UNE REVUE MULTIDISCIPLINAIRE SUR LES ENJEUX NORMATIFS
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Les ateliers de l'éthique
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LE LIBÉRALISME POLITIQUE ET LE PLURALISME DES CONCEPTIONS DU JUSTE. JUSQU'OÙ PEUT ALLER LA TOLÉRANCE POLITIQUE ?[1]

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RÉSUMÉ

Cet article explore les conséquences pour le libéralisme politique de considérer l'existence d'un pluralisme raisonnable au sujet des différentes conceptions du juste. Comment une conception publique de la justice peut se développer malgré un désaccord raisonnable et profond sur les termes mêmes de cette justice ? En comparant le libertarisme, la justice comme équité et l'égalitarisme strict, il sera montré que les concepts fondamentaux de ces conceptions du juste sont essentiellement contestés. En guise de solution, deux conditions seront suggérées afin de faire en sorte que la conception publique de la justice en soit une de tolérance politique : premièrement, elle devra se baser sur une liste de droits minimaux reconnus par les différentes conceptions raisonnables du juste; et deuxièmement, si la conception publique de la justice a pour ambition de se développer au-delà du dénominateur commun, elle devra offrir des mesures compensatoires à ceux supportant des conceptions du juste plus restrictives. À certains égards, cette problématique et ces accommodements s'apparentent à ce qui est déjà proposé au sujet de multiculturalisme.

ABSTRACT

This paper explores the implications for political liberalism of acknowledging that there is a reasonable disagreement among competing conceptions of justice. How can a public conception of justice be designed while still respecting the views of those who strongly disagree with it ? By confronting libertarianism, justice as fairness, and strict egalitarianism, it will be claimed that the core concepts of theses theories are essentially contested. As a solution, two conditions will be suggested in order for the public conception of justice to be one of political toleration: first, it ought to be based on shared agreements with regards to minimal rights; secondly, if it wishes to go beyond that minimal baseline, those who support more restrictive conceptions should receive some compensation. In some aspects, this issue and its accommodations resemble the ones faced in the multicultural contexts.

> *In formulating such a conception [of justice], political liberalism applies the principle of toleration to philosophy itself.* (Rawls 2005, 9-10)

Le libéralisme politique de John Rawls s'est bâti en prenant acte du pluralisme, c'est-à-dire de l'irréductible diversité de doctrines religieuses, morales et philosophiques existant dans la société. La question politique fondamentale est alors de déterminer comment concevoir une société unie régie par des principes acceptables pour tous, considérant que les citoyens, libres, égaux, possédant un sens de la justice ainsi qu'une conception du bien qui leur est propre, ne partagent pas la même doctrine compréhensive du bien.

La solution proposée par Rawls, et qui constitue le cœur du libéralisme politique, est de développer une conception *politique* de la justice qui ne se prononce pas sur les questions métaphysiques et religieuses et qui reste indépendante de ces dernières. Autrement dit, cette conception doit rester confinée à la sphère politique et tenter de trouver des principes de justice acceptables pour tous. Grâce à ce processus, Rawls espère que la justice comme équité se démarquera des autres conceptions du juste.

Or, même l'idée de demeurer dans la sphère politique recèle de nombreux problèmes. Il existe après tout un pluralisme des conceptions du juste. Celles-ci se font compétition pour déterminer quels sont les principes publics de justice et sont généralement irréconciliables entre elles. Il devient alors difficile de juger laquelle est la plus juste et la plus légitime sans rapidement tomber dans des débats philosophiques et moraux que le libéralisme politique préfèrerait éviter, du moins autant que possible. De plus, il ne semble pas exister d'arbitre neutre pour trancher le débat.

Si une conception de la justice est publiquement établie[2], elle devra certes gagner la plus large adhésion possible, mais aussi trouver des raisons pour que ceux qui sont en désaccord raisonnable avec celle-ci puissent néanmoins l'accepter. Le pluralisme des conceptions du juste évoque donc l'idée de tolérance politique, et doit ainsi trouver des raisons à la tolérance mutuelle, malgré des désaccords profonds sur ce qui est juste.

Pour analyser ce problème, cet article se divise en trois parties. La première partie expose le pluralisme des conceptions raisonnables du juste, c'est-à-dire le fait qu'il existe plusieurs candidats raisonnables à la conception publique de la justice et que ceux-ci sont généralement incompatibles. L'égalitarisme strict ainsi que le libertarisme seront identifiés comme exemples de conceptions du juste concurrentes à la justice comme équité de Rawls. La deuxième partie élabore l'idée que les concepts centraux de la philosophie politique sont essentiellement contestés, ce qui signifie que plusieurs conceptions raisonnables du juste peuvent y faire référence de manière incommensurable tout en étant chacune convaincue de détenir la seule bonne interprétation. La troisième partie examine les solutions

à cette impasse, premièrement en critiquant la thèse de Gray (1978) selon laquelle il faudrait adopter une justice procédurale; deuxièmement en proposant de développer une conception de la justice par dénominateurs communs; troisièmement en étudiant la possibilité d'accorder des mesures compensatoires, voire un droit de sortie, à des minorités se sentant lésées par une conception publique de la justice voulant se développer au-delà de la justice par dénominateurs communs. Cette dernière sous-section se divisera elle-même en trois parties pour répondre aux problèmes suivants : une objection provenant des conceptions plus exigeantes du juste, l'éducation des enfants, puis les mesures compensatoires dans une société libertarienne.

La thèse centrale qui sera défendue est qu'étant donné le fait du pluralisme des conceptions raisonnables du juste, la conception publique de la justice doit, pour être légitime, accorder une place centrale à la tolérance politique envers les autres conceptions raisonnables du juste. C'est pourquoi, si elle se construit au-delà de la justice par dénominateurs communs, elle devrait accorder des mesures compensatoires. Ce recours à des mesures compensatoires s'apparente à ce qui existe déjà pour accommoder la diversité religieuse et culturelle.

1. LE FAIT DE LA PLURALITÉ DES CONCEPTIONS RAISONNABLES DU JUSTE

Rawls admet sans détour que différents candidats peuvent être considérés comme conception publique de la justice : "There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one." (Rawls 2005, 450) Il reconnaît que l'adoption de la justice comme équité, bien que moralement[3] souhaitable et politiquement légitime, demeure une question spéculative : "Whether justice as fairness (or some similar view) can gain the support of an overlapping consensus so defined is a speculative question." (Rawls 2005, 15)

En revanche, Rawls ne semble pas admettre de larges possibilités concernant d'autres candidats à la conception publique de la justice. Il restreint effectivement les choix, ou à tout le moins, se montre plutôt optimiste quant au type de conceptions qui pourraient être suggérées. Il faudrait donc étudier quelles seraient les conséquences théoriques si des conceptions encore plus différentes du juste étaient admises dans l'arène politique au sein du libéralisme politique. Pour la présente analyse, le libertarisme[4] et l'égalitarisme strict (qui n'admet pas le principe de différence) d'allégeance libérale seront considérés comme des candidats potentiels à la conception publique de la justice[5]. Ce choix n'est évidemment pas exhaustif, mais réussit à interpeler les deux extrémités idéologiques de la justice comme équité au sein de la grande famille libérale, bien que de nombreuses autres théories de la justice s'inscrivent dans ce spectre. Ces trois conceptions du juste devraient suffire à illustrer la complexité du problème qui sera étudié.

La condition essentielle pour qu'une conception du juste soit recevable est qu'elle soit raisonnable, ce qui signifie qu'elle puisse être partagée par des

citoyens conçus comme libres et égaux, et qu'elle ne présuppose pas de conception compréhensive particulière (Rawls 2005, 9-11 et 174-176). Ces conceptions doivent donc être *politiques* plutôt que compréhensives, et doivent potentiellement s'appliquer à tous les citoyens, sans discrimination. Cela écarte donc des conceptions du juste qui seraient hiérarchiques ou qui prôneraient une violence ou une discrimination à l'endroit de certains groupes.

Cette condition correspond au libéralisme politique – celui-ci n'exigeant pas tellement plus. En revanche, comme il a été dit, cela laisse encore de larges possibilités. La première question est de déterminer si des conceptions du juste comme l'égalitarisme strict et le libertarisme peuvent se qualifier « raisonnables ». Si oui, ces conceptions ne peuvent-elles pas être appréhendées comme candidates à la conception publique de la justice ?

Rawls ne semble pas penser que ce soit le cas du libertarisme. Outre le fait que cette théorie n'accorde pas d'importance aux moyens disponibles pour exercer sa liberté (voir §2.2.), elle n'est pas fondée sur l'idée d'un contrat social (Rawls 2005, 262-265), sans compter le problème des conditions initiales qui ne proviennent généralement pas d'une situation juste. De ce fait, le libertarisme peut conduire à des situations injustes si les institutions de base de la société ne sont pas guidées et réinitialisées par des principes de justice provenant d'une position originelle (Rawls 2005, 265-269). Ces arguments ont bien sûr leur mérite, mais négligent le fait qu'ils ne portent pas – ou peu – contre ceux partageant une conception complètement différente du juste. Du point de vue des libertariens, leur conception est parfaitement raisonnable en ce sens qu'elle peut être adoptée par n'importe qui (c'est-à-dire, peu importe la conception compréhensive des citoyens) et qu'elle considère tous les citoyens comme libres et égaux. Les partisans des autres conceptions du juste devraient alors expliquer que les libertariens ne comprennent pas bien le sens de *liberté* et d'*égalité*, mais comme il sera vu à la section §2.2., le problème est que ces concepts sont essentiellement contestés. À cause de cela, soutenir qu'une conception du juste est injuste ou inéquitable s'apparente toujours à une pétition de principe, car ces autres conceptions du juste définissent autrement ces mêmes termes politiques.

Quant à l'égalitarisme strict, Rawls ne formule pas d'arguments forts contre cette conception. Il semble plutôt présumer que la justice comme équité est plus réaliste et efficiente, tout en étant suffisante du point de vue de la justice. Or, du point de vue du libéralisme politique, rien n'exclut à priori la candidature d'un égalitarisme strict. Et du point de vue de cette conception en question, c'est plutôt la justice comme équité et les autres conceptions du juste qui se révèlent insatisfaisantes et injustes. Les égalitaristes ont des arguments forts contre les autres conceptions du juste, de sorte qu'il devient nécessaire de trouver des arguments politiques de tolérance pour que ceux-ci acceptent de vivre dans une société qui n'endosse pas leurs principes.

Il est important de comprendre que le libertarisme et l'égalitarisme strict n'ont pas à être compréhensifs : ils peuvent aussi être appréhendés par une panoplie de

conceptions compréhensives du bien, et ce, pour différentes raisons. Le libéralisme politique pourrait adopter leurs principes sans se prononcer sur leur statut philosophique et sur leur vérité, et donc se présenter simplement comme une conception politique. Par exemple, la notion de propriété de soi peut être affirmée politiquement (notamment par une liste de droits négatifs et de droits à la propriété privée), sans rien exiger de particulier pour la sphère privée ni sur la manière dont cette idée doit philosophiquement être interprétée par les différents citoyens; l'égalitarisme strict peut aussi bien être conçu dans une doctrine chrétienne que dans une doctrine humaniste ou purement politique. Dans tous les cas, les différentes conceptions raisonnables du juste devront se prononcer en respectant l'idée de la raison publique, et à ce moment, elles seront accessibles pour toutes les conceptions compréhensives du bien.

Si le libéralisme politique reconnaît un pluralisme des conceptions raisonnables du juste, il ne peut légitimement en écarter une à priori, tant que celles-ci restent raisonnables. Comme le libertarisme et l'égalitarisme strict entérinent une conception de l'égalité et de la liberté, il semble que ces doctrines doivent être accueillies comme candidates à la conception publique de la justice. Certes, de nombreux débats font rage au sujet de savoir quelle est la théorie la plus juste, ou même de savoir si les autres sont réellement justes. Ces débats ont lieu d'être et doivent être poursuivis. Par contre, le libéralisme politique en lui-même peut difficilement trancher sur ces enjeux et ne peut se prononcer sur la question de savoir laquelle serait la plus appropriée pour façonner ses institutions. Étant donné ce pluralisme, il n'est pas sûr que le consensus par recoupement puisse refléter des interprétations qui seraient précises et satisfaisantes pour tous :

> the concept of an "overlapping consensus" may be tought to base the possibility of democracy on already existing agreements and antecedently shared values. […] However, there is no reason to believe that such a basis would be sufficient for a "political" conception of justice in complex and diverse modern societies. […] Moreover, even if there is an overlapping consensus about certain moral values, conflicts of principle about disputed issues are still possible. (Bohman 1995, 254)

2. LES CONCEPTS POLITIQUES SONT-ILS ESSENTIELLEMENT CONTESTÉS ?

2.1. Le concept de concepts essentiellement contestés

La notion de concepts essentiellement contestés (*essentially contested concepts*) a été avancée par Gallié (1955). Elle s'applique à des concepts qui sont à ce point débattus que le débat sur leur définition ne semble pas pouvoir être réglé par des arguments, des démonstrations ou des preuves, car chaque parti, malgré la reconnaissance du caractère contesté du concept, continue ardemment à défendre son point et à demeurer parfaitement convaincu d'avoir raison (Gallié 1955, 169 et 172)[6, 7]. Gallié a suggéré sept critères et éléments pour identifier de tels concepts : l'appréciativité (*appraisiveness*), la complexité interne, la descripti-

vité diverse (*diverse describability*), l'ouverture (*openness*), la reconnaissance réciproque (*reciprocal recognition*), l'utilisation d'exemplaires (*exemplars*) et la compétition continuelle (*progressive competition*).

Depuis, plusieurs débats se sont consacrés à cette notion : certains commentateurs ne sont pas d'accord avec tous les critères, d'autres craignent que cela aboutisse à un relativisme conceptuel, voire radical et qui risque, de surcroît, d'être autocontradictoire (Gray 1977, 338 et 341-343).

Il est bien sûr insuffisant de montrer que la définition du concept en question est contestée, ou qu'elle est contestable. Il faut montrer que le différend conceptuel est à ce point profond qu'il ne semble pas possible de pouvoir le régler de manière objective (Gray 1977, 338-339). Certains commentateurs pensent que cette contestabilité essentielle s'explique pour des raisons normatives, donc par des différences de perspectives axiologiques. Cela semble particulièrement approprié au sujet de concepts sociaux et politiques.

Pour les besoins de notre problématique, il semble que l'analyse de Collier, Hidalgo et Maciuceanu (2006) soit la plus pertinente. Plutôt que de rechercher une conception définitive des concepts essentiellement contestés, il vaut mieux se servir de cette notion pour mieux analyser les débats conceptuels et peut-être comprendre pourquoi ils ne semblent pas aboutir à des accords :

> it appears more productive to label Gallie's set of ideas as an analytic framework—i.e. a set of interrelated criteria that serve to illuminate important problems in understanding and analyzing concepts. […] Like any framework or schematization, it should probably be judged by its overall utility […] (Collier, Hidalgo et Maciuceanu 2006, 215)

Cette interprétation est d'autant plus appropriée que, du point de vue du libéralisme politique, ce débat autour du statut du concept de concepts essentiellement contestés doit être accueilli différemment. Le libéralisme politique ne s'intéresse pas à la vérité de ces questions (qu'elles portent sur le statut de la notion ou sur les potentiels concepts essentiellement contestés), il ne recherche donc pas à déterminer quel parti a raison. Il cherche plutôt à comprendre ce que ces notions impliquent sur le plan politique, voire pratique. La notion de concepts essentiellement contestés peut donc avoir son utilité dans la question du pluralisme des conceptions du juste, car elle met en lumière le fait qu'au-delà des divergences sur des perspectives normatives et idéologiques, ce sont des problèmes conceptuels qui empêchent parfois la construction d'une conception publique de la justice[8]. Comme il est montré dans la section suivante (§2.2), un même concept se voit mobilisé par les multiples conceptions raisonnables du juste, et chacun lui prête une définition différente. Les concepts politiques pourraient être essentiellement contestés en ce sens que chacune des acceptions semble légitime du point de vue d'une conception particulière et raisonnable du juste.

2.2. Les concepts des conceptions raisonnables du juste

Si les concepts politiques mobilisés par le libéralisme politique s'avèrent essentiellement contestés, cela pose un problème à l'édification de cette théorie qui a pour motif de ne pas se prononcer sur des enjeux philosophiques et métaphysiques. Même parmi les conceptions raisonnables du juste, un différend assez important pourrait miner la possibilité d'établir une conception publique de la justice acceptable par tous. En d'autres mots, les définitions des concepts fondamentaux du libéralisme sont loin de faire consensus chez les auteurs libéraux. Il convient maintenant d'étudier ce caractère essentiellement contesté de certains des concepts centraux du libéralisme, soit les concepts de liberté et d'égalité.

Gray (1978, 385-388) consacre quelques pages au sujet du caractère contesté du concept de liberté. Par exemple, il existe une approche restrictiviste de la liberté, préconisée par Oppenheim, ainsi que la liberté négative défendue par Berlin qui l'oppose à la liberté positive (cette dernière étant à son tour définie de manières très diverses). Par ailleurs, Gray aurait pu introduire d'autres définitions de la liberté, comme celle des néorépublicains qui la conçoivent en tant que non-domination. Ainsi, lorsqu'une conception du juste prône la valeur de la liberté, comment la conception publique de la justice doit-elle l'interpréter ?

Selon Rawls, une conception de la justice ne devrait pas uniquement contenir le concept formel des différentes libertés, mais devrait également fournir les moyens pour faire un usage effectif de ces libertés, sans quoi elles perdent leur sens (Rawls 2005, 324-331; Wenar 2012, 3.4). Cependant, cette critique présuppose une définition de la liberté contre une autre définition, ce qui est le propre d'un concept essentiellement contesté. La définition libertarienne n'en est pas pour autant réfutée, car si la liberté est entendue comme non-intervention, il est difficile d'imaginer comment elle pourrait être purement formelle. Un libertarien se sent libre lorsque personne ne le force à faire quelque chose, et ce, même si ses options se voient arbitrairement réduites par les autres ou lorsqu'il n'a pas les moyens d'exercer ce qu'il veut – s'il pense le contraire, alors il n'est plus libertarien. Il y a sans doute des raisons de trouver cette idée étrange et repoussante, mais elle n'est pas incohérente pour autant.

Le concept d'égalité, central dans le premier principe de la justice comme équité, se voit aussi l'objet de vifs débats[9]. Faut-il parler d'égalité de considération des intérêts, comme les utilitaristes en général ? d'égalité de bien-être, comme le défendent entre autres les partisans de l'utilitarisme moyen ? d'égalité de ressources, comme un libéral semblable à Dworkin ? d'égalité d'accès aux avantages, comme le défend Cohen ? d'égalité de biens sociaux premiers, comme le voudrait Rawls ? ou d'égalité des capabilités, comme le pense Sen ? Même les libertariens revendiquent l'égalité, mais qui se réduit strictement à celle des droits négatifs. Si le concept paraît fondamental et indispensable aux conceptions du juste, son acception est loin de faire consensus, et il devient difficile de trancher le débat sans faire violence aux autres conceptions raisonnables du juste. Répondre à la définition semble nécessairement exiger que l'on adopte une conception du juste particulière.

De manière plus problématique, la notion même de ce qui est politique pourrait être essentiellement contestée (Gray 1978, 393-394). À certains égards, les marxistes tendent à croire que tout est politique, et qu'en ce sens, la distinction entre la sphère publique et la sphère privée pourrait être plutôt mince, voire inexistante. Pour des fins de simplicité, nous continuerons, dans cet article, de supposer que le domaine relatif au politique – sujet à la conception publique de la justice – n'est pas controversé, sans quoi l'intérêt porté au libéralisme politique risque de perdre tout son sens.

Plusieurs autres concepts politiques (comme ceux de la responsabilité, du mérite, des besoins, de la coercition, de la punition, etc.) pourraient être soumis à cette même analyse, sans oublier les concepts mêmes de libéralisme (après tout, les libertariens s'autoproclament parfois comme les *vrais* libéraux) et de justice. Heureusement, le qualificatif « raisonnable » semble un peu moins contesté puisque les différentes conceptions du juste qui sont ici étudiées peuvent s'entendre sur cette condition.

Bref, le fait que les concepts politiques soient essentiellement contestés illustre la difficulté de se prononcer sur la conception publique de la justice sans adopter une conception particulière du juste :

> [...] any application of a specific conception of freedom[10] [...] involves taking sides in controversial areas of social thought on issues about what is structurally necessary in a given society and what contingent, and about where responsibility is to be located for the ultimate consequences of particular policies. (Gray 1978, 387)

Qui plus est, le problème ne concerne pas uniquement le fait que ces concepts politiques sont essentiellement contestés, mais aussi que leur utilisation présuppose généralement une série d'autres concepts tout aussi controversés :

> […] such concepts are articulated in patterns of reasoning which have a distinctively philosophical character. Any use of an essentially contested concept, then, involves assent to definite uses of a whole range of contextually related concepts of a no less contestable character. Since these uses typically cohere to form a single recognizable world-view that is intelligibly connected with specific forms of social life, I conjecture that essentially contested concepts occur characteristically in social contexts which are recognizably those of an ideological dispute. (Gray 1977, 332-333)

Autrement dit, ces concepts sont rarement isolément contestés. Il devient donc difficile d'appréhender l'objet du politique et des attentes envers la justice sans se heurter à une panoplie de concepts étant aussi essentiellement contestés. Au risque de se répéter, il devient surtout difficile d'aborder le problème de la construction de la conception publique de la justice sans adopter une conception du juste déjà essentiellement contestée. Et le libéralisme politique ne peut pas,

par lui-même, déterminer quelle est la bonne définition, car il ne doit pas se prononcer sur des problèmes philosophiques. Il devient donc inévitable d'admettre ce pluralisme des conceptions raisonnables du juste comme un fait indépassable.

3. LA TOLÉRANCE POLITIQUE

À partir de ce constat, le défi est d'imaginer la cohabitation politique et la mutuelle acceptation de règles pour le vivre-ensemble, alors qu'une diversité de conceptions raisonnables du juste se distingue fondamentalement. Est-il possible de fonder une conception publique de la justice sous ces conditions ? Premièrement, la solution proposée par Gray d'adopter une justice procédurale sera critiquée. Deuxièmement, la position voulant que la conception publique de la justice doive se développer par une justice minimale des dénominateurs communs sera suggérée. Troisièmement, l'idée d'accorder des mesures de compensation dans les cas où la conception publique de la justice pourrait aller au-delà de la justice minimale sera étayée.

3.1. Au-delà de la justice procédurale

Selon Gray (1977), le fait de reconnaître que les concepts politiques sont essentiellement contestés implique que nous abandonnions la prétention d'aboutir à un absolutisme et que nous endossions ainsi un pluralisme moral et épistémologique : "For if none of the rival uses of our basic concepts can be logically privileged over any other, are we not all but committed to tolerance of diversity, and to the project of promoting a mutual and interminable conceptual enrichment through maintaining permanent dialogue ?" (Gray 1977, 335) Pour l'instant, cette proposition est cohérente avec l'esprit du libéralisme politique de Rawls; Gray (1977, 336) parle même explicitement d'un libéralisme pluraliste[11].

Cependant, dans son article de 1978, Gray va plus loin sur le plan normatif et pense que le fait que les concepts politiques soient essentiellement contestés conduit à l'adoption d'une justice procédurale (Gray 1978, 399-402). Malheureusement, il donne peu de détails sur la question de savoir quelles seraient les modalités d'une telle justice[12], mais il est déjà possible d'examiner cette idée en reprenant certaines critiques que Rawls (2005, 421-433) formule à l'endroit de la justice procédurale en général.

La justice procédurale se préoccupe, comme son nom l'indique, des procédures, plus précisément du processus de légitimation des lois et des politiques, tandis qu'une justice substantielle s'intéresse surtout au résultat (*outcome*). En un certain sens, la première recherche les qualités d'équité, d'impartialité et de neutralité en un sens formel, alors que la seconde conçoit ces dernières sous le regard d'une conception de la justice particulière (voir plus bas). Des exemples de procédures seraient un vote (à majorité simple, ou selon d'autres modalités), un tirage au sort, une rotation des décisions, et dans tous les cas, la décision peut porter directement sur le sujet litigieux ou sur le choix d'un représentant (ou une assemblée de représentants) devant débattre du choix à arrêter. De nombreuses autres procédures peuvent exister, mais de manière générale, les procédures démocratiques sont les plus représentatives des défenseurs de la justice procédurale.

Cependant, la justice procédurale présente quelques problèmes importants. Premièrement, il n'est pas garanti à priori qu'elle parviendrait à écarter des conceptions non raisonnables. Or, le libéralisme politique ne doit accepter que les conceptions considérant que tous les citoyens sont libres et égaux. Si des limites sont ainsi imposées aux procédures permises, alors des éléments de justice substantielle sont intégrés. Deuxièmement, le choix des procédures a un caractère arbitraire puisque différentes procédures peuvent être établies et mener à des résultats différents; faut-il alors penser que tous ces résultats sont également justes ? Sinon, quelle doit être la procédure ? Si celle-ci n'est pas fixée à priori, quelle doit être la procédure pour déterminer quelle procédure il faudrait justement adopter ? Ce problème est vulnérable à une régression à l'infini et risque toujours l'arbitraire. Troisièmement, il est difficile de voir la justice procédurale autrement que comme un *modus vivendi*, c'est-à-dire un certain point d'équilibre visant à étouffer des hostilités ou des tensions sociales, n'ayant donc qu'une fonction instrumentale et contingente. Le problème, ici, est que cela mine la stabilité de la communauté politique à long terme, car si l'un des partis a un avantage à violer la justice, il le fera, alors que dans la formation d'une conception politique de la justice, le citoyen s'y reconnaît moralement beaucoup plus grâce au consensus par recoupement (Rawls 2005, 147-149). Quatrièmement, même certains théoriciens défendant la justice procédurale, comme Habermas, finissent par intégrer des éléments substantiels, ce qui révèle que son élaboration théorique paraît plutôt difficile sans tomber dans une justice plus substantielle. Cinquièmement, respecter les procédures peut rendre le processus légitime, mais cela ne le rend pas *juste* pour autant[13]. Ce sont les conceptions du juste qui informent cette dernière.

Ces critiques ne s'adressent pas nécessairement toutes à la justice procédurale qu'adopterait Gray, mais suffisent à illustrer les limites d'une approche exclusivement procédurale. En revanche, il est vrai que de telles approches sont rares, car la plupart des défenseurs de la justice procédurale acceptent que des principes substantiels doivent être admis au préalable et insistent plutôt sur l'idée que les procédures doivent être instaurées sur certains types de désaccord. En d'autres mots, la question des procédures devient éventuellement incontournable. Concernant le problème du pluralisme des conceptions raisonnables du juste, le défi sera de trouver des procédures tolérantes de mise en place d'une conception publique de la justice qui puissent s'avérer légitimes pour le plus grand nombre de citoyens.

Par ailleurs, abandonner la justice exclusivement procédurale ne signifie pas que la justice plus substantielle ne serait pas neutre. Rawls (2005, 190-195) explique bien qu'il existe plusieurs acceptions de la neutralité[14]. Outre la neutralité procédurale, il existe aussi la neutralité des buts et la neutralité des effets. La neutralité des buts concerne le fait d'offrir à toutes les conceptions raisonnables (du bien, chez Rawls) la possibilité d'être poursuivies, alors que la neutralité des effets concerne le fait que les résultats des politiques publiques n'affectent pas plus des conceptions raisonnables particulières que d'autres. Cependant, la neutralité des effets n'est pas envisageable, car il est à peu près impossible de pré-

voir et d'empêcher les effets des politiques publiques sur les différentes conceptions du bien (ou du juste) – il s'agit, selon Rawls, d'un fait évident de sociologie politique. Une conception publique de la justice pourrait donc être dite neutre en adoptant la neutralité des buts, celle-ci n'avantageant en principe aucune conception particulière au détriment des autres.

3.2. La construction de la justice au sein d'un pluralisme des conceptions du juste

Comment instituer une conception publique de la justice qui soit *unifiée* et en même temps *tolérante* à l'égard de la diversité des conceptions raisonnables du juste ? Aucune conception raisonnable du juste ne peut prétendre à être adoptée publiquement tout en ignorant les revendications des autres conceptions. De la même manière que les citoyens du libéralisme politique doivent, en tant qu'agents raisonnables, reconnaître que différentes doctrines compréhensives du bien peuvent être raisonnables et doivent être tolérées comme telles, les citoyens doivent reconnaître le fait du pluralisme des conceptions raisonnables du juste. Un certain compromis sera nécessaire si l'on veut éviter une vacuité de la justice publique ou l'impossibilité du politique. Ce compromis devra certes être construit à l'aide d'une certaine procédure, mais devra aussi contenir des éléments substantiels. Il faut alors concevoir la justice comme un projet en éternelle construction, comme un *work in progress*. La méthode proposée ici sera développée en trois temps.

Premièrement, il va de soi qu'il est nécessaire d'écarter les conceptions du juste qui ne seraient pas raisonnables. Cela correspond à la condition essentielle du libéralisme. Seules les conceptions *raisonnables* du juste peuvent être accueillies dans la construction de la conception publique de la justice, sans quoi celle-ci ne serait pas tolérante.

Deuxièmement, il faut vérifier si des affinités existent entre les différentes conceptions raisonnables du juste, malgré le fait que leurs concepts soient essentiellement contestés. En d'autres mots, il faudra élaborer une justice par dénominateurs communs, c'est-à-dire qui recherche les principes et libertés consensuels parmi les différentes conceptions raisonnables du juste. Il est probable que cela mène à un accord sur une liste de droits négatifs et de libertés fondamentales négatives dont tous les citoyens jouiront de manière égale. Par exemple, les libertés d'association, d'expression et de conscience devraient être facilement assurées, en plus des droits fondamentaux. Il n'y a rien de novateur à propos de cette idée. Ce faisant, le libéralisme politique ne devrait pas seulement se restreindre à la sphère politique, il devra aussi se contenter d'être *pratique*. Il devra accorder des libertés et des droits fondamentaux sans présupposer quel est leur véritable conception ou fondement. En ce sens, il devra tenter d'outrepasser le caractère essentiellement contesté des concepts en insistant seulement sur leur valeur pratique, et non sur leur acception. Un consensus par recoupement devrait permettre aux différents citoyens d'accepter ces principes malgré leur conception particulière du juste et des termes politiques[15].

Un problème se pose cependant à l'emploi de l'idée des dénominateurs communs : il pourrait être objecté qu'elle contredit la notion de concepts essentiellement contestés. Comment peut-on penser un accord alors que les définitions des concepts sont essentiellement contestées ? Pour répondre à ce problème, il faut insister sur le caractère pratique de ces concepts. Entre autres, l'espoir est de pouvoir graduer de manière linéaire les différentes acceptations d'un concept de manière à ce que certains disent qu'il est insuffisant et d'autres trop exigeant. Ainsi, ceux disant qu'une définition particulière est « insuffisante » ne rejettent pas en bloc les idées déjà inscrites. Par exemple, au sujet de la liberté, rares sont ceux qui sont en désaccord avec la liberté comme non-intervention. Ils croient plutôt que la liberté représente plus que cela, comme avoir la possibilité de réaliser quelque chose – ils estiment même qu'il est *injuste* de s'en tenir à de tels droits négatifs et de négliger les autres droits, comme les droits socioéconomiques. Quoi qu'il en soit, comme il a été dit, ces dénominateurs communs ne doivent pas être recherchés sur la définition des concepts, mais plutôt sur leurs implications pratiques.

Une difficulté plus importante concerne la possibilité d'équilibrer les libertés entre elles, comme le veut Rawls (2005, 324-368)[16]. Cet équilibre ou cette restriction de certaines libertés pourrait se voir contesté par certaines conceptions raisonnables du juste. En effet, la justice comme équité ainsi que d'autres conceptions raisonnables du juste conçoivent que les libertés peuvent se limiter (les unes vis-à-vis les autres et aussi entre elles-mêmes) afin d'assurer une égalité réelle entre les citoyens et réduire les contingences des rapports de force. Or, les libertariens ne seront évidemment pas d'accord avec cette justification et soutiendront que n'importe quelle limitation d'une liberté exigerait un usage illégitime du pouvoir étatique. Si la conception publique de la justice se construit simplement par dénominateurs communs, elle risque de toujours donner raison à ceux ayant des conceptions du juste plus restrictives, et ne fera pas preuve de tolérance à l'égard des autres conceptions, qui y verront de l'injustice. Est-ce que ce problème devrait être accepté comme un fait insurmontable ou est-ce que les autres citoyens peuvent nourrir l'espoir de construire publiquement leur justice ?

Ainsi, troisièmement, la conception publique de la justice pourrait se construire au-delà de la justice minimale par dénominateurs communs, *à condition qu'elle offre compensation* à ceux ayant une conception raisonnable du juste plus restrictive, sans quoi ces derniers ne seraient pas tolérés. La section §3.3. analysera quelles modalités de mesures de compensation seraient possibles, et quelles difficultés elles engendreraient. Mais théoriquement, il semble que cela soit cohérent.

De manière générale, le plus grand différend entre ces multiples conceptions raisonnables du juste se situera au niveau de la justice distributive. Si la conception publique de la justice ne s'en tient qu'aux dénominateurs communs, sans doute il n'y aurait pas du tout de distribution. Le risque est donc qu'elle soit très conservatrice, c'est-à-dire difficile à faire évoluer. Cela implique que le fardeau

de la preuve repose sur ceux endossant des principes plus exigeants, et ceux-ci, même majoritaires, ne peuvent malheureusement pas imposer leurs vues, sans quoi ils ne seraient plus libéraux :

> [the citizens] will readily acknowledge the practical impossibility of reaching agreement on the nature and weighting of distributive principles embodying concepts whose application is inherently disputable—concepts such as need, desert and merit—and the implementation of which demonstrably subverts the liberal order. (Gray 1978, 401)

Par contre, ils ont quand même le droit de développer une conception publique de la justice plus près de la leur, à condition d'offrir des compensations aux autres. De cette manière, la conception publique de la justice n'est plus imposée. De plus, ils s'assurent de respecter la neutralité des buts, car une telle conception publique de la justice, allant au-delà de la justice minimale, ne désavantage pas les conceptions raisonnables du juste plus restrictives si elle leur permet d'être poursuivies par le recours à des compensations.

Cette construction publique de la justice par dénominateurs communs et par compensation repose aussi sur un argument pratique, car elle vise à rendre possible la mise en commun de conceptions extrêmement divergentes. Son objet ne consiste pas à régler les controverses au sujet des concepts essentiellement contestés (le libéralisme politique ne devant pas se prononcer sur leur vérité), mais plutôt à accueillir les propositions des partis de manière à forger des principes de justice qui soient tolérants. La conception publique de la justice n'exprime pas quelle conception raisonnable du juste est la meilleure ni quelle est la plus juste : au contraire, elle est simplement construite *politiquement*, et non philosophiquement et métaphysiquement.

Elle n'impose pas non plus de résultat prédéfini, car celui-ci dépendra beaucoup des groupes sociaux qui composent la société et du progrès des débats de justice internes à la société (voir ci-contre, §3.3.1.), et variera en fonction de ceux-ci, d'une société à l'autre. L'essentiel est que cette conception publique de la justice reflète un équilibre découlant des conceptions raisonnables du juste d'une bonne partie des citoyens : "It is part of citizen's sense of themselves, not only collectively but also individually, to recognize political authority as deriving from them and that they are responsible for what it does it their name." (Rawls 2005, 431)[17] Bien sûr, personne ne sera totalement satisfait et ne s'y reconnaitra parfaitement, sauf que la conception publique de la justice reflètera aussi le compromis politique que la mise en commun des différentes conceptions raisonnables du juste permettra de dégager. Et cette conception publique sera raisonnable du fait qu'elle reconnaîtra d'emblée que plusieurs autres conceptions sont admissibles et méritent d'être entendues pour son élaboration.

En d'autres mots, comme il a été dit, cette conception publique de la justice en sera essentiellement une de *tolérance politique*, entendue en un sens très radical. En effet, le concept de tolérance présuppose le fait d'être en désaccord ou

d'être dérangé par la chose tolérée, mais il implique aussi d'avoir une raison supérieure pour ne pas intervenir envers cette chose désapprouvée (Cohen 2004)[18]. Dans ce cas-ci, la raison supérieure représente le désir de forger une société où les citoyens pourront coopérer socialement et s'épanouir respectivement, en dépit de leurs désaccords profonds, néanmoins compréhensibles et raisonnables. En ce sens, la conception publique de la justice ainsi construite n'est pas un *modus vivendi :* elle ne se contente pas de rechercher un équilibre social et contingent, mais reconnaît plutôt l'importance de respecter le pluralisme raisonnable des différentes conceptions du juste.

3.3. La question des mesures de compensation

Il a été proposé que si la conception publique de la justice a pour ambition d'aller plus loin que la justice par dénominateurs communs, cela peut être légitime à condition qu'elle offre compensation à ceux ayant des conceptions raisonnables du juste plus restrictives et qui s'estiment lésés par des mesures publiques plus exigeantes. Cela pourrait être le cas des libertariens qui croient fortement, entre autres, que les impôts constituent une forme de vol. Pour respecter leur liberté de conscience et faire preuve de tolérance, la société pourrait leur proposer une compensation.

