as 'motivational constraints' and 'resource constraints.' With a common term these might be called feasibility constraints on a theory of justice.

At first sight, it seems that while non-ideal theory is concerned with facts about the world and the sort of institutions that are possible, ideal theory is not. In other words, the problem of feasibility seems to be a secondary concern left aside for non-ideal theorizing. I seek to challenge this sharp distinction, by showing that there is one sense in which ideal theory is (and should) be concerned with facts. Rawls calls them permanent facts concerning human motivation and the historical circumstances of our society; they are likely to persist over time and can be considered as law-like elements of human societies. These permanent facts might be distinguished from what we might call the changeable facts; the kind of facts that a normative theory aims at changing or reforming.

For a better grasp of the distinction between permanent and changeable facts of our social world, consider the genuine dilemma for any normative theory. Principles of political morality aim at being action-guiding. This notion, however, contains the paradox of moral and political philosophy, insofar as acting and guiding require the theorist to endorse two different standpoints. On the one hand, political principles must be such that the relevant agents can be motivated to act upon them.

On the other hand, a normative point of view must provide a standard for moral and political criticism by setting the horizons for social change and moral progress. So the genuine dilemma is the following: How can principles of political morality appeal to, and be sufficiently action guiding for the relevant agents and, at the same time, formulate standards that challenge the boundaries of the practically possible?

Certain aspects of our social world are relevant in order for the theory to be action guiding, while other conditions of our social world are exactly what we need to be critically assessing. So, when assessing the social world one needs to discern which facts to account for as relevant constraints on the theory, and which ones to consider as an object of critical assessment and change. Permanent facts of persons and society are relevant for the action-guidingness of the theory, while changeable facts are the facts we can (or hope to) change. Discerning these different kinds of facts is a rather challenging task for any normative theory. Rawls, for example talks about certain limiting conditions or “historical conditions to which we should be reconciled,” such as the fact of reasonable pluralism, while political and social institutions are taken to be changeable.

This fact of reasonable pluralism limits what is practically possible here and now... [However] the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions and much else. Hence we have to rely on conjecture and speculation, arguing that the social world we envision is feasible and might actually exist ...¹²⁶

In constructing principles of justice, in ideal theory, we can (and should) already account for the permanent facts that make our philosophical enterprise more open to success when the action-guidingness of our principles is at stake. In this sense, feasibility becomes a relevant evaluative criterion for constructing principles of

¹²⁶ Rawls, *The Law of Peoples*, p. 17.

justice, and we will be looking at discerning the relevant facts to account for in our justificatory approach.

4.3. Feasibility between Justification and Application

Providing reasons for a justified conception of justice and for a feasible conception of justice are often thought of as independent theoretical enterprises. On the common view, justification is the normative enterprise explicating a coherent set of underlying reasons that support a principle from philosophical foundations, while feasibility is concerned with the problem of institutional design and policy-making, that is, the application of our justified political ideals under the circumstances of here and now. In this chapter I challenge this strict distinction by arguing that there is at least one sense in which feasibility becomes a relevant consideration in the justificatory enterprise itself. One can hold a normative theory of justification according to which an account of feasibility is a necessary requirement for properly justifying principles of justice. As I will argue it is, indeed, the preferred theory of justification for principles of justice. More specifically, an account of a feasible justification is something an egalitarian conception of justice cannot do without, in order for it to be

I examine the political turn in the Rawlsian theory of justice, in order to show that there are good reasons to endorse political justification as the appropriate form of justification for principles of justice. Some welcomed Rawls' restatement as 'epistemic humility,' or as well-founded 'epistemic restraint,' others rejected it as 'epistemic abstinence,' or liberal skepticism, while still others took it to be a move towards founding principles of justice on contingent facts qua facts alone. I try to

