



The Department of  
**POLITICS** and  
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# **Justice and Assistance: Three Approaches and a Fourth One\***

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**Abstract** – Although no one denies that there is a duty to address the special needs of the least developed countries, the normative grounds of this duty are subject to on-going debate. While cosmopolitans argue that we should tackle global poverty as part of a broader quest for global *justice*, social liberals believe that our duties to less fortunate nations are (almost) exclusively a matter of *humanitarian assistance*. Although much of the debate on global justice turns on the distinction between justice and assistance, surprisingly, neither cosmopolitans nor social liberals offer a systematic account of it. Intuitively, justice is weightier than assistance, but why and to what extent this is the case is something both advocates and critics of global justice fail to explain. In order to fill this gap in the literature, in this paper I consider three accounts of the distinction between justice and assistance: what I call the ‘Agent-based View’, the ‘Recipient-based View’, and the ‘Mixed View’. I show that these views implicitly underpin some of the most prominent liberal outlooks on international morality, and argue that they all prove unsatisfactory. I conclude the paper by offering a fourth alternative, ‘the Revised Agent-based View’ which, I claim, successfully overcomes the difficulties affecting its rivals.

## 1. INTRODUCTION

In 2000 the world’s leaders committed themselves to the United Nations Millennium Goals. Among these goals are halving global poverty, providing universal primary education, reducing maternal and child mortality, and ‘address[ing] the special needs of the least developed countries’.<sup>1</sup> No one denies the moral importance of meeting these objectives. No one denies that we ought to do something about world poverty. However, there is considerable disagreement, especially among liberal political philosophers, about the moral grounds of our duties to address destitution and human suffering outside our borders. Some argue that we should tackle global poverty as part of a broader quest for global *justice*, while others believe that our duties to ‘less fortunate’ nations are a matter of *humanitarian assistance*,<sup>2</sup> and that no principles of distributive justice apply worldwide. Proponents of the former view are known as ‘cosmopolitans’, proponents of the latter as ‘social liberals’.<sup>3</sup>

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<sup>1</sup> See <http://www.un.org/millenniumgoals/>.

<sup>2</sup> What I call duties of assistance are often also referred to as duties of humanity, duties of beneficence, or duties of charity. My discussion intends to be neutral across these different characterisations.

<sup>3</sup> The labels ‘cosmopolitanism’ and ‘social liberalism’ are Charles Beitz’s. See his ‘Social and Cosmopolitan Liberalism’, *International Affairs*, 75 (3) (1999), 515-29.

Even though much of the debate on global justice turns on the distinction between justice and assistance, neither cosmopolitans nor social liberals offer a systematic account of it. Intuitively, justice is weightier than assistance,<sup>4</sup> but why and to what extent this is the case is something both advocates and critics of global justice fail to explain. In an attempt to fill this gap in the literature, in this paper I excavate the accounts of justice and assistance implicit in three prominent liberal outlooks on international morality, criticize them, and offer a fourth, in my view preferable, alternative.

My argument is structured as follows. In section 2, I briefly review the contemporary debate on global justice and explain why the distinction between justice and assistance plays a crucial role within it. I then describe three ways of drawing this distinction – corresponding to what I call the ‘Agent-based View’ (section 3), the ‘Recipient-based View’ (section 4), and the ‘Mixed View’ (section 5) – and argue that they all prove unsatisfactory. On the agent-based view, principles of justice turn out to be implausibly conservative, on its recipient-based counterpart they are too demanding, while on the mixed view they are excessively *ad hoc*. In section 6, I offer an alternative to these three approaches: the ‘Revised Agent-based View’. I argue that this view successfully overcomes the difficulties affecting its rivals and provides a plausible rationale for making sense of the distinction between justice and assistance.

Before getting started, one prefatory remark is in order. The argument I am about to offer is of a conceptual rather than substantive nature. My aim is to lay out an account of the *concepts* of justice and assistance, rather than particular *substantive conceptions* of them.<sup>5</sup> Consequently, I do not provide an answer to the question raised at the outset. That is, I do not take a stand on whether the Millennium Goals should be pursued as a matter of justice, but only clarify what it means to say that they should.

## 2. JUSTICE AND ASSISTANCE: PRELIMINARY CONSIDERATIONS

The question of whether principles of distributive justice grounding socio-economic rights should apply beyond state borders is hotly debated in contemporary political philosophy. Cosmopolitans answer it in the affirmative, social liberals in the negative.<sup>6</sup> For social liberals, ‘global’ justice only requires

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<sup>4</sup> T. D. Campbell questions the ‘priority of justice’ thesis in his ‘Humanity before Justice’, *British Journal of Political Science*, 4 (1) (1974), 1-16.