Or, ces mesures de compensation doivent être minutieusement étudiées pour éviter le *free-riding*; par exemple, il serait facile pour un riche de prétexter une idéologie libertarienne afin d'accéder à une forme d'évasion fiscale légalement masquée en mesures compensatoires. Ainsi, si de telles mesures sont autorisées, elles doivent impliquer un coût, c'est-à-dire que les individus y ayant recours perdraient plusieurs des privilèges offerts par la vie en société[19] ; cela pourrait mener à un droit de sortie, voire plutôt une *exigence* de sortie, lorsque trop de compensations sont requises. Si des ex-citoyens veulent ensuite faire affaire ponctuellement avec la société, des frais de douanes, en quelque sorte, pourraient être imposés[20].

Évidemment, de telles mesures s'avèrent extrêmement délicates et épineuses, mais sont pourtant analogues aux problèmes de la coexistence de la diversité religieuse et culturelle, et les solutions à l'endroit du pluralisme des conceptions du juste peuvent s'apparenter aux mesures d'accommodements raisonnables (religieux ou culturels)[21]. Le défi consiste à développer des accommodements propres à répondre aux divergences idéologiques respectives, donc aux torts subis par ceux qui se sentent brimés par certaines mesures des institutions de la société.

Par contre, il est important que l'accessibilité aux mesures compensatoires soit possible à condition que de telles mesures ne minent pas les avantages de la vie en société pour les autres[22]. Autrement dit, elles ne doivent pas déséquilibrer la stabilité et la pérennité des communautés politiques justement constituées et devront sans doute, par conséquent, demeurer aussi marginales que possible. Heureusement, si la psychologie morale que développe Rawls (2005, 81-86 et 140-142) est vraie, des institutions justes sauront engendrer des citoyens dont le

sens de la justice se conforme à de telles institutions; si une société parvient à mettre en œuvre des principes justes de coopération sociale, les citoyens se développeront en adéquation avec ceux-ci et sauront reconnaître les mérites d'un tel système, de sorte que ceux qui ne s'accordent pas avec ces principes devraient, par spéculation, demeurer marginaux. Cette hypothèse pourrait être aussi vraie, même dans un cadre de pluralisme des conceptions du juste raisonnables.

Trois problèmes plus particuliers méritent maintenant d'être abordés à l'égard des mesures de compensation, si celles-ci sont acceptées : comment répondre aux objections des conceptions raisonnables du juste plus exigeantes ? Comment déterminer l'éducation des enfants et comment se conçoivent les conceptions raisonnables du juste au sein d'une société à prédominance libertarienne ?

3.3.1. L'objection des autres conceptions du juste

Est-ce que de telles mesures de compensation pourraient être contestées par les partisans d'une justice plus exigeante ? Comment justifier que des individus jouissent de certains bienfaits de la vie en société sans en payer un quelconque coût, et ce, par simple choix idéologique ? Même si les libertariens se séparent de la société et forment des communautés comme celles des Amish, ils profiteront encore des mesures étatiques telles que la protection du territoire, mais aussi du développement scientifique et technologique en partie financé publiquement. De manière plus générale, pourquoi la construction publique de la justice doit-elle privilégier les plus laxistes, et non accorder le bénéfice du doute aux conceptions raisonnables du juste plus généreuses ? Est-ce qu'accorder des exceptions aux principes publics de justice ne rend pas ceux-ci à la fois injustes et à la fois plus vulnérables, car moins efficaces ?

La réponse se trouvera en partie en rappelant le problème qui a émergé : les objections des conceptions raisonnables du juste plus exigeantes seront sans doute formulées en des termes étant essentiellement contestés. Si les partisans de ces conceptions reconnaissent le pluralisme des conceptions raisonnables du juste, ils ne peuvent alors pas imposer leur version de la justice (ce qui serait le cas si ce n'était que la majorité qui décidait), sans quoi ils ne seraient plus raisonnables eux-mêmes. Plutôt, la construction de la conception publique de la justice doit être réalisée en respectant les avis dissidents lorsque ceux-ci découlent d'un désaccord sincère et profond.

> Rather, justification is addressed to others who disagree with us, and therefore it must always proceed from some consensus, that is, from premises that we and others publicly recognize as true; or better, publicly recognize as acceptable to us for the purpose of establishing a working agreement on the fundamental questions of justice. It goes without saying that this agreement must be informed and uncoerced, and reached by citizens in ways consistent with their being viewed as free and equal persons. (Rawls 1985, 229-230)

Or, s'il n'est pas possible d'atteindre un consensus plus étendu qu'une liste de droits négatifs, force est d'admettre que les mesures de compensation sont peut-être le dernier recours pour construire une structure de base de société plus exigeante qui ne viole plus la conscience des citoyens partageant une conception raisonnable de la justice plus restrictive.

L'espoir des partisans de conceptions raisonnables plus exigeantes du juste consiste donc à *convaincre* les autres du bienfondé de leur approche, et plus ils réussiront à convaincre leurs concitoyens, plus la conception publique de la justice pourra s'élever au-delà de la justice minimale. La construction de la justice ne peut pas se faire sans les plus réticents[23] (à moins d'offrir des mesures compensatoires) et doit par conséquent miser sur les débats sociaux, le partage d'opinions et l'éducation civique pour tous. La réflexion philosophique ne précède pas l'édification de la justice, mais au contraire se doit d'accompagner celle-ci, et de n'écarter personne. Cette réflexion philosophique devient ainsi un élément central du libéralisme politique en tant qu'idéal ou idée du bien tout à fait nécessaire à l'équilibre et au bon fonctionnement de la société. Dans la construction de la conception publique de la justice, tout le monde est égal[24], et c'est dans leur for intérieur, en exerçant leur pouvoir moral du sens de la justice, que chaque citoyen devra être convaincu. Sans quoi, ils ne seraient pas réellement tolérés.

Une autre objection sérieuse serait d'avancer que le projet d'accorder des mesures de compensation risque de miner trop sérieusement l'unité de la société et la nécessité d'avoir des principes de société qui couvrent tous les citoyens. Est-ce que la tolérance politique exige nécessairement de laisser les citoyens implanter leurs propres conceptions raisonnables du juste ?[25] Pourquoi la liberté de conscience et d'association ainsi que la libre circulation des idées (ce qui suppose le *respect* des différentes conceptions du juste) ne seraient-elles pas suffisantes ? La réponse est complexe et fait appel à différents éléments évoqués au cours de cet article. De un, l'unité de la société devrait être garantie dans la mesure où ceux bénéficiant des mesures de compensation ne font plus partie de cette unité sociale; il est même possible que le reste de la société soit plus unifié et coopératif, car les principes de justice de base auraient le loisir d'être plus cohérents et constants, moins vulnérables à la pression politique des conceptions raisonnables plus restrictives du juste. De deux, il semble que la tolérance politique conduise non seulement à respecter la libre circulation et la défense des idées, mais aussi à accorder autant que possible un espace où les citoyens puissent vivre leurs convictions profondes, y compris leurs convictions à propos des conceptions de la justice. Y a-t-il une véritable tolérance lorsqu'un citoyen se sent forcé de vivre dans une société qu'il estime fondamentalement injuste et dans laquelle il doit, de surcroît, apporter sa contribution ? Se sent-il toléré si les seules justifications qui lui sont soumises se formulent en des termes essentiellement contestés qu'il trouve pourtant inacceptables ? Ce dernier aspect sera soulevé de nouveau, et avec plus de détails, au cours de la conclusion. En attendant, il semble que la tolérance soit mieux réalisée lorsque les partisans de conceptions plus restrictives reçoivent compensation, et lorsque les partisans de conceptions plus exigeantes possèdent plus de moyens pour réaliser leurs objectifs de société.

3.3.2. L'éducation des enfants

Toutefois, les mesures de droit de sortie posent un problème quant à l'éducation des enfants. Est-ce que les enfants de ceux ayant des conceptions restrictives de la justice (comme les libertariens) devraient quand même accéder à l'éducation publique ? Plus encore, devraient-ils être *forcés* d'aller à l'école publique ? Cela ne devrait pas déplaire aux citoyens ayant une conception de la justice plus exigeante, mais pourrait soulever l'objection des parents libertariens.

La réponse réside en partie dans le statut des enfants au sein du libertarisme (Vallentyne 2010, 5.1.) : si l'enfant n'est pas la propriété des parents, ces derniers ne peuvent pas décider d'élever leurs enfants comme ils le veulent et imposer leur vision du monde – l'endoctrinement devrait donc être interdit autant que possible. En revanche, les parents ont au moins une responsabilité forte envers leurs enfants, celle de développer l'autonomie et l'épanouissement de ces derniers, et il serait incohérent, voire déraisonnable, d'avancer que l'éducation des enfants appartient exclusivement à un tiers et que les parents ne jouent aucun rôle dans celle-ci (Galston 2002, 101-109). Ils ont même certains droits en tant que parents, entre autres, le droit de leur inculquer leurs valeurs si celles-ci sont raisonnables[26]. En d'autres mots, les parents ne possèdent pas un droit absolu sur la manière d'élever leurs enfants, mais sont responsables de cette éducation. Il s'agit même d'une des implications du pluralisme que d'admettre une certaine diversité quant à l'éducation des enfants[27], et cette diversité reflète aussi la possibilité de transmettre des valeurs particulières à ses enfants.

Un compromis devra donc être dégagé concernant l'éducation des enfants et pourrait varier d'une société à l'autre, voire d'un cas à l'autre. Une possibilité consisterait à exiger les écoles libertariennes (ou semi-libertariennes, si leur financement est mixte) à offrir un cursus enseignant des valeurs civiques, exposant les différentes conceptions politiques du juste, en plus des bienfaits de la vie en société non libertarienne[28]. L'essentiel est que ces enfants ne soient pas pénalisés d'avoir eu des parents libertariens, c'est-à-dire qu'ils doivent pouvoir intégrer la société politique s'ils le désirent plus tard, et ce, sans coût exagéré. Bien sûr, d'autres injustices pourraient persister aux yeux des autres conceptions du juste, notamment le fait que ces enfants n'auraient pas joui des mêmes chances de départ, mais le problème est sensiblement le même au sujet du multiculturalisme. C'est peut-être le (ou plutôt l'un des) prix à payer pour la tolérance politique et le respect du pluralisme des conceptions raisonnables du juste.

Une autre solution à ce problème consisterait à intégrer les enfants de parents libertariens à des écoles publiques. Après tout, l'adhésion à une conception de la justice est souvent influencée par la position sociale que l'on occupe[29]. Cela pourrait impliquer que, si la structure de base de la société se doit d'être neutre[30] à l'égard des différentes conceptions raisonnables du juste, elle doit autant que possible minimiser les facteurs sociologiques qui déterminent arbitrairement l'adhésion politique des citoyens, afin que ces derniers puissent endosser une conception de la justice qui leur est authentique. Un système d'éducation uni-

versel offrant une ouverture sur les différentes conceptions raisonnables du juste pourrait alors s'avérer un outil important pour permettre aux jeunes citoyens de remettre en question leurs présupposés. Cela n'empêcherait pas les parents libertariens de transmettre leurs valeurs, mais imposerait une limite dans la mesure où leurs enfants devraient aussi pouvoir développer leur autonomie intellectuelle. Seulement, un problème logistique s'impose : si les libertariens ont exercé leur droit de sortie de la société non libertarienne, comment gérer les interactions avec cette société étant donné que leurs enfants fréquenteraient des écoles publiques ? La réponse ne semble pas évidente, et certains compromis seraient nécessaires.

3.3.3. La compensation dans une société libertarienne

Comment concevoir des mesures de compensation dans une société à prédominance libertarienne, c'est-à-dire où la construction de la conception publique de la justice est fortement inclinée en faveur du libertarisme ? Est-ce que les citoyens partageant une conception de la justice exigeant une redistribution doivent individuellement recevoir compensation ? (Dans un tel cas, le risque de *free-riding* serait le même que dans une société où les libertariens sont marginaux, car des citoyens pourraient prétexter une conception différente dans le but d'en avoir plus.) Et si oui, comment peuvent-ils recevoir compensation si le libertarisme considère comme injuste toute redistribution forcée ? Un modèle de société libertarienne ne semble pas offrir d'outils de compensation autres que des actions individuelles volontaires, ce qui est sans doute nettement insuffisant. Ou est-ce que ce sont les libertariens les moins bien lotis qui doivent faire l'objet de compensation ? Le problème est le même : cette compensation ne semble pas institutionnellement possible, et puis elle devrait aussi se faire avec l'accord de ceux qui en bénéficient.

Étant donné ces paramètres dans un tel contexte, la solution la plus raisonnable pourrait être que les citoyens partageant une conception de la justice plus exigeante forment une microsociété où ils institueraient des mécanismes de justice égalitaristes offrant différents services. Pour en bénéficier, des citoyens pourraient volontairement devenir membres de cette microsociété; les frais d'association varieraient en fonction des moyens des membres, comme l'impôt progressif. Cette idée ne viole pas les principes libertariens et correspond à certains égards à l'idée de mini-États ne détenant pas de monopoles (un peu comme chez Nozick 1974); en d'autres termes, cela ressemblerait à une assurance collective à frais proportionnels. Quant au principe d'égalité d'opportunité, il serait sans doute moins efficient dans le cadre d'une microsociété, mais pourrait être minimalement encouragé par différentes mesures d'aide.

La plus grande difficulté, toutefois, réside dans la possibilité pratique de fonder de telles microsociétés au sein d'une société libertarienne, car des pressions externes (comme celle d'un capitalisme non contrôlé) pourraient miner sa réussite, en plus du coût probablement plus élevé d'implanter des systèmes égalitaristes à petite échelle. De plus, l'efficience de telles microsociétés dépend grandement du nombre de citoyens aisés ayant une conception du juste égalita-

riste, ce qui risque d'être contingent et pourtant injuste aux yeux des égalitaristes moins aisés. Si ce problème est suffisamment sérieux et empêche les citoyens de vivre en fonction de leur conception raisonnable du juste, il semble alors qu'une conception publique de la justice à prédominance libertarienne viole le principe de la neutralité des buts[31], car les institutions qui en découlent permettraient mal, en principe, que ceux qui sont en désaccord raisonnable avec celles-ci puissent être respectés. Est-ce qu'une conception publique libertarienne se révèle, en fin de compte, réellement tolérante envers ceux étant en désaccord raisonnable avec celle-ci ? Il semble qu'un certain compromis soit nécessaire afin qu'une conception publique libertarienne permette à d'autres de s'épanouir et de créer leurs microsociétés.

CONCLUSION

Cet article s'est ouvert sur le constat du pluralisme des conceptions raisonnables du juste. Celles-ci, bien que toutes candidates à la conception publique de la justice, sont néanmoins hétéroclites et incompatibles. Le libéralisme politique ne semble pas pouvoir légitimement trancher entre ces conceptions. De plus, les concepts mobilisés par ces conceptions du juste s'avèrent essentiellement contestés en ce sens que les arguments logiques concernant leur bonne application ne semblent pas pouvoir conclure le débat. Cela rend difficile de renvoyer à ces concepts sans favoriser une conception du juste particulière au détriment de ses concurrentes. Il a donc été proposé que la construction de la conception publique de la justice devrait se faire par dénominateurs communs, donc en accordant minimalement une liste de droits négatifs au point de vue pratique. Si la conception publique de la justice a pour ambition d'établir des principes au-delà de ce minimum, elle devrait accorder des mesures compensatoires à ceux se sentant lésés. De telles mesures compensatoires, pouvant aller jusqu'à un droit de sortie, sont requises de manière à respecter les objections raisonnables de ceux adhérant de manière sincère à des conceptions différentes et plus restrictives du juste. Cette approche révèle que les questions de justice sociale et de politique publique, et même de justice distributive, sont intimement liées à celle de la tolérance politique.

Il se pourrait que le constat de ce pluralisme des conceptions raisonnables du juste ait ouvert une boîte de Pandore (certains pourraient même considérer qu'il s'agit d'une réduction par l'absurde du projet du libéralisme politique). Le risque est énorme : en insistant trop sur les débats philosophiques au sujet de la justice, l'idéal d'une société politique où les citoyens s'entendent sur les mêmes principes publics de justice semble gravement menacé. Il n'est pas non plus certain que la justice par dénominateurs communs soit toujours possible, car elle mène à de nombreux problèmes théoriques et pratiques. Heureusement, certains de ces problèmes sont similaires à ceux concernant le pluralisme religieux et culturel, de sorte qu'il serait pertinent de s'y rapporter pour y retenir des leçons. Il reste à espérer que l'histoire des pratiques politiques, dont s'inspire Rawls pour bâtir son libéralisme et ses principes de justice, mène effectivement à des recoupements aussi larges que possible ainsi qu'à une coopération sociale permettant des redistributions significatives et acceptables pour la plupart – et que le poids

démographique de ceux étant plus restrictifs ne mine pas le succès de ces principes publics de justice.

Un dernier problème mérite d'être abordé. Il pourrait être objecté que cette approche paraît hautement individualiste, comme si le fait d'adopter une conception du juste était une affaire personnelle et privée, ce qui est pourtant contre-intuitif et potentiellement contradictoire. En effet, si la justice désigne, selon la célèbre expression, ce que l'on doit aux autres, il y aurait lieu d'espérer que la conception du juste œuvre plutôt à établir les rapports aux autres et à assurer des institutions égalitaristes où chacun a sa place et sa juste part, et non simplement ce que les individus doivent recevoir pour que leurs croyances politiques soient respectées; la justice est, semble-t-il, forcément une affaire sociale, interpersonnelle. Si le projet est de respecter les croyances de chacun, il est possible qu'une logique libertarienne ait déjà gagné – et en effet, une construction par dénominateurs communs semble d'avance favoriser les plus laxistes. Comment concevoir un projet social à partir de telles prémisses ?

Une réponse complète ne peut être esquissée ici, car il faudrait étudier la possibilité de développer une théorie du pluralisme des conceptions raisonnables du juste qui serait moins individualiste ou qui pourrait évoluer au-delà de ce modèle[32]. Mais cet individualisme a aussi sa raison d'être. Les conceptions du juste font souvent partie, de manière profonde, de l'identité et des valeurs des citoyens. Ces conceptions tendent à définir ce que les citoyens attendent raisonnablement de leur société, voire à définir dans quelle société ils souhaiteraient vivre, tout en sachant qu'une telle société serait offerte aux autres citoyens en tant que personnes libres et égales. Il serait donc exagéré, à moins d'avoir des raisons fortes pour le faire, que le libéralisme politique viole les croyances fortes et raisonnables des citoyens – ce qui implique aussi de les forcer à participer à l'effort collectif d'un projet social auquel ils ne croient même pas. C'est pourquoi des mesures de compensation pourraient être offertes dans les cas où un désaccord raisonnable prévaut, mais que des raisons publiques importantes (comme la stabilité de la communauté politique ou la pérennité de la coopération sociale) nécessiteraient de violer certaines conceptions du juste plus restrictives. Mais ce respect des convictions individuelles est justifié si et seulement si les individus sont prêts à assumer les conséquences de leur conception raisonnable du juste – autrement dit, un libertarien ne pourrait pas exiger une aide sociale, à moins de renoncer à ses idées libertariennes et d'adhérer au projet de coopération sociale où prévaut une redistribution déterminée par la conception publique de la justice.

Politiquement, c'est-à-dire en renonçant à affirmer quelle est la meilleure théorie de la justice, il semble que la décision la plus juste et tolérante du pluralisme consiste à développer une conception publique de la justice qui respecte, autant que possible, les différentes conceptions raisonnables du juste des citoyens, même si cela vient avec un coût énorme. Si les arguments qui ont été exposés ici sont justes, il faut œuvrer à offrir les moyens, autant que possible, pour que les citoyens exercent non seulement leur conception de la vie bonne, mais vivent aussi en accord avec la conception du juste qu'ils considèrent la plus justifiée.

NOTES

[1] Cet article a originalement été rédigé dans le cadre du séminaire PHI 6540 — *Tolérance et pluralisme social* donné à l'automne 2012 à l'Université de Montréal. L'auteur remercie le professeur Marc-Antoine Dilhac pour ses nombreux commentaires ainsi que pour son encouragement qui ont permis d'améliorer plusieurs aspects de la première version du texte. Il lui témoigne sa reconnaissance pour lui avoir parlé des concepts essentiellement contestés. L'auteur remercie enfin les deux évaluateurs anonymes pour leurs commentaires approfondis et éclairants.

[2] Dans ce texte, l'expression « conception publique de la justice » renvoie à la conception de la justice qui se voit adoptée pour façonner les structures de base d'une société, au-delà du pluralisme des conceptions du juste existant dans la société. Autrement dit, elle ne réfère pas nécessairement à une conception politique du juste en particulier. Elle est dite *publique* par opposition à *privée*, car seraient privées des conceptions du juste adoptées par des citoyens, mais non par les institutions de la société.

[3] Les conceptions du juste sont aussi des conceptions morales, sauf qu'elles se distinguent par leur étendue (*scope*) : au lieu de traiter de plusieurs (ou de toutes les) sphères de la vie, elles ne s'appliquent qu'à la sphère politique. (Rawls 2005, 13-14)

[4] Il existe plusieurs formes de libertarisme – entre autres un libertarisme de droite, où les ressources non réclamées appartiennent au premier arrivé (sous certaines réserves), et un libertarisme de gauche, pouvant admettre certaines redistributions étant donné la propriété collective des ressources naturelles (Vallentyne 2012). Ce texte fera surtout référence au libertarisme de droite, car en pratique, les libertariens de gauche peuvent accepter plusieurs mesures des autres conceptions du juste plus exigeantes.

[5] L'utilitarisme, qui se présente pourtant comme une conception de la justice, sera écarté de ce travail. Une analyse plus approfondie permettrait d'étudier les conséquences sur la conception publique de la justice si des utilitaristes sont considérés dans sa construction. En revanche, Rawls ne semble pas considérer l'utilitarisme comme une conception raisonnable, entre autres parce qu'il s'agit d'une conception morale trop compréhensive (Rawls 2005, 11 et 260-261).

[6] "Now once this *variety* of functions is disclosed it might well be expected that the disputes in which the above mentioned concepts figure would at once come to an end. But in fact this does not happen. Each party continues to maintain that the special functions which the term 'work of art' or 'democracy' or 'Christian doctrine' fulfils on *its* behalf or on *its* interpretation is the correct or proper or primary, or the only important, function which the term in question can plainly be said to fulfil. Moreover, each party continues to defend its case with what it claims to be convincing arguments, evidence and other forms of justification." (Gallie 1955, 168)

[7] Voir aussi la définition de Gray (1978, 395) : "[…] I suggest that what makes a concept essentially contested and gives any use of it an inherently controversial aspect, is that disputes about its proper applications cannot be resolved by an appeal to the canons of logic or by recourse to stipulative or lexical definition."

[8] Est-ce que le voile d'ignorance permettrait de sortir de cette impasse ? Il semble que si ces concepts sont essentiellement contestés, alors il demeure aussi difficile de trancher à priori sur la bonne acception, sans connaissance de nos conditions particulières. Qui plus est, le recours au voile d'ignorance ne pourrait-il pas lui-même être contesté par les différents citoyens ? Pourquoi privilégier cette méthode de délibération contrairement à d'autres méthodes ? Même si la position originelle a ses mérites, elle semble comporter différents présupposés qui sont pourtant ouverts au débat. Différentes conceptions raisonnables du juste peuvent avoir des désaccords sur l'intérêt d'un tel recours.

[9] Voir entre autres Sen (1980), G.A. Cohen (1990) et Daniels (1990). Pour une présentation générale, voir Gosepath (2011).

[10] Et l'on pourrait ajouter : « et de n'importe quel autre concept central aux conceptions du juste ».

[11] "To identify a concept as essentially contested is to say a great deal about the kind of society in which its users live. If it is the case, for example, that most of the concepts of our social and political thought—power, freedom, justice, coercion, and responsibility, for example—have an essentially contested character, then this can be only so in virtue of the fact that our social and political thought occurs in a social environment marked by profound diversity and moral individualism." (Gray 1977, 337)

[12] En réalité, il donne quelques indications, mais celles-ci peuvent paraître plutôt floues. Par exemple : "to endorse any procedural conception of justice is to acknowledge that, to adopt J.L. Austin's idiom of 'trouser words', it is 'injustice' that wears the trousers—that justice is done whenever all accusations of injustice have been rebutted." (Gray 1978, 399) Qu'est-ce que cela signifie ? Si cette méthode correspond à l'idée qu'il y a justice lorsqu'aucune plainte de justice n'est émise, cela est soit naïf, soit contradictoire avec le fait que les conceptions du juste s'opposent. En effet, si par exemple la conception publique adopte des principes libertariens, les autres conceptions du juste crieront à l'injustice, et vice versa. Pourquoi la procédure devrait privilégier l'une plutôt que l'autre ? La procédure potentielle de Gray serait donc inapplicable. C'est pourquoi une interprétation générale de la justice procédurale sera étudiée au cours de cette section. Ensuite, la solution proposée en §3.2. essaiera de résoudre un dilemme semblable.

[13] "Neither the procedures nor the laws need be just by a strict standard of justice, even if, what is also true, they cannot be too gravely unjust. […] But before this point is reached, the outcomes of a legitimate procedure are legitimate whatever they are. […] Legitimacy allows an undetermined range of injustice that justice might not permit." (Rawls 2005, 428)

[14] Est-ce que l'on pourrait y voir un autre concept essentiellement contesté ? La section §3.2. du présent article tentera d'expliquer qu'une conception publique de la justice peut aller au-delà de la justice procédurale malgré le fait du pluralisme des conceptions raisonnables du juste. En ce sens, elle pourrait être dite neutre si elle respecte chacune des conceptions raisonnables du juste.

[15] Est-ce qu'une telle chose est possible ? Cela mériterait d'être étudié plus en détail.

[16] Comme le résume cet extrait : "[…] the basic liberties constitute a family, and that it is this family that has priority and not any single liberty by itself, even if, practically speaking, one or more of the basic liberties may be absolute under certain conditions." (Rawls 2005, 357)

[17] La question de savoir si cette approche est trop individualiste sera examinée dans la conclusion.

[18] Le concept de tolérance présuppose aussi d'avoir la possibilité effective d'intervenir pour empêcher cette chose (A.J. Cohen 2004, 93-94). Dans ce cas-ci, il est question de tolérance politique lorsque des partisans de conceptions du juste raisonnables en position de majorité décident de ne pas imposer leurs conceptions, à moins de compenser les autres.

[19] Il faudrait aussi étudier si ces coûts doivent être rétroactifs, c'est-à-dire s'ils devraient rembourser les bénéfices, en tout ou en partie, de la vie en société dont ces citoyens ont joui avant de prendre la décision de sortir de la société.

[20] Évidemment, la plupart des libertariens ne seraient pas complètement satisfaits de telles mesures. Même s'ils considèrent injustes l'imposition forcée et le monopole de l'État, ils revendiquent le droit de jouir d'un marché économique libre. Et ce marché ne serait pas libre si des frais de douanes étaient exigés pour chaque échange avec une société non libertarienne. En revanche, ces libertariens, s'ils sont raisonnables, se doivent de comprendre que ce n'est pas tout le monde qui partage leur conception de la justice et que ces gens ont le droit de forger leur société selon un tel modèle. Autrement dit, les libertariens ne peuvent réclamer la tolérance et la refuser aux autres. Et rien n'empêche les libertariens de forger leur microsociété, où ils s'échangent librement entre eux biens et services. Il n'y a donc rien d'injuste envers *eux*, dans un tel système.

[21] Voir par exemple Macedo (1995) pour la question des accommodements du point de vue du libéralisme politique. Voir aussi Bohman (1995) pour connaître certaines critiques; Bohman pense qu'un pluralisme de la raison publique permettrait de résoudre certains de ces dilemmes.

[22] Cela signifie aussi que la conception publique de la justice peut aller au-delà de la justice par dénominateurs communs seulement lorsque les conceptions plus restrictivistes du juste sont très minoritaires par rapport à l'objectif public.

[23] "[…] citizens in civil society do not simply use the idea of justice as fairness 'as a platform {handed to them by the philosopher as expert} from which to judge existing arrangements and policies.' In justice as fairness there are no philosophical experts. Heaven forbid ! But citizens must, after all, have some ideas of right and justice in their thought and some basis for their reasoning. And students in philosophy take part in formulating these ideas but always as citizens among others." (Rawls 2005, 426-427) Pour le reformuler à l'aune du présent contexte, ce n'est pas parce que des partisans de certaines conceptions raisonnables du juste ont les « meilleurs » arguments et la « meilleure » théorie que cela les autorise à imposer leur régime.

[24] Voir *supra*, note 22.

[25] Merci à l'un des deux commentateurs anonymes d'avoir insisté sur ce problème. J'ai ajouté le présent paragraphe pour clarifier l'enjeu.

[26] "[…] the ability of parents to raise their children in a manner consistent with their deepest commitments is an essential element of expressive liberty. As Eamonn Callan rightly suggests, parenting is typically undertaken as one of the central meaning-giving task of our lives. We cannot detach our aspirations for our children from our understanding of what is good and virtuous." (Galston 2002, 102)

[27] Nier cette diversité conduirait effectivement à un abus de pouvoir peu conforme au libéralisme : "Conversely, one of the most disturbing features of illiberal regimes is the wedge their governments typically seek to drive between parents and children, and the effort to replace a multiplicity of family traditions with a unitary, state-administered culture." (Galston 2002, 103)

[28] De manière générale, comme il a été défendu au §3.3.1., la diversité des conceptions raisonnables du juste devrait être enseignée. Il s'agit même d'un intérêt politique, d'une vertu civique importante, et qui justifie une imposition dans le cadre du libéralisme politique. (Macedo 1995)

[29] Merci à l'un des commentateurs anonymes de m'avoir rappelé ce fait sociologique important et qui m'a conduit ajouter le présent paragraphe.

[30] Comme expliqué à la section 3.1, il existe plusieurs acceptions de la neutralité. La solution proposée serait conforme à la neutralité des buts dans la mesure où laisser des facteurs sociologiques (comme les inégalités économiques) déterminer l'adhésion à une conception de la justice contrevient à l'idée de donner une chance à toutes les conceptions raisonnables de du juste d'être appréciées.

[31] S'agit-il plutôt d'une violation de la neutralité des effets ? La nuance semble ici subtile, mais elle est importante : l'objection ne concerne pas tant le fait que des citoyens ne parviennent pas instaurer des microsociétés correspondant à leur conception du juste, mais bien qu'une société libertarienne n'offrirait pas les *conditions de possibilité* pour que ceux étant en désaccord raisonnable avec celle-ci puissent néanmoins vivre en fonction de leur conception raisonnable du juste.

[32] L'un des commentateurs anonymes a fait la remarque fort éclairante selon laquelle le libéralisme politique doit exiger, de la part des conceptions raisonnables du juste, une conception politique et non compréhensive de la *société* – par exemple, pour sa part, Rawls (2005, 15-22) définit la société comme un système de coopération sociale. Autrement dit, si l'individualisme constitue une conception compréhensive, alors il est légitime de limiter certaines de ses implications. Entre autres, il pourrait être justifié d'exiger de la part des libertariens un plus grand compromis de leurs principes si cela est nécessaire pour l'établissement de cette société. Je pense que si un tel argument est juste, alors il pourrait nuancer en grande partie la nécessité d'adopter des mesures de compensation, comme il a été suggéré dans le présent article. En revanche, si le concept de société est lui-même essentiellement contesté et si le libertarisme est capable d'avancer des conceptions non compréhensives (donc, politiques) de la personne et de la société, alors le problème que j'ai exposé demeure aussi pertinent et embêtant.

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DOSSIER

BOOK SYMPOSIUM ON PABLO GILABERT'S *FROM GLOBAL POVERTY TO GLOBAL EQUALITY: A PHILOSOPHICAL EXPLORATION* AND MATHIAS RISSE'S *ON GLOBAL JUSTICE*

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INTRODUCTION

The literature on theories of justice over the last half century has come in two waves. The first wave, triggered by Rawls' *A Theory of Justice*, formulated questions about the relative privileges and burdens within the confines of a given society. The second wave, which gained momentum in the 1990s, has taken questions of distribution to the global level. Given that some of the most staggering inequalities in income, wealth, and other material as well as immaterial goods today exist between countries rather than within them, this shift in emphasis was only logical.

The present book symposium, which is based on presentations at a workshop co-hosted by the *Centre de Recherche en Éthique de l'Université de Montréal (CREUM)* and the *Groupe de Recherche Interuniversitaire en Philosophie Politique (GRIPP)* in December 2012, analyses two new and important contributions to this literature on global justice. Over the last two decades, global justice theorists have often been said to fall into two camps. Statists on the one hand, who argue that principles of egalitarian justice only exist within the confines of the state; and globalists on the other hand, who take egalitarian principles to be global in scope. Debates between these two camps, and even their labelling as such, have sometimes obscured the fact that the *scope* of our principles of justice is only a derivative feature that depends on the *grounds* of justice on which they are defended.[1]

One of the refreshing features of both of the books discussed in this symposium is that they leave behind the stale dichotomy between statists and globalists. For Gilabert, scope derives from identifying the factors relevant for grounding duties of justice – from what he calls *moral desirability conditions* – as well as from considerations about the prospect of discharging these duties – that is, *feasibility*

conditions. For Risse, scope varies with the different grounds of justice he invokes and, as he puts it, "the term 'scope' does not do much independent work" (Risse 2012, fn 2 on p.5).[2] Having said that, the grounds of justice Gilabert and Risse mobilise in their arguments, and hence the conclusions about global justice they arrive at, are far from similar.

The objective of the present symposium is to analyse and critically discuss these different grounds of justice. In this brief introduction, I will limit myself to two sets of remarks on each book. First, I shall sketch some of their central features; second, I will provide an overview of the issues taken up by the contributors to the symposium. Note that the contributions to the symposium do not represent a comprehensive analysis of the two books, but concentrate on those aspects that attracted their authors' critical attention. Following the order at the workshop in 2012, I shall start with *On Global Justice* by Mathias Risse.

Mathias RISSE defends what he calls pluralist internationalism. His position is pluralist in the sense that it admits a number of different grounds of justice, cutting across the divide between relationalists and non-relationists. More specifically, the grounds of justice discussed in the book are "recognizing individuals as human beings, members of states, co-owners of the earth, as subject to the global order, and as subject to a global trading system" (Risse 2012, 11). His position is internationalist, because he agrees with globalists that international relations give rise to their own principles of justice, even though they tend to be weaker than principles of justice within states. Two distinctive features of Risse's account should be underlined here. First, his discussion of common ownership of the earth as one important ground of justice underpinning human rights that apply across borders; this central argument of the book – its discussion in Part 2 represents about a third of the book – is inspired by Hugo Grotius' writings on the idea of common ownership of the seas. Risse mobilises this account, for example, to justify contemporary duties in the context of climate change (chapter 10) or rights to essential pharmaceuticals (chapter 12). The second distinctive feature of Risse's account is his recognition of the normative peculiarity of states. In a context where we are unable to even imagine what a system without states would look like, this epistemic constraint forces us to restrict our "realistic utopias" to a world in which states continue to play an important role. I shall come back to this point below.

In his discussion of Risse, Arash ABIZADEH focuses on common ownership of the earth as a ground of justice. Abizadeh contests that Risse's argument succeeds in establishing that each individual has an inalienable right to use the earth's resources to satisfy her basic needs. Moreover, Abizadeh challenges Risse to say more on how his own view relates to the rival views of no ownership, equal division ownership and joint ownership and why it should be considered superior.

Colin FARRELLY's assessment of Part 3 of Risse's book critically analyses the relationship between the theoretical grounds of justice Risse invokes and the practical conclusions he arrives at. While Farrelly is sympathetic to the theoretical framework of the book, he argues that more empirical work is needed to

make Risse's conclusions stick. For instance, Farrelly maintains that mobilising Grotius' thought on common ownership of the seas to say something about intellectual property rights requires a more thorough understanding of the workings of intellectual property rights today.

The final commentary by Ryoa CHUNG revolves around the normative peculiarity attributed to the state by Risse's account. Whereas Risse considers a world without states to be an unrealistic utopia in the sense that we cannot even imagine how it would function, Chung is more sympathetic to the quote by John Lennon that Risse cites: "Imagine there's no countries, it isn't hard to do". In other words, Chung insists on the value of ideal theory even in a context where the recommendations of this theory are not immediately accessible to us.

As the title suggests, Pablo GILABERT's *From Global Poverty to Global Equality*[3] puts forward two normative standpoints. Part I argues that we have positive duties to eliminate global poverty; part II defends the more radical claim that duties of global justice go beyond the sufficientarian ones of part I and take the form of egalitarian duties. The two parts share three common characteristics. First, Gilabert relies on a version of Scanlonian contractualism in order to ground the demands of first sufficientarian and then egalitarian demands of justice. Second, one of the most valuable contributions of Gilabert's book consists in his original discussion of questions of feasibility. What should we make of objections that certain duties to fight poverty or to pursue equality are in fact void because they cannot be effectively discharged? In response, Gilabert not only provides an insightful typology of different aspects of feasibility – for instance by way of distinguishing questions of *accessing* certain morally desirable states of affairs from their *stability* – but he also points out that apart from a number of "hard", that is for instance physical or biological, feasibility constraints, the limits of feasibility are flexible. Thus, he introduces the idea of *dynamic duties*, which involve "the expansion of the feasible sets of political action" (Gilabert 2012, 138). For example, suppose we cannot attain global equality today. We may still have dynamic duties to bring about a world in which our chances of doing so are better. Third, and finally, it is an important feature of Gilabert global egalitarianism that it is constructed on what he calls humanist (others might say non-relationist) rather than associativist (relationist) grounds. While he does not deny the existence of associativist duties, he argues that they tend to be weaker than the humanist kind on which his argument relies.