show that taking the ‘fact of reasonable pluralism’ (from here on pluralism) seriously neither amounts to founding principles of justice on contingent facts, nor is it a strategic move of a philosopher with a practical concern who endorses a certain conception of justice at home (as true) and promotes another conception of justice in public (as reasonable). I argue that pluralism is a relevant *feasibility constraint* on the justification of principles of justice. The concern with feasibility, i.e. with the potential success of his justificatory strategy, explains the political turn in the Rawlsian theory towards grounding principles of justice on political ideals embedded in public life. I argue that the political turn, which consists in bracketing controversial debates about moral truth, is neither a form of skepticism nor a political maneuver. What follows, I argue, is that the distinction between a justified conception of justice and a feasible conception of justice is not a matter of best and second-best. Rather the putative second-best status of a feasible conception of justice depends on how one understands the role of justice, the role of political philosophy, and the relevant notion of justification. Hence, depending on the normative theory of justification we offer, our putative second-best can, in turn, become the best we can hope for.

What does it mean for a conception of justice to be justified in the Rawlsian sense? On a common understanding we often take justification to be logical proof from correct premises to thereby correct conclusions. This is a first person perspective on justification in the sense of providing reasons for one’s conclusions in an attempt to appeal to the other. This notion of might be distinguished from justification as the potential acceptability of principles by whom the justification is addressed to. This is a second person perspective according to which a principle is justified insofar as the justification offered can be accepted or cannot be rejected by

the other. For a better grasp of these two distinct phases of justification, one might think of justification as an attempt to provide logically compelling grounds for a conception of justice, and acceptability as the successful practice of justification.

a.) justification as attempt concept: providing justification (first-person)

b.) justification as success concept: accepting justification (second-person)

The combination of the two leaves us a third option. Our first-person aim to justify our principles to others might attempt to account for the second-person perspective, thereby anticipating the potential success of justification.

c.) justification as a potential success concept: accounting for the relevant facts that potentially constrain the acceptability of principles ('could be accepted,' 'could not be rejected')

The Rawlsian notion of justification is the third notion of justification. I take this to be the most plausible philosophical account of what justification of principles should entail. As Rawls says,

justifying a conception of justice to someone is to give him proof of its principles from premises that we both accept, these principles having in turn consequences that match our considered judgments. Thus mere proof is not justification. ... proofs become justification once the starting points are mutually recognized¹²⁷

Attempt and success concepts of justification represent the two phases of one and the same justificatory strategy. A plausible justification cannot start from premises one merely takes to be true. As he says mere proof is no justification at all. In order for a justification to be plausible one has to account for why the premises we start from could be acceptable by those the justification is addressed to. While such justification cannot guarantee that the principles will, in fact, have consequences on our

¹²⁷ Rawls, *A Theory of Justice*, p. 508.

considered judgments, it can, at least, anticipate a potential success. This philosophical anticipation of the potential success of justification consists in an argument why we may think that the premises could be mutually recognized, hence our principles could be action-guiding for the relevant agents. Justification, in this sense, is not about guaranteeing that our arguments will be convincing for all. Justification as a potential success concept involves an account of the relevant facts that might constrain the acceptability of our principles. These are what I take to be the feasibility constraints on the justification of a conception of justice. If these constraints are not accounted for in the theory, then one can conclude from the theoretical standpoint that the justification provided will most likely fail. A plausible understanding of justification conveys not only the attempt, but also its potential success, by incorporating the relevant constraints in the justificatory strategy itself.

The concern with potential success in the application of principles and the stability of the institutions they lead to is widely referred to as “the feasibility issue” in political theory. While theorists are likely to raise the problem at the level of application and institutional design, I believe, it makes sense to talk about feasibility constraints at the justificatory phase of a theory of justice, thereby bringing the problem of feasibility back to ideal-theory. In this sense, one might distinguish between a feasible application and a feasible justification. A feasible justification requires an account of those permanent facts in society that apparently constrain the potential justifiability and acceptability of the proposed principles. While there is no guarantee that a justification which accounts for the limits of justifiability will in fact motivate people to act, it can nevertheless speculate its potential success, thereby contributing to a more probable success at the phase of application and institutional design. Feasible justification might not be all there is to a feasible conception of

justice; however, it seems to be a relevant first step and a task that surely remains within the realm of political philosophy.