<sup>5</sup> On the distinction between concepts and conceptions see John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999 rev. ed.), p. 5.

<sup>6</sup> See, e.g., Thomas W. Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), Charles R. Beitz, *Political Theory and International Relations* with a new afterword (Princeton, NJ: Princeton University Press, 1999), Darrell Moellendorf, *Cosmopolitan Justice* (Boulder, CO: Westview Press, 2002), Simon Caney, *Justice beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005), and Kok-Chor Tan, *Justice without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004).

international non-interference, while the provision of goods and services is regarded as a matter of mutual *assistance* between states.<sup>7</sup>

The difference between these two outlooks is far from trivial: The notion of justice notoriously conveys a sense of special moral importance that the notion of assistance does not express. But how is this special importance to be understood? One possibility is to think of assistance as supererogatory, and of justice as required by duty. As several theorists have pointed out, this way of thinking is mistaken.<sup>8</sup> Since both justice and assistance ground moral duties, by definition, neither can be supererogatory.

An alternative, more promising, avenue is to think of their different levels of stringency as reflecting their different *functions*. While principles of justice establish persons' entitlements given their equal right to form and pursue their plans of life, principles of assistance ground duties to help those in need with resources that are rightfully one's own.<sup>9</sup> Unlike assistance, justice creates a 'system of rights ... and "rights" are protected fields for activity within which individuals or groups may pursue their interests'.<sup>10</sup> This is why duties of justice are particularly weighty. If you have a duty to assist others in need then, *a fortiori*, you have a duty not to deprive them of resources that are justly theirs.<sup>11</sup>

Given their special stringency, duties of justice *exist* independently of their costs to the duty bearer.<sup>12</sup> For instance, I have a duty not to steal from or injure others even if this means going through severe hardship. Similarly, I have a duty to pay my debts even if this involves considerable sacrifice. This is not to say that one can never be all-things-considered justified in breaching one's duties of justice. If paying my debts would make me unable to provide for my family, then I might be justified in refusing to pay them. This 'all-things-considered' justification does not relieve me from my duty. By failing to pay my debts I still act wrongly. However, I have moral permission to do so in light of other, arguably more pressing, moral interests I also have a duty to protect (e.g., my family). If, at a later stage in my life, my financial situation improves, I am

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<sup>7</sup> See, e.g., John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), and Thomas Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33 (2) (2005), 113-47.

<sup>8</sup> See, e.g., Buchanan, 'Justice and Charity', *Ethics*, 97 (3) (1987), 558-75, p. 559 n.1; Brian Barry, 'Humanity and Justice in Global Perspective', in Brian Barry *Liberty and Justice: Essays in Political Theory 2* (Oxford: Clarendon Press, 1991), 182-210; Sylvie Loriaux, 'Beneficence and Distributive Justice in a Globalising World', *Global Society*, 20 (3) (2006), 251-65, p. 254. My characterisation of duties of justice and duties of assistance is largely indebted to these pieces.

<sup>9</sup> Barry, 'Humanity and Justice', p. 209.

<sup>10</sup> W. D. Lamont, 'Justice: Distributive and Corrective', *Philosophy*, 16 (61) (1941), 3-18, p. 3.

<sup>11</sup> These points are forcefully made by Barry, 'Humanity and Justice', pp. 204-10.

<sup>12</sup> On this see, e.g., Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), p. 248.

still obligated to pay my debts and, possibly, to compensate my creditor(s) for the inconvenience caused.

Typically, duties of justice are stringent to the point of being *enforceable*. Since I have no right to violate others' rights – i.e., to act unjustly – I am not wronged if I am compelled to act justly. Indeed, we do not think people's rights are violated when they are forced not to steal, or to pay their debts and taxes.<sup>13</sup>

Unlike duties of justice, duties of assistance are not correlative to rights, and lack legitimate enforceability. This is not to say that deprivation may not stem from rights violations by other parties.<sup>14</sup> But crucially, when people who have not violated any rights fulfil their duties of assistance, the recipients have no rights to be assisted *by them*. For example, having adopted several children at a distance, Jane and John may be said to have discharged (at least part of) their duties of assistance. But notice that, while these children might have had a right to be taken care of by their parents or their government, they had no right to be assisted *by Jane and John*. To fulfil their duties of assistance, instead of resorting to distance-adoption, Jane and John could have donated their money to some charity or NGO, without thereby violating anyone's (including the newly adopted children's) rights. Moreover, no one has a right to force Jane and John to adopt those children, or to assist the needy. No individual can legitimately force other people to use their own resources – i.e., what they are rightfully entitled to – in ways they do not consent to.<sup>15</sup> Doing so would clearly constitute a violation of their rights.