In her comments on Gilabert, Patti LENARD probes the robustness of his duties of global justice when confronted with the special relationships human beings have with others. How can global egalitarians of Gilabert's outlook justify that individuals should give priority to egalitarian duties of global justice to distant others over duties they have to their families, compatriots, and members of other communities they are part of? Using Gilabert's categories, this is an important question both in terms of moral desirability – is there priority from a normative perspective? – and in terms of feasibility – can individuals be motivated to respect this priority?

Robert SPARLING's assessment of chapter 3 referees the debate between Gilabert's global egalitarianism and the libertarian objections to it put forward by authors like Jan Narveson. While Sparling suggests that Gilabert's position more than holds his own in this debate, he argues that it has two important weaknesses. First, Gilabert's position would benefit from a sustained analysis of the empirical conditions – concerning foreign aid, international trade and so on – under which his egalitarian duties can be realised. Second, the libertarian insistence on self-determination points to a potential conflict between justice and democracy that Gilabert seems to underestimate.

Colin MACLEOD focuses on the central theme of feasibility in Gilabert's work, and suggests that Gilabert equivocates between moral justification and strategic justification. Whereas Gilabert maintains that limited social influencability in a given context has an impact on the *actual* obligations individuals hold, Macleod replies that the obligations as such do not change. The only thing that might change is the *strategic* justification – one might for instance adopt a more moderate political goal that does not fully respond to our moral obligation, but has better chances of success. Macleod adds a stimulating discussion on the question of demandingness as a feasibility constraint. The question of whether redistributive demands on the rich are morally demanding, he argues, depends on whether they have acquired their riches in a just way.

Finally, Christine STRAEHLE's comments on chapters 5 and 6 of the book concentrate on the role that appeals to individual autonomy play in Gilabert's argument. If the objective of the humanist principles of global justice that Gilabert defends is to realise a level of well-being and individual autonomy, then, so Straehle argues, a precise account of autonomy is required in order to be able to specify the global duties of justice we hold. She discusses a number of conceptions of autonomy we find in the literature, but concludes that it is not clear that Gilabert appeals to any of these or to a different conception of autonomy sufficiently well defined to play the above role.

To round the symposium off, both authors respond to the critical remarks put forward by the commentators. I will not detail their responses here. Instead, I would like to close this introduction by pointing out one of the ways in which the two books offer us radically different perspectives on global justice. The contrast I have in mind lies in their treatment of feasibility constraints. Risse's reaction to strong feasibility constraints, as mentioned above, is to accept them as constraints on what we should do. The goal, in other words, is to formulate a "realistic" utopia. For example, there is no point aiming at a global order without states, because we cannot even imagine what it would look like. Gilabert, by contrast, uses his idea of dynamic duties to constantly push the boundaries of the politically possible. If there is a morally desirable state of the world that is not accessible from here and now, our task consists in working towards making it possible tomorrow. Finding a balance between these two perspectives is one of the central both theoretical and practical challenges for global justice today.

NOTES

[1] Authors who have recently criticised the framing of the global justice debate in terms of statism *versus* globalism include for instance Joshua Cohen and Charles Sabel, "Extra Republicam Nulla Justitia?" *Philosophy & Public Affairs* 34/2 (2006), 147-75; A.J. Julius, "Nagel's Atlas", *Philosophy & Public Affairs* 34/2 (2006), 176-92; Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice-Dependent Account", *Philosophy & Public Affairs* 37/3 (2009), 229-56; Laura Valentini, *Justice in a Globalized World*, Oxford: Oxford University Press, 2011.

[2] Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012).

[3] Pablo Gilabert, *From Global Poverty to Global Equality: A Philosophical Explanation* (Oxford: Oxford University Press, 2012).

A CRITIQUE OF THE "COMMON OWNERSHIP OF THE EARTH" THESIS [1]

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ABSTRACT

In *On Global Justice*, Mathias Risse claims that the earth's original resources are collectively owned by all human beings in common, such that each individual has a moral right to use the original resources necessary for satisfying her basic needs. He also rejects the rival views that original resources are by nature owned by no one, owned by each human in equal shares, or owned and co-managed jointly by all humans. I argue that Risse's arguments fail to establish a form of ownership at all and, moreover, that his arguments against the three rival views he considers all fall short. His argument establishes, rather, a moral constraint on any conventional system of property ownership.

RÉSUMÉ

Dans *On Global Justice*, Mathias Risse prétend que les ressources premières de la Terre sont la propriété collective de tous les êtres humains de sorte que chacun a le droit moral d'utiliser les ressources premières nécessaires pour satisfaire ses besoins de base. Il rejette également trois points de vue concurrents selon lesquels les ressources premières n'appartiennent à personne ; chaque être humain en est propriétaire à parts égales ; ou elles appartiennent à tous les êtres humains, qui les gèrent conjointement. Je soutiens que les arguments de Risse ne parviennent à établir aucune forme de propriété, et qu'en outre, aucun des arguments qu'il présente contre les trois points de vue concurrents n'est concluant. Son argumentation impose plutôt à tout système conventionnel de propriété une contrainte morale.

In section II of *On Global Justice*, Mathias Risse defends the provocative thesis that the original resources and spaces of the earth, i.e., those resources and spaces that "exist independently of human activity" (p. 108),[2] are collectively owned by all human beings in common. Invoking the legacy of Hugo Grotius, Risse defends this "Common Ownership" model against three rival models of ownership of the earth's original resources and spaces: No Ownership, which denies any original natural owner and claims that all ownership rights must arise through some process of appropriation; Equal Division Ownership, a form of collective ownership in which each co-owner has an equal share of private-property rights in what is collectively owned; and Joint Ownership, another form of collective ownership by which a corporate body of co-owners manage their property via some collective decision-making procedure. My thesis is that even if its premises are true, Risse's argument does not "entail," as he claims it does, a form of natural, collective ownership, and that his arguments against No Ownership, Equal Division Ownership, and Joint Ownership do not justify rejecting them.

Risse's argument for his thesis comprises three basic premises (pp. 113-114):

1. The earth's original resources and spaces are necessary for human activities and survival.

2.a. The satisfaction of basic humans needs is morally significant.

2.b. The satisfaction of basic human needs is more morally significant than any environmental value.

3. If resources and spaces are original (i.e., produced without human interference), then no one has any accomplishment-based claims to them.

Risse believes that these premises "entail" what I shall call the Inalienable Right to Basic Resources Thesis (IRBR):

4. Each human being has an inalienable, indefeasible moral right to use (a part of) the earth's original resources and spaces to satisfy her basic needs.

This is my language, but it captures the essence of Risse's conclusion.[3] The moral right in question actually comprises, according to Risse, a bundle of rights: a liberty-right to use the resources in question, a protective perimeter of claim-rights (e.g. against interference in exercising one's liberty), and an immunity-right against being stripped of this bundle (indeed, it is inalienable) (pp. 111-115).

Of course, Risse himself gives the Inalienable Right to Basic Resources Thesis a different, more evocative and rather charged label: he calls it human beings' "Common Ownership of the Earth." But it is important for my purposes to see that the content of what Risse calls Common Ownership of the earth does not refer to anything beyond IRBR. I have given the thesis an alternative label

because it is not immediately clear why, given its content, one should speak of a kind of "ownership." Risse defines common ownership as a form of collective ownership in which (a) each co-owner is equally entitled to use what is owned, (b) within some specified set of constraints, (c) and without the right to exclude other co-owners from similarly using what is owned (pp. 110-111). He thus formulates the "core" idea of his Common Ownership of the earth thesis as follows:

> 4'. Each human being "ought to have an equal opportunity" to use the original resources and spaces of the earth to satisfy her basic needs (insofar as their satisfaction depends on such original resources and spaces) (p. 111).

(It is important to note that 4' is weaker than 4: it refers to a right of "equal opportunity" to use original resources, rather than a right to use original resources, but strictly speaking Risse believes that his argument establishes more than 4'.[4] This weakening will be congenial to those who are resistant to the theoretical use to which Risse later puts his argument, namely, to restrict the state's unilateral territorial rights; but it will be unsatisfying to those that think Risse fails to restrict those territorial rights *enough*. Risse seems to suggest (p. 124) that the formulation in 4', which refers to opportunities, articulates the part of IRBR having to do with principles of justice; he thus leaves it open for IRBR to entail further, non-justice rights and obligations (p. 132)).

1. NO OWNERSHIP

One reason it is unclear why IRBR should be called "Common Ownership" is that, given the standard meaning of ownership, the content of IRBR is *prima facie* insufficient to establish any form of ownership at all: the standard incidents of ownership are much greater than mere use rights. Thus one problem with calling mere use rights "ownership" is that it encourages ideological obfuscation: it connotes a set of rights (such as the right to rents, or the right to exclude) that Risse's argument for IRBR does not seem to establish. Indeed, IRBR is open to an alternative, more natural, interpretation: it identifies a moral constraint on any just property regime. Claiming that there is an inalienable, indefeasible right to use original resources to satisfy one's basic needs might just be interpreted as claiming that there is a *constraint* of justice on any conventional property regime. One can say this without saying that the constraint constitutes a type of ownership, and one can say it while further insisting that there is no natural ownership of anything, i.e., that all property is conventional.

In fact, Risse implicitly concedes the possibility of alternative interpretations of IRBR when he considers No Ownership. If the earth's resources and spaces have no original, natural owner, as No Ownership claims, then if there is to be any ownership of the earth's resources and spaces, it must be possible to appropriate them. Risse considers two versions of No Ownership: according to the right-leaning version, individuals can unilaterally appropriate without restriction, and in particular without taking others into account; according to the left-leaning

version, individual appropriation is possible but only subject to provisos.[5] Risse rejects the former version on the grounds that appropriation without provisos may lead to outcomes that prevent the satisfaction of basic human needs, in violation of IRBR (p. 117). Risse's response to the latter version is simply that No Ownership with provisos is plausible only if the provisos in question are identical to IRBR – no more, and no less (p. 119). But if that is Risse's response, then he has simply conceded that IRBR does not itself warrant talk of collective or common ownership. Something more would need to be said to motivate Risse's more evocative label.

The second reason that it is not clear why Risse calls IRBR "Common Ownership" concerns one of the specific incidents of ownership: the right to exclude.[6] To motivate construing IRBR as involving or implying a kind of ownership, one would need to specify whom the putative co-owners have the right to exclude. Yet, on Risse's conception, common ownership implies that while all co-owners have the right to use (within constraints), they do not have the right to exclude other co-owners' similar use. Perhaps Risse wants to add that co-owners have the right to limit each others' *overuse*; but that is still not a right to exclude use. Hence it must be non-owners who are excluded. Here, then, would be a reason to call IRBR Common Ownership: to emphasize that humans have a right to exclude non-humans from the earth's original resources and spaces insofar as it is necessary to satisfy basic human needs. It is therefore surprising that anthropocentrism does not receive a stronger defence, and play a more prominent role, in Risse's discussion. Of course Risse's anthropocentrism is highlighted by premise 2.b, according to which the satisfaction of basic human needs is more morally significant than any environmental value. But Risse never actually argues for 2.b. His defence (p. 120) against critics of anthropocentrism merely amounts to name calling: he calls deep ecology one of the "rather extreme forms of environmental ethics." An argument for anthropocentrism is all the more urgent for Risse not only because it is important for motivating calling IRBR a kind of Common Ownership, but also for motivating premise 3. For the premise that *no one* has any accomplishment-based claims to resources that are not the product of *human* activity begs the question against deep ecologists: If non-humans have contributed to realizing original resources, then why do they not have any accomplishment-based claims? Indeed, Risse's construal of the rights entailed by common ownership actually provides positive reason for thinking that at least some of these non-humans *do* have such claims. For Risse wants to claim that such humanity's common ownership includes not just liberty-rights but also a perimeter of protective claim-rights. But if the point of calling IRBR a form of collective ownership is to emphasize the rights that human beings hold against non-humans, and if some of these rights are claim-rights, then this suggests that the non-humans in question – and not just other human co-owners – have the correlative duties to each human being to not interfere with her use of original resources. But to construe non-humans as bearers of duties to human beings is to attribute a normative standing to them that is in considerable tension with the denial of any accomplishment-based claims to the resources that they may have contributed to realizing.

2. EQUAL DIVISION OWNERSHIP

So far, then, I have argued that Risse has not provided sufficient reason for rejecting No Ownership and hence insufficient reason to characterize IRBR as a kind of Common Ownership. I want now to turn to Risse's critiques of Equal Division Ownership and Joint Ownership, where I draw similar conclusions.

Risse's fundamental criticism of Equal Division Ownership is that in order to divide collectively owned resources equally, one must have a metric for assessing the value of resources; Risse argues that no such metric exists (pp. 122-123). I fail to see the force of Risse's argument. He seems to assume that for Equal Division Ownership to be action-guiding, it requires a complete, cardinal ordering of the value of different resource aggregations. Yet even if we do not have a metric that assures equal division in all potential cases, surely we could devise metrics enabling us to identify *more or less* egalitarian divisions in many cases. We might not be able to specify what equality would consist in precisely, and we may not be able to tell in *every* pair-wise comparison of states of affairs which one has the more equal division, but we might still be able to tell, in many pair-wise comparisons, that some distributions are more equal than others. The ideal of equal division would then warrant choosing one from amongst the divisions that we can tell are more equal than all the others. To be clear: I do not find Equal Division Ownership a compelling view, so I do not intend to defend it here. But it seems to me that Risse owes its defenders a substantive normative argument, and not just an epistemic one, because even if they cannot specify equality precisely and absolutely, they could still do so with enough precision to compare some states to others, and this at a threshold above and beyond basic-needs satisfaction.

3. JOINT OWNERSHIP

Risse begins his critique of Joint Ownership by considering an admittedly crude interpretation of the view (p. 121). On the crude interpretation, jointly owned resources cannot be used by any of the co-owners without the consent of each of the other co-owners. The requirement that joint owners gain the unanimous consent of all others is of course a possible interpretation of Joint Ownership of the earth, but it is crude because it has a wildly implausible consequence: it implies that before any person can use the terrestrial resources necessary for satisfying her basic needs, she has to obtain every other human being's consent! She might as well die. Risse is therefore on solid ground when he rejects this crude version of Joint Ownership.

The crude interpretation has two salient features. First, it specifies an *actual* decision-making procedure for co-managing property. Second, the actual decision-making procedure for co-management that it specifies is governed by unanimity rule. This means that there are at least two ways to revise the crude version to produce a more plausible interpretation of Joint Ownership. One could continue to hold that Joint Ownership specifies an actual decision-making procedure, but abandon unanimity-rule (at least for appropriation). Or, alternative-

ly, one could assume that Joint Ownership specifies a *hypothetical* procedure by which the actual decision-making procedures are determined. Risse opts for the second, contractualist route; he simply overlooks the first possibility. This is an important oversight: nothing intrinsic to Joint Ownership requires the actual decision-making rule to be unanimity. Joint Ownership might require, for example, that co-owners manage their property collectively via some majority-rule procedure, or some complicated procedure where majority rule is constrained by individual use-rights, or some other rule.

Yet it might be possible to reconstruct what Risse would say in the case of this first kind of revision to Joint Ownership on the basis of what he does say in the case of the second, contractualist kind. Not surprisingly, Risse asserts that the only actual decision-making procedure for managing the earth's original resources and spaces that would plausibly result from a hypothetical original position of joint owners is IRBR – no less, and no more (pp. 121-122). No less: joint owners would agree that each has an inalienable, indefeasible moral right *unilaterally* to use the earth's original resources and spaces to satisfy her basic needs (without any other co-owner's consent). And no more: joint owners would not agree to (a) any collective decision-making procedure for distributing the remaining resources, nor to (b) any egalitarian principle, like the Rawlsian difference principle, constraining the other (non-collective decision-making) procedures that determine resource distribution. In other words, Risse asserts that even if Joint Ownership were correct, it would essentially lead to Risse's own view.

Both (a) and (b) seem wrong to me. It is essential to the contractualist thought experiment that the parties to the original position – in this case, the joint owners – each enjoy a veto over the outcome of the hypothetical procedure – in this case, over the actual decision-making procedure to be adopted. First, I see no reason to suppose that (a) joint owners in an original position would unanimously decide to reject all collective decision-making procedures for managing their joint property, e.g. *entirely* to delegate the actual management of their joint resources to original non-owners such as states. And Risse, unfortunately, provides no argument for why joint owners would do such a thing, *wholly* alienating their collective management rights to others.

Second, whatever reasons motivate parties in the domestic Rawlsian original position to adopt the difference principle would also, it seems to me, motivate the joint owners of the earth's original resources to afford themselves egalitarian protections in the case of the earth's resources. Risse asserts to the contrary that joint owners in an original position would simply endorse IRBR; nothing motivates them to adopt stronger, egalitarian principles because, he argues, joint owners do not care about morally arbitrary distributions. But this seems mistaken. Joint owners in an original position would care about the fairness of how joint property is distributed amongst themselves in part because, *qua* joint owners, they enjoy a status as joint equals: no joint owner is more of an owner than others. That would be one of the essential features of Joint Ownership inter-

preted in contractualist terms, as specifying a hypothetical decision-making procedure. Thus Risse's argument for why joint owners in an original position would not endorse anything more than IRBR just begs the question against Joint Ownership: his argument amounts to the assertion that we have no reason to model the original position as one involving joint owners. But that assertion is precisely what is in dispute here.

4. CONCLUSION

Risse's general approach is oriented towards finding principles for constraining the power of states (e.g. p. 137). He also wants to derive substantive, action-guiding normative conclusions from as minimal a set of assumptions as possible. I am sympathetic to this orientation and method. Yet constraining the power of states in the service of basic-needs satisfaction does not require one to use the inflated language of common ownership, nor to make even more inflated assumptions about human beings' claims against the non-human world. It just requires making claims, on behalf of individuals, against states and the conventional regimes of property that they coercively regulate. I take it that these claims arise from the constraints of justice on the coercive regulation of conventional property regimes. In my view, a conception of justice grounded in respecting the status of human beings as free and equal places at least two negative moral constraints on the state's exercise of political power, including its coercive regulation of property: that the state exercise its coercive power neither in a way that prevents some human beings from pursuing opportunities adequate to meet their basic material needs, nor in a way that functions to protect and entrench the structural sources of significant material inequality amongst human beings. To treat persons as free and equal while coercively exercising political power requires not using that power against individuals structurally to entrench absolute levels of *poverty* or relative material *inequality*. It is to Risse's credit that the "international pluralism" he defends in his book makes room for claims about inequality at the global level, even if they are not grounded in his claims about Common Ownership.

NOTES

[1] For comments, I am grateful to participants at the "Symposium sur la justice globale," Montreal, December 10, 2012, and two anonymous referees.

[2] All in-parenthesis page numbers refer to Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012).

[3] In Risse's own language: "first, each person, independent of her actions, has a natural right to use original resources and spaces to satisfy her basic needs, and second, in conflicts with any further entitlements with respect to these resources, this natural right has priority" (p. 115). The claim that this is "entailed" by his premises is made on the same page.

[4] 4 would entail 4' on the assumptions that when Risse, in 4', says that humans ought to have an equal opportunity to use original resources, he means that they have a moral right to such equal opportunity, and that each person's moral right to use resources, in 4, is supposed to be an equal right and so includes the right to the equal opportunity to use resources.

[5] Risse's own labels are the "right-libertarian" and "left-libertarian" versions of No Ownership, but the reference to libertarianism is a red herring. Libertarians typically assert that there is at least one form of natural ownership, namely self-ownership, but proponents of No Ownership may very well reject all forms of natural ownership.

[6] According to Honoré, the standard incidents of ownership include: the right to possess/recover, to use, to manage, to obtain the fruits/rents/profits, to alienate/consume, and to a relative level of security/immunity in these other incidents – where the right to manage includes the right to determine who else may use or not. A. M. Honoré, "Ownership," in *Oxford Essays in Jurisprudence*, ed. A. G. Guest (Oxford: Oxford University Press, 1961).

COMMENTARY ON PART 3: INTERNATIONAL POLITICAL AND ECONOMIC STRUCTURES

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ABSTRACT

Mathias Risse's *On Global Justice* is a unique and important contribution to the growing literature on global justice. Risse's approach to a variety of topics, ranging from domestic justice and common ownership of the earth, to immigration, human rights, climate change, and labour rights, is one that conceives of global justice as a *philosophical* problem. In this commentary I focus on a number of reservations I have about approaching global justice as a philosophical rather than an inherently *practical* problem. To his credit Risse does acknowledge at various stages of the book that a good deal of the applied terrain he ventures into presupposes complex and contentious empirical assumptions. A greater emphasis on those points would, I believe, helpfully reveal the shortcomings of tackling intellectual property rights by appealing to Hugo Grotius's stance on the ownership of seas, or the shortcomings of tackling health by invoking the language of human rights without acknowledging and addressing the constraints and challenges of promoting health in an aging world.

RÉSUMÉ

La monographie de Mathias Risse, *On Global Justice*, représente une contribution originale et importante à la littérature croissante sur la justice mondiale. Risse conçoit la justice mondiale comme un problème *philosophique*, et applique cette perspective à une série de thématiques diverses incluant la justice nationale, la propriété commune de la terre, l'immigration, les droits de la personne, les changements climatiques et les droits des travailleurs. Dans ce commentaire, je souligne un certain nombre de réserves que j'ai à l'idée d'aborder la justice mondiale comme un problème philosophique plutôt que comme un problème fondamentalement *pratique*. Certes, Risse reconnaît à plusieurs reprises que les enjeux de justice appliquée qu'il traite touchent à des questions empiriques complexes et controversées. Un effort de prendre ces questions empiriques plus au sérieux révélerait, à mon sens, les faiblesses d'une approche qui vise à se prononcer sur les droits de propriété intellectuelle en se basant sur la théorie d'Hugo Grotius sur la propriété des océans, ou les faiblesses d'une approche à la santé qui a recours au langage des droits de la personne sans tenir compte des contraintes et des défis que représente la promotion de la santé dans un monde vieillissant.

INTRODUCTORY REMARKS

It would perhaps be an understatement to describe *On Global Justice*[1] as simply an *ambitious* book. The breadth of topics Mathias Risse addresses, and the bold aspirations of his account of *pluralist internationalism*, are certainly unique and important contributions to the growing literature on global justice. I cannot think of another work in contemporary political philosophy that has the reach and scope of *On Global Justice.* Risse covers themes as diverse as domestic justice, common ownership of the earth, immigration, human rights, agricultural subsidies, intellectual property rights, intergenerational justice, climate change, labour rights, and the World Trade Organization. Any one or two of these topics could be the focus of a book-length project in themselves.

Assessing a book with such expansive ambitions can be a challenge. To provide a charitable assessment, a reader cannot fault Risse for not providing a more detailed account of any one topic or defense of any proposed practical prescription because his project is not primarily motivated by the aspiration to provide an exhaustive and complete account of one specific ground of justice, or application of a principle of distributive justice. Rather, his project is motivated by a desire to transcend the traditional debates between those who limit the applicability of justice to states, on the one hand, and those who extend the demands of justice to all human beings, *qua human beings*, on the other hand. So his contribution is a welcome and valuable one.

The view Risse develops is one that recognizes *multiple* grounds of justice. He thus calls this approach "pluralist internationalism". It "grants particular normative relevance to the state but qualifies this relevance by embedding the state into other grounds that are associated with their own principles of justice and that thus impose additional obligations on those who share membership in a state" (p.ix). While I am largely sympathetic to the project of steering a middle ground between the debates of nationalists and cosmopolitans, I will raise a number of questions about the general approach, and aspirations, of Risse's account of global justice, with a particular focus on issues that arise in Part 3 of the book.

Before detailing those points I should perhaps say a few comments about the perspective from which I raise these issues. In the Preface to *On Global Justice* Risse makes it clear that this book is about "global justice as a *philosophical* problem, and about political problems on which principles of justice bear at the global level" (my italics) (p.x). I must admit that I am in many ways an outsider to philosophical debates about global justice. I see global justice as a (primarily) *practical*, rather than philosophical, problem. Like most authors who work on the topic of global justice, I am troubled by the fact that poverty still persists in the world, that health innovations are unequally accessible, that the development of novel medical interventions are stifled by inefficient public policies, etc. But I am sceptical about the function and value of developing a general theory of global distributive justice (indeed, I am sceptical about doing so even at the domestic level).

The problems of this world are extremely complex and disparate. And the philosopher's aspiration to construct a precise and determinate account of "the demands of justice in the world today", while arguably noble, must inevitably be very selective in a manner that risks eroding an understanding of how complex and disparate the problems of this world really are. To conceive of global justice as *primarily* a philosophical rather than practical problem means that an understanding of human history, or the empirical realities of our complex world do not necessarily play a foundational a role in the intellectual exercise. Instead, the abstract normative theories, concepts, and assumptions of the philosophical literature (much of which engages little with the empirical realities of the rapidly changing world) frame the questions, perspectives and conclusions of the global justice theorist. So while I think there is some room for philosophizing about global justice, I believe such an intellectual exercise must be extremely provisional and tentative, as well as contextual and sensitive to the empirical realities of that context. Some of the critical points I raise in this commentary on Part 3 of *On Global Justice* pertain to concerns I have about the general philosophical endeavor, they do not arise simply as a response to Risse's specific arguments.

Jeremy Waldron, in criticizing the philosopher's aspiration to construct grand theories of distributive justice, labels such an approach "I-expect-you'd-all-like-to-know-what-I-would-do-if-I-ruled-the-world"[2]. As I read through Risse's account of domestic and then global justice I could not help but be reminded of Waldron's critique. Waldron argues that the justice approach is deficient because it fails to take seriously the "circumstances of politics". Theorizing about justice is only part of the task of the political philosopher, the second is to *theorize about politics*. And when the subject matter is global justice, this means theorizing about *global politics*. Tackling such an enormous challenge ought to give the normative theorist reason to pause, and, in my (perhaps too conservative) judgement, permit intellectual humility to win the day over the desire to derive a priority list of global principles of justice.

Many aspects of Risse's project avoid the central concerns I have about the limits of philosophical accounts of global justice. He adopts *pluralism*, for example, which I believe is a sensible and helpful way to approach the subject matter. A pluralistic normative framework helps guard against the worst elements of the "I-expect-you'd-all-like-to-know-what-I-would-do-if-I-ruled-the-world" approach to normative theorizing. And in his discussion of complex policies Risse often notes the feasibility constraints that are likely to arise and attempts to address them. So while his breadth of concern is expansive, Risse does make sensible concessions to intellectual humility when the political topics being addressed rely on complex and contentious empirical assumptions. However, my worries about Risse's overall project became most manifest in chapter 17, when he constructs, based on his own considered judgement, a list of prioritized principles to govern the life prospects of the world's population and all countries:

1. Within the state, each person has the same indefeasible claim to an adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.

2. (a) The distribution in the global population of the things to which human rights (understood as membership rights) generate entitlements is just only if everyone has enough of them for these rights to be realized. (b) The distribution of original resources and spaces of the earth among the global population is just only if everyone has the opportunity to use them to satisfy her or his basic needs, or otherwise lives under a property arrangement that provides the opportunity to satisfy basic needs. (principles 2(a) and 2(b) are at the same level of priority).

3. Within the state, each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.

4. Social and economic inequalities are to be arranged so that they are both (a) attached to offices and positions open to all under conditions of fair equality of opportunity, and (b) to the greatest benefit of the least advantaged. (4(a) has priority over 4(b)) (p. 331).

What follows are what I hope are some constructive comments from a philosopher who remains largely agnostic and sceptical about philosophical accounts of global justice and the aspiration to derive a priority list (like that above) of distributive principles of justice. My commentary is not motivated by a theoretical allegiance to a global application of Rawls's difference principle, or to a specific liberal nationalist theory committed to partiality for compatriots. I engage with Risse's book without any strong theoretical commitments to a specific theory of global justice. Instead, my commentary is motivated by the judgement that the problems of global justice are first and foremost practical and political, not philosophical, problems. And my worry is that approaching these topics as if they were, first and foremost, *philosophical* problems is inherently problematic. While I do not think this means there is no room for philosophy to play a role in helping us think about those problems (I believe there is an important, though limited, role), it does mean we should be cautious about deriving and endorsing the philosopher's construction of priority rules for principles that are to govern the life prospects of all 7 billion people in today's interconnected and rapidly changing world.

1. INTELLECTUAL PROPERTY RIGHTS

Part 3 of *On Global Justice* develops Risse's pluralist internationalism by considering what principles apply globally in virtue of specific relations and institutions of the globalized era. Expanding upon the conception of human rights developed in earlier chapters, Risse extends human rights to include a right to essential pharmaceuticals and work and leisure. The former is the focus of chapter 12, the latter chapter 13. I will focus my critical commentary on just these two substantive topics.

Risse argues that there is a human right to X, given the existence of certain global relations, when principles of the form "it is unjust if any member of the global order lacks X" hold. He begins his discussion of intellectual property by considering Hugo Grotius's argument against private ownership of the seas, which Risse then applies to ideas. I believe this approach is deeply problematic because it mistakenly assumes that the bundle of rights at stake with private property is the same bundle of rights involved with intellectual property, like patents.

"Patents are time-bound monopoly rights".[3] The particular bundle of rights conferred by a patent is very different from the bundle of rights entailed by ownership of private property. If I own my house, this means I have *affirmative rights* to use, possess or sell my house. This bundle of property rights is very different from the bundle of rights conferred by a patent. The time-bound monopoly rights of patents do not provide the patentee with affirmative rights to do anything. The rights they do have are rights to *exclude* others from using, making, importing or selling patented items (for a set period of time, typically 20 years).

Is it helpful to approach the topic of intellectual property, and its relation to a human right to essential medicines, by invoking Grotius's stance on the ownership of seas? I do not think it is. The good reasons for not permitting affirmative rights to use or possess seas do not necessarily apply to patents or copyright with respect to ideas. Consider, for example, the three reasons Grotius offers for why the seas should remain unappropriated:

Anybody's use of the seas is consistent with everybody else's similar use.
Everybody benefits from leaving the seas unappropriated.
The seas cannot be occupied. (p. 234)

Some of these reasons can be easily transferred from possession rights in property like the seas to exclusion rights in ideas. And this stems from the fact that seas and ideas are both *public goods*. Public goods, unlike private goods like my car or house, are *non-excludable* and *non-rivalrous*. Shakespeare's *Hamlet*, like the Mediterranean sea, is non-excludable. Once it exists, you cannot stop people from enjoying or making use of either. *Hamlet* is also non-rivalrous. My enjoying *Hamlet* does not leave less of the play available for others to enjoy. Similarly, my enjoyment of the Mediterranean Sea does not require that there be less of that sea available for others to enjoy.

However, I believe there is a problem with transferring Grotius's second reason, which presumes everyone is better off in a situation where seas are unappropriated, to the realm of ideas. Risse claims "Not only does use of ideas not subtract from their usefulness for others, it adds to it, by stimulating intellectual activities that inspire yet more such activities. *Everybody* benefits from a situation where ideas are unappropriated" (p. 235). But intellectual property rights like patents do not entail appropriating ideas like one might land or the seas. No affirmative rights are conferred by a patent. Patents are time-bound monopoly

rights that permit the patentee to *exclude* others. Is it true that everybody benefits from a situation where no one can be excluded from making, using, selling or importing patented items? To answer "yes" is to make an enormous empirical assumption, and one that sharply divides defenders and critics of intellectual property.

The central rationale for granting patents to inventors is precisely because they help disseminate knowledge (patents are published) and stimulate innovation. Risse goes on to note the importance of the latter, so I was puzzled as to why he applies Grotius's discussion of possession of the seas to patents, especially when the former do not involve the affirmative rights which Risse appears to be concerned about. Patents involve exclusionary rights. And the interest behind granting exclusionary rights is that it will deter inventors from keeping their research a secret, which is *inefficient*. So no one is better off in a situation where ideas are kept a secret and innovation is stifled.

It is because of the inefficiency of an "Intellectual Commons" that patents are thought to be necessary and justified. When researchers can expect to profit, in addition to recoup the costs of their research, then investment in research and development (R&D) increases and innovation can be accelerated.

So while the idea of an "Intellectual Commons" might be more consistent with Grotius's account of possession of the seas, I do not see this as a compelling ground of justice, at least as it pertains to intellectual property because intellectual property involves a different bundle of rights from those involved with the affirmative rights of private property. A more sound ground for justifying intellectual property, in my opinion, would be a *purposeful* approach which emphasizes the potential *utility* or efficiency of intellectual property rights. A contextual normative analysis which focused more on the fact that ideas are *public goods,* rather than the argument a 17th century theologian and philosopher made against the possession of the seas, would make these points more central to the analysis. Because ideas are non-excludable and non-rivalrous, researchers will tend to keep their findings a secret or simply not undertake their research in the first place. Patents can help stimulate research and innovation because they provide the financial incentives needed to spur investment in medical research.

If, and it is an empirical question, granting intellectual property rights stimulates more innovation than a system without such rights, then there is a ground (in justice) for granting such rights. The devil is really in the details then concerning how stringent the regulation of such rights will be. For example, how to interpret the requirements that the patent be "novel, useful and not obvious". And my sense is that there is still a great deal of uncertainty about the potential pros and cons of granting intellectual property rights. Is the 20 year time period too long, not long enough, or just right? Adopting a Grotiusian account of "Intellectual Commons" obstructs, rather than highlights, the importance of these empirical questions.

Another element of the "Intellectual Commons" argument that Risse considers, though he does not rely on it, (nor does he rely on the Intellectual Commons argument,) is *ontological realism* about objects of intellectual property. He explains:

> Such realism denies that scientific, musical and other artistic works are "products" of the mind. Instead, they exist outside the realm of either material or mental objects. They belong to a (Fregean) "third realm" of nonmental, supersensible entities, distinct from both the sensible external world and the internal world of consciousness. There is, then, no invention, refinement, or any other human *contribution* to these entities. By assumption, objects in that realm exist prior to human activities. Nobody has as a claim to them that draws on her contributions to their existence (p. 236).

Once again I find the introduction of a philosophical treatment of intellectual property rights to be unhelpful and obscures the realities of the stakes involved with research and development (at least as it pertains to the development of new medicines). Suppose, for example, that ontological realism is in fact true.[4] In this "third realm" let us suppose there exists a vaccine for HIV. We can thus say that no human researcher "creates" the HIV vaccine. However, there is still the problem of determining if such a vaccine actually exists in this Fregean realm, and what, precisely, it is. Humans have no way of knowing what exists in this third realm before we undertake research. So we do not know if a viable HIV vaccine exists. Countless attempts to develop an HIV vaccine have failed. Basic scientific research, and the clinical trials needed to test the safety and efficacy of a new drug, are extremely expensive.

In the United States, for example, the estimated cost of developing and bringing a new drug to market is approximately 800 million dollars.[5] R&D in pharmaceuticals is an extremely expensive endeavour and risky investment. Ontological realism provides little help in terms of understanding how we should address these realities. We do not have a crystal ball to know which new inventions actually exist in this "third realm" and await our discovery and which do not. And to find out which do and do not exist requires enormous human efforts and an investment of billions of dollars. And that discovery process, of bridging the divide between the "realm of the human mind" and the "Fregean realm", could itself be the grounds for granting intellectual property to those who discover these truths (by investing the time, talent, energy and money). So even if ontological realism is true, discovering truths could be *analogous* to "producing something new". I do not see how invoking ontological realism helps us in determining the merits of the grounds either in favour of, or against, intellectual property.

Risse does touch on what I think are the really pertinent issues with respect to intellectual property, namely, compensation and incentives. These are complex and tricky issues to assess at the domestic and global levels, which pluralist internationalism adopts. Consider, for example, that the United States has

approximately 41% of the pharmaceutical patents filed under the PCT (Patent Cooperation Treaty).[6] Hearing a statistic like this might lead us to conclude that it is grossly unjust that one country in the world should have such an expansive array of intellectual property. But what this statistic also tells us is that the United States also makes the largest investment in the research and development of new drugs. The United States has 6, 213 biotechnology firms, by far the largest among OECD countries.[7] France is second with 1, 359 firms and Spain third with 1, 095 firms. Why would the share holders and investors of large pharmaceutical firms like Pfizer or GlaxoSmithKline be willing to invest billions of dollars on research and development for the possibility of developing a new drug that is safe and more effective than existing interventions without the 20 year exclusivity rights? How much compensation and incentive setting is sufficient for such large investments on uncertain returns? Risse suggests that vital pharmaceuticals not be regulated by far-reaching private rights (beyond what is justifiable in terms of incentives and fair compensation). But determining what constitutes fair compensation and incentives is precisely the difficult issue. Is a 20 year patent too much time or too little? Suggesting that people in poorer countries ought to be free to make generic drugs (pp. 243-244) in a globally interconnected world could have unintended adverse consequences on drug development and innovation. Why would drug companies be willing to spend billions of dollars on drug development in the United States when generic brands of their products can be massed produced in poor countries? Perhaps, as Risse suggests, this would not put a serious dent in their likely profits, in which case it might not hamper innovation. But if it did diminish R&D investment then the complaint that the domestic priority of improving innovation (which also creates jobs) should take priority over potential global duties could arise. This is a particular problem in an aging world.