CONCLUSION

In this doctoral dissertation I defended an institutional account of global egalitarianism and argued that its justification must be carried out on global public grounds, in order for it to be egalitarian in its justification and feasible in its application. The first theoretical task was to account for the theoretical essentials of a theory of distributive justice and defend an *institutional* or *practice dependent* approach to global egalitarianism.

Among the main philosophical challenges to global egalitarianism, I addressed the challenge from the *domestic scope thesis*, according to which duties of egalitarian distributive justice are confined to members of a nation-state due to the normative features underlying the scheme of domestic social and political institutions, the so called, *basic structure*. I discussed three different variants of this critique: 1.) the *bounded contribution view*, 2.) the *bounded constituency view* and 3.) the *bounded cooperation view*. I argue that none of these critiques warrant restricting the scope of justice to the domestic context.

As a third contribution, I made an inquiry into the appropriate form of justification a global egalitarian conception requires. Global egalitarianism has been most notably justified through an extension of Rawls' *A Theory of Justice*, by I have argued that global egalitarianism grounded in cosmopolitan ideals or comprehensive liberal commitments would fail to appeal to a global justificatory public, characterized by doctrinal and religious disagreements. I have argued that a global egalitarian conception of justice must rest on *global public* grounds.

Finally, I have addressed the *feasibility challenge* to global egalitarianism, according to which the normative ideal it promotes or the institutional scheme it

envisions is infeasible. Feasibility critics have challenged global egalitarianism at the level of application and institutional design. Conceptualizing the fact pluralism as a feasibility constraint on a theory of justice, I tried to show that part of the feasibility challenges can already be accounted for at the level of justification. I have argued that *public* justification is able to account for pluralism as a feasibility constraint, and brings a normative political ideal closer to a feasible ideal.

The main theoretical findings of this doctoral thesis suggest two directions of extension for future research. Firstly, I have argued that given global pluralism a plausible justification of global norms and institutions must rest on global public grounds. However, what global public culture and global political ideals consist in, and in what sense can we speak of a global public to whom such a political constructivist justification might be addressed to, remains highly contested. My planned research would involve a thorough conceptual analysis towards a constructivist account of global egalitarianism, as well as circumspect empirical research and analysis of global governance cases.

I would aim at developing a conception of global public justification that draws on fundamental norms and values embedded in global public culture. Some have argued that the global public culture is not robust enough to support an egalitarian account of global justice. This claim is plausible if one construes international norms in a legal-political institutional framework in which global egalitarianism would require a world government with a global constitution in place. However, the theory and practice of international normativity has proven to be much more sophisticated, involving an account of agency and social change within a multi-level institutional framework of governance networks. Global governance regimes, international treaties and institutions, *jus cogens* norms and customary law

underlying international court cases, global advocacy networks and movements, are only some of the many examples of international norms sufficiently recognized and observed by the relevant agents. For a circumspect analysis of the problem I would take on an interdisciplinary agenda and compare different accounts of the nature and the source of international norms. A comparative conceptual analysis between the ideas present in political philosophy, international law, international relations theory and European governance theories would be the appropriate approach towards a plausible account of global normativity and the requirements of global public justification.

Secondly, such a mature conceptual framework would allow me to work out concrete normative proposals for global governance cases, by applying the global public justificatory apparatus to global institutions and practices. One idea would be to demonstrate how egalitarianism in global health justice might be justified on global public grounds. Life-expectancy, one of the best indicators of average well-being for global comparative assessment, is among the goods most unequally distributed across the globe. Prominent scholars of global health justice, Thomas Pogge, Norman Daniels and Gillian Brock among others, have shown that specific international institutions and agreements significantly affect such a distribution, which calls for normative justification. By selecting a few model-cases, such as the problem of intellectual property rights on life-saving medicine or the bi-lateral agreements concerning the brain drain of health care workers, I would try to show how their moral assessment might be carried out drawing on relevant norms and values embedded in global public culture.

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