The lesser stringency of duties of assistance is also revealed by their sensitivity to costs. While everybody has a duty to assist those in need, the amount of assistance required of them in order to fulfill such a duty depends on how much of a burden it is reasonable to ask them to bear. For instance, if I am a young musician whose only valuable is an old piano, I have *no duty* to sell the piano and donate the revenue to a charitable organisation even if this would save a few destitute children from starvation. Fulfilling my duties of assistance would probably require some lesser donation. Helping the children by selling the piano would therefore be supererogatory. If, on the other hand, I had incurred a debt which I could only repay by selling the piano, I would indeed

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<sup>13</sup> Of course, the point about tax-payment does not hold for libertarians. For further discussion see Buchanan, 'Justice and Charity'.

<sup>14</sup> In such cases, violators have a duty of justice to rectify the situation. Although such a duty might involve acts of assistance, it is not a duty of assistance strictly understood.

<sup>15</sup> See Arthur Ripstein, 'Private Order and Public Justice: Kant and Rawls', *Virginia Law Review*, 92 (7) (2006), 1391-438, p. 1408.

have a duty to sell it, and it would be an open question whether I could be all-things-considered justified in breaching this duty.

To sum up, (i) correlativity to rights, (ii) legitimate enforceability and (iii) insensitivity to costs are typically thought to mark the greater stringency of duties of justice as compared to duties of assistance.<sup>16</sup> In light of this, we can now better appreciate what is at stake in the debate between cosmopolitans and social liberals. On the one hand, cosmopolitans condemn the existing system of global entitlements as unjust. This means that at least part, if not all, of what we – wealthy liberal nations – ought to do to address the plight of the world’s poor (e.g., the UN Millennium Goals) is *owed* to them. On this view, the poor are the rightful owners of some of the resources we now happen to possess. For social liberals, on the other hand, we have a weaker duty to *assist* (help) the poor with resources that rightfully belong to us. Social liberals do not object to the current distribution of entitlements across the globe, but only to rich nations’ refusal to forego some of *their own* wealth to relieve the suffering of distant strangers.

This has been a quick overview of the role played by the distinction between justice and assistance in the debate on international morality. In this introductory section, I have kept my account of this distinction deliberately general and, I hope, relatively uncontroversial. The fact that the debate on global justice is so polarised between those who defend principles of global distributive justice, and those who oppose them, suggests that there exist different ways of further specifying the concepts of justice and assistance. Three possibilities are available, which I now go on to examine.

### 3. THE AGENT-BASED VIEW

On what I call the ‘agent-based view’,<sup>17</sup> whether a duty is one of justice or one of assistance entirely depends on the position of the duty bearer. The view comes in two forms, a strong and a weak one, which I shall consider in turn.

- 1) **The strong agent-based view:** duties of justice are always subject to *effective enforcement mechanisms*. If a duty is not effectively enforceable, it cannot count as a duty of justice.

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<sup>16</sup> This distinction is in many ways reminiscent of Kant’s distinction between duties of justice and duties of virtue. See Immanuel Kant, *The Metaphysics of Morals* (1797), translated by Mary Gregor (Cambridge: Cambridge University Press, 1991). For discussion see Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996).

<sup>17</sup> Cf. O’Neill’s discussion of the different perspectives of agents and recipients of justice in *Towards Justice and Virtue*, ch. 5.

- 2) **The weak agent-based view:** duties of justice are *perfect*, i.e., their content, mode of performance and recipients are fully specified. Only perfect duties can be correlative to rights, and hence count as duties of justice.