Life expectancy at birth for the global population is 68 years and is expected to rise to age 81 by the end of this century.[8] "Globally, the number of persons aged 60 or over is expected to more than triple by 2100, increasing from 784 million in 2011 to 2 billion in 2050 and 2.8 billion in 2100".[9] Asia has 55% of the world's older persons. Chronic conditions like cancer, heart disease and stroke have replaced infectious diseases as the leading causes of death. And age is a major risk factor for chronic disease. 62% of Americans over age 65 have multiple chronic conditions.[10] The chronic conditions of late life are also manifest in developing countries that have made significant progress with reducing early life mortality. Many poorer regions of the world face the challenges of both infectious and chronic disease. Managing the multiple chronic conditions of late life by providing pharmaceuticals can place significant strain on the economy of even the richest countries of the world. What does a human right to health entail in an aging world where the richest of countries face ballooning debts and increasing strains on healthcare? Invoking the language of human rights, while offering the potential for emancipation, can also obstruct the constraints and challenges of promoting health in an aging world. This is perhaps a further limitation of seeing global justice as primarily a philosophical problem best addressed by appeal to the collective ownership of the earth.

If health is a primary concern of an account of global justice then why the focus on access to pharmaceuticals? Public health measures like sanitation and smoking cessation are a matter of importance to the affected agents' immediate environment, and have global urgency. Perhaps Risse would also add these things to the list of human rights, but I suspect they are ignored or bracketed in part because they do not naturally align with, or follow from, Grotius's principle of collective ownership of the earth (which is a nice illustration of why I think seeing global justice as, first and foremost, a *philosophical* problem is misguided).

If we can add all public health measures (like sanitation), along with essential medicines, to the list of human rights this raises some tricky problems if the account of human rights is not merely aspirational. The theorist can just stipulate that everything necessary for living a minimally decent life can be characterized as a human right.

But pluralist internationalism demands this be more than a mere aspiration. Specific duties arise because of common ownership of the earth, membership in the global order and subjection to the global trading system. But, when Risse later details the priority of principles (p. 331) of global justice, we see principle 2, which demands that the human rights of the global population be met before attention turns to domestic concerns (for example, the difference principle (the fourth principle)). Such a rigid priority of principles does not help with the task of prioritizing among those human rights. Risse suggests that richer states should shoulder a broad range of duties of justice (p. 331). But if human rights include measures not only related to health, but also to work and leisure, they run the risk of imposing overly stringent duties on developed countries, ones they cannot (or at least have not) fulfilled even in the domestic sphere, let alone, globally. So let us turn now to chapter 13, which focuses on labour rights as human rights.

2. LABOUR RIGHTS: WHY NOT A UNIVERSAL BASIC INCOME?

In chapter 13 Risse argues that common ownership, enlightened self-interest and interconnectedness converge to recognize a right to work as a human right understood as a right against the state obstructing labour markets, a right to minimum wages, and a right not to be fired for frivolous reasons. Addressing Onora O'Neill's argument that human rights can be aspirational, Risse responds that there are relevant duties to do what one can to bring about their satisfaction. And yet, even if one agrees that a right to work is a human right, by prioritizing it in the same principle that addresses measures pertaining to public health and essential medicines, this means that the richest countries are to be just as concerned about preventing workers in China from being fired for frivolous reasons as they are providing malnourished children in Africa with access to sanitation, antibiotics and micronutrient supplements.

Risse anticipates this type of objection (p. 250) when he addresses the *inferior urgency objection*. He concedes that social and economic rights might not, in Cranston's terminology, pass the test of "paramount importance", but he does not

believe a list of human rights should be limited to only those rights that are of paramount importance. However, I believe this move does become problematic when a theory prioritizes a principle of satisfying those demands over considerations of domestic justice (beyond the protection of basic liberties).

The more expansive the list of human rights, especially when it is given priority over partiality concerns for domestic justice, the more inert a pluralist theory will be as it simply ignores, rather than tackles, the difficult issue of tradeoffs. The latter is inevitable given that all the things that need to be done to ensure 7 billion people can live a minimally decent life on this planet cannot be done simultaneously, nor is any one country or region of the world (which itself may come up short with respect to some of these human rights in the domestic sphere) going to shoulder the responsibility of satisfying such a stringent principle.

One alternative proposal to extending the human right to work in the way Risse proposes is to argue instead in favour of an *unconditional basic income* (UBI). Indeed, such a proposal would seem to follow from Risse's commitment to common ownership, which he extends to ownership of the earth and ideas. Risse dismisses social security as a form of satisfying basic needs because he believes it would expose people to the government's whims and woes. He claims "it is preferable to impose obligations on governments to make sure people have jobs rather than merely provide social security" (p. 255). But full employment is a significant challenge for even the richest of countries, and also subject to the government's whims and woes. Indeed, some might argue that full employment in today's highly complex and interconnected world is simply an impossible task for any domestic government to realize.

Given that Risse does not extend the right to work to include a right to employment, one might argue that UBI could offer a more effective protection against the risks of a market society. Indeed the most prominent philosophical defence of UBI, from the Belgian philosopher Philippe Van Parijs[11] could fit nicely with Risse's assumption of common ownership. Assuming we live in a world where 100% full employment is simply untenable, then why not extend the right to collective ownership of the earth to include ownership of the world's limited jobs? Just as no person has a prior entitlement to the earth's resources, no one has a prior entitlement to the world's limited job opportunities. So the institutional arrangements and public policies governing employment must be justified to all, including those who will, inevitably, fail to find employment.

Van Parijs suggests that equal ownership of jobs entails imposing *employment rents*. Those who do not work thus receive compensation, in the form of an unconditional basic income, for the fact that they let others utilize the collective resource of employment. The UBI proposal certainly aligns well with some of the theoretical premises of pluralist internationalism, especially common ownership of the earth, membership in the global order and subjection to the global trading system. The attraction of UBI, for its proponents,[12] is that it provides the material resources people need to live a minimally decent live. And if common

ownership of the earth is a tenable starting assumption for a theory of global justice (I myself do not believe it is), there would appear to be a strong presumption in favour of a global unconditional basic income. A more detailed comparison of what is gained and what is lost by endorsing a global UBI could be an interesting issue for Risse to consider further.

CONCLUSION

Global justice is the most prominent topic of debate in political philosophy today. In many respects I believe this is a welcome development. But at the same time I also find the prominence of global justice a potentially worrisome development for political philosophy. Political philosophers have long employed armchair theorizing when tackling domestic justice, and extending this same approach to the global scale runs the risk of tempting them to simply magnify the size of the philosopher's armchair.

The world is a complex and interconnected place, and the life prospects of humanity are influenced by diverse domestic and global institutions and cultural practices. Risse's *pluralist internationalism* is a valuable contribution to the philosophical debates on global justice. Immigration, agricultural subsidies, intellectual property rights, climate change, labour rights – these are all important issues which Risse's book engages with and so I believe the book will have broad appeal and lead to many stimulating discussions of more detailed aspects of global justice.

However, I do have serious reservations about Risse's (and the field's) assumption that global justice should be treated, first and foremost, as a *philosophical* (rather than practical) problem. In this commentary I have expressed reservations about the philosopher prioritizing principles to govern the life prospects of the world's population or invoking "ontological realism" to help address the myriad of complex and difficult issues that arise with respect to intellectual property rights. To his credit Risse does acknowledge at various stages of the book that a good deal of the applied terrain he ventures into presupposes complex and contentious empirical assumptions. I suppose I would have liked to see such points factor into the discussion of global justice at a more fundamental level, as *crucial considerations* that shape the normative analyses he develops. Doing so could helpfully reveal the shortcomings of tackling intellectual property rights by appealing to Grotius's stance on the ownership of seas, or the shortcomings of tackling health by invoking the language of human rights without acknowledging and addressing the constraints and challenges of promoting health in an aging world.

NOTES

[1] Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012). All references to the book will be made using brackets inside the text.

[2] Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), p. 1.

[3] Philippe Cullet, "Patents and Medicines: The Relationship between TRIPS and the Human Right to Health" *International Affairs* 79(1) (2003):139-160, 140.

[4] Though I confess I do not know how we could ever know that it is true or false.

[5] Joseph A. DiMasi, Ronald W. Hansen, Henry G. Grabowski "The Price of Innovation: New Estimates of Drug Development Costs" *Journal of Health Economics* 22 (2003): 151–185.

[6] Key Biotechnology Indicators, available at: http://www.oecd.org/science/innovationinsciencetechnologyandindustry/49303992.pdf

[7] *Ibid.*

[8] United Nations, Department of Economic and Social Affairs, Population Division (2011). *World Population Prospects: The 2010 Revision, Highlights and Advance Tables*. Working Paper No. ESA/P/WP.220; xviii.

[9] *Ibid.*, xvi.

[10] Christine Vogeli et al. "Multiple Chronic Conditions: Prevalence, Health Consequences, and Implications for Quality, Care Management, and Costs", *Journal of General Internal Medicine* 22(3) (2007): 391–5, 392.

[11] Philippe Van Parijs, *Real Freedom for All* (Oxford: Oxford University Press 1995)

[12] Elsewhere I have critiqued the UBI proposal, see "Justice and a Citizens' Basic Income" *Journal of Applied Philosophy*, Vol. 16(3) (1999): 283- 296.

PLURALIST INTERNATIONALISM IN OUR TIME

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ABSTRACT

In his 2012 book *On Global Justice*, Mathias Risse makes an invaluable contribution to the literature on theories of global justice. In this paper, I offer a critique of the fourth and final part of the book, entitled "Global Justice and Institutions," which deals with the standing of the state within the pluralist internationalism defended by the author. My focus here is on the justification of the state system and the discussion on utopian ideals. I agree with Risse that the state remains the inescapable political structure that any serious theory of global justice must internalize within its conceptual framework. However, I differ from Risse's approach in that I place greater emphasis on the historical contingency of the state system, including how prescriptions of global justice reflect historical contingencies stemming from globalization. From this point of view, pluralist internationalism should then be understood as a conceptual paradigm that mirrors its own historical contingency as embedded in our current world order. This recognition of the historical contingency of the state system serves two important purposes. One, it is a bulwark against any tendency to discredit too quickly the philosophical and practical relevance of ideal theory. Two, it buttresses the stance that we might still have the moral duty to pursue the goal of global justice beyond pluralist internationalism.

RÉSUMÉ

Dans son livre de 2012, *On Global Justice*, Mathias Risse apporte à la littérature sur les théories de la justice mondiale une contribution inestimable. Dans cet article, je propose une critique de la quatrième et dernière partie du livre, intitulée « Global Justice and Institutions », qui traite de la position de l'État dans la perspective de l'internationalisme pluraliste défendu par l'auteur. Je me concentre ici sur la justification du système étatique et la discussion d'idéaux utopistes. Je conviens avec Risse que l'État demeure la structure politique incontournable que toute théorie sérieuse de la justice mondiale doit intégrer dans son cadre conceptuel. Cependant, là où je m'éloigne de l'approche de Risse, c'est que j'insiste davantage sur la contingence historique du système étatique, notamment la façon dont les prescriptions de la justice mondiale reflètent les contingences historiques découlant de la mondialisation. De ce point de vue, il faut donc comprendre l'internationalisme pluraliste comme un paradigme conceptuel qui, inscrit dans l'ordre mondial actuel, reflète sa propre contingence historique. Cette reconnaissance de la contingence historique du système étatique sert deux fins importantes. En premier lieu, elle constitue un rempart contre toute tendance à discréditer trop rapidement la pertinence philosophique et pratique de la théorie idéale. Deuxièmement, elle étaye la position selon laquelle nous pourrions encore avoir, au-delà de l'internationalisme pluraliste, le devoir moral de poursuivre l'objectif de la justice mondiale.

In his latest work, *On Global Justice* (2012)[2], Mathias Risse makes an inestimable contribution to the scholarly literature dedicated to theories of global justice. Following several foundational works of this research area, such as *The Law of Peoples* (1999)[3] by John Rawls, *World Poverty and Human Rights* (2002)[4] by Thomas W. Pogge, and *Justice Beyond Borders: A Global Political Theory* (2005)[5] by Simon Caney, Risse's new book participates in a more recent wave of publications focused on the subject of global justice.[6]

What singles out Risse's philosophical contribution is his foundational theory of international obligations based on a pluralist and contextualist conception of the grounds of justice, which distinguishes his approach from the current cosmopolitan ones. Risse describes cosmopolitanism following the well-known definition proposed by Pogge,[7] which develops around three major positions. Firstly, cosmopolitanism is based on *individualism* according to which any single person represents the ultimate unit of moral concern. Secondly, cosmopolitanism is based on moral *universalism* that sees all human beings as individuals who must be equally considered as the ultimate unit of concern. Thirdly, cosmopolitanism is committed to the *generality* of this status and extends the scope of justice to a global scale. However, from Risse's perspective, the cosmopolitan approach is no longer pertinent to define and specify the principles of justice, the *distribuendum* (or *metric*) of justice, the multiple grounds and scope of a coherent theory of global justice. According to Risse, "while the term [cosmopolitanism] is suitable to describe a love of humanity or the evanescence or fluidity of culture, it has outlived its usefulness for matters of distributive justice. We have learned the basic cosmopolitan lesson: moral equality is an essential part of any credible theory of global justice" (Risse 2012, 10).

Risse's distinctive approach is located mid-way between a statist and a full-fledged globalist view of the extent of our moral obligations. These two terms are defined on the basis of a spectrum of positions we adopt according to the limits and/or the extent of the mutual obligations between moral agents we consider warranted. From a relationist point of view, statists believe that the configuration of the state delimits the set of reciprocal obligations that the members of a society are mutually subjected to as members of a specific political community. This community is determined by the set of institutions that constitutes its basic structure. On the other hand, globalists argue that the global order determines the fundamental relationship that ties together all individuals in their interactions. However, the pluralist view adopted by Risse will acknowledge that not all grounds of justice are relational. "Common humanity", for example, is a ground of justice that does not pertain to any relational considerations of the sort while other grounds of distributive justice must necessarily rest on the recognition of special ties and obligations between members of a polity. Moreover, Risse's approach recognizes the particular status of the state in the international context. I agree that the state remains, in many ways, the inescapable political structure that any serious theory of global justice must internalize within its conceptual framework, and will discuss this in more detail further down. In his book, Risse advocates a *pluralist internationalism* that we can summarize in his own eloquent words.

> "Internationalism shares with statism a commitment to the normative peculiarity of the state. Internationalism also holds that nothing as egalitarian or demanding as Rawls's account of justice […] applies outside of states, though it does apply inside the state. At the same time, internationalism accommodates multiple grounds, some of which are relational and some not. […] Internationalism's inherent pluralism transcends the distinction between relationism and nonrelationism, formulating a view 'between' the two common views that principles of justice either apply only within states (as statists think) or else apply to all human beings (as globalists and nonrelationists think)" (Risse 2012, 10).

In this paper, I offer critical remarks concerning the last section of Risse's *On Global Justice*, entitled "Global Justice and Institutions". Chapters 15 to 18 all deal with the standing of the state within the pluralist internationalism defended by the author. Risse's pluralist conception of global justice conveys a partly statist approach to international relations that distances itself from the current cosmopolitan trend, precisely because pluralist internationalism recognizes the crucial standing of the state and, at same time, justifies extensive obligations of global justice on five distinct but overlapping grounds: 1) shared membership in states; 2) common humanity; 3) humanity's collective ownership of the earth; 4) membership in the global order; and 5) subjection to the global trading system. According to Risse, a global difference principle does not apply for all the reasons previously detailed in the book. I will put aside these questions, for fear of repetition, and will only focus on some of the salient features of this fourth and final part of the book, namely the justification of the state system and the discussion on utopian ideals.

The first general comment pertains to the structure of Part IV. Admittedly, it might be the case that the following critical comments are already biased by my mild realist assumptions according to which states remain the most important actors in international relations. In this regard, it is somewhat puzzling that the author would devote so much effort in chapters 15 and 16 to argue that, in the current state of affairs, world order and global justice cannot be thought beyond the state system. However, in the name of intellectual probity, we must acknowledge the issue at stake here since Risse worries about the relevance of pluralist internationalism, should one contest the fact the state system is *morally* justified. The argumentative strategy which the author relies on in Chapter 15 ("The Way We Live Now") is the following: in order to justify the descriptive and normative pertinence of pluralist internationalism, Risse believes that one must first reply to the critical objections brought against the global order, based on the state system, which is seen by many as the source of "moral flaws" wrongfully harming the global poor. In the following chapter, the author tries to demonstrate that there is no sound argument that the state system should not exist, in spite of the fact that there isn't "a justice-based rationale" that one could refer to in order to justify it. Risse comments as follows: "[t]here remains a nagging doubt about whether there ought to be states at all; nevertheless, morally and

not merely pragmatically speaking, we ought not abandon states now, nor ought we aspire to do so eventually" (Risse 2012, 284).

In Chapter 15, Risse argues that "no moral complaints arise against the system of states because the existence of borders is inconsistent with freedom, liberal justice, or democracy, or because statistics about the global order all by themselves reveal that it wrongfully harms the poor" (Risse 2012, 303). Previous arguments concerning freedom, liberal justice and democracy merit further discussions but I will leave them aside in order to put emphasis on the latter complaint concerning the causal responsibility of the global order in harming the poor. Here Risse reproduces in a more concise manner the fascinating debate in which he opposes Pogge in his article "How Does the Global Order Harm the Poor"[8]. The stimulating debate between Risse and Pogge will not be repeated here; it suffices to say for the purpose of the argument that much of it concerns the normative interpretation of empirical evidence for or against the claim that the global order aggravates the fate of the most disadvantaged. Risse's general claim on the issue is summarized in this passage: "Historically speaking, the global order seems to have brought tremendous advances. Moreover, advances in medicine and food production are largely due to countries that have shaped that order. As far as we can tell, the global order has benefited the poor. This is although the *absolute* (as opposed to *relative*) number of people in poverty is higher now than two hundred years ago" (Risse 2012, 296).

However, in the grand scheme of Part IV, it is not clear in what sense Risse's arguments against Pogge's thesis (according to whom it is not the percentage of comparison but the sheer number of people living in destitution that raises the moral concern) truly help us understand why the state system is justified. In other words, even if we could demonstrate without a doubt or statistical dispute concerning absolute and relative numbers (however important they may be) that the state system, such as we know it today, does cause harm to the global poor, this would not invalidate, in my view, the claim that the state system remains an inescapable feature of the world order and that any serious attempt to remedy inequality and poverty must internalize this salient feature of international affairs within its justification and ascription of duties of global justice. Consequently, a key question remains unsolved in the reader's mind: why does the author pursue this contentious line of argument when a more pragmatic, factual account of the salient features of the world order would suffice to justify the accuracy of pluralist internationalism based on the normative peculiarity of the state?

As a matter of fact, Risse doesn't convincingly address the moral complaint that the legacy of past colonialism still causes harm to the global poor either. In his view, "[i]ndeed, while it happened, colonialism disrupted lives, killing, mutilating, or enslaving many in the process. But one would need to show that there is *persisting* injustice rooted in colonialism to establish the claim that it is because of the colonial past that the global order wrongfully harms the poor" (Risse 2012, 299). Let's consider, for instance, the case of Haiti in the context of the difficult reconstruction following 2010's earthquake. An empirical case study of the

country's historical struggle to overcome its colonial past and to pay back its independence debt shows how this debt hindered past and present generations on the road to economic and political recovery, making it difficult today for the Haitian people, in fact, to even utilize international aid in useful, sustainable ways. This would suggest that in many respects the positions that read the legacy of colonialism as still harming the poor today are, at the very least, as plausible as Risse's doubts on the same subject. In any case, I merely want to suggest that even if the harms caused by our current world order were *lesser evils* than in the past, it would not invalidate either one of these claims: first, that the global order actually does cause harm (as Risse's description of the WTO's failings in chapter 18 precisely suggests), and secondly, that the state system remains nevertheless inescapable, therefore justifying the need to incorporate the state system as the unavoidable starting point of any plausible theory of global justice.

This brings us to chapter 16, entitled "Imagine There's No Countries. A Reply to John Lennon". This section opens on an epigraph taken from Lennon's cult song:

> *Imagine there's no countries*
> *It isn't hard to do*

Here, Risse tries to reconcile the state's moral relevance with its historical contingencies and deals with the problem of counterfactuals and utopian ideals. Again, for those endorsing Risse's reading of Hobbes, Kant and Rawls on the centrality of the state for any theory of justice, the chapter's exclusive focus on skepticism from below and skepticism from above in order to justify the relevance of pluralist internationalism appears puzzling. Skepticism from below describes the objections that criticize the moral necessity of the institution of a monopoly of force in order to determine the interactions between individuals, while skepticism from above does not contest the necessity to organize power, but rather the fact that the actual organization of power should necessarily take the shape of a multiple state system. If the skeptiscism from below reminds us of the objections advanced by anarchists, the skeptiscism from above, on the other hand, characterizes the claims voiced by advocates of cosmopolitan democracy or of the ideal of world government. In a nutshell, this is what Risse himself says on these forms of skepticism:

> "[…] a state system may be justified even though we are entitled to say neither that there ought to be a state system nor that there ought to be no such system. This would be the case if the following conditions applied: (1) The system of states has certain moral or prudential advantages, certain objections to it can be answered, and, to the best of our understanding, no alternative political system has moral or prudential advantages that outweigh those of a system of states. So we cannot conclude that there ought to be no state system. (2) Nonetheless, there remain nagging doubts about the acceptability of the state system, and we cannot conclude either that there ought to be a system of states. It is in the moderate sense of conditions (1) and (2) that the state system is justified. Neither type of skepticism can be either conclusively established or refuted" (Risse 2012, 309).

> *Thereby we also find a sweeping objection to any attempt to argue toward the conclusion that the state system morally ought to cease to exist, the objection that completes the discussion we began in chapter 15*" (Risse 2012, 310 – the italics are mine).

Although one could perfectly agree with Risse's position on the necessity of acknowledging the crucial standing of the state in our current world order, in spite of the reservations previously expressed with regard to his argumentative strategy, it is the logical necessity that he establishes between the two fragments of this quotation that raises some questions. In order to better understand the author's remarks, we should focus on the lengthy discussion Risse offers on the topic of counterfactuals. In chapter 16, Risse explains why epistemic considerations concerning the practical and philosophical relevance of utopian ideals should warn us against the use of counterfactuals in our reasoning about global justice. He also argues, and has some good reasons to do so, that the utopian ideals conceived in the light of a distant future cannot be action-guiding, as much as one cannot justify prescriptions over human actions on the basis of counterfactuals that could have changed the world if the past had been different from how we know it. Risse argues that:

> "The reason why we ought to refrain from certain judgments about the past is the same as why we should refrain from supporting certain utopian visions. Insofar as this is plausible for scenarios about the past, and to the extent that it is plausible that the reasoning in both cases is the same, this discussion about counterfactual history supports and supplements what I argued about utopian visions in section 5. […] We ought to refrain from judging the statement that 'the world would now be a better place if the state system had not developed' for the same reason why we ought to refrain from passing judgment on the statement that 'the world will be a better place, or look such and such, if the system of states is abandoned'" (Risse 2012, 321).

However, the question Risse's arguments inevitably raise is the following: should we endorse pluralist internationalism *forever until the end of time* merely because we cannot, at the present moment, *imagine* John Lennon's utopian aspiration? Indeed, this seems to be his conclusion. However, not only did this passage of chapter 16 deserve, in my view, a more elaborate discussion on the distinction between ideal and non ideal theory from an epistemological point of view, but it also begs the following question: the fact that we cannot imagine future changes does not immediately invalidate the epistemological relevance of ideal theory in the shaping of the future world. A backward looking perspective in the history of social changes and political transformations might tell us another story, a story according to which Kant's ideal of *Perpetual Peace* in the 18th century was not utterly irrelevant in the narrative and the shaping of the UN world order (despite all its failings) or a story according to which le *Projet de Paix* de l'Abbé de St-Pierre was not utterly irrelevant in the narrative and shaping of the European Union.

Another way of restating our main critical comment against Risse's defence of pluralist internationalism is the following: could it not be the case that we should merely accept the fact that states are historical contingencies? Although Risse seems ready to accept this, it is less clear how he understands the following implications. Indeed, the historical contingency of the state system would also imply that prescriptions of global justice also reflect historical contingencies (stemming from globalization) and therefore that pluralist internationalism should be understood as a conceptual paradigm mirroring its own historical contingency embedded in our current world order. But why would this necessarily lead to such a radical disqualification of the philosophical and practical relevance of ideal theory?

In the final chapter 18, we find a fascinating discussion on the role that international institutions such as the WTO could play regarding the need of a system of global accountability that falls short of global democracy. I will conclude this short critical commentary with these final remarks and questions. First, as previously mentioned, it appears somehow paradoxical that Risse would describe the current WTO failings without acknowledging that in this regard the global order does, in fact, cause harm to the global poor. Even if we could argue that these are lesser evils than in the past, there are justified moral complaints against the state system. Admittedly, Risse will acknowledge these moral complaints, but the discussion taking place in the final chapter seems to deflate the issues at stake in the Risse-Pogge debate mentioned in Chapter 15. Second, the reader might also continue to wonder why Risse doubts that complex mechanisms of accountability within an international institution such as the WTO can become genuinely democratic over time. Why shouldn't they be subjected to transformations that affect the global order, and the state system, such as we know them today? Those questions should invite the author to restate his argument, especially if he aims at convincing those who subscribe to the cosmopolitan democrats' claim according to which: "[…] the current absence of a global demos does not affect their argument. A global demos does not need to precede global democratic institutions. Instead, their creation may help with the formation of such a demos. More plausibly, gradual reform toward global democratic institutions would also gradually lead toward a global demos" (Risse 2012, 343).

In fact, following Risse's arguments, since the prediction of the path of future transformations of the world order remains a difficult task and cannot rely on scientific certainty, it seems every bit as problematic, from an epistemological point of view, to wander off in utopian terrain than it is to shut down any attempt to think beyond the contingent parameters of our historical situation. From this angle, one might be warranted to complain about a certain philosophical conservatism regarding the heuristic value of ideal theory. In many regards, this kind of philosophical conservatism commits the naturalistic fallacy deriving 'ought' from 'is'. After all, critics of a certain type of realism have pointed out that despite realists' aspirations to scientificity in the study of international relations, the failure to predict the end of the cold war or the scope of current globalization (because it was unimaginable in those days) should serve as a lesson of doctrinal humility.

In the context of Chapter 15, I have tried to demonstrate that Risse's controversial position with regard to the 'moral failures' of the state system does not contribute anything more than adding a layer of tangential controversies to the defence of pluralist internationalism. Regarding Chapter 16, the dismissal of utopian ideals goes, once again, a bit too far. The fact that the state system exists in the present world does not negate the epistemological legitimacy of prospective theories that try to escape the conceptual paradigm established by the state system. Since a key debate over the distinction between ideal and non-ideal theory is currently going on in the domain of political theory, the complete absence of reference to the numerous scholarly publications on the subject seems a relevant weakness of Risse's new book, particularly with regard to the point of view outlined in Chapter 16. It is not clear whether Risse criticizes utopian ideals from a non-ideal perspective in accordance with a certain implicit understanding of the importance of facts, feasibility considerations and empirical methodologies or rather because he rejects excessive forms of idealizations. Similarly, it is not fully clear if pluralist internationalism is not, itself, an ideal theory of global justice that excessively idealizes certain features of the state system obscuring the lucid analysis of the multiple wrongs that the global order causes in reality. In the end, the state borders may not be as politically, economically and morally hermetic as one may think.

To conclude, *On Global Justice* is, without any doubt, an extremely important work that, like any sophisticated contribution to a specific research field, raises a series of highly complex critical questions. In the context of this short critical review, my aim has been to open some of these questions, focusing on those that seemed central to the aims of the fourth section of the book. As far as I am concerned, I fully recognize the timely pertinence of Risse's conceptual framework and the importance to develop theories of global justice from the full understanding of the state system and under the light of a plurality of principles and grounds of justice. Nonetheless, pluralist internationalism still seems, from my point of view, a theory which mirrors the historical contingencies of our age that should not prevent us from thinking that we might still have the moral duty to go beyond the state system because, as Bob Dylan could have said to John Lennon, "*the times they are a-changin*".

NOTES

[1] I am indebted to Sara Villa and Peter Dietsch for their precious assistance in the English version of this text.

[2] M. Risse, *On Global Justice*, Princeton: Princeton University Press, 2012.

[3] J. Rawls, *The Law of Peoples*, Cambridge: Harvard University Press, 1999.

[4] T. Pogge, *Justice Beyond Borders: A Global Political Theory*, Cambridge: Polity Press, 2002 – second revised edition 2008.

[5] S. Caney, *Justice Beyond Borders: A Global Political Theory*, Oxford: Oxford University Press, 2006.

[6] These more recent works include: G. Brock, *Global Justice. A Cosmopolitan Account*, Oxford: Oxford University Press, 2009; L. Valentini, *Justice in a Globalized World. A Normative* Framework, Oxford: Oxford University Press, 2011; P. Gilabert, *From Global Poverty to Global Equality. A Philosophical Exploration*, Oxford: Oxford University Press, 2012; L. Ypi, *Global Justice & Avant-Garde Political Agency*, Oxford: Oxford University Press, 2012; C. Nine, *Global Justice & Territory*, Oxford: Oxford University Press, 2012; D. Miller, *National Responsibility and Global Justice*, Oxford: Oxford University Press, 2012; N. Hassoun, *Globalization and Global Justice: Shrinking Distance, Expanding Obligations*, Cambridge: Cambridge University Press, 2012.

[7] T. Pogge, "Cosmopolitanism and Sovereignty" in *Politicial Restructuring in Europe: Ethical Perspectives*, ed. Chris Brown, 89-122, London: Routledge, 1994, p.89.

[8] Risse, M., "How Does the Global Order Harm the Poor", *Philosophy & Public Affairs*, vol.33, 2005, pp.349-376.

REPLY TO ABIZADEH, CHUNG AND FARRELLY

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It is a great honor that my book has received such sustained attention by some of my esteemed fellow travellers. Arash Abizadeh, Ryoa Chung and Colin Farrelly focus on different parts of my book, Abizadeh on the second[1], Farrelly on the third[2], and Chung on the fourth[3]. I respond to them in that order.

To all major points raised by Abizadeh, my response is that the book already addresses the matter. Abizadeh often omits central bits of my argument or makes a caricature of them, to such an extent that my position is not addressed at all. Abizadeh may have found my discussions unpersuasive and ignores them for that reason. I do not mean to be taciturn, but since indeed these discussions are not taken up, I can do little more than to refer to the relevant passages.

Abizadeh writes that "claiming that there is an inalienable, indefeasible right to use original resources to satisfy one's basic needs might just be interpreted as claiming that there is a *constraint* of justice on any conventional property regime." I agree. I also agree that, as he adds, "[o]ne can say this without saying that the constraint constitutes a type of ownership, and one can say it while further insisting that there is no natural ownership of anything, i.e., that all property is conventional." One *can* do all this. But I explain why nonetheless it is sensible to think of the earth as collectively owned in a natural-rights sense. I do so in chapter 6, second paragraph of p. 113, and also at the beginning of chapter 7, pp. 130-131.One reason is that we increasingly face problems that concern humanity's way of dealing with this planet as a whole. An appropriately non-chauvinistic way of developing humanity's collective ownership is one way of capturing the importance of that kind of problem, and thus makes the planet as such and our relationship with it central to political philosophy."Appropriately non-chauvinistic" means that the emphasis must be on the symmetry of claims across all human beings (and across generations), rather than any kind of dominion over the rest of nature.The fruitfulness of that approach would then have to be judged by the kind of work that I submit it can do. Part 2 of my book applies the topic of humanity's collective ownership of the earth to problems such as immigration, human rights, obligations to future generations and climate change.

A second reason is that claims of need are frequently frustratingly amorphous. They are often usefully supplemented by the consideration that what we require to meet basic needs are resources and spaces that are nobody's accomplishment.That thought is again well-captured in terms of appropriately understood natural ownership rights. A third reason is that ownership of resources and spaces is a rather central human concern. Conventional legal systems regulate ownership. However, that fact raises the question of whether such conventional legal systems can themselves be justified by pre-conventional considerations. Abizadeh does not address any of these considerations. I do not know what he would make of them.

Abizadeh argues that I implicitly admit that talk of collective ownership is not warranted. After all, I concede that a version of No Ownership is also plausible, to wit, one that endorses provisos that make that view identical to Common Ownership in what it permits and forbids. But anybody who accepts my reasons for wanting to talk about collective ownership would draw a different conclusion. They would think defenders of No Ownership with provisos that make the theory identical to mine in the relevant sense do in fact accept that in some sense humanity collectively owns the earth. The point is obscured because Abizadeh never addresses my reasons for resorting to talk about collective ownership.

Abizadeh then explores one incident of ownership, the right to exclude. He wonders who would be excluded, insisting that somebody must be. What I say on this matter is that in the limit case of humanity as an owner, ownership loses this feature (fn. 3, p. 378; see also fn. 9 on p. 379). One may say this view comes with problems of its own.I am sure it does. But it amounts to a conceptual position untouched by Abizadeh's criticism.

I conceive of collective ownership as a view about the relationship among human beings that can readily integrate plausible accounts of environmental ethics (p. 119). To the extent that a version of anthropocentrism needs to be defended, at this stage of my argument (in chapter 6) I assume that case has been made. I discuss the distinctively human life, and its normative relevance, at length in chapter 4. The view on the standing of human life vis-à-vis the rest of nature that I adopt in section 5 of chapter 6 is what Bernard Williams calls "enlightened anthropocentrism". If Abizadeh thinks this is an inflated view (as he seems to do), he should explain why. Enlightened anthropocentrism makes room for many ways of valuing nature, but also takes seriously the fact that valuing must occur within the confines of human life. At the very least Abizadeh should recognize that that is my view. As it is, his claim that I make "inflated assumptions about human beings' claims against the non-human world" bears no connection to what I say.

I discuss deep ecology, among other views, in chapter 6 to point out that, while my version of collective ownership of the earth (unlike many of its 17th century cousins) is compatible with many views on environmental ethics, it is not compatible with all of them. I thereby argue against a potential charge of

trivialization. I think it is beyond doubt that deep ecology is an extreme form of environmental ethics (as I'm confident even Arne Naess would agree). I am not sure why Abizadeh takes me to task for calling it that ("name-calling"). Deep ecology is not refuted by being characterized in that way. But I neither think nor claim it is. That should already be clear from the fact that I use that formulation only in the paragraph that sums up my discussion in section 5 of chapter 6.

At a later stage, Abizadeh mischaracterizes my argument against Equal Division. I do owe defenders of Equal Division a substantive response, as Abizadeh insists, not merely an epistemic one. But what I offer in section 7 of chapter 6 (continued at the beginning of section 4 in chapter 8) is a substantive argument. The point is not about precision, or about what we can find out or agree on. Any conception of collective ownership needs to be defended through a natural-rights strategy. For reasons of principle (see second paragraph on p. 123) no such strategy is available to defenders of Equal Division.The point is that the kind of measure that is crucially needed here does not exist, not that we have no good way of figuring out what it is. Ultimately I might be wrong about this, but if so, it would not be because I do not even offer the right sort of argument.

Finally, Abizadeh makes it sound as if I am not offering any argument against Joint Ownership that takes the position seriously. I do. It begins in the second full paragraph on p. 121 and ends in the middle of p. 122, at the end of section 6 of chapter 6.The starting point of that argument is to model an original position where all parties are joint owners and seek to agree on principles under which all may acquire resources and spaces without unanimity in particular acts. In the original position, this is to ask what permissions it is reasonable both to give and to receive. I argue then that, under those assumptions, it is actually Common Ownership that would have to emerge as the solution. The argument I give to that effect may ultimately fail. But when one reads Abizadeh, one would never think this argument even exists.

Abizadeh ends his comments in the following way:

> To treat persons as free and equal while coercively exercising political power requires not using that power against individuals structurally to entrench absolute levels of *poverty* or relative material *inequality*. It is to Risse's credit that the "international pluralism" he defends in his book makes room for claims about inequality at the global level, even if they are not grounded in his claims about Common Ownership.

He says this in an intellectually conciliatory spirit. But here too I must say I do not recognize my view. The first sentence captures a commitment that (as far as material inequality at the global level is concerned) I do not share. At the beginning of Chapter 15 I spell out what my theory implies for global inequality. And that is probably much less to Abizadeh's liking than his concluding statement suggests.

Let me move on to Farrelly. Farrelly comments on Part 3 of my book. He begins by expressing uneasiness about philosophers addressing global justice. He suggests that other questions are properly in the domain of political philosophers, but matters of global justice are not. Theorizing about global justice, after all, means theorizing about global politics. But doing so carries the philosopher's tendency to grandiose theorizing to an untenable extreme.I cannot help but recall here a brief review of *On Global Justice* in *Times Higher Education* (29 November 2012). Conor Gearty, an LSE-based human rights lawyer, finished up as follows:

> Like Joyce and Nietzsche (or is that Nietzche?) you need to be really convinced that there is something there to make yourself persevere. I doubt I'd have done so, to be honest, without the stimulus of having to write this review. And at the end you ask, "Did I understand it?" and then think, "Even if I did, and he is right, what difference can (yet another) set of self-contained right answers about justice by a bright university guy make?"

When this was first posted, two comments appeared. (I can no longer find them online.) One came from another human rights lawyer who wholeheartedly endorsed the tenor of Gearty's review (apparently without having read a line of my book), making it sound as if the publication of books like mine could be the ruin of higher education properly understood. The second comment was very short, pointing out merely that Gearty apparently disliked normative theory and took it out on my book. That is where the comments ended. Presumably that was because this topic never attracted much interest. But it also seemed to me quite apt that this was the last comment. (And, no, it is not "Nietzche".)