### 3.1 THE STRONG AGENT-BASED VIEW

The strong agent-based view offers a very narrow interpretation of the existence conditions of duties correlative to rights in general, hence also of duties of justice in particular.<sup>18</sup> On this view, if duty bearers lack the will, or the power, to fulfil their duties, then the would-be correlative rights do not exist at all. The idea behind this approach is that it is of little value to say that someone has a right if the duty bearer cannot get herself, or be forced, to do what is required of her. For instance, it seems disingenuous to claim ‘that a welfare right to medical treatment is claimable as long as legal and social institutions distribute duties to nurses, doctors and so on, even if medical staff illegally refuse to treat certain sectors of the population, or the drugs needed for treatment are permanently unavailable’.<sup>19</sup>

As presented, this argument comprises two different claims. One concerns the feasibility of the object of the rights in question. Presumably, if ‘ought implies can’, then no one can possibly have a right to a cure for his or her illness if the drugs needed are permanently unavailable – say because a successful cure for the disease has not yet been found. This type of infeasibility, which we might call ‘robust’ infeasibility, offers a convincing basis for denying the existence of a right.<sup>20</sup> But this is not the only type of infeasibility targeted by proponents of the strong agent-based view. As the example above shows, mere unwillingness to discharge one’s duties, as well as the absence of effective mechanisms to force the unwilling to comply, are sufficient to exclude the presence of a right. This claim is far too strong.

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<sup>18</sup> As I have argued in section 1, I take duties of justice to be paradigmatically correlative to rights.

<sup>19</sup> Susan James, ‘Rights as Enforceable Claims’, *Proceedings of the Aristotelian Society*, 103 (2) (2003), 133-47, p. 135. For a similar argument see also Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001). For a critique of James see Saladin Meckled-Garcia, ‘Neo-positivism about Rights: The Problem with Rights as Enforceable Claims’, *Proceedings of the Aristotelian Society*, 105 (1) (2004), 143-8. For general critical discussion of what I call the agent-based view in relation to human rights see John Tasioulas, ‘The Moral Reality of Human Rights’, in Thomas Pogge (ed.) *Freedom from Poverty and a Human Right: Who Owes What to the Very Poor?* (Oxford: Oxford University Press, 2007), 75-102.

<sup>20</sup> Of course, there are bound to be controversial cases, where the infeasibility of X is the result of the priority given to some other goal Y. For instance, in the case just discussed, one could say that a cure has not been found because medical research in this particular area hasn’t been sufficiently funded. Whether, besides being tragic, this fact is also justified, is something we can only establish on a case-by-case basis. All I want to claim here is that there are at least some types of infeasibility which do count as valid grounds for denying the existence of a right.

Consider, once again, the case of a right to health. Proponents of the strong agent-based view seem committed to the dubious claim that no injustice – i.e., no rights violation – takes place when medical staff refuse to treat a certain segment of the population, and health authorities do nothing to remedy this unfairness. Such systemic forms of discrimination and disadvantage are precisely the kinds of phenomena we are inclined to describe as unjust. If, in a society, members of a certain minority are *de facto* underprivileged – say because of historical unfairness and prejudices – and the state turns a blind eye to their disadvantage, we have all reasons to call that society ‘unjust’. This scenario represents a paradigm case of social injustice, where some citizens’ rights are unjustifiably infringed.

In light of this, we must conclude that effective enforceability is not a plausible existence condition of duties of justice. Notice, however, that effective enforceability is not the only requirement the strong agent-based view places on duties of justice. Most importantly, a concern with enforceability presupposes a concern with institutional allocation: unless we know who the duty bearers are – medical staff in the case at hand – and what duties they have, we cannot enforce any duties on them. This observation points us in the direction of the weak agent-based view.

### 3.1 THE WEAK AGENT-BASED VIEW

This view appeals to Kant’s famous claim that all duties of justice are perfect in form.<sup>21</sup> A duty is perfect when its content, recipient (i.e., the right holder) and mode of performance are fully determinate. When duties are perfect in this way, duty bearers have no discretion in determining the content of the duty and how it should be fulfilled. Moreover, since the content of a perfect duty is independent of subjective considerations (hence known to all), duties of justice can be enforced without wrongdoing – i.e., ‘without being arbitrary or subject to abuse’.<sup>22</sup>

On this view, duties of justice can be of two kinds: either *universal negative duties* not to harm others, or *special positive duties* to provide them with particular benefits. Negative duties not to harm are held by everyone against everyone else. For instance, I have a duty not to kill, deceive, lie to, or steal from all other human beings in the world. Such negative duties, i.e., duties of forbearance, can be universal as well as perfect. What I ought to do in order not to kill, deceive, lie and so forth is obviously clear, as is clear that I owe this duty to every human being with no exception.

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<sup>21</sup> Kant, *The Metaphysics of Morals*.

<sup>22</sup> Buchanan, ‘Justice and Charity’, p. 562.

Things look different when we turn to positive duties to provide agents with certain benefits. We cannot have duties to provide every individual in the world with the resources necessary for them to lead an autonomous life. That duty would clearly be an impossible one to discharge. On the agent-based view, then, positive duties become duties of justice only once they have been *institutionally allocated*.<sup>23</sup>

From the perspective of the agent-based view, institutions are an existence condition of positive duties of justice. From this it follows that distributive justice (as opposed to the part of justice which concerns mere forbearance) only applies within domestic political communities, or at any rate, within social systems where positive duties have already been allocated and thereby ‘transformed’ into perfect ones.<sup>24</sup> Until then, those who are suffering from deprivation and are unlucky enough to share no duty-allocating institutions with wealthier fellow humans can only count on others’ assistance.

Interestingly, this way of drawing the cut between justice and assistance may be said to implicitly underpin John Rawls’s social liberal approach to international morality.<sup>25</sup> In Rawls’s just world order there is no room for distributive justice between societies. Societies should respect each other’s right to self-determination – i.e., they should refrain from interfering with one another’s internal affairs – and have a duty to assist each other when the need arises. If the people of country B live in conditions of severe poverty, the wealthy inhabitants of country A have a duty to *assist* them. The grounds of their duty is not one of justice. While B’s inhabitants may have a human right *against their government* to the objects of their socio-economic rights, they have no such right against the people of A. As has recently been suggested, Rawls’s stance appears to rest on the fact that no *perfect* duties of distributive justice can apply between states in the world today.<sup>26</sup> Since there is no global institutional agent capable of allocating international distributive duties, so it is argued, these duties cannot be perfect in kind, hence they cannot be duties of justice. They are, at best, duties of assistance.

Of course, one could dispute the empirical basis of this conclusion, suggesting that there is in fact more institutional integration, and international allocation of duties, than Rawls’s Law of Peoples suggests. This is a valid consideration, but one that does not directly address the focus of my discussion here – namely the *conceptual* question of whether the agent-based account of the

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<sup>23</sup> The most eloquent defence of this view can be found in O’Neill, *Towards Justice and Virtue*, ch. 5.

<sup>24</sup> See Buchanan, ‘Justice and Charity’, for further discussion.

<sup>25</sup> Rawls, *The Law of Peoples*. For this interpretation of Rawls see Saladin-Meckled Garcia, ‘On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency’, *Journal of Political Philosophy*, 16 (3) (2008), 245-271. I should also note that I am aware that this is not the only available interpretation of Rawls’s theory.

<sup>26</sup> For this line of argument see Meckled-Garcia, ‘On the Very Idea of Cosmopolitan Justice’.

distinction between justice and assistance is plausible. My answer is that it is not. In particular, what is most troubling about this account, is that it gets the relation between justice and institutions 'the wrong way round'.<sup>27</sup>

To see the dubious implications of this view, consider a society in which the distribution of entitlements is blatantly unfair. In such a social system, part of the citizenry is the victim of social injustice. Their opportunities to realise their plans of life are significantly constrained by others, who enjoy an unfairly large share of resources. Although the social system as a whole is unjust, on the weak agent-based view there would be no duties *of justice* to reform it, because such duties are not already institutionally allocated. But why should the *form* of a duty – perfect or imperfect – contribute to determining its nature and *function* – i.e., whether the duty is one of justice or one of assistance? By insisting on duties being perfect – which requires their precise allocation – the agent-based view lacks the moral resources necessary to address those situations in which existing perfect obligations do not track the demands of justice.

At this point, advocates of the weak agent-based view might protest that I have mischaracterised their outlook. They might insist that, contrary to what I have suggested, in every society there is always an agent who bears perfect duties of justice: the state. Liberal egalitarians, for instance, believe that the state has a perfect duty of justice to distribute resources equally across its citizens.<sup>28</sup> Consequently, a society is unjust – i.e., the rights of its citizens are violated – whenever the state fails to discharge this duty. On this reading of the agent-based view, any instance of social injustice can be traced to the state's failure to fulfil its perfect duties of justice towards its citizens. Does this reply succeed in rescuing the agent-based view from the charge I have mounted against it? I believe not.

This counter-argument misconstrues the nature of the state. Instead of being a monolithic agent, entirely independent of its citizens, the state is better conceptualised as a system of rules created and supported by a multiplicity of agents. To say that 'an unjust state should act justly' is to say that many individuals have imperfect duties to bring about changes in its rules and institutions.