Farrelly's approach is more thought-provoking because he does not throw out the whole project of normative reflection. Instead he wonders whether specifically global justice is not simply too much for any sensible philosopher to take on. Will it not always be true that any answer, no matter how worthy of discussion, will have to omit many topics? Will it not be true as well that, no matter how plausible bits and pieces are, there will always be another author who comes up with another approach that will be very different in outlook and detail but can muster about the same amount of plausibility?

The best defense I have is that the questions I address in my book simply arise, and arise, in the first instance, as practical political matters. Should we allow for more immigration, and if so, what should guide us? Our own self-interest as a country, or the desire to meet some moral obligations? Who should do how much about climate change? Can we justify human rights standards to people who say that, in their culture, ideas about rights have no traction (but who nonetheless wish to receive certain aid packages, say, from the European Union, which nowadays makes them dependent on human rights standards)? Does trade trigger moral obligations, or is it a voluntary exchange that any participant can engage in or walk away from?

Most reflective newspaper readers sometimes think about such questions. Sensible answers to these questions have theories behind them, and we get to those theories by pushing the reflection further. Few people will wonder about whether their answers to these different questions sum up to an overall coherent and plausible theory. But those who do, before they know it, do think about "global justice." In an increasingly interconnected world the topic has become inescapable. Aristotle wrote about the polis because that was (most of) his social world. Hobbes wrote about the state because that was (most of) his. Today our social world is global. So that is where political philosophy must engage. We need visions for where to go from here. It is the job of political philosophy to provide them.

In principle, political philosophy should be able to provide guidance to the decision maker, and I think my theory has some potential for offering it. Perhaps not in this book, which does not have the kind of format decision makers appreciate. But I have already made another attempt at communicating, in my textbook *Global Political Philosophy*. And to be sure, academic discourse is not a race: political philosophers do not generally seek to put human rights lawyers out of business, nor do we normally think everybody should spend a substantial amount of time dwelling on our questions. People climb Mount Everest just because it is there, and they rob banks because that is where the money is. Surely comprehensive reflection on some of the world's most urgent normative issues is doing okay by comparison. And not just by comparison.

Let me also be clear that I am eager not to overstate the role of philosophy in the context of "global justice."As a political philosopher based at a school of public policy I am deeply humbled by what practical people can do to improve the plight of the poor, and I am utterly persuaded by the relevance of social science inquiry into just about anything.But nonetheless Farrelly writes that I am assuming (and that my field is assuming) that global justice is *first and foremost* a philosophical problem. There is no such claim in my book (or on my mind). For reasons already explained I think philosophical reflection on the kind of normative issues that arise in our time at the global level is important. Saying *that* is enough to make a book like mine legitimate, to say the least. But saying *that* requires no comparative judgment about other endeavors that can also credibly claim that they are concerned with global justice. We do not need to compete for significance here.

Farrelly specifically articulates some criticism of my treatment of intellectual property and labor rights.His criticism is an instantiation of his larger claim. My treatment of these subjects, especially of intellectual property, he says, illustrates why philosophy does not have anything important to contribute to the most substantive issues that arise in these fields. Let me concede one point. My most important envisaged opponent is somebody who says that my pluralism is not genuine because it collapses into some kind of cosmopolitanism or (more likely) statism. To discourage that kind of criticism I try to show the fruitfulness of my view, by showing what kind of work different grounds of justice do, and also by showing how to put my somewhat complex theory of human rights to work.The-

refore I approach the problems to which I apply my theory from the standpoint of that theory. For instance, I discuss immigration from the standpoint of collective ownership to show that it bears on immigration. I do not think nothing else of interest could be said about immigration. A similar point also applies to intellectual property and labor rights.

That said, I believe my theory has important things to say about both subjects. I will not address labor rights since I take Farrelly's main point, that there is merit to investigating whether my approach would not sit rather well with the basic income approach. As far as intellectual property is concerned, Farrelly points out that a more solid ground (than what I am offering) for justifying intellectual property would be utility or efficiency. But in light of this move, it seems as if Farrelly's discontent is not so much about applying philosophy to this topic, but about how to do it. My approach is non-consequentialist. I do not argue for that approach but take it as a starting point. A utilitarian analysis of intellectual property is no default for me. I think there is an important role for rights to play here.

But why would one draw on Grotius' discussion of water in this context? Recall that among rights-oriented approaches to intellectual property the dominant one is the Lockean. Locke's idea that appropriation to the exclusion of others was acceptable where "enough and as good" was left to everybody else did not seem to apply anywhere with as much plausibility as it did to the domain of ideas.I think of something, claim it as mine, and since there are infinitely many other ideas, you are not being made worse off by my appropriation.

And this is where we should turn to Grotius for a better theory. Unlike Locke, Grotius distinguishes between parts of the earth that can be acquired (mostly the land) and parts of the earth that should be left in common property (in particular the seas). Locke offers no extensive discussion of this theme. So the only way in which intellectual property theorists can get inspiration from Locke is by looking at what he says about appropriation. But the analogy in the domain of ideas should not be to land (which can be appropriated) but to water (which cannot). The transfer to intellectual property should not be of the mechanism by which something *can* be appropriated, but of the reasons that show that something *cannot* be appropriated, or that, in the end, at least show that legitimate appropriation is possible only within constraints. Locke offers no foothold for this view, but Grotius does. Given what is sometimes called the totemic status of the Lockean view in rights-based approaches to intellectual property, this strikes me as an important matter. If I am right, much rights-based thinking about intellectual property has been *dramatically* misguided because it got its inspiration from the wrong philosopher.

But why, one might ask nonetheless, do I have to treat these topics in this book? The reason is that they actually can be treated within the confines of my theory of human rights. Thus these topics also serve to illustrate the workings of that theory.

At the substantive level, Farrelly argues that one can see that my Grotian move is unhelpful in the discussion of Grotius' second point about the sea, that "everybody benefits from leaving the seas unappropriated." Farrelly says that making this move basically sweeps away all the interesting issues, say, in the debate about patents. After all, the issue there is precisely how much protection should be given so that inventors do not feel they have more to lose than to gain by coming forward with their findings. Farrelly concedes that I touch on "the really pertinent issues with respect to intellectual property, namely, compensation and incentives." But once that is said, the best I can do is to remind readers of the structure of my argument.

In the case of the sea Grotius proceeds in two steps. In a first step he establishes that there is a presumption in favor of leaving things in common. That presumption draws on the divine donation of the earth to humanity. So there need to be good reasons for anything to be taken out of common property. Grotius explains why this presumption against appropriation cannot be overcome for the sea. One reason is that keeping the sea in common ownership is to everybody's advantage. These various conditions that for the sea are meant to keep the original presumption are also plausible for the domain of ideas. But once one sees that, one must ask whether there could be anything like a presumption in favor of an original situation of common ownership of ideas, which would then render (but which is also *needed* to render) these Grotian considerations applicable.

It is at that moment that I start investigating the ontological nature of ideas (to see whether there is such a presumption). It is also at that moment that ideas about fair compensation and incentives need to be given their due. To make a long story short, in the end the Grotian considerations are qualified in precisely the way Farrelly thinks they should be. Big questions remain for how to think of fair compensation and incentives. My theory has no resources to answer these questions. What it does do, however, is establish that considerations of fair compensation and incentives are the *only* relevant ones when it comes to delineating private rights to ideas. What one cannot do is point out that one should have unlimited property rights simply because one created some ideas (if that is what we do with ideas), or because one did not appropriate anything that would deprive anybody else of the opportunity to do just the same for other ideas (if *that* is what we do with ideas). So certain avenues of arguing for private property that are wide open on other rights-based approaches to intellectual property are now blocked. That is no small matter although Farrelly is right that much is left open thereby.

Let me finally turn to Chung, who deals with Part 4 of my book. Chung starts by stating that, in light of her "mild realist assumptions according to which states remain the most important actors in international relations," it is puzzling that I would devote so much efforts in chapters 15 and 16 to justifying that, in the current state of affairs, world order and global justice cannot be thought beyond the state system. Let me explain why I go to such length to do so.

By the time we come to the end of the third part of my book, the five grounds of justice that are on my agenda have been explored. According to my view, pluralist internationalism, particularly strong principles apply only within states. Weaker ones are associated with other grounds. However, the features of the world that create this situation – that there are multiple institutions where immediacy and reciprocity apply but no global institutions with these properties – exist only contingently. If the state system ceased to exist, and were replaced with a world with no states, then the global principles would be the only principles of justice that apply. If the state system were replaced with global institutions that are much like states today, then the difference principle would apply globally. Crucially, if *in addition* it would be morally desirable for the system of states to cease to exist (in either of these ways), then my theory could not be our ideal of justice. Instead, that ideal would be the vision of global justice for whose sake states should be abolished.

It is for that reason that we must ask whether we can establish that it would be morally desirable for the state system to cease to exist. Is it true that there morally ought to be no states or a global state rather than a state system? Answering that question is also relevant to answering two questions about justification from chapter 1: whether states can be justified to people respectively excluded by them; and whether the whole system of states and global political and economic institutions can be justified to those living under them. If there ought to be no state system, then it cannot be justified.

Chung's realist starting point should give her no reassurance as far as these questions are concerned. What is at stake is whether my theory is non-ideal in the sense that it can only make a world as good as possible about which we nonetheless already know that it is morally second-best (compared to a different ideal that we understand but for practical reasons cannot reach), or whether it is indeed an ideal theory. It is meant to be an ideal theory, in the sense of a Rawlsian *realistic utopia*. A realistic utopia is relative to a time. What is realistically utopian now may differ from what is generations later. I argue in chapters 15 and 16 that it is not now part of a realistic utopia to dismantle states. What is part of such a utopia are efforts at global problem solving that require coordination among and considerable reforms within states, which in due course may alter what we can consider a realistic utopia.

Rawls cannot sharply delineate realistic from non-realistic utopias. Nor can I. Nonetheless, anarchism and views of world order that completely dismantle the system of multiple states in favor of other organizational structures (including a world state) are clearly inaccessible. The change they demand is too radical, in any event for now. Nor can we credibly assert that we should gradually approximate this goal because we do not understand the goal itself well enough to aspire at such a step-by-step approximation. What is conceivable, in line with what I have just stated, is that at some point in the future a world without states does become a realistic utopia.

Chapter 15 and 16 argue in two steps that my theory is an ideal theory in the sense explained rather than a non-ideal theory. The overall goal is to block the move towards the conclusion that there ought to be no system of states and thus no global order. If I can show that, then I think I can show that my theory of justice is this kind of ideal theory.In a first step chapter 15 considers several arguments that find moral flaws in the system of states. I explore four strategies one might deploy (a) to identify moral flaws of the state system, and (b) to use these flaws to conclude that there ought to be no system of states and thus no global order. And this is also where the book connects to my earlier work on Thomas Pogge.

Some of these strategies fail to identify flaws of the state system as such, but not all do. There is a sense in which the global order wrongfully harms the poor that emerges from this discussion, by not doing enough to satisfy the duties of justice that my theory generates, and because institutions in former colonies have often emerged from a history in which the range of available options was formed enduringly by concerns other than the well-being of the colonized.

At the end of chapter 15 our question is whether the rectification of the acknowledged deficiencies requires either a world state or no states, or whether in any event either version of a political arrangement that does away with a state system would do better in the realization of justice. But that question we can only answer if we have a credible idea of what a world without states would look like. Chapter 16 argues that we do not have such an idea.

Chapter 16 offers a sweeping objection to any attempt to argue towards the conclusion that the state system ought to cease to exist (and formulates this objection in a framework of an account of what it is to *justify* a system of states). Chapter 16 finds that we are not entitled to conclude that there ought to be no states, but nor can we secure a justice-based rationale for their existence. There remains a nagging doubt about whether there ought to be states at all; nevertheless, morally and not merely pragmatically speaking, we ought not to abandon states now, nor ought we to aspire to do so eventually.

Now Chung is quite right that

> even if we could demonstrate without a doubt or statistics disputes concerningabsolute and relative numbers (however important they may be) that the state system, such as we know it today, does cause harm to the global poor, this would not invalidate, in my view, the claim that the state system remains an inescapable feature of the world order and that any serious attempt to remedy inequality and poverty must internalize this salient feature of international affairs within its justification and ascription of duties of global justice.

The antecedent would indeed not invalidate the consequent as stated here. But that never was the subject of my investigation. What is at stake is the moral desirability of the state system, not whether it will remain a fixture of our world.

At some point, as one ponders this desirability, the question of "compared to what"? turns out to assume a central role. Chung asks why I "pursue this contentious line of argument when a more pragmatic, factual account of the salient features of the world order would suffice to justify the accuracy of pluralist internationalism." The answer is: because I am not proposing pluralist internationalism as a non-ideal theory, but as the intellectually available kind of ideal theory.

One thing should be added for the record. Chung notes that since

> a key debate over the distinction between ideal and non-ideal theory is currently going on in the domain of political theory, the complete absence of reference to the numerous scholarly publications on the subject seems a relevant weakness of Risse's new book, particularly with regard to the point of view outlined in chapter 16.

It is not true that there is a "complete absence" of this kind of reference. It is just that this topic is not addressed as late as chapters 15 and 16, but much earlier. See chapter 2, pp. 29-30, and especially the extensive footnote 6 on pp. 366-367.The index also duly records the "ideal-non-ideal theory" topic.

I am not sure why Chung disagrees with my discussion of colonialism. She quotes me as saying that one would need to show that there is persisting injustice rooted in colonialism to establish the claim that it is because of the colonial past that the global order wrongfully harms the poor. But Chung quotes this as if it were my conclusion. It is not: it is one step in a multi-level investigation that ends with this conclusion:

> Past violence has not only produced ill-gotten gains. It has also created difficulties in making good on the duty of assistance. To the extent that past violence constitutes a link between ill-gotten gains and difficulties in satisfying this duty, there is a *compensatory* aspect to that duty. Chapter 4 stressed that it is hard to judge how demanding that duty is. Duties in virtue of common humanity involve a considerable *boundary problem* because we can ascertain their demandingness only in terms of the normative significance of common humanity. It is in light of this compensatory aspect of this duty that in many cases where doubts arise if certain measures are required, we should decide *in favor of so counting them*. (p. 265)

In the eyes of some this might be not be enough. I address some such concerns afterwards. But Chung does not track my discussion to its end.

About chapter 16, Chung's worry is that it goes way too far. She asks whether we should "endorse pluralist internationalism forever until the end of times because we cannot, at the present moment, imagine John Lennon's utopian aspirations? Indeed, this seems to be his conclusion." But it is not. I have no view on whether pluralist internationalism should be our ideal view of justice forever. But

it should be for now. I propose it as a realistic utopia. I argue that any vision that gives up on states entirely cannot be sufficiently well-theorized to be action-guiding.

This by itself does not mean utopian thinking has no role to play. It is fine to offer utopian visions that differ importantly from ours and use one's imagination to build a whole world around such ideas. One just needs to be alert to what this kind of work can accomplish. It could be beautiful fiction. It could make us think about certain features of our world by introducing us to an imagined world that is different from ours especially in the relevant regards. But if we cannot show why the world that we will then construct around particular issues with regard to which we wish to bring about a change would look *this* way rather than some other way, then we have not been given an action-guiding political utopia that we can use to formulate a competing ideal to my proposed ideal of making the world of states as good as we can. And that is my complaint about much of the existing cosmopolitan literature. Too much of it talks as if some other ideal of world-order were readily available, and that the only reasons why we should not adopt it now or try to reach it are practical in nature. Matters are much more complicated.

NOTES

[1] Arash Abizadeh, "A Critique Of The 'Common Ownership Of The Earth' Thesis", *Les Ateliers de l'éthique/The Ethics Forum,* volume 8, numéro 2, 2013, pp. 33-40.

[2] Colin Farrelly, "Commentary On Part 3: International Political And Economic Structures", *Les Ateliers de l'éthique/The Ethics Forum,* volume 8, numéro 2, 2013, pp. 41-52.

[3] Ryoa Chung, "Pluralist Internationalism In Our Time", *Les Ateliers de l'éthique/The Ethics Forum,* volume 8, numéro 2, 2013, pp. 53-61.

SPECIAL RELATIONSHIPS, MOTIVATION AND THE PURSUIT OF GLOBAL EGALITARIANISM

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ABSTRACT

One of the most significant challenges facing global egalitarian theorists is the motivational gap: there is a noted gap between the duties imposed by a global commitment to the equal moral worth of all people and the willingness of the wealthy to carry out these duties. For Pablo Gilabert, the apparent absence of motivation to act justly on a global scale presses us to consider the importance of feasibility in developing a persuasive account of global justice, part of which requires being attentive to what motivates us to act in support of global egalitarianism. In this article, I am critical of Gilabert's account of the role that relationships between individuals play in conceiving our global justice duties. I begin with an account of some confusion in Gilabert's account of the actual costs likely to be imposed on citizens of wealthy states as a result of the duties he demands of us and why it is important to resolve that confusion. I will then consider, and critique, Gilabert's account of special responsibilities. I shall argue that, fundamentally, there is an ineliminable tension between the special responsibilities individuals legitimately possess and the duties they have to eradicate global poverty.

RÉSUMÉ

L'un des défis les plus importants auxquels sont confrontés les théoriciens égalitaristes à l'échelle mondiale est celui de l'écart de motivation : on observe un écart entre, d'une part, les devoirs imposés par un engagement mondial envers la valeur morale égale de toutes les personnes, et d'autre part, la volonté des riches de s'acquitter de ces devoirs. Pour Pablo Gilabert, l'absence apparente de motivation à agir justement à l'échelle mondiale nous presse, dans l'élaboration d'un état des lieux convaincant de la justice dans le monde, de réfléchir à l'importance de la faisabilité, ce qui exige notamment d'être attentif à ce qui nous motive à agir en faveur d'un égalitarisme mondial. Dans cet article, je critique le compte rendu que Gilabert fait du rôle des relations entre les individus dans la conception de nos devoirs en matière de justice mondiale. Pour commencer, je souligne chez Gilabert une certaine confusion quant aux coûts réels susceptibles d'être imposés aux citoyens des pays riches découlant des devoirs qui, d'après l'auteur, leur incombent, et les raisons pour lesquelles il est important de clarifier cette confusion. J'examinerai ensuite et critiquerai le compte rendu que Gilabert fait des responsabilités particulières. Je soutiens qu'il existe fondamentalement une tension inéliminable entre les responsabilités particulières qui reviennent légitimement aux individus et le devoir qu'ils ont d'éradiquer la pauvreté dans le monde.

One of the most significant challenges facing global egalitarian theorists is the motivational gap: there is a noted gap between the apparent duties imposed by a commitment, globally, to the equal moral worth of all people and the willingness of the wealthy to carry out these duties. For some, the gap tells against pursuing global egalitarianism; the absence of the right kind of motivation means that these duties cannot be met, and therefore that these alleged duties are, after all, merely alleged. For others, including Pablo Gilabert in his impressive *From Global Poverty to Global Equality*, the apparent absence of motivation to carry out the duties mandated by a commitment to global egalitarianism has no impact on its "moral desirability", i.e., whether it is morally obligatory.[1] The claim that the motivational gap exists can therefore only press us to reconsider the feasibility of meeting the demands imposed by a commitment to global egalitarianism. Here Gilabert is optimistic: we can see evidence of an incipient universal global solidarity, which is already serving to underpin a commitment to global egalitarianism. In this brief article, I shall make some critical observations about Gilabert's account of the mechanisms by which relationships between individuals play a role in understanding and conceiving the duties imposed on us by a commitment to global egalitarianism. I will begin with a brief account of what I believe is some confusion in Gilabert's account of the actual costs likely to be imposed on citizens of wealthy states as a result of the duties he demands of us and why, if we are concerned about the motivation to pursue poverty eradication, it is important to resolve that confusion. I will then consider, and critique, Gilabert's account of special responsibilities. I shall argue that, fundamentally, there is an ineliminable tension between the special responsibilities individuals legitimately possess and the duties they have to eradicate global poverty.[2] These are critiques intended to continue the important conversation that Gilabert has begun in his careful, detailed, and most importantly, exciting book.

1. MORAL MOTIVATION AND COSTS OF POVERTY ERADICATION

Let me begin, just briefly, by assuming that Gilabert is right to divorce the moral desirability of poverty eradication from the motivational challenges that it faces (I will put pressure on this attempt in the next section). Gilabert offers us three "kinds" of motivation we might seek as support for eradicating poverty. Prudential or self-interested reasons may motivate individuals or states to work towards eradicating global poverty; for example, states might be motivated to contribute to eradicating poverty if they believed that there was a strong link between poverty and terrorism. Sympathy for others – the belief that others' well-being is constitutive of our own in some important sense – may also motivate support for poverty relief. For example, women in wealthy states might find themselves sympathetic to the women who fall victim to rape in war zones, and thus for sympathetic reasons work to alleviate the conditions under which women are vulnerable to this sort of violence. These two reasons, however, are fundamentally inadequate, says Gilabert. The most powerful of motivations, he tells us, is a commitment to justice; where individuals possess a "sense of jus-

tice", they will concern themselves with everyone's well-being, and not simply their own and that of those close to them (p. 143). We should rely on prudence and sympathy to motivate duty fulfilment only in the absence of a commitment to justice.

However, Gilabert's brief account the motivational mechanisms that serve to secure aid to the global poor does not account for a key element of human moral psychology and this is that what we are willing to do for others, even as a matter of justice, is deeply connected to our sense of how much doing so will cost. A fuller account of motivation must confront the fact that there are many people who will be willing to contribute to poverty eradication at some costs, but not at others. In other words, it may well be that people are indeed willing to "sacrifice" some of their well-being in the name of improving the others' well-being, abroad, but they may not be willing to contribute in ways that they believe are "too much". This distinction derives from an observation that Peter Singer made in his seminal article "Famine, Affluence and Morality", between stronger and more moderate accounts of the duties we have to alleviate poverty.[3] In his account, we have very strong duties to alleviate poverty – such that we should be willing to give up nearly everything. But, Singer observed, such a view, while right, seemed unlikely to gain traction, and he was therefore willing to support a more moderate requirement, according to which we must be willing to contribute to the project of eradicating poverty, but where we are not obligated to make significant sacrifices. The concession Singer made is an important one, since it acknowledges that there is a deep connection between our motivation to carry out what justice requires and what it will "cost" us to do so. We might prefer that our understanding of the cost to us be irrelevant to our willingness to act justly, but any genuine account of human motivation – humans as they are, not as we might like them to be – cannot ignore the effect of this on our willingness to contribute to poverty eradication, beyond the boundaries of our state in particular.

Why mention this? Because, one question one might like to ask of Gilabert is precisely this: what should we expect the costs to us to be, of alleviating poverty? Gilabert's answer is ambiguous. Over the course of the first many pages of the book, there are multiple, abstract, claims about what these costs are. Consider these examples: on p. 32, Gilabert tells us that meeting our basic positive duties towards the least well off requires "slight or moderate sacrifices"; on p. 27 he tells us that doing so is "possible, indeed, not very expensive." Later (p. 38), Gilabert tells us that we can carry out our duties by transferring a "very modest part of our aggregate income." And later still, Gilabert says that we can carry out our duties at "a rather minimal cost to ourselves" (p. 46) and then, again, that we can do so at "relatively low cost" (p. 47) and then again that we can do so at "reasonable cost" to ourselves (p. 51). Gilabert may prefer to avoid a direct response, since the answer to him is obvious: we ought to be prepared to contribute in non-trivial ways to the alleviation of poverty. Articulating a more pre-

cise cost to those he is trying to get on board may therefore not be a priority. But, if we're serious about considering – even for reasons *only* connected to feasibility – the motivations that press individuals into action, we need to attend to the very real fact that uncertainty about the costs one is likely to incur can have a damaging effect on motivation. Note that my claim is *not* that our lack of motivation to carry out duties of justice towards the global poor determines the content of our duties.[4] My claim is simply that we must be more attentive than Gilabert is to the operation of ordinary moral psychology in persuading others of the importance of carrying out duties of justice.

One reason that identifying the relevant costs is complicated, for Gilabert, may have to do with the various ways in which the objectives at which we should aim are characterized. As Gilabert describes them, the objectives of a global egalitarian view are to meet the "basic socioeconomic human rights", which include "food, housing, basic health care and basic education" (p. 5). This statement is clear enough. Yet, over the course of the early pages of the book, this objective is described differently – as responding to the "demands of the destitute" (p. 37); as "eradicating destitution" (p. 39); "eradicating poverty" (p. 40); "eradicate extreme poverty of the Destitute" (p. 46); as having a target of "developing autonomous agency" (p. 48); as having the goal of "alleviating suffering" (p. 51); to eradicate "avoidable destitution" (p. 56); to respond to "urgent claims of the Destitute" (p. 57). These objectives seem distinct, however. In particular, not only does it seem that meeting the urgent claims of the destitute is likely to have more motivational purchase than the demand to eradicate global poverty; they seem more generally to be distinguished by the relatively greater and lesser costs that they impose.[5]

As it happens, my most frequent discussions about the duties imposed on us by a commitment to global egalitarianism are with undergraduate and graduate students. Although they are committed to the *idea* of eradicating global poverty, and recognize that globally speaking they find themselves among the wealthiest, they are fairly reluctant to admit that they are bound to make significant sacrifices to get it done. One way to explain their reluctance is to dismiss it as the product of, either, their failure to empathize with others who are doing as poorly as are the global poor, or their failure to have fully absorbed the implications of the central premises of luck egalitarianism. But another, and more plausible, explanation to explain their reluctance to sign up to stringent duties might stem from their (perceived) status as relatively poorer members of Canadian society. In other words, as Catherine Lu proposed,[6] they may be wondering why they, *qua students*, should be burdened with making sacrifices to alleviate poverty when there are other, wealthier, Canadians who can more easily shoulder this burden. If this explanation of what is making my students hesitate is correct, then what we are seeing is the strength of relational accounts of justice. Relational (or sometimes, associativist) accounts of justice are those that propose that justice only applies where people are already bound by shared, coercive,

institutions, and more generally, that people's sense of whether they are treated justly derives in part from how they believe others, with whom they share relevant connections, are treated.[7] In this case, what my students are doing is evaluating their role (which they acknowledge to some degree) in alleviating global poverty in relation to *other Canadians'* role in doing the same. They understand their own duties of justice to be connected to the duties possessed by other Canadians. One possibility, of course, is that my students are wrong, morally speaking, in understanding whom their reference group ought to be with respect to evaluating their duties of justice. But the message we can draw from relational theories of justice, instead, is that we should understand that individuals have two reference groups, fellow citizens and the global poor, which overlap as follows: they recognize that they have duties of justice towards the global poor, but believe that the content of these duties is determined relationally in comparison to fellow citizens. The costs we are willing to bear, to eradicate global poverty, are similarly understood in relational terms.

2. SPECIAL RESPONSIBILITIES AND GLOBAL EGALITARIANISM

Given the above analysis, then, we might propose that our understanding of the duties we have towards the global poor are shaped in important ways by the special relations we share, nearly always within non-global associations of various kinds (including, but not limited to, the state) and the responsibilities that these generate for us. If this is the case, it will be helpful to turn to an analysis of Gilabert's account of special responsibilities and how they appear to complicate our ability to meet the duties imposed on us by the obligation to eradicate global poverty.

Gilabert notes a central tension between the pursuit of global egalitarianism and the importance of respecting special relationships. A commonly expressed worry about global egalitarianism is that, in meeting its demands, we shall be required to ignore our special relationships, and the duties they (appear to) impose on us; in particular, we shall have to redirect our resources from attending to the needs of our loved ones, to others who are less well-placed. To put the worry specifically, it appears at least conceivable that the duties of global egalitarianism – as Gilabert and others describe them – require us to take the resources (financial and time-wise) that we spend reading to our babies, out of a duty to them to give them a love of books, or to care for them to the best of our abilities, and so on, and direct them to solving the challenges posed by global poverty. Moreover, it appears that, to the extent that we choose to read to our babies rather than direct our attention/resources towards eradicating global poverty (or attending to the urgent needs of the destitute), we are not carrying out a duty at all, we are in fact perpetuating injustice under the guise of carrying out a duty. This strikes me and, I think, many others, as mistaken.

Gilabert's response to the "special responsibility" worry is to acknowledge at least three ways in which special duties can be justified, and therefore do not (always) pose a genuine challenge to global egalitarianism. One reason emphasizes a "moral division of labour", where we conceive duties as distributed to relevant agents for reasons of efficiency. On this view, we can justify our strong parental duties towards our own children by conceiving of parental duties as distributed to parents, for efficiency reasons. If all parents take care of their own children, then children are taken care of in general – this is an efficient way to make sure that our general duty, to ensure that children are cared for, is met.[8] However, no one conceives their familial (nor most other special relations) in this way; describing ourselves as having duties to our loved ones only in terms of efficiency misdescribes familial relationships. Why does this matter? It matters because Gilabert is offering an account of global egalitarianism that is *feasible*, and a proper account of feasibility requires a plausible, in the sense of "makes sense to those who believe they matter," account of the nature of special duties to family members. Defending special relationships, and the duties they entail, for reasons of efficiency is suspect, especially since such reasons are defeasible where we can show that some alternative arrangement, where for example global egalitarianism is best pursued if we are denied the right to form and value friendships, is more efficient. Any feasible account of global egalitarianism must get *right* the felt value of special relationships and the *felt* importance of attendant duties, as Gilbert acknowledges.[9]

Thus, Gilabert proposes a second way to diffuse the apparent tension between special responsibilities and global egalitarianism, according to which most of our intimate relationships, and the duties they entail, can be defended for their being an "extremely important or basic good" that we all "have reason to value" (p. 60). For example, the special relations that obtain within a family are such that my "enjoyment" of them "is universally permissible and involves special obligations among those with whom we share them" (p. 60). Whereas the first attempt to diffuse the tension is inadequate for its implausibility, this second attempt suffers from a series of imprecisions that stem from the inability to identify which among our relationships are "extremely important" and therefore among our "basic goods." In particular, it is quite common among cosmopolitans to acknowledge the importance of family and friends – as extremely important or among our basic goods – and to deny the importance of co-citizen or co-national ties.

It is common among philosophers who are sceptical of the claim that states (or more specifically, nation-states) are special sites of justice to claim that these entities are a matter of historical contingency.[10] Gilabert himself dismisses national ties as "clearly" of moral irrelevance since they derive from historical contingency: he writes that these merely apparent special relationships, and the duties that we believe derive from them, are borne from "clearly contingent historical formations [which] humans could avoid without fundamental losses to

their well-being" (p. 203), the implication of which is that their very contingency makes them unlikely to warrant being deemed "extremely important." But it doesn't appear adequate to conclude, as a result, that where these relations are "historically contingent" they cannot possibly be "extremely important"; that a relationship develops for historically contingent reasons does not appear, *prima facie*, to erase the possibility that it is morally significant. Moreover, many of our "extremely important" relations are in fact contingent. There doesn't seem to be anything more contingent than which parents we get, but we have *prima facie* duties towards them because these contingent relations, but not others (i.e., national), are among those that we should treat as "extremely important."[11]

While it is clear to Gilabert that a life well-lived can, in his own case, be accomplished without (valuing, prioritizing) relations between co-nationals, the general point we should draw from Gilabert's claim is not as clear. It cannot simply be that, because Gilabert can live a flourishing life without prioritizing the well-being of his co-nationals as a matter of duty, that the same is generally true, or should generally be true, for others. The general point that we should take away from this discussion is that it is critical that we find a way to distinguish between relationships that should be valued as "extremely important" and those that should not. No such distinction can be achieved by fiat. It is not clear that the set of relations that one person designates "extremely important" will overlap with how another person defines that set. What matters may not be identifying objectively the set of relations that can protected for being "extremely important", but rather giving some leeway to individuals to identify this set for themselves.

Gilabert's third strategy for eliminating the supposed tension between special duties and the duties to eradicate global poverty is, I think, meant to be the most significant. He proposes that the reasons for which we might be inclined to prioritize special duties are not as important as the background conditions that must obtain in order to justify this prioritization. Any justification of special responsibilities, he tells us, must be "consistent with endorsement of the latter" or, differently (and more stringently) that "reference to particular contexts and attachments does not provide sufficient grounds for duties unless they do not violate cosmopolitan considerations" (p. 62). Later (p. 203), he formulates the view slightly differently, "special responsibilities [are] conditional upon compliance with certain background moral conditions....". Thus – and he has made this claim in an earlier piece, written with Arash Abizadeh – there is no genuine tension between special duties and global egalitarianism.[12] Any apparent tension emerges simply because the demands of global egalitarianism have not yet been met.

The implications of such a statement are under-explored in *From Global Poverty to Global Equality*, however. Am I behaving in an unjustifiable way when I prioritize spending quality time with my daughter, who is very, very, cute, but admittedly very luckily privileged in relation to the situation of many other

babies born to parents who love them just as much as I love my daughter, when I could be spending that time pressing the world into moving towards global egalitarianism? Gilabert at times appears committed to the view that I am indeed behaving unjustifiably. He writes for example that the duty to help individuals in desperate need is such that I am behaving unjustifiably where I privilege someone who is well off while this desperate need persists. My reading to my daughter appears condemnable, on this account.

He also suggests, in a way that doesn't fully serve to clarify his position in my case, that "it would be wrong for me to assist A if that involves murdering B" (p. 61). This seems right and quite uncontroversial. Indeed, I don't believe myself to be implicated in the murder of others when I read to my baby girl (her current favourite is "Sound that Animals Make"); I am not thereby assisting A to murder B. But he also suggests that "You may not, in order to secure excellent opportunities for your children, support policies that make the opportunities of other children worse than those of your children" (p. 203). And now I'm genuinely unsure whether I'm meeting the standard he requires. It may depend on how strongly he means "support policies" which serve to make "the opportunities for other children worse". Is that something I do, as a matter of course, if I am not diligently focused on meeting the demands of global egalitarianism all the time? Can I be excused to spend some quality time with my daughter, without behaving condemnably, if I do enough on a regular basis to press the world into moving towards global egalitarianism (does writing a commentary on an excellent work in theories of global justice count?). In other words, how strongly we should understand Gilabert's claim is not clear. It may be that he is warning us that any prioritizing that we are *presently* in the business of doing cannot be justified morally, since a cosmopolitan world order does not presently exist. But the requirements – in particular, the costs – of global justice, in particular those that fall to the most well-off, remain unclear.

CONCLUSION

My objective in this analysis is certainly not to persuade readers that global egalitarianism is doomed, because it fails to offer a full account of the status of special relationships and the duties to which they give rise, however desirable its vision. I do believe, however, that any successful global egalitarian project must take more seriously the opportunities and the challenges posed by the existence of special relations and the responsibilities they justifiably entail. We must attend to the fact that we are, at the end of the day, *relational* beings, i.e., beings who evaluate whether we are treated fairly in relation to specific others, specific others who for now are those who live within the boundaries of our state rather than those who live in developing states. In particular, we must acknowledge that, at least with respect to offering a feasible account of global justice, the costs individuals are willing to bear for remedying global poverty cannot be disconnected from the special relations they value. It is cold comfort to ob-reserve Aboriginal Canadians with poor water quality to know that their water quality

is better than that available to citizens of developing states. That Canadians can and should attend to the inequality within Canadian borders *before* they attend to inequalities more globally is not to condone their willingness to ignore poverty globally. It is simply to observe that attending to the needs of Aboriginal Canadians does not seem to be something that can be justified *only* where our duties to alleviate global egalitarianism are met.[13] It may be, in other words, that there are good and *moral* reasons to explain the inward focus of many citizens, and that any account of global egalitarianism must acknowledge the genuine tension between this focus and eradicating global poverty.

NOTES

[1] Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012). All references to the book will be made using brackets inside the text.

[2] I have termed this tension "ineliminable" in a piece co-written with Margaret Moore. See Patti Tamara Lenard and Margaret Moore, "Ineliminable Tension: A Reply to Abizadeh and Gilabert's 'is There a Genuine Tension Between Cosmopolitan Egalitarianism and Special Responsibilities?'," *Philosophical Studies* 146, no. 3 (2009).

[3] Peter Singer, "Famine, Affluence and Morality," *Philosophy and Public Affairs* 1, no. 3 (1972).

[4] That is, I am not an internalist about justice.

[5] One might propose that Gilabert's effort is to develop an account of dynamic duties, i.e., the duties we have to create an environment in which duties towards the global poor can best be carried out, and that these are not obviously costly. That may be the case, or it may not. Either way, a feasible account of global justice requires an honest account of the costs, material and otherwise, of the duties we have.

[6] She made this proposal at the workshop that gave rise to this special issue.

[7] One of the best-known, and best, accounts of relational justice is Elizabeth Anderson, "What is the Point of Equality?," *Ethics* 109, no. 2 (1999).

[8] This is the strategy pursued in Robert Goodin, "What is so Special about Our Fellow Countrymen?," *Ethics* 98, no. 4 (1988).

[9] And this is the case, even if one thinks that the correct theory of justice is one that believes these relations are irrelevant from the perspective of justice. The emphasis on *feasibility* demands attentiveness to the role that special relationships play in motivating the carrying out of duties of justice.

[10] See for example Daniel Weinstock, "Motivating the Global Demos," *Metaphilosophy* 40, no. 1 (2009): 95.

[11] And this raises the question of how individuals whose family is abusive should respond to the claim that family relations are "evidently" of special importance and deserving of moral priority. The answer is, of course, that in these unfortunate cases, individuals should not attach significance to familial relations. But, if only family relations are protected by this second attempt to account for the tension between special responsibilities and global egalitarianism, then people whose family is abusive appear doubly unlucky (a) because they are abused and b) because it is not clear which of their special relationships will be exempt from condemnation by global egalitarians in virtue of their being extremely important and therefore as counting among one's basic goods.