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<sup>27</sup> Another famous charge is that the protection of negative rights often entails positive action. For instance, in modern states rights such as the right to liberty, property and bodily integrity require positive institutional provisions – e.g., police and tribunals – thus blurring the line between perfect and imperfect, positive and negative duties. For this argument see Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, (Princeton, NJ: Princeton University Press, 1980, 2<sup>nd</sup> ed. 1996). For further criticism of the traditional dichotomies characterising talk of rights and justice see Elizabeth Ashford, 'The Alleged Dichotomy between Positive and Negative Duties of Justice', C.R. Beitz and R.E. Goodin (eds) *Global Basic Rights* (Oxford: Oxford University Press, forthcoming 2009).

<sup>28</sup> I am grateful to Miriam Ronzoni for suggesting this possible counter-argument.

Consider what liberal egalitarian justice would require in a Nozickian minimal state. In order for this state to be able to fulfil egalitarian distributive principles, a considerable effort in institution-building would have to be undertaken. A minimal state simply does not possess the institutions needed to implement egalitarian justice, and the duties to create them cannot be perfect in kind. Unjust institutions – like those of a Nozickian minimal state (looked at from a liberal egalitarian perspective) – are not in the business of allocating duties which, if discharged, would turn them into just ones. Since duties to bring about just institutions are imperfect in kind, on the agent-based view, they do not express requirements of justice, hence my earlier objection to it still applies.<sup>29</sup>

In light of our discussion, we can conclude that the main flaw in the agent-based view (both in its weak and strong versions) consists in its *exclusive* interest in the position of the duty bearer for the purpose of defining whether something is a matter of justice. It should thus come as no surprise that, in recent years, theorists have responded to the agent-based view by developing a recipient-based approach to justice.

#### 4. THE RECIPIENT-BASED VIEW

The recipient-based view holds that people have certain rights – both positive and negative – *as a matter of justice* solely by virtue of their humanity.<sup>30</sup> The approach is recipient-based because it defines justice exclusively by reference to those human interests that ought to be universally fulfilled, independently of the particular position of the duty bearers in question.

In the global justice debate, this outlook is typically embraced by so-called non-relational cosmopolitans, like Charles Beitz, Kok-Chor Tan and Simon Caney.<sup>31</sup> These theorists claim that, since liberal egalitarian principles of domestic justice rest on inherently universal grounds, duties of domestic justice (both negative and positive) should apply to the world at large independently of *any* pre-existing institutional relations between its inhabitants. On this view, our obligations of justice are entirely based on a certain conception of the

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<sup>29</sup> Someone might reply that, for agent-based theorists, the duties in question would not be duties *of* justice but duties *about* justice (i.e., duties to further just arrangements that have not yet been established). I find this reply unconvincing because the difference between duties of justice and duties about justice appears to be purely terminological. Either a duty is grounded in justice, or it is not.

<sup>30</sup> By saying ‘recipient-based’, I do not mean to suggest that this view ignores the agential nature of right holders, but simply that it focuses on them, rather than on duty bearers.

<sup>31</sup> For this label see Andrea Sangiovanni, ‘Global Justice, Reciprocity, and the State’, *Philosophy and Public Affairs*, 35 (1) (2007), 3-39, pp. 5-8. See, e.g., Caney, *Justice Beyond Borders*, Tan, *Justice without Borders*, and Charles R. Beitz, ‘Cosmopolitan Ideals and National Sentiment’, *The Journal of Philosophy*, 80 (10) (1983), 591-600. Notice that, in his earlier work, Beitz used to defend a relational cosmopolitan approach.

person, and all justice-based rights qualify as human rights, namely as rights people hold by virtue of their humanity.

The recipient-based view offers a very complex and expansive picture of what counts as a duty of justice: if a duty's object corresponds to the fulfilment of someone's (human) rights<sup>32</sup> – including welfare rights to goods and services – then it is, *ipso facto*, a duty of justice. How do advocates of this view propose to allocate duties of justice so conceived? Even though non-relational cosmopolitans say little about this,<sup>33</sup> we can at least envisage a number of alternative allocation principles compatible with their overall outlook.

First, there is the suggestion that each and every human being has a duty always to act in a way that best furthers the realisation of persons' human rights worldwide. Albeit simple, such a suggestion is obviously susceptible to the charge of overdemandingness. To ask people always to act in such a way as to maximise human rights fulfilment is to deprive them of a space within which to realise their own ends and goals – i.e., what human rights and justice are for.<sup>34</sup> A theory of justice which demands unlimited altruism, and leaves agents with no resources to pursue their life plans, is one that undermines the very values it seeks to protect. Notice that this observation differs from my earlier claim that, once we have established our substantive – non-self-defeating – account of duties of justice, the *existence* of such duties is insensitive to costs.<sup>35</sup>

Second, recipient-based theorists might focus on institutions as the most efficient, and morally appropriate, means to discharging duties to fulfil human rights worldwide. The idea is that, once appropriate institutional arrangements have been built, people need no longer worry about human rights fulfilment in their daily lives: institutions will take care of it.<sup>36</sup> In turn, this requires positing

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<sup>32</sup> I say 'human' because, on the recipient-based view, all of our justice-based rights are human rights, that is rights we hold by virtue of our humanity.

<sup>33</sup> Caney himself admits that his approach is silent about how responsibility for the fulfilment of persons' human rights should be distributed. See Simon Caney, 'Global Poverty and Human Rights: The Case for Positive Duties', in Thomas Pogge (ed.) *Freedom from Poverty and a Human Right: Who Owes What to the Very Poor?* (Oxford: Oxford University Press, 2007), 275-302, p. 304.

<sup>34</sup> Notice moreover that placing limits on assistance may also be a sign of respect towards its recipients. If they are to be treated as agents, they should be allowed to bear *some* of the costs of their choices and take responsibility for the particular conditions in which they find themselves. For a similar claim see Miller, *National Responsibility and Global Justice*, p. 7.

<sup>35</sup> For instance, a plausible account of justice would probably include the principle 'you ought to honour your justly acquired debts' – i.e., those debts you acquired against fair background conditions. The fact that Jason has lost most of his wealth gambling does not cancel his duty to pay his justly acquired debts, *even if* it makes fulfilling such a duty particularly costly to him. On the contrary, Jason's loss of wealth as a result of gambling does cancel his duty to donate money to assist others in need. (He might, however, still have a duty to save children in danger, or engage in community service.) The fact that such a duty of *assistance* would be very costly to him suffices to deny its existence.

<sup>36</sup> This is the line taken in Robert E. Goodin, *Protecting the Vulnerable: A Re-analysis of Our Social Responsibilities* (Chicago: University of Chicago Press, 1985) and Henry Shue, 'Mediating Duties', *Ethics*, 94 (4) (1988), 687-704.

what Henry Shue calls ‘mediating duties’ to create institutions capable of realising justice worldwide.<sup>37</sup> By contrast to the agent-based view, here institutions are not an existence condition of duties of justice, but simply *instrumental* to their realisation.<sup>38</sup>

Unfortunately, this second solution replicates the overdemandingness problem affecting the first one (albeit in a different form). Considering how much needs to be done, by way of institution-building, in order to realise global distributive justice, people in the current generation as well as in future ones would have to devote all of their efforts to the construction of just global institutions, thus neglecting their own legitimate life plans.<sup>39</sup>

One might object that the costs of just institution building would be so prohibitive only assuming partial compliance. If everyone did their fair share in institution building, then the costs of bringing about greater justice would not be so exorbitant as they seem to be.<sup>40</sup> This argument appeals to a principle like the following ‘your duties of justice always correspond to what your “fair share” would be under conditions of full compliance’.<sup>41</sup>

Although intuitively appealing, this agent-centred principle sits uncomfortably with a recipient-based approach to justice. According to this principle, if there are five people equally placed to save Martin from starvation, and Martin needs at least five units of food to survive, each of them has a duty of justice to give him one such unit. If one of them fails to honour her duty, the others still have a duty of justice to give Martin only one unit – which, *ex hypothesi*, would not be enough to save him (even though they could all easily give him two).<sup>42</sup> This way of looking at things is clearly unacceptable from the perspective of the recipient-based view. How, then, can its advocates escape the overdemandingness charge?

A third suggestion, advanced by Caney, is to place limits on ‘the amount that one may permissibly require of individuals’.<sup>43</sup> On this ‘cost-sensitive’ version of

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<sup>37</sup> Shue, ‘Mediating Duties’.

<sup>38</sup> Cf. the arguments about the ‘division of labour’ between society’s institutions and its citizens in John Rawls, *Political Liberalism*, with a New Introduction and the ‘Reply to Habermas’ (New York: Columbia University Press, 1996), lecture VII. For critical discussion see Liam B. Murphy, ‘Institutions and the Demands of Justice’, *Philosophy and Public Affairs*, 27 (4) (1999), 251-91.

<sup>39</sup> Cf. Thomas W. Pogge’s critique of monistic approaches to justice (e.g., Cohen’s) in ‘On the Site of Distributive Justice: Reflections on Cohen and Murphy’, *Philosophy and Public Affairs*, 29 (2) (2000), 137-69.