[12] Arash Abizadeh and Pablo Gilabert, "Is there a genuine tension between cosmopolitan egalitarianism and special responsibilities?," *Philosophical Studies* 138(2008).

[13] I am deliberately avoiding speculation on whether we currently possess the resources to eradicate poverty globally, or whether it could be that there exists what David Miller has termed a "justice gap", i.e., the possibility that in pursuing legitimate justice claims domestically, poverty will persist (even where those who are poor have a legitimate justice claim against being poor). For more discussion, see David Miller, "Social Justice versus Global Justice," in *Social Justice in a Global Age*, ed. Olaf Gramme and Patrick Diammond (Cambridge, MA: Polity Press, 2009).

JUSTICE AND CHARITY: POSITIVE DUTIES AND THE RIGHT OF NECESSITY IN PABLO GILABERT

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ABSTRACT

This article considers Pablo Gilabert's attempt to defend against libertarian critics his ambitious argument for basic positive duties of justice to the world's destitute. The article notes that Gilabert's argument – and particularly the vocabulary of perfect and imperfect duties that he adopts – has firm roots in the modern natural rights tradition. The article goes on to suggest, however, that Gilabert employs the phrase 'imperfect duties' in a manner that is in some tension with the tradition from which it is derived. Indeed, Gilabert's novel deployment of the phrase contains a number of radical possibilities that are not pursued in his text. The article suggests that Gilabert would do better to break more decisively from a tradition that insists on the essential distinction between justice and charity.

RÉSUMÉ

Cet article examine la tentative de Pablo Gilabert de défendre, contre la critique libertarienne, l'argument ambitieux selon lequel nous avons des devoirs positifs fondamentaux de justice envers les plus démunis du monde. L'article souligne le fait que l'argument de Gilabert — et particulièrement le vocabulaire des devoirs parfaits et imparfaits qu'il déploie — est profondément enraciné dans la tradition moderne du droit naturel. Cependant, la manière dont Gilabert utilise la formule « devoirs imparfaits » entre en tension avec la tradition dont elle est issue. En fait, l'usage novateur que Gilabert fait de cette formule recèle un certain nombre de possibilités radicales qui ne sont pas pleinement considérées dans son texte. L'article suggère que Gilabert ferait mieux de rompre plus nettement avec une tradition qui insiste sur la distinction essentielle entre justice et charité.

The aim of Pablo Gilabert is one with which it is difficult not to be in great sympathy. I certainly endorse the basic principle that positive duties towards the destitute of the world ought to be conceived as obligatory duties of justice rather than voluntary duties of charity. I am less convinced by the larger argument about a universal humanist egalitarianism and the Scanlonian contractualism that gets us there, but one oughtn't to make the best the enemy of the good, and if we could manage merely to realize the ideal proposed in the first part of this book—the widespread adherence to the view that we have positive duties of justice at least towards so-called "sufficientarian" ends—we would have achieved quite a lot. On the international front one has a hard enough time eliciting from people charity let alone justice. (Readers will note, in passing, that the Canadian government has insisted recently that future projects in international development will be employed to further the interests of Canadian resource extraction companies, which indicates just what charity means today.[1]) I must admit a certain admiration for Gilabert's quixotic task, for he is pursuing an ideal on a global level that is currently having a difficult enough time defending itself within the confines of the state. But perhaps this ambitious move is only sensible: the welfare state is on the run facing the disciplining power of mobile capital and out of control debt, so perhaps the only place to go for the welfare state is global. *De l'audace*. Without entering into the discussion of feasibility, I suggest that this project is quite utopian; but that is not necessarily a criticism. In the following paper, I will suggest that Gilabert might have erred in not following through with the radicalism of his intuitions. Embedded in his idiosyncratic use of natural rights discourse is a radical proposition concerning property rights. But he still remains wedded to the basic framework of the modern natural rights tradition—thus, improbably demanding as his political proposals might be, I will suggest that his philosophical program would benefit from an extra dose of audacity.

The paper proceeds as follows. The first section addresses Gilabert's response to the work of Jan Narveson and Thomas Pogge. Here, I will spend some time on Gilabert's debate with Narveson, and I will suggest that while Gilabert powerfully dispatches a number of Narveson's arguments, he nonetheless remains vulnerable to challenges both on empirical matters concerning the sources of poverty and, more importantly, on ethical matters concerning the nature of the good. The second section follows up on this latter point, inquiring into the natural rights tradition whose vocabulary Gilabert adopts. I indicate that there is something quite new in Gilabert's treatment of the distinction between perfect and imperfect rights, something, indeed, that would have been thought contradictory in the tradition of modern natural rights discourse. I suggest that implicit in Gilabert's novel treatment of this distinction are some radical possibilities that Gilabert does not fully realize. In the concluding section, I return to Narveson's charge that champions of redistribution such as Gilabert are simply trying to impose upon others their idiosyncratic tastes for material equality. I indicate that Gilabert's attempt to shift the line dividing justice from charity is extremely important, but that it does not go far enough: Gilabert's robust version of the right of necessity is still wedded to a theory placing the emphasis on rights over

the right. Following through on the intuition that allowed Gilabert to speak of 'imperfect duties of justice' would entail radically revising – if not effacing – the line separating justice and charity.

1. POGGE AND NARVESON

Chapter three has two targets, Jan Narveson and Thomas Pogge. The debate with Pogge is more of a friend's quarrel; it is in the section on Narveson that the sparks truly fly. But the common point is that both Pogge and Narveson accept the view that duties of justice are negative duties and that one can only justify redistribution if it is compensatory for some previous wrong. Narveson takes the empirically weak position that rich countries bear little responsibility for the poverty of poor countries (save insofar as they have trade barriers that a libertarian can't support), therefore "we don't owe them a thing!" (as he writes, supplying the exclamation mark that conveys his resentment at being made to feel guilty).[2] Pogge soundly rejects this position and argues for a redistributive scheme based on the moral responsibility of the rich for the poor's poverty. Given that wealthy nations have caused a harm, they have a duty—on a purely negative account of duties of justice—to redress it. Pogge adopts this position for pragmatic reasons, but Gilabert is of the view that it doesn't go far enough as it ignores our positive duties of justice towards those whose dire need is not our fault. We need to go beyond mere negative rights and duties—we need to articulate a strong claim to enforceable positive duties to the destitute, duties that are 'underived', that is, not derived from some prior harm that the wealthy have committed. (I would take Gilabert one step further and point out that Gilabert's solution avoids the rather difficult task of establishing precisely who caused what harms in the global economic order; if one is able simply to demonstrate a universal duty of justice to the destitute, one is relieved of some tedious and interminable debates about the attribution of blame for existing economic disparities.)

So Pogge only gets two cheers from Gilabert because his justification of compensatory redistribution, while essential, does not go far enough in pointing out our duty to the poor. Gilabert urges Pogge to stop trying to appeal to libertarians by adopting their highly limited principle of justice and simply go the whole way to adopting a view of positive duties towards the poor, a position which would contribute more to the lasting and complete eradication of poverty. But it is Narveson with whom Gilabert most has to quarrel, for Narveson does not merely adopt the doctrine of negative duties strategically—he gives an account of them that follows a style of contractualist argument that is close enough to Gilabert's own method to bear comparison (though it differs sufficiently to give birth to radically different conclusions). Gilabert indicates that Narveson's argument contains holes through which one could drive trucks; Gilabert wants to drive a truck full of foreign aid through them. The disagreements are both empirical and logical. Let us begin with the empirical issues.

Gilabert does not need to break a sweat to demonstrate the greater reliability of taxation over voluntary charity, so we don't need to spend much time on Narveson's claim that charity concerts are superior to government action, nor on

Narveson's view that charity can be enforced by the informal method of expressing moral disapprobation to shame those who fail to contribute.[3]

Narveson thinks, also improbably, that global poverty is mostly due to inequalities of geography and technology. Insofar as structures of international trade are a contributing factor to poverty, Narveson thinks that this is due to insufficient liberalization of trade. Gilabert retorts that this is simply blinkered. Neoliberalism has been an abject failure, and what is required is rather a kind of internationally sanctioned protectionism that would keep poor countries' industries from being eaten up by the wealthy: 'fair trade'. I suspect the weight of the evidence is on Gilabert's side, but there is something awkward about the debate, since both authors offer up counterfactual ideals as their promised solutions to the current system. Narveson offers the image of complete free trade, and he cites a study detailing with risible precision exactly how many lives would be saved if the EU stopped protecting its markets (6,600 a day).[4] If there is oppression of the poor it is because we're not liberal enough. Narveson also gives the widespread view that foreign aid merely serves to prop up corrupt dictatorships. Gilabert retorts that "no serious advocate of foreign aid would quarrel with this claim, and would certainly ask for 'smart' forms of aid precisely targeting small business and civil society when governments are clearly defective".[5] Fair enough, but this reply seems laden with similar wishful thinking, for just as Narveson imagines some fanciful land of plenty once the demons of protection and planning have been slain, Gilabert imagines a foreign aid scheme that cannot get co-opted by ruthless elites, and a 'fair trade' scheme that does not engender stagnation and increased costs to the poor, but rather allows their industries to grow and flourish.

I do not wish to offer a false equivalency between these two positions, but I do think that Gilabert fails to engage sufficiently with the serious challenges posed by the opponents of protectionism and foreign aid. Gilabert's proposed solution of funding civil society directly without having to deal with corrupt, autocratic governments, for instance, is not without problems—Haiti is a good example of a place where one often hears the lamentation that the central government has been actively undermined by thousands of well-meaning NGOs operating with even less legitimacy than a corrupt central government. Gilabert is clearly aware that there are numerous complexities, both moral and practical, to the administration of foreign aid, and it would not be the place of a philosophical text of this nature to enter into all of the empirical details of development policy. And he is surely correct to point out that even if some foreign aid regimes have been badly executed this in no way weakens the case for a positive duty to ameliorate the condition of the destitute. (It simply raises questions about the best means to do so.) Nonetheless, since an important part of Narveson's argument rests on empirical claims about the nature of free trade, protectionism and foreign aid, a full hashing out of this question will ultimately require some heavier economic lifting (on both Gilabert's and Narveson's parts). For Narveson is unfortunately not alone in thinking sweatshops a good idea—it is a widespread view among champions of globalization (many of whom have not been convinced by the likes of Pogge). This is, of course, a central empirical question requiring more than the

small handful of citations that the two authors lob at each other's camps. But it also entails more than the empirical question about the efficacy of aid: the very institutions of international redistribution are fraught with types of domination about which one must think both institutionally and conceptually.[6]

It would be churlish to fault Gilabert for not articulating the final word to stop the mouths of neoliberal economists. But on the relationship between redistribution and power one suspects Narveson of making an important point that Gilabert glosses. This is the question of the liberty to decide what goods a country or community wishes to pursue. Gilabert suggests that there are basic needs that human beings have, that we can establish these and derive duties of justice from them. The great difficulty in this position is that it entails making strong claims about the good, and that task—one of the most important tasks of political philosophy in my view—is widely neglected in contemporary political philosophy. Narveson asserts that people who make arguments on the nature of the good are all would-be philosopher-tyrants. Narveson's libertarianism is at base a way of making the right precede the good—and like many such positions, it winds up begging the question, appealing rather unreflectively to an intuition about the good. (In this case, the intuition is that property should be sacrosanct.[7]) But there is naturally something to be said for his objection that different peoples might not necessarily see welfare or duty in the same way. Gilabert gives a democratic gloss to how his global distribution would work, with a kind of open-ended discursive democratic ideal tied to some frankly vague suggestion that democratic accountability is required from donors and recipients of aid. But this feels very much like an afterthought, and it addresses neither the serious institutional issues such ideals entail, nor the fundamental conceptual problems that arise when truth meets will. Gilabert's project would entail integrating everyone into a global distributive scheme—in a sense, globalization becomes an enforceable duty. Instead of building a new barn, would a wealthy Amish village be obligated to sell some surplus goats in order to pay for health care in distant nations?[8] Communal projects have a very low place in Gilabert's estimation—he doesn't discount them, but they clearly can't trump global obligations, and they cannot override the primacy of the individual.[9] My point is not to enter into Gilabert's argument for the relative weight of associativist and humanist justification; I mean merely to point out that his ideal, which ultimately places a universal duty of justice on all to enter into the global redistributive scheme, might well clash with democratic will. It should not be pretended that these things can be reconciled with ease. Indeed, the very point of establishing these universal duties of justice is to place them *beyond* the vagaries of particular democratic wills.

2. POLICING THE LINE BETWEEN CHARITY AND JUSTICE: THE RIGHT OF NECESSITY IN MODERN NATURAL RIGHTS DISCOURSE

Let me turn to what I take to be the most interesting aspect of Gilabert's argument in chapter three: his attempt to shift the line between charity and justice. This is, I suggest, a very good thing to do, but it is here that Gilabert might have

gone further. The distinction between charity and justice is, of course, heavily embedded in the modern natural rights tradition, whereby every right has a corresponding duty on the part of another. Rights are properties: if I have a right to X, everyone else has a corresponding duty to respect my right. A sensible Hobbesian would say that your corresponding duty only exists when there is a sovereign to enforce it, and in any natural state our rights will clash, but Gilabert disapproves of such legal positivism, belonging more to the tradition that thinks that there is, prior to the establishment of a sword, a series of natural rights and corresponding duties (though he does not use this language, and would offer, by means of Scanlonian 'contractarianism,' a metaphysically abstemious manner of getting to the same point). He wants to argue that among these rights are rights to other people's goods in cases of necessity. If I am starving and you are rich, you have no right to withhold aid to me—I have a claim on some portion of your goods, a claim that is not merely an appeal to your charitable nature; it is a claim that ought to be enforced with the sword. Certain positive duties are duties of justice, and if it is unclear just how we are to fulfil these we have an anterior duty to build institutions to make such transfers regular and enforceable. That is, Gilabert wants to make sure that we do not look upon these positive duties as mere appeals to our virtue: they are obligatory duties of justice.

Now, for medieval natural right, getting over this hump from virtue to justice was not as difficult—consider Aquinas, for whom anything in excess of what one needs is properly speaking the property of the hungry (*Summa Theologica* II, ii, 66, art.7). It would be a stretch to turn St. Thomas into a defender of the welfare state, but my point is merely that justice and charity were not so essentially divided. But modern natural rights discourse typically made the move harder. When people begin from the perspective of natural rights, they tend to place emphasis on negative duties (the duty not to infringe someone's rights). Nonetheless, there is an old move among natural rights thinkers that has its analogy in Gilabert's chapter three: we can move into the territory of positive rights and duties when survival is at stake. Of course the right of necessity is entirely unproblematic for Hobbes, since it would be a contradiction to cede such a right upon entering civil society; but since Hobbes' right of necessity does not necessarily imply duties on the part of another, it is also less attractive for someone seeking to buttress positive duties to the distant destitute. Locke, Pufendorf, or Grotius, though highly committed to individual property rights and to drawing a firm distinction between charity and justice nonetheless do allow for a move that somewhat dilutes the claims of justice in name of charity. In general, the story is that if someone is on the verge of death, you do not have a right to withhold basic needs, providing you have a surplus. This can be seen in Locke's brief line in the first treatise that you can't use someone's poverty to enslave them.[10] It can be seen in Pufendorf, who justifies theft if one is going to starve and there is absolutely no way of getting food by charity, though he goes a long way towards restricting this right in a manner that informs all attempts to distinguish the deserving poor from the rest of the riff-raff.[11] (On this issue, Gilabert treads carefully, clearly not wanting to fall into the trap of asserting who are the deserving and the undeserving poor. Nonetheless, he leaves open the possibility that such a distinction could be established.)[12]

The standard way of managing the distinction between negative and positive rights was to distinguish between perfect rights and duties (which are the basis of contracts, and are legally enforceable) and imperfect rights and duties (which are the basis for charity and are not coercively enforceable). I will have to make a bit of an excursus into the history of this distinction because Gilabert's argument hangs on a novel conception of imperfect and perfect duties. Typically when this distinction is employed in modern natural rights theory it functions in the following way. Every perfect right entails a perfect duty on the part of others; every imperfect right entails an imperfect duty on the part of others. So if I am cold I have an imperfect right to your second coat, and you have an imperfect duty (a duty of charity) to lend or give me the coat. If you fail to do so, you have not committed an injustice, but have lacked charity. One can convert imperfect rights into perfect ones, but only by contract or, as we will discuss in a moment, in cases of necessity. That is, the bedrock is the *meum et tuum*. Perfect rights and duties are the realm of justice; imperfect, the realm of virtue or charity. Now, the distinction between perfect rights (rights of justice) and imperfect rights (rights to charity) is altered somewhat in Kant, who gives the distinction several slightly different meanings. There is no space here to enter into the variations of Kant's idiosyncratic use of the distinction in the *Groundwork* and the *Metaphysics of Morals*. Let it suffice for us to note that Kant's shift from the standard usage in the *Groundwork*, he retains in the *Metaphysics of Morals* a basic continuity with the tradition, mapping the perfect and imperfect roughly onto the distinction between justice and virtue: imperfect duties are all ethical (rather than juridical). Kant's distinction is notoriously ambiguous given that it shifts, and Kant introduces some confusion by suggesting in some places that there are some *perfect* duties that are duties of virtue.[13] But he remains clear that imperfect duties are always duties of virtue, not justice: "Imperfect duties are, accordingly, only *duties of virtue.*"[14]

Gilabert appears to be following Kant in some respects, but he goes further than Kant in undermining the standard distinction between perfect duties as duties of justice (obligatory and legally enforceable) and imperfect duties as duties of virtue (voluntary and morally praiseworthy). He follows an element of Kant's meaning, treating perfect rights as ones that are concrete and particular, and imperfect as ones that are general, or open to interpretation ('wide').[15] Of course, this was always part of the traditional distinction, since charity admitted of discretion partly because it was open to interpretation to whom you had this duty and how much you owed. But *contra* Gilabert the fact that an imperfect duty was general was not its defining feature—it was, rather, the fact that it was not contracted and was not externally enforceable. An imperfect duty was a duty of charity, enforced by one's conscience and open to one's discretion. People like Pufendorf felt that it was important to maintain this distinction for the Aristotelian reason that you get to be generous when charity is at your discretion, and hence you get moral brownie points. Kant, too, thought that fulfilling imperfect duties gave one merit, whereas fulfilling perfect duties did not because fulfilling perfect duties did not involve making voluntary sacrifices and could be enforced coercively (we don't, after all, think that merely paying one's debts is

worthy of great praise).[16] The primacy of mine and thine is never undermined in Kant, and it is indeed extremely important for him to separate virtue and right for just this reason—our ethical duties, for instance, to push for an improvement of civic conditions, do not justify breaches of our duties of right.[17]

Now, for Gilabert, you can have *imperfect duties of justice*, something that would, both in the tradition and in Kant's somewhat idiosyncratic version, have been a contradiction. For Gilabert, the fact that duties are imperfect *merely* means that they are owed in a general way; this does not reduce the strictness of their claim (they belong to justice, not virtue). So an imperfect duty is itself a call to make itself perfect—we should be trying to nail down how much we owe and to whom by establishing the institutions that can make it so. We have a general duty of justice to give ourselves particular duties of justice. That is, Gilabert would have been perfectly Kantian if he had written that we have an (imperfect) duty of virtue to create (perfect) duties of justice; while the passage is ambiguous, Kant might have been suggesting something of the sort when he wrote, "The wider the duty, therefore, the more imperfect is a man's obligation to action; as he, nevertheless, brings closer to *narrow* duty (duties of right) the maxim of complying with wide duty (in his disposition), so much the more perfect is his virtuous action."[18] But Gilabert does not say this. He clearly wants this wider duty, the imperfect duty, to be conceived of as a duty of justice; it is in this claim that there lies a hidden radicalism because he ultimately blurs the lines between justice and charity that the modern natural rights tradition had wanted to keep clear. An imperfect duty of justice is, in the modern natural rights tradition, a contradiction in terms. Gilabert's move is thus quite novel, and pregnant with radical implications.

How does the natural law tradition articulate positive rights as rights of justice? For some in the natural rights tradition, duties of charity could become duties of justice when survival was at stake. Kant does not allow this—he merely suggests that you can't enforce the law in cases of necessity.[19] Grotius is somewhat ambiguous on this, for while he says that absolute necessity allows us to return to a condition in which the earth was owned in common (for we must assume that when property was introduced the people who introduced it never would have consented to a system that runs counter to 'natural equity'),[20] he also speaks of the case of necessity as an "exception."[21] The needy can abrogate strict laws in cases of necessity, but they are bound by duty to restore the object to the owner once they are in a condition to do so.[22] Pufendorf said the same thing in one place.[23] But why should one person's survival impose strict duties on others? Some introduce an original common ownership of the earth, which has some element of equal access that cannot be overridden by later property relations, but we noticed that in Grotius this led to a right of necessity but not to a corresponding duty on the part of the propertied. Locke's 'enough and as good' provision offers some justification for granting people access to the labour market as a right of necessity (a move that Gilabert correctly sees as exploitation[24]). In a concrete proposal, Locke advocated the most unlibertarian policy that property owners should be forced to employ beggars. Of course, he offered this in lieu

of their paying the poor tax, and he insisted that beggars should be forced to take the jobs proffered by the propertied at much less than the going rate, or be pressed into naval service.[25] I do not wish to enter into details; I merely wish to suggest that this can be construed as an attempt to render precisely the positive duties that accompany the right of necessity, a right that came out of the initial common ownership of the earth. Gilabert doesn't play this game, and he is perhaps right not to. For what Locke was doing was finding a way of *deriving* positive duty in cases of necessity from some original, violated right—the right of access to the means of survival.

One interesting exception in modern political thought is Leibniz, who makes the surprising argument that justice *is* charity—the "charity of the wise."[26] It is worth noting here because its defence bears a striking resemblance to the 'contractarian' argument that Gilabert employs whereby something is wrong if it would be disallowed according to principles that no one can reasonably reject. Leibniz employs the golden rule, asking, "suppose that you were plunged into misery; would you not complain of him who did not help you at all, if he could do it easily?" He continues, "justice, at least among men, is the constant will to act, so far as possible, in a way such that no one can complain of us, if we would not complain of others in a similar case."[27] Leibniz was trying to undo the damage done by the excessive focus on strict negative duties, but that horse was already out of the barn, and even he kept the basic elements of the Grotian distinction between perfect and imperfect duties, referring to 'strict' justice that can be grounds for a legal claim and the more demanding claims of justice, which are not necessarily convertible to enforceable rights, though he did leave the door open: "Equity demands strict right ... except when an important consideration of a greater good makes us depart from it."[28]

3. RIGHTS AND THE RIGHT

We have seen that Gilabert breaks with the modern natural rights tradition in insisting on not conflating the distinction between perfect and imperfect duties with the distinction between justice and virtue. This enables him to come up with a rather strong right of necessity based on his conception of imperfect duties of justice. But what grounds Gilabert's right of necessity? Like Leibniz, he wants to rely more on intuitions—the intuition, say, that having some small rise in taxation on our disposable income is more acceptable than having babies starve to death. And, indeed, Gilabert does not place the threshold for rights of justice at mere survival, but at a minimally decent standard of life. Narveson thinks this is a perverse and idiosyncratic intuition that can't be maintained by anything other than mere assertion; for someone to take this as primordial is to beg the question and impose their own tastes on the world. He complains that such people are simply saying "the difference between your view and mine is that I am right." Narveson clinches the argument by asserting "My view seems to me more reasonable because it is in accord with reality."[29] So Gilabert correctly responds, *tu quoque*, demonstrating that Narveson himself has placed an undefended premium on existing property rights and the negative duties to respect

them. Gilabert argues that Narveson can't reasonably defend his possessive individualism through his 'contractualist' position whereby a "configuration is better" if no one loses anything. By 'losing', Narveson means losing property. Well, this is clearly an entirely arbitrary preference, piggybacking on a number of assumptions about what constitutes advantage, and about the justice of the current baseline of property distribution. Gilabert and Leibniz certainly have more intuitive appeal.

Gilabert takes apart Narveson's argument carefully. He argues that Narveson's account of the rational contract slides back and forth from a prudential consideration of the person who knows his position in society to a more abstract, Rawlsian veil of ignorance argument. On the basis of the first, Gilabert writes that the Narvesinian contractor, if he knows he is in a powerful position, would have no reason even to support negative rights. Why not simply take what you want from the poor if you are contracting from a position of force? Yet when, in the context of another essay, Narveson moves the bargainers to a more impartial position, one of semi-Rawlsian ignorance, they surely would be tempted by a more egalitarian outcome than Narveson suggests. This is largely, Gilabert points out[30], because Narveson offers as the only two options for property distribution wealthy inequality or poor levelling. I must admit that the first argument against Narveson seems a somewhat uncharitable reading, and the running together of two passages from very different contexts might raise Narveson's hackles. (Which would be a feat, since he already has high hackles.) Greater attention to Narveson's more thorough *The Libertarian Idea* might have been desirable here.[31]

But what the debate ultimately comes down to is the basic question of whose intuition is more rational. For the crux of the matter is, as Gilabert rightly points out, Narveson's assumption that people have an "absolute right to their pretax income."[32] Narveson charges the egalitarian with imposing upon others his subjective taste for equality; Gilabert retorts that Narveson is asserting an odd and poorly defended preference for the protecting pre-tax income. I do not think that Gilabert is merely expressing an idiosyncratic taste when he is upset by extreme poverty—by the fact, say, that about 350 people around the world will have died of starvation by the time you have finished reading this article. He is not expressing an idiosyncratic judgment, though the existence of people like Narveson indicates that it is perhaps not a judgment based on principles to which "no one would reasonably object". The more radical philosophical task, in my view, is to make a substantive argument for a conception of property tenure that does not place great weight on subjective rights, but greater weight on the notion of *the right* (action which is right), property tenure as stewardship rather than ownership. I would go further and suggest that the challenge should be to question the very distinction between justice and charity. For the central achievement of the modern natural rights tradition has been to separate charity from justice, granting us the right to do wrong.[33] Justice is about what's mine and thine; virtue is about what I should do with what's mine. We have enshrined the right to do wrong, the right to be an arsehole or an angel—you pays your nickel, you takes

your choice. The right of necessity existed to give some limits to how much of an arsehole we were allowed to be. The likes of Narveson have wanted to remove these limits; Gilabert wants to increase them. But perhaps a more radical philosophical task is to ask whether we are philosophically justified in accepting strict divisions between justice and charity, or whether the task is not to think about ways of conceiving of property tenure as a kind of stewardship rather than ownership. In suggesting that there can be such a thing as an imperfect duty of justice, Gilabert has clearly gone partway down this road, confounding the categories of modern natural rights theory. For in declaring that our imperfect duties are duties of justice he has basically called into question the strict right of *mine and thine* that is the bedrock of modern natural rights theory; after all, if we are to consider our imperfect duties to part with our property as duties of justice, we must think that 'our' property is not wholly ours, but somehow exists in a grey area (the same grey area that made the realm of necessity so difficult to define). Taking this thought further would entail less calling for redistribution than calling for just use of resources; less articulating demands in terms of rights claims, but in terms of what is right.

As long as we're being utopian.

NOTES

[1] Kim Mackrael, "Ottawa signals shift in foreign-aid policy toward private sector," *Globe and Mail,* Nov. 23, 2012. http://www.theglobeandmail.com/news/politics/ottawa-signals-shift-in-foreign-aid-policy-toward-private-sector/article5582948/. Accessed 28/1/2013. It is difficult to resist the powerful altruism expressed in the minister's comments: "'Yes, there is a business component to this, obviously we can't ignore that,' Mr. Fantino said. 'But I want to highlight that there's an altruistic reason, certainly for Canada to be doing what we're doing, and that the purpose, [the] intent, is to help the industry succeed in an ethical way.'" Kim Mackrael, "Fantino talks foreign aid with mining industry," *Globe and Mail*. Friday, Mar. 01 2013. http://www.theglobeandmail.com/news/politics/fantino-talks-foreign-aid-with-mining-industry/article9242181/. Accessed March 18, 2013. In addition, the Agency itself is being shuttered and its mandate will now be taken over by the Department of Foreign Affairs and International Trade.

[2] Jan Narveson, "We Don't Owe Them a Thing! A Tough-minded but Soft-hearted View of Aid to the Faraway Needy," *The Monist,* 86:3 (2003), 419-33.

[3] *Ibid.*, 429. Narveson suggests the appellations of "dumb-ass or a scrooge" would be appropriate.

[4] Jan Narveson, "Welfare and Wealth, Poverty and Justice in Today's World," *Journal of Ethics* 8:4 (2004), 337.

[5] Pablo Gilabert, *From Global Poverty to Global Equality*, Oxford: Oxford University Press, 2012, p. 91.

[6] Gilabert is aware of some of these problems, but his attempt to deal with them entails somewhat vague appeals to democracy and deliberation; a book from him on this subject would be highly illuminating.

[7] Narveson, it must be noted, goes beyond mere assertion, offering an extended argument for the link between liberty and property in his *The Libertarian Idea* (Peterborough: Broadview, 2001); his argument, nonetheless, remains replete with normative question begging.

[8] Gilabert's argument leans heavily on the claim by Pogge that alleviating dire poverty would actually require a very small, almost unnoticeable percentage of global wealth; thus, the Amish village would merely sacrifice a small percentage of their year's milk (say 4.38 days' worth of milk, if Pogge's 1.2% of GNP is correct). I do not dispute Gilabert's point that forcing such a sacrifice for the sake of eliminating dire poverty would be morally desirable, but I wish merely to indicate that such a scheme would entail costs beyond the wealth transfer, and that such a scheme entails turning the fact of globalization into a political imperative.

[9] We see him touch on the problem of national self-determination at p. 209-211, 290-291, but he does not truly grapple with the problem of deep pluralism. In a sense, he might reply that economic globalization is simply a fact, so if his scheme equally would submit the globe to a uniform rule it is a much more humane and morally acceptable rule than the simple rule of corporate interest. Perhaps, but this scheme would rule immoral a number of radical political projects.

[10] John Locke, *Two Treatises of Government* ed. P. Laslett (Cambridge: Cambridge University Press, 2003) I:42. Locke does not say in this passage that one has a duty of justice to help the starving. On the contrary, he purposely distinguishes our duty of charity from our duty of justice. Nonetheless, he suggests that one has a 'title' to another's surplus if one is in extreme want and is not able, through the sale of one's labour, to survive otherwise. The nature of this title is a source of interpretive debate. It is ever to be recalled that though Locke insists that poverty cannot be used as an excuse to enslave someone, there are no such concerns about poverty reducing someone to the necessity of 'drudgery' *Ibid.,* II:4.

[11] "Which distinction being omitted," writes Pufendorf, "a Right seems to be given to idle Knaves, whose Vices have brought them into want, to seize forcibly for their own Use the Fruits of other Mens honest Labours" *Of the Law of Nature and Nations: in eight books,* tr. Basil Kennett, 4th ed. (London: Wilkins et. al., 1729), II:VI, 208; Pufendorf is speaking of Grotius here, but Grotius, too, sets a very high standard to trigger the right of necessity.

[12] 110, n.82.

[13] I*bid.*, 6:421ff.

[14] *Ibid.*, 6:390.
[15] Kant, *Metaphysics of Morals,* 196, 6:476-477.
[16] *Metaphysics of Morals* 6:390-391. That said, it is *meritorious* to have a will disposed to act in accordance with the law (rather, say, than merely to fear punishment). The principle is nonetheless clear that it is important to have room to practice free benevolence.
[17] This helps explain Kant's torturous attempt to celebrate the French revolution while condemning revolt in the strongest of terms.
[18] *Metaphysics of Morals,* 6:390.
[19] *Metaphysics of Morals* 6:236: "there could be no necessity that would make what is wrong conform with law." Of course, Kant had no objections to the sovereign taxing people in order to alleviate poverty, and there are ways of rendering his thought compatible with positive duties of justice. *Metaphysics of Morals* 6:325-326. See Allen Rosen, *Kant's Theory of Justice* (Ithaca: Cornell University Press, 1993); Pablo Gilabert, "Kant and the Claims of the Poor," *Philosophy and Phenomenological Research* 81:2 (2010), 382-418.
[20] Hugo Grotius, *The Rights of War and Peace* (Indianapolis: Liberty Fund, 2005) II:ii:6, p.433-434. The right of necessity is merely an exception. J. Salter fleshes out the distinction between the right that this gives and the type of right that would entail a perfect positive duty on the part of the property holder, "Grotius and Pufendorf on the Right of Necessity," *History of Political Thought* 26:2 (2005), 288.
[21] Grotius, *Rights of War and Peace*, II:ii:6, p.434-435. Indeed, he deliberately counters one interpretation of St. Thomas that would make the right of necessity an enforceable duty.
[22] *Ibid.*, II:ii:9, 436-437.
[23] Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law* (Cambridge: Cambridge University Press, 1991) I:5:23, p.55. Elsewhere, however, he faulted Grotius for confusing matters by suggesting that the object needs to be restored—this would suggest that the person's right to the object was somehow of a lesser status than other rights. Pufendorf, *Of the Law of Nature and Nations: in eight books,* tr. Basil Kennett, 4th ed. (London: Wilkins et. al., 1729) II:VI:v, p.208.
[24] He declares this to be "intuitively repugnant," p.83.
[25] John Locke, *Political Writings*, ed. David Wooton (Indianapolis: Hackett, 1993), 450-451. I leave aside his proposals for the whipping of poor children, though I note in passing that it demonstrates that it is possible to be even more insouciant about suffering than the insufferable Narveson (though note that Locke is actually offering a more generous principle than that of the libertarian).
[26] Leibniz, *Political Writings*, ed. Patrick Riley (Cambridge: CUP, 1988), 54.
[27] Leibniz, 56-57.
[28] Leibniz, 173. But he places greater weight on the importance of enforcing strict property on utilitarian grounds.
[29] Narveson, "Welfare and Wealth, Poverty and Justice," 323. He says this in the context of denouncing those who believe they can make foundational claims as fanatics who believe they have godlike powers.
[30] Gilabert, *From Global Poverty to Global Equality*, p.88.
[31] That said, though it would have been more intellectually generous on Gilabert's part to engage at greater length with Narveson's more substantive treatment, it would likely have come to the same conclusions.
[32] Gilabert, *From Global Poverty to Global Equality*, p.85.
[33] This is argued forcefully in Edward Andrew, *Shylock's Rights* (Toronto: University of Toronto Press, 1987)

GILABERT ON THE FEASIBILITY OF GLOBAL JUSTICE

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ABSTRACT

In this article, I discuss the analysis of the feasibility of global justice developed by Pablo Gilabert in his recent book *From Global Poverty to Global Equality: A Philosophical Exploration*. Gilabert makes many valuable contributions to this topic and I agree with most of his analysis. However, I identify a distinction between strategic justification and moral justification that Gilabert neglects. I show how this distinction is useful in addressing objections to the feasibility of global justice. I also claim that Gilabert makes some problematic assumptions concerning the way in which global justice is morally demanding.

RÉSUMÉ

Dans cet article, je traite de l'analyse de la faisabilité de la justice mondiale élaborée par Pablo Gilabert dans son récent ouvrage, From *Global Poverty to Global Equality: A Philosophical Exploration*. Les contributions de Gilabert sur cette question sont nombreuses et précieuses, et je suis en grande partie d'accord avec son analyse. J'identifie cependant une distinction, que Gilabert néglige, entre la justification stratégique et la justification morale. Je montre en quoi cette distinction est utile dans le traitement des objections relatives à la faisabilité de la justice mondiale. Je soutiens également que certaines des hypothèses émises par Gilabert quant à l'exigence morale propre à la justice mondiale sont problématiques.

Pablo Gilabert's excellent new book *From Global Poverty to Global Equality: A Philosophical Exploration* (Gilabert 2012) articulates and defends a compelling account of global justice. Gilabert draws on the resources of Scanlonian contractualism to justify a humanist conception of global justice that requires not only the elimination of extreme poverty but also the establishment of a global egalitarian order in which "everyone has equal access to certain important advantages" (Gilabert 2012: 4). Although theorists of many different stripes have acknowledged the moral importance of dramatically reducing the worst forms of global poverty, ideals of global egalitarian justice have been met with greater resistance, even from liberal political philosophers who endorse egalitarian principles of distributive justice within states.[1] Gilabert's book is a welcome addition to the growing body of literature that challenges the normative coherency of confining egalitarian distributive ideals to states.[2] The fact that we live in a world marked by a great deal of extreme poverty, along with the unwillingness of powerful political elites to adopt and pursue policies that could rapidly reduce global poverty often gives rise to doubts about the practicality of Gilabert's brand of global egalitarianism.[3] The seeming enormity of the task of significantly reducing poverty, let alone achieving anything approaching global equality seems, to many, to threaten the feasibility of wide ranging conceptions of global justice. Perhaps poverty elimination is an admirable goal but given the deep obstacles to its achievement, it should not be represented as a demand of justice. Similarly, the requirements of global distributive equality are thought to impose impossibly heavy demands on the global rich and outstrip the capacities of realistic institutions. In the face of this kind of skepticism, one of the especially attractive dimensions of Gilabert's discussion is that it addresses the feasibility of global justice in a systematic and sustained fashion. In this paper, I will consider some of Gilabert's contributions to illuminating what is involved in assessing the feasibility of global justice. I am broadly sympathetic to the position Gilabert develops so my remarks are mainly aimed at clarifying and probing some issues raised by his analysis.

Gilabert's analysis of the feasibility of global justice is presented in two chapters. Chapter four – 'The feasibility of global poverty eradication in nonideal circumstances' - focuses on feasibility issues associated with elimination of absolute poverty (basic global justice).[4] Chapter seven - 'The feasibility of global equality' - takes up the feasibility of global egalitarianism (non basic justice).[5] Gilabert does not analyze the feasibility of particular policy proposals about either the elimination of absolute poverty or the establishment of global egalitarianism. Rather his principal aim is to analyze the concept of feasibility with a view to understanding the precise character of reservations or objections to global justice that purport to be grounded in the idea that pursuing global justice is not feasible. On Gilabert's view, a proper appreciation of the nature of feasibility tends to blunt the force of many hasty dismissals of ideals of global justice – whether basic or non-basic – as infeasible. Along the way, Gilabert makes many valuable observations and distinctions that enrich our understanding of what is at stake in evaluating the feasibility of either a duty to eradicate poverty or a global conception of egalitarian distributive justice. I will not attempt to

reconstruct all facets of Gilabert's analysis but I want to highlight three valuable contributions to current debates about the feasibility of global justice that Gilabert makes.

First, Gilabert emphasizes the importance of distinguishing between different "domains" (Gilabert 2012: 120) in which feasibility issues can be raised. Gilabert points out that we must be careful not to conflate the question of whether an ideal of justice is *accessible* with the question of whether implementing the ideal would be *stable*. He plausibly contends that the issue of whether an ideal of global justice – either basic or non-basic – can be feasibly be accessed is more pressing than whether an ideal is stable. This is especially true of our assessment of the ideal of eliminating global poverty. Given that poverty elimination requires only modest resource redistribution, there seems little reason to doubt that a world without dire poverty can be stable. Moreover, the special moral urgency that attaches to poverty relief makes it likely that a decent institutional regime that eliminated poverty would enjoy widespread endorsement and thus would be stable. The more interesting and practically important matter concerns the feasibility of *accessing* or implementing the ideal from our present very unjust circumstances. Injustice can present various formidable obstacles to implementing ideals of justice that once implemented are very stable.[6]

Second, Gilabert argues that when we think about our duties to realize ideals of global justice we should adopt a *transitional standpoint* that is attentive to the ways in which the "institutional and cultural environment" (Gilabert 2012: 145) that agents inhabit is changing and changeable. From this standpoint we need not view the possibilities for achieving justice as defined by existing institutional arrangements and constraints. Yet we need not suppose that we possess a fully worked out "blue print for desirable and feasible institutional schemes" (Gilabert 2012: 145). Adopting the transitional standpoint allows us to recognize that there are not only duties to bring about justice directly but also "dynamic duties" (Gilabert 2012: 137) to adopt strategies that make the achievement of global justice more feasible. Acknowledging the relevance of dynamic duties allows us to appreciate different facets of political activity aimed at achieving global justice. We can act not only to implement an ideal – e.g., by enacting policies that realize basic human rights – but also in ways that make the achievement of ideals that are not currently fully realizable more realizable in the future – e.g., by pursuing strategies that improve the conditions for the adoption of policies that can realize human rights. This means that even if a demand of justice (e.g., universal access to good education and health care) is not currently accessible, we cannot conclude that it is infeasible *tout court* and that we can justifiably abandon its pursuit. Instead, we may have a duty to generate social and political conditions hospitable to the realization of human rights. Fulfillment of this kind of 'dynamic duty' can thereby render an ideal of global justice more feasible than it currently is.[7]

Third, Gilabert rightly conceives of poverty relief as "unambiguously a matter of distributive *justice"* (Gilabert 2012: 128). The global poor who lack access to

the material and social conditions of dignity are deprived of resources to which they have a justice-based entitlement. Discharging the duty to relieve global poverty should not be conceived as a matter of beneficence or as a laudable but *optional* "humanitarian goal" (Gilabert 2012: 128). Similarly, the ideal of global equality is an ideal of distributive justice. To the degree that the ideal is sound, those who are denied equal access to "important advantages" are denied resources to which they are entitled. Moreover, those who have more than equal access to important advantages (at the expense of those with less) enjoy resources to which they have no just entitlement.

Gilabert does not emphasize this latter point but as I will explain below, I think it has implications for how we interpret the idea that global egalitarianism might be infeasible on the grounds that it is an unduly demanding ideal. To the degree that we think that goals of poverty elimination or global egalitarianism are very burdensome (for those who are currently well-off) and yet are not stringent demands of justice, we may be inclined to think that pursuing them is not feasible because doing so would impose unreasonable costs on the well-off. Our moral calculus about what are feasible burdens to bear can be influenced by our sense of the moral gravity of the ideal that imposes burdens on us. Gilabert allows that feasibility considerations can have a bearing on whether a purported ideal of justice is justifiable. But as I show below his analysis neglects an important distinction between different kinds of justification. To set the stage for my critique, some general remarks about feasibility and practical deliberation may be helpful.

1. FEASIBILITY, JUSTIFICATION AND STRATEGY

In many contexts of practical deliberation we reject a course of action on the grounds that it is not feasible. Usually this means that the action in question violates some parameter that we take as a more or less fixed constraint on acceptable action. I may want to buy a new guitar and a new car this month but making both purchases is not financially feasible given my budget for discretionary spending. Sometimes the infeasibility in question is a matter of literal impossibility. Perhaps the combined cost of the guitar and car simply outstrips all the money I can lay my hands on this month, no matter what. Often, however, the infeasibility does not involve literal impossibility but rather is grounded in the fact that some possible options have been decisively ruled out on other grounds. For example, perhaps I could buy the guitar and the car if I sold my house or if I embezzled money from the university. I view these possible ways of facilitating the purchases as unacceptable (e.g., too costly or wrong) rather than actually impossible. In a related vein, I may rule out some possible strategies for achieving my end as unacceptable because, though possible, the probability that they will succeed is too remote. Spending my money on a lottery tickets could yield the money needed to buy both items but because it's so unlikely to succeed, I regard it as an unacceptable strategy. There is an important difference between saying a proposed plan of action is infeasible because it is (virtually) impossible and saying it is infeasible because pursuing it would violate acceptable parameters on action (e.g., it would wrong or too risky). In the former case, we

cannot coherently adopt the plan. In the latter case, adoption of the plan can be coherent if we are prepared to revise our views about the acceptability parameters. This point about parameters is worth keeping in mind because in some contexts we may conflate different senses of feasibility.

Gilabert recognizes that a familiar challenge to ideals of global justice, whether basic or non-basic, is that they are not feasible. But what exactly is the challenge? We cannot say that there is a duty to relieve poverty if the socioeconomic human rights on which this purported duty depends cannot be fulfilled. Similarly, we cannot endorse global egalitarianism as an ideal of justice if the institutions requisite to securing equal access to important goods are unrealizable or unacceptably costly. It is extremely doubtful that meeting the human rights of the global poor with basic socioeconomic resources is impossible. The ideal of non-basic justice is clearly neither logically nor nomologically impossible and it's doubtful that global egalitarianism is impossible in either of these senses. So we cannot claim that either ideal is unjustified because its adoption is incoherent due to a violation of the principle 'ought implies can'. Successful feasibility objections to the claim that basic human rights have socioeconomic dimensions or that justice requires global equality must depend on a different construal of feasibility. Here it is important to distinguish between the question of whether feasibility considerations show an ideal to be *unjustified* as a claim about justice and the question of whether feasibility considerations affect the political goals and strategies we should adopt in pursuit of an ideal of justice.

Consider the following example. At the time of the American civil war, justice required both the abolition of slavery and the full extension of equal political rights to African Americans (and to women and other unjustly excluded groups). However, given prevailing racism of the time political advocacy of these ideals was likely to frustrate achievement of both of them. Whereas the abolition of slavery was politically feasible, the recognition of full political equality was not. Of course, the principal obstacle to political equality was the *unjustified and mutable* racist attitudes of the white majority. Whereas enough racists could accept the elimination of slavery to make its advocacy politically feasible, there was insufficient recognition of the real demands of justice to permit the political recognition of full political equality. Given this sad state of affairs, it arguably made sense from a strategic point of view for supporters of political equality only to press for the elimination of slavery. Note, however, that this strategic calculation had no bearing on whether political equality was a genuine demand of justice at the time. (There was no 'hard' parameter that rendered full political equality impossible.) I raise this point because I think some of Gilabert's discussion of feasibility objections to ideals of global justice equivocates between issues of *moral justification* and issues of *strategic justification*. Let me explain.

Gilabert introduces a distinction between the 'ought of actual obligation' and the 'ought of moral desirability'. "One can interpret the claim that 'everyone ought to have enough to eat' as linked to a set of duties on the part of a set of agents to see to it that everyone has enough to eat. Alternatively, one can inter-

pret it as simply saying that a world in which everyone had enough to eat would, in a certain respect, be a just world. We can call the first ought the 'ought of actual obligation' and the second the 'ought of moral desirability' " (Gilabert 2012: 115). Gilabert says that feasibility considerations primarily apply to 'the ought of actual obligation'. It is feasibility worries about ideals of global justice as 'oughts of actual obligation' that Gilabert mainly wants to address. In the civil war case, it is clear that both kinds of oughts are operative: it was both desirable that political equality be established and agents had an actual obligation to bring about political equality. The actual obligation to bring about political equality was genuine even if racist attitudes prevented its realization. Simplifying matters a bit, racists had an actual obligation to give up their racism and support political equality.

Yet Gilabert seems to allow that an unusual type of feasibility consideration could, in principle, affect our *actual* obligation to end poverty. Thus following Amartya Sen, Gilabert allows that the degree to which an ideal of justice has "social influenceability" affects whether it is *justified*. A human rights claim can be defeated on this view if the view lacks sufficient social influenceability. Here social influenceability is understood as a measure of the receptiveness of people to a putative ideal of justice. Applied to the American civil war case, full political equality had low social influenceability because the majority of Americans, especially a majority who wielded political power, were not receptive to political equality. Gilabert holds that social influenceability affects judgements concerning *actual obligations*. In this context, Gilabert approvingly cites James Nickel's feasibility test that holds that "a necessary condition for the justification of a specific right is the possibility of successfully implementing in an ample majority of countries today" (Gilabert 2012: 135). Gilabert suggests some modest tweaks to Nickel's proposal but he endorses its basic thrust.[8] However in Gilabert's discussion, there is an equivocation about whether social influenceability is relevant to the moral justification of ideals of global justice or only to strategic justification about how to pursue them. On the one hand, to the degree he is following Nickel's lead, Gilabert seems to accept the claim that social influenceability can affect the moral justification of a human rights claim. On the other hand, he says that the criterion of social influenceability reflected in his revised feasibility test determines whether "a certain moral demand be at the foreground of global political agenda" (Gilabert 2012: 136). This sounds like a point about strategic justification rather than moral justification.

It's doubtful that Gilabert's revised feasibility test is actually relevant to the moral justification of ideals but it could be relevant to strategic justification. Consider the civil war case. Does the fact that the ideal of political equality had very low social influenceability in nineteenth century America have any bearing on whether it is an ideal of justice that yielded actual obligations to establish political equality? I don't think so. But, in such a context, low social influenceability probably does affect strategic justification. Perhaps in the context of prevailing racism, the justified ideal of political equality was not best served by putting it in the foreground of a political agenda. But that does not mean that

there was not an *actual* obligation to establish political equality or that racists did not have an *actual* duty to support political equality. Similarly, in current political circumstances the (apparently) low social influenceability of socioeconomic human rights does not, in my view, tell us anything about whether they are justified and generate *actual* obligations for individuals and groups today. But consideration of low social influenceability may tell us something about what strategies for the realization of such human rights are appropriate today and in the foreseeable future. The general worry is that Gilabert's adoption of the social influencability standard runs the risk of conflating moral and strategic justification.

2. MOTIVATION AND FEASIBILITY

A related ambiguity arises in Gilabert's discussion of what he calls the 'motivational argument' against global justice. Although he does not think it is ultimately successful, Gilabert thinks the following argument poses a serious challenge to his conception of global justice.

(1) An institutional scheme instituting duties of distributive justice is feasible only if those to whom it applies share a sense of mutual commitment or solidarity with each other.
(2) People do not share a sense of mutual commitment or solidarity with distant strangers.
(3) Therefore, it is not reasonable to advocate schemes of global justice (Gilabert 2012: 141)[9]

Notice that the conclusion here is naturally read as a claim about *strategic* rather than *moral* justification. It does not say that schemes of global justice are actually *unjustified.* Instead the point is only that advocacy is problematic.[10] As such, it's hard to see how the argument poses any challenge to a conception of global justice viewed as specifying actual obligations of agents. At best this argument raises strategic issues about how to discharge our duties of global justice. It gives us no reason to deny that we have such duties. Yet the point of raising motivational concerns in the first place is, it seems, to challenge global justice as an ideal with practical import.

Moreover, at least as it is presented, it is difficult to see how the argument provides a credible claim about strategic justification. Note that premise (2) does not say that people *cannot* share a sense of mutual commitment with distant others. It only says that they *do not*. So at the very least a premise is missing. In order for the argument to generate the conclusion, we would have to add something like:

(2.1) Advocating schemes of global justice makes no contribution to (or perhaps undermines) the cultivation in people of a sense of mutual commitment or solidarity of people with distant strangers.

On the face of it premise (2.1) does not seem very plausible. So it's not clear why we should view the motivational argument as identifying a credible objection to

a conception of global justice of the sort favoured by Gilabert. More generally, I think feasibility considerations only really challenge Gilabert's ideals of global justice as yielding actual obligations if such considerations can be shown to render global justice impractical in a deep sense, namely as violating well-established and more or less immutable nomological constraints concerning human nature and associated limits on possible institutional design. The fact that a purported moral duty does not *currently* motivate people does not show that there is no such duty. So critics of global egalitarianism who appeal to motivational considerations need to present compelling evidence that (most) people *cannot* be motivated by ideals of egalitarian justice.

In my view, the greatest obstacles to global justice are rooted in facts about mutable moral and political attitudes of the global rich and powerful.[11] If more affluent people endorsed global justice politically then we would not think there are deep obstacles to its achievement. But we cannot use the fact that most affluent people do not endorse global justice as a reason for thinking that it is not feasible. I think that for the most part Gilabert would endorse this view. But there is some ambiguity as to whether he thinks that the *de facto* moral and political attitudes of people can challenge the justifiability of global justice and hence its feasibility.

3. FEASIBILITY AND DEMANDINGNESS

In my view, many so-called feasibility challenges to global egalitarian justice are not really concerns about whether it is *possible* to implement institutions requisite for global equality. Rather the focus of reservations is really on the very different idea that the implementation of global egalitarianism and the attendant transformation of institutional structures would be unduly demanding on some people. Global equality is represented as infeasible in the sense that it would impose costs on some people that they are both unwilling to bear and are also in a position to avoid bearing.[12] For instance, as Gilabert notes in a footnote, the global super-rich could provide sufficient funds to eliminate poverty by giving up 1% of their annual aggregate income for a few years (Gilabert 2012: 157, n. 60). One facet of the problem today is that the global super-rich do not want to do this and they cannot be compelled to do it. Similarly, the democratic populations of the affluent Western democracies do not collectively support the policies necessary to effect even modest transfers that would significantly reduce global poverty.[13] Moreover, the global poor are not in a position to insist upon it. Of course, achieving global equality would require, at least in the medium term, a much greater redistribution of resources from the global rich to the global poor. Thus it seems natural to characterize the ideal of global equality as especially demanding. Throughout the book Gilabert frequently depicts global egalitarianism as extremely demanding but the theme of demandingness of global justice gets special emphasis in chapter 7.[14] The demandingness of the ideal of global egalitarianism is then linked to issues of feasibility. Global equality seems infeasible because it places too many heavy demands on the global rich. Of course, in one sense it is true that the global rich frequently view the requirements of global equality as too demanding and this perception certainly

makes the realization of global justice very difficult. However, I believe that Gilabert makes a mistake in presenting global equality as demanding in a way that carries with it high moral costs to the global rich.

A lot turns here on how we conceive, from the point of view of justice, the existing distribution of advantages and the resulting entitlements that people rich and poor have to resources. We may think, for instance, that the global rich have a *prima facie* entitlement to most of the advantages to which they currently have access. Viewed from this perspective, achieving global equality requires that the rich relinquish a great deal of the advantages that they *appropriately* view as justly theirs. Transfers from rich to poor to achieve global equality thereby entail what we might call a *real moral sacrifice* for the rich. But we can also view the extra advantages that the rich currently enjoy as resources to which they have no justice-based entitlement. The advantages they enjoy beyond an equal share are arguably advantages to which the poor are entitled. Of course, if the rich transfer these advantages to the poor they will experience a loss but the loss will be what we might call a *mere sacrifice*.

Here's an analogy to flesh this out. Suppose I have in my possession a beautiful and expensive collection of guitars that I received from my father. I derive many significant advantages from owning and playing the guitars. You also greatly value beautiful guitars but have none. Unbeknownst to me, it turns out that my father did not actually own all of the guitars that he gave to me. Indeed half of them belonged to your family and you, being the sole surviving heir, have a legitimate entitlement to them. You have no way to compel me to transfer half of the guitars to you. I may recognize how much you would benefit from the guitars but I also realize that my level of advantage will be reduced if I effect a transfer. Since I believe that all the guitars are mine, I will view the transfer of half of them to you as a *real moral sacrifice* but it is, in fact, a *mere sacrifice*. Moreover, if I keep half the guitars, you suffer a real and not mere loss. You are, after all, wrongly deprived of a benefit that is rightly yours. Given this state of affairs, it is misleading to characterize a redistribution of guitars from me to you as unduly demanding on me. Indeed, we should view the existing unjust distribution as demanding too much from *you*.[15] So we might say in this, admittedly contrived, case that it is the maintenance of distributive injustice that is unduly demanding from a moral point of view. It is harder to say that an equitable distribution can be reasonably resisted because it is too demanding for me.

How does this bear upon the feasibility of global equality? Let's suppose that Gilabert is right to insist that global equality is unambiguously a requirement of distributive justice. This can reasonably be interpreted as implying that the global poor have an entitlement to an equal access to important advantages and that the global rich do not have an entitlement to their current greater than equal access to important advantages. If this is the case, then it is questionable as to whether we should represent the ideal of global equality as especially demanding on the global rich. It is true that its realization would involve sacrifices on the part of the global rich but these sacrifices would be *mere sacrifices* rather than

real moral sacrifices. (In saying this I am assuming that the realization of global equality would not deny anyone – rich or poor – of the material and social conditions of basic human dignity.) By contrast, the maintenance of global inequality imposes real sacrifices on the global poor. So given the assumption that global equality is a genuine demand of distributive justice, it is a mistake to view global equality as an especially demanding ideal of justice. Rather it is actually the status quo of massive global inequality that generates problematic moral costs and imposes undue demands on some people. But this means that we cannot say that global equality is somehow infeasible because it imposes unacceptable burdens on the rich. Of course, since most of the global rich believe that they have justice-based entitlements to an unequal share of advantages, the achievement of global equality will appear to be demanding in a morally troubling way. But appearances can be deceptive. Perhaps the real moral costs of maintaining global inequality are much greater than the real moral costs of realizing it.

NOTES

[1] Prominent liberal egalitarians who reject the global application egalitarian principles of distributive justice include Rawls (1999), Nagel (2005), Blake (2001), Risse (2012).

[2] Recent defenses of global egalitarianism include Tan (2004), Brock (2009), and Moellendorf (2002).

[3] To give just one illustration, Oxfam estimates that the "$240 billion net income in 2012 of the richest 100 billionaires would be enough to make extreme poverty history four times over" (Annual Income 2013).

[4] "*Basic Global Justice:* We should, to the extent that we reasonably can, pursue institutional schemes under which everyone has access to what they need for their basic human rights to be fulfilled" (Gilabert 2012: 127). Arguably basic global justice involves more than the elimination of extreme poverty but poverty relief is clearly an essential component of basic justice.

[5] "*Global egalitarianism*: We should, to the extent we reasonably can, pursue institutional schemes under which everyone has equal access to important advantages" (Gilabert 2012: 127).

[6] For example, the political battle to extend the franchise to women was very difficult. But in those societies in which voting rights have been achieved the ideal of equal voting rights is stable and secure. So accessing a facet of political equality for women was difficult but ideal once realized is stable.

[7] To the best of my knowledge, Gilabert's dynamic duties proposal is novel but it has some broad affinities with Henry Shue's point that a fully adequate account of our duties should give recognition to 'mediating duties' (Shue 1988).

[8] Gilabert's partial revision of Nickel's test has four elements. First, it relaxes the requirement that implementation be gauged only in relation to countries as a whole – implementation within a country would count towards satisfaction of the standard. Second, that standard should be sensitive to feasibility not only today but also in the future. Third, implementation must be assessed not only with respect to the availability of resources but also with respect to the presence or absence of institutions that can allocate resources. Fourth, feasibility must be oriented to determining whether or not a moral demand should "be at the foreground of our political agenda" (Gilabert 2012: 136).

[9] Gilabert initially presents the motivational argument with a slightly different version of premise (1) – "Duties of distributive justice exist only among those who share a sense of mutual commitment or solidarity with each other" (Gilabert 2012: 141). But he thinks this premise is problematic and revises the argument with premise that I have identified as (1) in the text above.

[10] Advocating political equality during American civil war might have been unwise given the urgency of ending slavery. But as I have already observed that fact did not undermine the justifiability of political equality.

[11] I have in mind here both the numerically small collection of super rich individuals as well as the affluent citizenry of developed democratic states. The collective wealth and power of the latter is considerable yet affluent democratic communities appear to have little political appetite to even address global poverty, let alone global inequality, in a serious and concerted fashion.

[12] I do not mean that the rich have sound moral excuses but rather that there are no social or political mechanisms that put pressure on them to comply with the relevant duties.

[13] To give one familiar, and to my mind shameful, example: since endorsing the goal of contributing .7% of GNP to foreign development assistance in 1970, the vast majority of rich countries have not come close to meeting this modest goal. In Canada and elsewhere there appears to be insufficient democratic support for the requisite policies.

[14] References to the demandingness or potential high moral costs of global equality are sprinkled through the book but in chapter 7 appear at 237, 241, 245, 250, 251, 254-258 (Gilabert 2012).

[15] To be clear, the point I am making concerns moral not legal entitlement. Some jurisdictions may permit beneficiaries of wrongdoing to retain some benefits. But by the same token, the law of unjust enrichment can also require that restitution be paid to people who have been unjustly deprived of valuable resources.

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AUTONOMY, WELL-BEING AND THE ORDER OF THINGS: GILABERT ON THE CONDITIONS OF SOCIAL AND GLOBAL JUSTICE

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ABSTRACT

Gilabert argues that the humanist conception of duties of global justice and the principle of cosmopolitan justifiability will lead us to accept an egalitarian definition of individual autonomy. Gilabert further argues that realizing conditions of individual autonomy can serve as the cut-off point to duties of global justice. I investigate his idea of autonomy, arguing that in order to make sense of this claim, we need a concept of autonomy. I propose 4 possible definitions of autonomy, none of which seem to necessitate Gilabert's duties of egalitarian global justice. Instead, I propose that he may have in mind *Autonomy 5*, which requires that individuals have access to a maximum number of options and not simply a sufficient range of options to choose from. I criticize this premise as too demanding in the global world characterized by fundamental inequality. Second, I argue that if we were to endorse the preconditions for *Autonomy 5*, we would have to accept that Gilabert's theory of global justice doesn't provide for a cut-off point of duties of global justice

RÉSUMÉ

Gilabert soutient que la conception humaniste de nos devoirs en matière de justice mondiale ainsi que le principe de justifiabilité cosmopolite amèneront l'adoption d'une définition égalitaire de l'autonomie individuelle. De plus, il propose que la réalisation des conditions de l'autonomie individuelle puisse servir de ligne de démarcation par rapport à nos devoirs en matière de justice mondiale. Je me penche sur son idée d'autonomie en avançant qu'il nous faut, pour justifier cette thèse, un concept d'autonomie. J'examine ensuite 4 définitions différentes de l'autonomie individuelle, dont aucune ne nécessiterait l'adoption des devoirs de justice égalitaire mondiale proposés par Gilabert. Je démontre plutôt que Gilabert pourrait soutenir une cinquième définition, *Autonomie 5*, qui, elle, exige que les individus aient accès non seulement à un choix suffisant d'options, mais au plus grand nombre d'options possibles. Une telle prémisse, dans un monde caractérisé par l'inégalité fondamentale, me semble cependant trop exigeante. Deuxièmement, je soutiens que si nous adoptions et mettions en place les conditions nécessaires à la réalisation d'*Autonomie 5*, il nous faudrait accepter que la théorie de Gilabert, telle que proposée, ne prévoit guère de ligne de démarcation par rapport à nos devoirs en matière de justice mondiale.

Pablo Gilabert's book aims to establish an argument for a humanist conception of global justice. Such a conception is built on the fundamental premise that duties of justice are egalitarian in nature, and global in scope. In the pursuit of his argument, Gilabert carefully clears some obstacles that are brought forward against such a premise. In my comments, I want to focus on the themes of individual autonomy and well-being. These themes run through the book, but are most importantly brought forward in chapters 5 and 6. I want to argue that Gilabert uses ideas of autonomy and well-being as measures of global justice without, however, providing a clear definition of the *concept* of autonomy or well-being that he has in mind. This, I want to show, leads at best to imprecision in his argument for a humanist account of global justice and the duties that flow from it; less sympathetic readers may further claim that without a definition of the concept of autonomy and well-being, Gilabert's claim that the conditions of autonomy are universal is unsubstantiated.

My discussion is structured as follows: first, I will briefly review Gilabert's account of the concern we should bring to conditions of autonomy and well-being. Second, I will aim to contextualize this concern in some of the cosmopolitan literature. Third, I will provide some points of critique to Gilabert's discussion.

I.

Gilabert argues that if we accept the principles of moral equality and cosmopolitan justifiability, we will necessarily arrive at the humanist principles of global justice he so well describes. The first such principle is that of moral equality that characterizes our relations in the world. This is to say that all human beings have equal moral standing in our moral deliberations. If we accept this, then we should also accept that "we should treat each other on the basis of principles of justice that no one, as free and equal persons, could reasonably reject" (p. 10).[2] Note that this clause serves both, as a definition of equal moral standing, and also as the definition of what Gilabert calls 'cosmopolitan justifiability'.

How does this refer to autonomy? Gilabert argues that the goal of our duties of global justice and, importantly, their cut-off point is to realize a level of well-being and individual autonomy. This formulation is important since it defines the good that humanist principles of global justice pursue. Methodologically, defining the realization of conditions of individual autonomy as the cut-off point of duties of global justice, moreover, helps to address one of the criticisms often levelled against proposals of global justice. Most notably raised by Rawls and repeated by others, the problem with such accounts is that they don't offer a cut-off point at which justice is realized. The distribution of goods, in other words, would be endless and non-satiable, and we would never be able to fulfill our duties of global justice. I will return to this point at the end of my comments.

The realization of conditions of individual autonomy is at the basis of Gilabert's claim that we have global duties to distribute access to important advantages equally among all individuals around the globe. A first, preliminary, definition

of autonomy that Gilabert seems to suggest is thus that autonomy requires access to a set of advantages. Two examples of such advantages are access to medical care to realize the good of healthy lives; and access to opportunities for education. Both of these, we can say, are necessary for a certain conception of autonomy. Admittedly, I may be going out on a limb here since autonomy *per se* is not actually defined in the book – or not as explicitly as to make it into the index. My first task is thus to reconstitute the kind of idea of autonomy that Gilabert seems to rely on from the places in the book where it is mentioned.

We can agree that requiring access to medical care in order to lead healthy lives is fairly uncontroversial – we can simply accept that individuals can't really lead lives worth living if they lack a basic standard of health (however this may be defined). Call this *Autonomy 1*. Certainly, if individuals lack the means to protect themselves from easily preventable diseases, and actually die, then they obviously lack the means for autonomy since they are dead. Even less controversially, we can say that if persons suffer from such diseases, then they lack a basic level of well-being.

Does *Autonomy 1* provide reason to accept the humanist conception of global justice? Not necessarily. Instead, I would argue that it is readily endorsed by most authors debating global inequality: access to the basic means of living is part of the kind of basic duties of *humanitarian* justice that Miller, Rawls and many other 'associationists' accept.[3] Note here that the emphasis is on *humanitarian* justice, and not *egalitarian* justice. Gilabert's aim, however, is to justify egalitarian principles of justice, seemingly necessitated by a humanist conception of justice and cosmopolitan justifiability. This suggests, then, that Gilabert must have something else in mind when he makes the link between autonomy and the specific humanist duties of global justice he wants to argue for. In fact, he does accept articulations of autonomy that go beyond sheer existence, and that are meant to express our concern for individuals to be able to make choices in their lives. Call this *Autonomy 2*, which differs from *Autonomy 1* in that the former requires the possibility of *choice* in individual lives, rather than sheer existence.

II.

This brings us to the more narrow and applicable definition of autonomy. In chapter 5, Gilabert addresses Michael Blake's argument for the associationist basis of egalitarian duties of justice based on his argument for the value of individual autonomy. Blake's principle of autonomy holds that "all individuals, regardless of institutional context, ought to have access to those goods and circumstances under which they are able to live as rationally autonomous agents, capable of selecting and pursuing plans of life in accordance with individual conceptions of the good"[4]. In other words, Blake accepts *Autonomy 3*. This definition of autonomy is characterised not simply by choices, but by a conception of a good life that we assume every rational person wanting to pursue.

What is important for my argument is that according to Blake, *Autonomy 3* can be secured through principles of global sufficientarianism. This is to say that if all human beings have sufficient resources, options and advantages to lead what a reasonable person would consider a good life, then the duties of global justice have been satisfied. Global justice does not require egalitarian redistribution of these goods. Instead, to Blake, such principles are only necessary in the realm of the coercive state, where egalitarian justice plays a compensatory function for the kind of coercion the state exercises on its members. Blake seems to say that when the coercive state thwarts individual autonomy, it can only compensate for this by providing egalitarian distribution. Some of the goods of justice that the egalitarian state should distribute are for example, access to health care and education; and while these goods should be sufficiently accessible to all human beings, they don't have to be accessible to all to the same extent above a level of sufficiency.

Blake justifies his stance with the argument that sufficiency would provide conditions of autonomy, since what we need to be autonomous is a *reasonable* set of options, rather than a *maximal* set of options. Gilabert challenges the underlying assumption in Blake's argument that there are two standards that apply to the provision of options. Why, Gilabert argues, would there be a justification for providing people with 'more economic options' in the realm of the state that is different in the global sphere? Would anybody adopting the principle of cosmopolitan justifiability actually agree to this? And why is state coercion the only route to high justificatory burdens and egalitarian concern, as Blake would have it?

We can see that Gilabert is critical of Blake's account of the distinction between global and social goods of justice. In fact, Gilabert questions if the realization of sufficientarian principles only at the international level would allow for the realization of *Autonomy 3*, which he seems to endorse in his discussion of Blake. He asks instead whether *Autonomy 3*, when taken seriously, couldn't "also yield stronger demands" on the kinds of principles of justice we ought to adopt on the global level. Note here that Gilabert does not say that his concept of autonomy demands stronger global distributive principles, although I think that this is in fact his premise. I will return to this point below.

There are several points that are important here. First, what is the nature of the choices that make people autonomous, besides the kind of basic necessities of life, like being able to lead healthy lives. What, in other words, does *Autonomy 3* demand? Gilabert makes a convincing case that education is necessary to put individuals in a position of choice of the good life. He provides us later on in chapter 6 with good arguments why we should accept equal opportunity in education. And I don't think that Blake would necessarily disagree with the argument that access to education is necessary for autonomy, as I argued above.

The disagreement derives instead from their premise: Gilabert seems to hold that providing for the *necessary provisions* of autonomy (such as access to edu-

cation, reasonable options and the like) require principles of egalitarian distribution, whereas Blake believes that sufficiency is, well, sufficient to guarantee conditions of autonomy. Put differently, while Blake argues that the sufficientarian provision is enough to assure conditions of autonomy, egalitarian principles of distribution of goods within the state are required because of the coercion state measures impose on its members. Gilabert, on the other hand, argues that egalitarian distribution of access to goods is a requirement for global conditions of individual autonomy.

Gilabert's premise is important here and should have been underlined more strongly: it is this premise that deals Blake's distinction between obligations of egalitarian justice and respect for individual autonomy the kind of deadly blow it may deserve. Gilabert quite correctly asks why else we would adopt principles of egalitarian justice in the realm of the nation-state if not to support individual autonomy. The causal arrow in Blake's argument seems to go the wrong way: Blake doesn't argue from what the conditions of autonomy require, instead he argues from the perspective of the obligations of the state towards its members. One of the great merits of Gilabert's argument, then, is to argue from the perspective of autonomy, and in a pragmatic way; he starts his investigation with a look into the necessary conditions for autonomy to prevail. This seems to me the more appropriate way of going about things.

Both Blake and Gilabert rely on Joseph Raz' conception of individual autonomy[5], so let me briefly summarize this view here[6]. Call this *Autonomy 4* or the most encompassing definition of autonomy so far. Raz proposed a concept of autonomy as 'self-authorship'; a concept, in other words, that requires us to enjoy a range of valuable or adequate options that may inform our choices in life, to create our own moral world[7].

Raz explicitly acknowledges that place and culture may fundamentally shape the kinds of decisions we make – we may adopt some of the values our culture has promoted – we may believe in equality, solidarity and fraternity, as much as we may believe in the justice of the American dream. Options become real if we can refer to a context of choice, "some already accepted principles", i.e. principles that are adopted and endorsed by others around us. Our options also need to be *adequate* options if we are to carry out our lives autonomously. Both, long-term options that carry pervasive consequences as to the direction our lives will take, and short-term options that apply mostly to trivial decisions in our lives have to be available and open in order for us to be authors of our own lives[8]. We not only need to have a range of options; furthermore, these need to be *viable* for us. In other words, only if we are in a position where the options available can also become *actual* and *concrete* can they make sense to us and can they serve our autonomy. We can hence hold that options are necessary in order to make decisions in the most basic sense of what making decisions means, and that the original point from where we draw the options in our lives are those that are conveyed to us through our society, our social context like parents, family, friends and the societies we live in. So if this were the case, then we could say

that associativist arguments such as those proposed by David Miller[9] and Michael Blake[10] have some traction – that in fact, societies translate the kind of possibilities available into options.

Finally, and discussing the *variety* of options we need to have at our disposal when making choices, Raz stipulates that the adequate choice "for most of the time…should not be dominated by the need to protect the life one has: A choice is dominated by that need if all options except one will make the continuation of the life one has rather unlikely"[11]. To put things in a more contemporary light, we can use Raz' argument to show that there is "an important connection between the view …that threats undermine freedom and the view that poverty undermines freedom."[12] This, we could say, supports the argument Blake makes – that a conception of justice on the global level requires *sufficient* options; this does not support Gilabert's claim, however, that autonomy requires an egalitarian amount of options.

Autonomy 4, then, indeed calls for sufficientarian duties of global justice, but not necessarily for the kind of humanist framework Gilabert wants to establish. In fact, I would argue that the response Gilabert proposes to Blake – namely, that the reason why the coercive state has obligations for egalitarian justice is simply because reasonable people would presumably want more options or the maximum number of options – may be correct; but that it is not necessarily what they would *need* in order to enjoy conditions of individual autonomy

III.

This brings me to my penultimate point: it may be important here to make a distinction between the conditions of autonomy, and the conditions of well-being. Earlier, I discussed briefly basic access to medical services that Gilabert promotes as a necessary right flowing from a humanist conception of global justice. There, I accepted that such access constitutes one of the conditions of individual well-being and autonomy. Reflecting on medical care, however, illustrates that well-being and autonomy as the two values we pursue in policies of global and social justice may not require the same conditions: health may be required for well-being, but autonomy may not be required for well-being. In fact, much of the current literature on global justice and health inequalities aims to grapple with the question of how to promote conditions of health. And some authors participating in the debate have come to the conclusion that recourse to paternalism might be the most effective way of improving well-being, even if paternalistic intervention is hardly ever justifiable from a perspective of individual autonomy, particularly if we accept *Autonomy 4* which stipulates that we ought to be "part author of our own lives". Suffice to say, then, that conditions of autonomy may demand one set of duties, while conditions of well-being may demand another.

Assume that Gilabert accepts the sufficientarian argument for autonomy (*Autonomy 3*)– he could then still hold that concern for individual well-being demands humanist duties of global justice. But in order to sustain *this* proposal, it seems

to me that we need to know more about the nature of well-being. If we accept, for example, a description of well-being along the lines of Sen's and Nussbaum's capabilities approach, then a closer look at what kind of capabilities individuals should have access to may again support the kind of duties of basic justice Blake and Miller endorse; but capabilities as a definition of well-being may not actually yield humanist principles of global justice as Gilabert proposes them. Sen, for example, is particularly vocal against what he calls 'transcendental principles of global justice' because he believes that they divert us from the kind of contextual interpretation those concerned with individual well-being need to employ when describing our duties of global justice.[13]

To be sure, many have criticized Sen for what they perceive as a neglect of the important role that principles of justice play when designing duties of justice, and I believe that Gilabert would probably agree with much of the criticism. Suffice it to say here, though, that if our aim is to define well-being, and if in doing so, we make reference to Sen, we may actually have to agree with those who propose that a lot of what determines our well-being is contextual to the society we live in (or culture or something alike). If we accept that, however, then Miller's proposal that the conditions for and principles of justice, like the value of autonomy, for instance, are contextual to the society we live in, gains in plausibility. In other words, if we accept an account of well-being that builds on Sen's work, we may also have to accept associationist accounts of the duties of global justice.

So let's leave aside the definition of well-being and return instead to the concept of autonomy. Earlier, I argued that a Razian definition of autonomy (*Autonomy 4*) would lend itself to support sufficientarian principles of global justice but not necessarily yield the humanist principles that Gilabert wants to defend. This suggests that Gilabert has yet another concept of autonomy in mind (*Autonomy 5*). What, then, is Gilabert's concept of autonomy? Remember that the principles put forward here are submitted to the cosmopolitan justifiability test, which is to say that all are treated as moral equals. To test whether or not principles satisfy this test, Gilabert proposes to think about actual realizations of moral equality, for example through provisions of political equality. Early on in the book (pg 148 and section 2.4.1. page 44ff), Gilabert discusses the idea of individual autonomy in the context of political self-determination and political participation. He identifies enabling such participation as a humanist duty of global justice, and provides a detailed discussion of possible global institutional structures and the role individuals could play in these. If we accept this proposal, then it seems to me that we accept, also, that individual political autonomy can only take shape within an institutional framework. Autonomy, in other words, could possibly be construed as only realizable in specific contexts that enable the realization of autonomous agency.[14]

But if we accept that, and to return to the associativist critique of duties of global justice, the fact that autonomy requires a specific context doesn't tell us *which* contextual conditions autonomy requires. An associativist proposal building on Sen could for example refer to David Miller's argument proposed in 'Principles

of Social Justice'.[15] There, Miller argues that the social context provides us not only with the necessary context of choice (see above, my discussion of *Autonomy 4*), but also the reasons for this context of choice as the result of decisions we as a society have taken.[16] The framework of society, put differently, only makes autonomy plausible. If we accept *Autonomy 4,* it is plausible to argue that we need a set of reference points along which we are actually able to define options. It is not clear that institutions can provide us with this reference point. And I believe that Gilabert would agree that institutions are simply the means we employ to implement certain choices we have made as a society about the good life. As a society, we afford ourselves public institutions of higher learning, the arts and sciences but also institutions of health care and early childhood care because our society has decided that these are goods that are part and parcel of the good life that all members should have access to. Institutions can't, however, provide the definition of the goals of justice. That discussion has to precede the establishment of institutions.

Finally, I believe that an egalitarian principle that demands maximum options for autonomy raises an objection that Gilabert himself anticipates. Here, I simply want to raise a flag as to his answer to the objection. Towards the end of chapter 5, Gilabert discusses to what extent one could argue that global egalitarianism restricts individual autonomy of the well-off. (p. 179). The question raised, in particular, is whether or not the duty to set up 'domains of cooperation' imposes unreasonable costs that might go against individual preferences of the well-off, thus thwarting their autonomy. Gilabert acknowledges that in the current (unequal) world, the demands on the well-off that would follow from a humanist duty of global justice would indeed be high, and one might speculate to what extent such demands would impose 'unreasonable' costs:

> "The challenge is based on the important claim that there is a strong personal prerogative to be able to pursue one's good without unreasonable interference from others, or demands to promote their interest…the challenge may be more biting for humanism because it may be less ready than various forms of associativism to see any current contingent factual limits to the depth of globalization as automatically warranting normative limits to global distributive demands" (pp. 179-180).

Gilabert accepts that if agent-neutral duties derive from humanist global justice principles, then "they may turn out to be quite demanding" (p. 180) – however, Gilabert posits that if such duties are meant to enable somebody else's autonomy, then "the charge of demandingness looses some force" (p. 180) since "a protection of one's personal autonomy should not be seen as a passport for exiting the moral space of responsibilities" (p. 181). The context that is required for autonomy to be realized, then, is in this instance circumscribed by the moral duties we have to others to enable *their* autonomy.

This brings me to the question raised at the end of this section in the book, which is left somewhat hanging. Gilabert accepts that the demandingness objection

would become particularly problematic in non-ideal contexts, where, often, the conscientious rich do more than their fair share and where this duty to do more (established earlier) might "threaten their ability to pursue their own personal projects unless they fuse such projects (as nobody should be demanded to) with the pursuit of justice." (pp. 181-182). Recall here the definition of *Autonomy 4*, which demands that our options need to be viable for us, and also that we can actually implement them. What to do, in other words, if we care for egalitarian conditions of autonomy for all, but when in the pursuit of realizing this goal, the autonomy of some is curtailed? How do we justify this?

Justifying *sufficientarian* conditions of individual autonomy in this context should come easily: if we accept the principle of moral equality, then it is immediately plausible and reasonable to argue that the *maximal* options of the rich may be justifiably curtailed to guarantee access to *sufficient* options of those who would otherwise lack them. I am not certain, however, that an equal concern for individual autonomy would equally be able to justify the kind of maximization of options that Gilabert calls for in his response to Blake. Put differently, if adopting egalitarian principles to provide conditions of autonomy in a world of fundamental inequality would indeed entail high costs to individual autonomy of the well-off, we need to ask why we should adopt the maximization concept of autonomy rather than stick with the sufficient and adequate conditions (*Autonomy 3*).

The balancing act that considerations of justice have to fulfill in negotiating between the legitimate autonomy concerns of the worst-off and those of the well-off seems to easily accept basic conditions of autonomy, but I don't see how we can ground egalitarian principles of distribution of options on the concern for providing conditions of autonomy – unless, of course, egalitarian principles are not simply the way we achieve autonomy, but are a goal in themselves. We could say, in other words, that our concern is simply to treat all individuals equally since we assume that this is the principle that cosmopolitan justifiability would yield – without aiming to buttress this claim with concern for individual autonomy. If Gilabert were to choose this route, however, I suspect that he would encounter the response that this doesn't provide us with a cut-off point at which we can say that we have satisfied our global duties of justice. Recall that providing a cut-off point is one of the advantages of cosmopolitan justifiability. What I am trying to say here is that Gilabert uses autonomy to support the claim that humanist egalitarian principles of global justice are plausible because, contrary to other proposals of cosmopolitan justice, he accepts the need for a cut-off point for our duties of global egalitarian distribution. This point is reached once we have distributed what we need to realize *conditions of autonomy*. My reading of his account of autonomy – as we move from *Autonomy 1* to *Autonomy 5* – however, suggests that somewhere along the way, his goal morphs from realizing conditions of autonomy to *maximizing options* as a condition for autonomy. And that, I believe, is not a clear cut-off point at all.

If a book stimulates the reader to reflection, then it has certainly achieved a great deal. Gilabert's treatment of the humanist conception of global duties of justice is such a book and we can only hope that he will pursue his exploration of the consequences of applying the humanist account to questions of global justice.

NOTES

[1] I would like to thank two anonymous reviewers of this piece who provided valuable and very helpful comments.

[2] Page numbers in brackets refer to Pablo Gilabert, *From Global Poverty to Global Equality* (Oxford: Oxford University Press, 2012).

[3] Those defending associationist conceptions of justice argue that specific duties of justice are due to those with whom we form associations, most importantly, associations in the context of the state.

[4] Michael Blake, *Distributive Justice, State Coercion, and Autonomy*, *Philosophy and Public Affairs*, 30(3), 2001, p. 271.

[5] Joseph Raz, *The Morality of Freedom*, Oxford : Clarendon Press, 1986.

[6] This is only one of many definitions of autonomy. A good overview can be found in Jeremy Waldron, "Moral Autonomy and Personal Autonomy", Anderson and Christman *(eds), Autonomy and the challenges to liberalism: new essays*, Cambridge : Cambridge University Press, 2005.

[7] Raz, *The Morality of Freedom*, p. 372ff.

[8] *Ibid.*, p. 374.

[9] David Miller, *National Responsibility and Global Justice*, Oxford: Oxford University Pree, 2007.

[10] Michael Blake, *Distributive Justice, State Coercion, and Autonomy*.

[11] Raz, *The Morality of Freedom*, p. 375.

[12] Jeremy Waldron, "Autonomy and Perfectionism in Raz' *Morality of Freedom*", *Southern California Law Review*, 62, 1988, p. 1116.

[13] Amartya Sen, *The Idea of Justice*, Cambridge: Harvard University Press, 2009.

[14] I am leaving aside here a discussion of the link between autonomy and agency. Suffice it to say that autonomy is a cardinal value for liberals since it is considered a necessary condition of individual agency.

[15] David Miller, *Principles of Social Justice*, Cambridge (Mass.): Harvard University Press, 1999.

[16] Miller elaborates on his earlier arguments made in 1999 in his latest work on duties of global justice. See David Miller, *Justice for Earthlings*, Oxford : Oxford University Press, 2013; particularly chapter 7.

RESPONSE TO MY CRITICS

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I.

In *From Global Poverty to Global Equality* (hereafter *GPGE*)[1], I engage in a philosophical exploration of the moral desirability and the practical feasibility of implementing global principles of poverty relief and egalitarian distributive justice. In this exploration, *GPGE* provides novel ways to challenge three common dichotomies in political theory and practice. They concern the tensions between approaches to global justice based on negative and on positive duties, between associativist and strictly universal humanist perspectives on the scope of distributive requirements, and between "realistic" but normatively unambitious and normatively ambitious but highly "idealistic" moral outlooks. *GPGE* argues that the second component of each of these contrasts can be given a powerful rendering, and that we should in fact resist the alleged dilemmas. We can and should affirm both positive and negative duties, combine humanist and associativist considerations, and aim high with our principles while thinking lucidly about the feasibility of their practical implementation. Regarding the first point, *GPGE* develops an account of socioeconomic human rights and egalitarian distribution in which our responsibilities have a global scope, and are based on positive duties to support the achievement of a decent and flourishing life by all human beings, not only on negative duties not to deprive them of access to such a life. Regarding the second point, *GPGE* defends the plausibility of humanist global principles, and explores how their demands relate to associative considerations in distributive justice. The relation is shown to be complicated, but not always one of mutual exclusion. Regarding the third point, it is common in political theory and practice to challenge ambitious proposals by saying that although their fulfillment may be desirable, it is not really feasible. However, there has been close to no conceptual exploration of what feasibility is, and very little substantive inquiry into why and how it matters for thinking about justice. *GPGE* seeks to fill these gaps. It proposes one of the only available systematic analyses of the concept of feasibility, and one of the first systematic applications of it to the pursuit of the fulfillment of human rights and global equality. *GPGE* provides an exploration, not a complete theory of global justice. The contributions to this symposium by Patti Lenard, Robert Sparling, Christine Straehle, and Colin Macleod, for which I am very thankful, show that the exploration should be taken further.

II.

A significant challenge that any ambitious conception of global justice faces is that what it requires may be at odds with what some people are currently willing to do. A salient example of this difficulty concerns people's strong tendency to give great weight to what they see as their responsibility to those who are "near and dear" to them, to those with whom they share special relationships (of love, friendship, family, and, more controversially, co-nationality). Patti Lenard argues that *GPGE* fails to properly address this challenge in two respects.[2] The first charge is that *GPGE*'s "account of the motivational mechanisms that serve to secure aid to the global poor does not account for a key element of human moral psychology and it is that what we are willing to do for others, even as a matter of justice, is deeply connected with our sense of how much doing so will cost … [I]t may be that people are indeed willing to 'sacrifice' some of their well-being in the name of improving the others' well-being, but they may not be willing to contribute in ways that are 'too much'." I find this charge puzzling because *GPGE* explicitly mentions, at several points, that costs to duty-bearers, including regarding the limitation of what they may do to cater for their special relationships, is significant for assessing both the desirability and feasibility of action to reduce global poverty and inequality. The contractualist framework of justification recommended by *GPGE* requires attention to the well-being of the duty-bearer, and attention to special relationships, as among the reasons that could weigh against purported duties of support to distant others. The interests of the latter are not the only relevant consideration. Schemes of distribution have to be justifiable to all concerned, including duty-bearers (p. 279). The perspective of duty-bearers is also explicitly considered to bear on the issue of feasibility. As Lenard acknowledges, *GPGE* considers three possible motivational mechanisms that might lead agents to take more seriously the plight of the globally worst-off: prudential considerations in which benefitting the worst-off would cause their own condition to be better, considerations of sympathy in which benefitting certain others directly constitutes an improvement of their own well-being, and a sense of justice in which a responsibility to cater for the well-being of others is part of what an impartial concern for the good of all requires. Lenard worries that the characterization of these three mechanisms is insufficient. She focuses on the third, after saying that *GPGE* takes it to be the "most powerful" one and that *GPGE* takes the other two to be significant only when it fails. This reconstruction is misleading. *GPGE* takes all three mechanisms to be significant simultaneously. It says that the third would be the most reliable one if it were to consistently operate in a strong way. It would be the most reliable because it would focus on *everyone's* well-being, not just on the well-being of those with whom the well-off are already intertwined through relations of mutual advantage and sympathy. But since a motivation to honor impartial justice is not always strongly operative, *GPGE* sees the other two mechanisms as necessary supplements. However, Lenard identifies an important issue regarding the third mechanism. Often, agents take their duties of justice to distant others to be constrained by their role within national associative frameworks, and this in two ways: (a) they think that what they should do for distant strangers depends on what other

co-nationals are doing (or failing to do), and (b) they think that supporting the poor in their country has priority over helping the poor in other countries (even if the latter are poorer). I think that these two points are often descriptively correct. But they do not defeat the feasibility of the eradication of global poverty. Conscientious agents can make efforts to fight global poverty unilaterally even if other co-nationals are not doing their fair share, and they can fulfill dynamic duties to change the institutions and policies of their country so that they compel their co-nationals to do their part (see pp. 55-58). For example, conscientious Canadians could campaign to make sure that the Canadian government fulfills its pledge under the Millenium Development Goals to give 0.7 percent of its GNP to fight global poverty (rather than around 0.3 as it normally does). Doing this is not incompatible with addressing the plight of the Canadian poor. A more likely possible tension might arise if we focus on securing global equality rather than eradicating severe global poverty. The former is a more demanding practical target and is thus arguably harder to achieve. But I have seen no compelling argument for taking that target to be morally inappropriate or infeasible. The nascent ethos of cosmopolitan solidarity could, and arguably should, over time, embrace it.

The second charge raised by Lenard is that *GPGE* fails to acknowledge that there is an "ineliminable tension" between special responsibilities and global egalitarianism. Lenard discusses three ways in which *GPGE* addresses the significance of special relationships within a cosmopolitan framework: (a) catering for special relationships may be instrumentally justified as part of a division of moral labor through which general duties are fulfilled efficiently, (b) some special responsibilities could be independently justified as being given rise to by certain types of special relationships that are amongst the basic goods that all human beings have reason to value, and finally (c) special responsibilities are valid only if their content does not violate the satisfaction of certain universal moral constraints. Lenard acknowledges that by articulating these cases *GPGE* gives room to special relationships, but complains that this does not succeed at "eliminating" the tension between special responsibilities and global egalitarianism. In response, I should say first that *GPGE* does not argue for the elimination of that tension. It explicitly accepts that in certain circumstances there is tension between *pro tanto* principles protecting special responsibilities (and personal projects) and *pro tanto* principles demanding certain (egalitarian or sufficientarian) distributions. (It does not say that the tension is "ineliminable"—how would one prove that?) What *GPGE* rejects is the view that there is a legitimate tension between special responsibilities and the more general cosmopolitan idea of moral equality (pp. 61-62). Cosmopolitan respect and concern includes attention to the importance of special relationships (given (a) and (b)), and calls for their limitation (given (c)). So the more specific demand of global egalitarian distribution would have to be weighted against the demands of respect and concern for special relationships. There is a question about how this balancing should proceed, but it would be addressing a tension internal to cosmopolitan egalitarianism. Now, although Lenard misses the status of the tension between special responsibilities and global distributive egalitarianism as characterized by *GPGE*,

she raises important points about its content. In particular, she raises the important issue of what renders a type of special relationship important enough to trigger protection under (b) and attention in the identification of moral constraints under (c). *GPGE* explicitly acknowledges that friendship and family fall under (b). It is agnostic (not outright dismissive) with respect to co-nationality (see pp. 202-204). This asymmetry seems reasonable, as it is much harder to imagine a fully decent, or even flourishing life, without the opportunity to form friendships and familial bonds than it is to imagine one without the opportunity to form national bonds. But even if the latter were crucial in a more limited, historical way, it is hard to see why national bonds have enough moral weight to insulate them from requirements of global (sufficientarian or egalitarian) distribution. Special relationships can be extensively pursued without having to rely on the use of disproportionate material resources. Furthermore, their value is agent-neutral besides agent-relative: the global poor should also have real opportunities to pursue *their* special relationships. Contributing to securing these opportunities, and, more generally, supporting their opportunities to live flourishing human lives, is not something one may simply ignore in the name of patriotism, at least not if one is to honor the more fundamental cosmopolitan idea of moral equality.

III.

One of the central claims of *GPGE* is that there are non-derived basic positive duties that are duties of justice rather than mere charity. In the context of discussion on human rights, these are duties to support the access of every human being to the objects of their basic needs, and they do not depend for their existence on previous voluntary commitments to provide what they demand or the violation of negative duties not to deprive others of the same objects. This thesis is rejected by many libertarians, and chapter 3 of *GPGE* critically addresses an example of such rejection pressed by Jan Narveson. Robert Sparling provides an illuminating discussion of this chapter of the book.[3] I have learnt a great deal from his paper, especially from its exploration of the relation between *GPGE*'s defense of basic positive rights and duties and the modern tradition of natural right. In what follows I address three critical comments made by Sparling regarding the contemporary debates. As Sparling notes, *GPGE*'s discussion of Thomas Pogge's views is less confrontational than the discussion of Narveson's. Although Pogge builds his account of global justice on the basis of negative duties, he presents that account as noncommittal with respect to the issue whether there are non-derived basic positive duties of justice. He chooses to show that strong redistributive requirements emerge from evidence that the global rich have violated their negative duties not to harm the global poor by foreseeably and avoidably contributing to causing their destitution. Although I argue that Pogge's argument is insufficient for justifying all the practical steps that are needed to permanently eradicate global poverty, I think that his strategy is valuable, and in many respects successful. Sparling suggests that I should perhaps have presented my view in a less conciliatory way, concentrating only on advocating non-derived basic positive duties, thus helping us avoid "the rather difficult task of establishing precisely who caused what harms in the global economic order."

I think, however, that the empirical burden of proof generated by Pogge's program is worth taking. Although, as I explain in the book, I do not think that we can build a sufficiently satisfactory conception of the demand to eradicate severe global poverty only on the basis of negative duties of justice, I think that to the extent that it succeeds, Pogge's program is of great importance. It relies on the common beliefs that negative duties with respect to a certain object (e.g. the conditions necessary to avoid destitution) are normally weightier than positive duties with respect to the same object, and that the former may give rise to requirements of justice while the latter may only give rise to requirements of charity. Showing that much of global poverty is the result of the systematic violation of negative duties is, motivationally speaking, a powerful way to present the call for the eradication of global poverty. This line of argument should be pressed as far as it can go, even if this means engaging the "tedious and interminable debates about the attribution of blame for existing disparities" (Sparling).

Similarly complex empirical debates are in any case likely to arise when it comes to designing the best policies to discharge non-derived basic positive duties of justice. And in fact the complexity of the global economy is what gives rise to a second challenge by Sparling. He suggests that *GPGE*'s advocacy of "fair trade" as an alternative to Narveson's "free trade" fails to "engage sufficiently the serious challenges posed by the opponents of protectionism and foreign aid". For example, *GPGE* responds to the worry that foreign aid may cement the power of corrupt governments by suggesting that aid can be channeled to small businesses and organizations in civil society. But, Sparling says, this strategy is not without problems, as it may undermine central governments by propping up "thousands of well-meaning NGOs operating with even less legitimacy than a corrupt central government". I think that Sparling's challenge is entirely fair. It is not a central aim of my book to settle these kinds of policy issues (which lie beyond my competence as a philosopher), but I do not deny that a full account of the practice of global poverty eradication has to grapple with them. *GPGE* is sensitive to the importance of not circumventing, and of supporting, the political self-determination of the poor (pp. 40, 48-50, 53, 145-152, 209-211, 260-262). But how is this to be done when the central governments are deeply corrupt? Showering those governments with foreign aid cannot be the solution. But a possibility is that if the resources are to go to non-governmental organizations, there should be a strategy of supporting those who have amongst their goals the fostering of more responsive governmental institutions and policies.

A third, interesting challenge by Sparling consists in pushing further Narveson's worry that those pressing for enforceable policies of distribution are imposing their own intuitions or subjective tastes about distributive outcomes on those who do not approve of them. Sparling says that Narveson makes an important point that *GPGE* "glosses," and this is "the question of the liberty to decide what goods a country or community wishes to pursue." Sparling acknowledges that *GPGE* mentions the importance of democratic and discursive institutions and practices rendering distributive schemes accountable to contributors and recipients, but finds that discussion insufficient. I agree that much more could, and

should, be said. But I do not think that Narveson's position would gain any traction as a result of pursuing this discussion further. First, as *GPGE* explains (drawing on Larry Temkin), Narveson's approach is not devoid of invocation of intuitions (e.g. in the reliance on the Pareto principle for comparing alternative paths of action). No political philosophy can avoid appeal to intuitions all the way down. Any contractarian framework (even the one Narveson embraces) must be defended by appealing to some of them. Second, the contractualist procedure recommended by *GPGE* provides a disciplined and impartial way of testing the relative weight of different intuitive considerations. The liberty not to be taxed for distributive purposes (a favorite liberty in Narveson's own taste) seems obviously less morally weighty than the avoidance of premature death by destitute children who could be saved by using the money resulting from taxing the rich (Sparling mentions a similar example in the last section of his paper). Third, the foregoing evaluative comparison could not be ignored by insisting on excising evaluative considerations from deontological assessments of people's rights. The greater importance of the avoidance of destitution when compared to the liberty not to be taxed is significant within a conception of rights. To develop a theory of rights we need some account of the good (however thin and shareable). Property rights lie far downstream in a theory of justice, they are not fundamental premises in it. Why should we accept a characterization of property rights that does not limit them when that is necessary to secure the survival of the destitute? Even a view centered on the value of freedom has to recognize that not every freedom is of equal importance, and that the freedom not to be taxed is less important than (and does not ground a right when confronted with) avoiding the destitution that crushes the ability of some human beings to act as dignified and self-determining agents in their social life. A world shaped by the principles of justice that *GPGE* defends would be one in which empowerment is widespread, and not concentrated in the hands of those who have been benefitted by the contingency of existing, historically imposed institutions of property (including those with callous subjective tastes of the kind often displayed by some libertarians).

IV.

GPGE challenges the common view that the scope of principles of distributive justice must always be fixed by the boundaries of existing (national, state-based, economic, and other) associations. Some distributive principles may have a global scope even in the absence of global associations when there are humanist grounds that justify them. Such justifications invoke the importance of some goods for all human beings, and the cosmopolitan idea of moral equality according to which all human persons equally deserve our equal respect and concern. Humanist global principles can (inter alia) be sufficientarian or egalitarian. The former focus on distributions that give people enough to access a minimally decent life, and the latter focus on distributions that support people's equal access to a flourishing life, which involves higher levels of well-being and autonomy. Humanist global egalitarianism seems more controversial than humanist global sufficientarianism, and in her article, Christine Straehle focuses on this asymmetry.[4] She challenges *GPGE*'s arguments against a view of the asymmetry based on the ideal of autonomy, and she shows puzzlement about a global

egalitarianism based on a construal of well-being in terms of capabilities. Straehle also worries, more generally, about *GPGE*'s lack of a systematic theory of autonomy and well-being. I agree that the outlook defended by *GPGE* would have been more informative if it had provided such a systematic theory, and that producing it is worthy in itself. But since I cannot provide the missing theory in this reply, I will focus on the two, more specific, charges mentioned.

GPGE challenges various arguments that take associative frameworks as necessary besides *prima facie* sufficient conditions for the moral appropriateness of the application of egalitarian, or more generally suprasufficientarian, principles of distributive justice. One such argument is based on a requirement of autonomy construed as including access to goods and circumstances enabling agents' selection and pursuit of plans of life in accordance with their conception of the good (pp. 171-4). Michael Blake sees this requirement as giving rise to egalitarian distributive demands in domestic contexts but only to sufficientarian distributive demands at the global level. Straehle takes *GPGE*'s criticisms of Blake's view to depend on *GPGE*'s holding of a premise that Blake rejects, viz. that providing for autonomy requires egalitarian distribution. But this is not true. In its discussion of Blake's argument, *GPGE* does not hold that premise. It proceeds, instead, internally to Blake's discussion, arguing (a) that it is not really clear why autonomy grounds, as *Blake* claims it does, egalitarian demands in the domestic context, and (b) that *if* autonomy supports egalitarian distribution in domestic contexts it is not clear why it does not also support egalitarian distribution in global contexts (given that Blake already accepts humanist global demands on the basis of autonomy—albeit only sufficientarian ones). If autonomy (as construed by Blake) requires a set of adequate rather than maximal options for pursuing a good life, then it is not clear why the fact of state coercion at the domestic level grounds the duty to secure more than adequate options. That state coercion limits autonomy does not by itself imply that the state must compensate for this limitation through the increase in material resources available to those coerced. The appropriate response may instead involve granting democratic political rights to those coerced. And if state coercion does justify more expansive economic options, this must be because agents have reason to press for more (either on the basis of a *new, wider* view of what autonomy requires or on the basis of requirements concerning *well-being*) than sufficientarian conditions. Bit since arguably all human agents have reason to ask for more, we still have to consider whether they are entitled to ask for suprasuffientarian conditions beyond state-boundaries, a question Blake does not really explore, thus begging the question against the humanist global egalitarian view. Coercion might be a *prima facie* sufficient condition, without also being a necessary condition, for suprasufficientarian distributive concern.

The second challenge is not unconnected with the first, as it raises the issue that since conditions for autonomy or well-being may be determined contextually, a humanist global egalitarian view would be problematic. Focusing on well-being, Straehle says that if *GPGE* were to embrace the capability approach proposed by Sen and Nussbaum, it would actually yield global demands that are suffi-

cientarian, not egalitarian. I disagree. To begin with, *GPGE* does not claim that all egalitarian principles should be conceived in a humanist way and be seen as having global scope. Some focus on the distribution of advantages whose value is dependent on fairly specific associative contexts. However, *GPGE* does claim that *some* egalitarian demands, concerning for example access to certain types of education and health care, can be extended globally on humanist grounds. It argues (p. 213) that these goods may be linked up with important capabilities in Nussbaum's list. Although Nussbaum has not argued for egalitarian besides sufficientarian distributions, some forms of the former can meaningfully be claimed to have universal significance. For example, it is clear that human beings around the world have reason to value access to sophisticated medical care concerning cancer treatment and heart surgery. It seems unfair that some human beings have much lower life expectancy than others as a result of having been born in a poorer country. Straehle worries that this egalitarian and universal pursuit of some well-being capabilities would clash with Sen's recent complaints "against what he calls 'transcendental principles of global justice' because he believes that they divert us from the kind of contextual interpretation those concerned with individual well-being need to employ when describing our duties of global justice." But a recommendation of contextual interpretation need not conflict with appeal to global humanist principles. As I explain in the book (pp. 62-63, 211-216), the latter may identify abstract goods that can be specified in different, but equivalent, ways in different contexts. This point can be articulated within the capability approach to human rights.[5] It can be extended to more ambitious discussions of global equality. As I explain in a recent paper, Sen has not succeeded in showing that there is a real dilemma between ambitious ("transcendental") and more modest ("comparative") approaches to justice, either domestically or globally.[6]

V.

GPGE claims that the eradication of severe global poverty and the achievement of global equality are genuine demands of justice. These claims are sometimes challenged on grounds of feasibility. Chapters 4 and 7 of *GPGE* address these challenges, concluding that they fail. *En route*, *GPGE* provides an interpretation of the very concept of feasibility (which is often used in political theory and practice but rarely explained). Colin Macleod agrees that the eradication of severe global poverty and the achievement of global equality are genuine requirements, finds the conceptual exploration of feasibility valuable, and shares my skepticism about the alleged infeasibility of the fulfillment of the genuine requirements of global justice.[7] However, he argues that the discussion of the feasibility of global justice in *GPGE* suffers from some ambiguities and imprecisions. In what follows, I address what I take to be Macleod's two main challenges.

The first challenge pressed by Macleod is that when *GPGE* claims that the achievement of global equality would be more demanding than the eradication of severe global poverty towards the globally better off it fails to distinguish between "mere sacrifices" and "real moral sacrifices." If the globally worst off are entitled to an equal share, then those who have more than it are not entitled to the surplus, and distributing from latter to the former would not impose real

moral sacrifices, but mere sacrifices that are actually morally justified. In the absence of such distribution, it is the globally worst off that incur real moral sacrifices. I agree that we must distinguish between perceived moral costs and real moral costs. Some reasons concerning personal prerogatives, political autonomy, and special relationships (discussed above in section II) are candidates for identifying real moral costs. Since these are valid considerations of justice, our overall judgments must weigh them against claims of distributive justice. But I do not take claims to resources to which the globally better off are not entitled as such candidates. This is the view I defend in the book, which explicitly calls into question existing property regimes, domestically and globally. When it comes to the moral justification of distribution what are crucial are indeed only the real moral costs. The merely perceived ones affect feasibility, and they are treated as such. Thus I do not think there is a real disagreement between Macleod and *GPGE* on this score. The only point at which it seems to me that *GPGE* may give the impression that Macleod's worries apply is when it discusses (in chapters 6 and 8) the possibility that the coercive imposition of egalitarian distributions may be all things considered outweighed by other considerations. But I think that my point there has to do with costs not in terms of distributive entitlements but in terms of disruption of special relationships and personal and political autonomy. These may outweigh the coercive imposition of some egalitarian distributive transfers, but even then I insist that they do not mute their status as justified *pro tanto* demands of justice.

The second challenge pressed by Macleod is more troubling. It is that *GPGE* sometimes "equivocates between issues of *moral justification* and issues of *strategic justification*." For example, when it takes the justifiability of some human rights to be contingent on current levels of social influenceability, or on answering the question of what is to be placed at the forefront of our political agenda (pp. 135-136), or when it entertains the objection that it is not reasonable to advocate schemes of global justice which are not currently supported by a strong ethos of cosmopolitan solidarity (pp. 141-142), *GPGE* fails to notice that "it is important to distinguish between the question of whether feasibility considerations show an ideal to be *unjustified* as a claim about justice and the question of whether feasibility considerations affect the political goals and strategies we should adopt in pursuit of an ideal of justice."

Macleod is right to puzzle about how *GPGE* relates to this distinction. In what follows, I will defend aspects of my formulations in the book, while acknowledging the need to make some amendments regarding other aspects, which are effectively probed by Macleod. I should note, first, that *GPGE* makes a distinction between the kinds of feasibility considerations that affect principles of justice and the ones that affect transformative action and plans (pp.122-125, 244-248, 278). I am much less permissive regarding the former than regarding the latter. This should accommodate some of Macleod's worries: when I am more concessive, I really focus on what should be targeted for immediate action. And even there, I emphasize the importance of *dynamic duties* to change current feasible sets to make ambitious ideals of justice (more) practicable. Thus, I do

not take principles (or, for that matter, even political advocacy) of global justice to be defeated by the current absence of a sufficiently strong ethos of cosmopolitan solidarity. Instead, I take that absence as triggering dynamic duties to reshape our political culture by cultivating cosmopolitan solidarity. Second, I build into my account of the levels of "social influenceability" needed to render the fulfillment of human rights feasible reference to what can be achieved in the long-term, thus again making room for dynamic duties to change current dispositions and circumstances that block their fulfillment in the short-term. Hence, I reject the motivational challenge to demanding principles of global justice (even in the improved version of them formulated by Macleod) and do not make human rights claims hostage to the contingent vagaries of the status quo. However, Macleod is probably right that I could have made these points clearer in the text. He is also right that the last clause in my account of the feasibility test for human rights might better be demoted to a consideration of strategy of implementation rather than be taken as a condition on the justifiability of a human right. Even though that account considers what is influenceable in the foreseeable future not just in the immediate future, the clause confuses the justifiability of a human right with the reasonability of placing it in the forefront of our current political agenda.

Second, *GPGE* makes a distinction between evaluative demands that hold only *pro tanto*, and all things considered, prescriptive demands involving conclusive reasons to act in certain ways in certain circumstances (see, e.g. 238-239, 243, 263, 268 n.12). This distinction seems to me important in that all things considered prescriptions must factor in feasibility considerations of the scalar besides the categorical kind on which Macleod focuses (thus, e.g. we should incorporate cultural besides logical and nomological parameters). Why? Because we should make our political choices with an ethical sense of responsibility for what we produce or fail to avert. Probabilities matter here, and they matter morally. So the justification of what Colin calls "strategic" choices is also a moral justification. To make the strategically mistaken choice may sometimes be to make the morally wrong choice. This applies to the example that Macleod uses as an "intuition pump" in his paper, which concerns the campaign to end slavery during the American civil war (and its failure to achieve full political equality at the time). Thus, (as powerfully depicted in the recent film *Lincoln* (2012)) Thaddeus Stevens, a Republican member of Congress, has a choice. The Thirteen Amendment holding slavery to be unconstitutional is on the floor for a vote. If passed, it will end slavery. But the measure is limited, not granting the full palette of rights to African Americans (such as political equality). Stevens has campaigned for full equality. But if he presses with that agenda now, the coalition formed to vote for the Amendment may collapse. So he decides to desist from pressing for more now. The Amendment passes. It includes, however, the provision that Congress has the power to introduce appropriate legislation to enforce the command that slavery and involuntary servitude do not exist, thus potentially opening the door for further reforms.

I think that Stevens made the right decision. I do not thereby deny that the racists who blocked the agenda of political equality had the duty to secure political equality. It helps here to index our considerations to the relevant agents. The racists did have an all things considered duty to go for full equality. But when they chose not to fulfill that duty, the reformers facing them had to take this choice as imposing a parameter for the short (although not the long) term and were right to decide to center their parliamentary strategy on the end of slavery but not on political equality (in the short term). This "strategic" choice was justified on moral grounds. If the campaigners hadn't lowered their immediate demands, the most likely outcome would have been that neither of the two moral goals (end of slavery and full political equality) were achieved. Note that this limited choice for the short term was coupled with a lucid dynamic move to include the provision that Congress could introduce legislation regarding slavery and involuntary servitude, thus potentially enabling future parliamentary action to target political inequality. Normative political judgment often involves this kind of reasoning. It even operates, more controversially, when an agent considers her own psychological choices and dispositions. A political leader A may have all things considered reason to step down from their position of leadership if they think that they run a serious risk of becoming corrupt. A may have all things considered reason to let another person B become leader if B is significantly less likely to become corrupt, even if B is less politically talented and would be somewhat less effective in the task of promoting justice when compared to A when acting without corruption. (A's dynamic duties to seek personal changes an institutional reforms that disincentivize corruption of political leaders can, and should, also be recognized in this case.)

The general difficult question that Macleod's challenge forces us to think about, and which I hope to address more fully in my future work on feasibility and normative political judgment is this: How does strategy relate to moral obligation? The case of Thaddeus Stevens suggests that they may be interestingly related. The hard question is: How exactly? Should we say that it would be right sometimes to choose what is "strategically" best even if it is at odds with what is morally best? If so, do we then think expediency trumps morality? That seems odd, as moral prescriptions are normally conclusive when they conflict with other kinds of considerations. The alternative, which intuitively I favor, is to explore the point that morality carries with it a sense of responsibility for likely outcomes. Morality requires that our all things considered judgments factor in strategic considerations because responsible choice must be sensitive to feasibility. The relevant feasibility considerations are not reduced to binary distinctions about what is strictly infeasible or feasible, but include also scalar considerations about degrees of feasibility. Low feasibility does not, like strict infeasibility, automatically defeat alleged prescriptions, but it may make a dent in them when there are alternatives that (even if they may be less intrinsically desirable) are much more feasible. How scalar feasibility bears on normative judgment is itself a moral question. *GPGE* discusses only briefly the distinction between binary and scalar feasibility (e.g. pp. 263-236). I have said more about it in another text.[8] But I hope to explore these issues further in future work, and I thank Macleod for stimulating me to do so.

NOTES

[1] Pablo Gilabert, *From Global Poverty to Global Equality. A Philosophical Exploration*. Oxford: Oxford University Press, 2012.

[2] Patti Lenard, "Special Relationships, Motivation, and the Pursuit of Global Egalitarianism," *Les Ateliers de l'éthique/The Ethics Forum* 8.2 (2013), pp. 74-83.

[3] Robert Sparling, "Justice and Charity: Positive Duties and the Right of Necessity in Pablo Gilabert," *Les Ateliers de l'éthique/The Ethics Forum* 8.2 (2013), pp. 84-96.

[4] Christine Straehle, "Autonomy, Well-being and the Order of Things: Gilabert and the Conditions of Social and Global Justice," *Les Ateliers de l'éthique/The Ethics Forum* 8.2 (2013), pp. 110-120.

[5] Pablo Gilabert, "The Capability Approach and the Debate Between Humanist and Political Perspective on Human Rights. A Critical Survey," *Human Rights Review* 14 (2013), pp. 299-325.

[6] Pablo Gilabert, "Comparative Assessments of Justice, Political Feasibility, and Ideal Theory," *Ethical Theory and Moral Practice* 15 (2012), pp. 39-56.

[7] Colin Macleod, "Gilabert on the Feasibility of Global Justice," *Les Ateliers de l'éthique/The Ethics Forum* 8.2 (2013), pp. 97-109.

[8] Pablo Gilabert and Holly Lawford-Smith, "Political Feasibility: A Conceptual Exploration," *Political Studies* 60 (2012), pp. 809-825.