<sup>40</sup> I am grateful to Ian Carroll for raising this potential objection.

<sup>41</sup> For a defence of this principle see Liam B. Murphy, *Moral Demands in Non-ideal Theory* (Oxford: Oxford University Press, 2000).

<sup>42</sup> For related arguments see Harry Frankfurt, ‘Equality as a Moral Ideal’, *Ethics*, 98 (1) (1987), 21-43.

<sup>43</sup> Caney, ‘Global Poverty and Human Rights: The Case for Positive Duties’, p. 306. Along similar lines, Amartya Sen has recently argued that the duties correlative to human rights need not always be perfect but can also be imperfect, merely asking duty-bearers to give ‘reasonable consideration to a possible action’. See

the recipient-based approach, everyone in a position to help fulfil persons' human rights has a stringent duty of justice to do so, so long as this is not too costly to her. Regrettably, this proposal is also ultimately unsustainable. Including considerations about costs within an account of duties of justice seems to rob them of their special stringency, turning them into *de facto* duties of assistance. While I have no duty to help others if this involves making considerable sacrifices, my duties of justice are insensitive to the costs attached to them. For instance, I have a duty to pay my (justly acquired) debts no matter how difficult it is for me to do so. As I noticed earlier, such a duty might be one that I am 'all-things-considered' justified in breaching, but the fact that it is costly does not by itself count as a reason to cancel it out. Since duties of justice are not cost-sensitive *in the way* duties of assistance are, Caney's cost-sensitive account of justice is unsuccessful.

Finally (and perhaps most importantly) let me point out that since any duty aimed at fulfilling persons' human rights automatically qualifies as one of justice, on the recipient-based view, there seems to be no room for duties of assistance. This is rather implausible, especially given that proponents of the recipient-based approach are keen on affirming the difference between duties of assistance and duties of justice.<sup>44</sup> Unfortunately, instead of offering a rationale for drawing the cut between justice and assistance, recipient-based theorists end up altogether eliminating one side of the cut: that of assistance.

## 5. THE MIXED VIEW

Given that a purely agent-based and a purely recipient-based approach to justice have proven unsatisfactory, it would seem natural to look for a third alternative combining the virtues, and avoiding the vices, of these two perspectives. An interesting attempt to defend this alternative is offered by David Miller, who tries to bring together the perspective of the agent and that of the recipient in the definition of what counts as a duty of justice. On his view, the status of a duty as one of justice or one of assistance depends on (i) the content of the duty – i.e., the importance of the interest(s) it is meant to protect – and (ii) the position of the duty bearer in relation to the recipient of the duty. With respect to (i), Miller holds that there is a set of basic needs *all* human beings are entitled to having fulfilled *as a matter of justice*. These, in turn, give rise to universal human rights. With respect to (ii), the stringency of the duties correlative to such rights *varies* depending on whether the duty bearer is a

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Amartya K. Sen, 'Elements of a Theory of Human Rights', *Philosophy and Public Affairs*, 32 (4) (2004), 315-56, p. 339.

<sup>44</sup> For instance, Caney says, 'there are arguments for the global redistribution of wealth which appeal not to what people can demand as a matter of justice but instead to duties of benevolence, or humanity, or charity', and makes it clear that he is concerned with the former type of argument. See Caney, *Justice beyond Borders*, p. 104.

primary one – i.e., whether the duty falls upon her directly, as in the case of negative and special duties – or whether she is a secondary one, acting because the primary duty bearer is not doing, or cannot do, her duty. Typical cases of primary responsibility for the fulfilment of a duty are, for instance, a person's duty to rectify a harm she caused to others, or the duties arising from special relationships, such as a mother's duty of care towards her children, or a government's duties towards its citizens.

To see how agent-based and recipient-based considerations contribute to our moral evaluation of specific cases, Miller offers a series of examples.

**Scenario I.** Imagine a society P suddenly hit by a natural catastrophe whose members consequently lack access to the necessary resources to fulfil their basic needs. For Miller, this generates a general *justice-based* responsibility on the part of other societies B, C, D etc. (call them S for brevity), to assist the needy people of P.<sup>45</sup> Since P's inhabitants cannot be held responsible for their plight, and since no one else is (i.e., they were 'harmed' by nature, not by other human beings), all those in a position to help, namely S, have a *stringent duty of justice* to do so.

**Scenario II.** In this scenario the *status quo* is the same as in scenario I: the inhabitants of society P are severely deprived. However, this time their plight has been caused not by a natural catastrophe, but by the predatory behaviour of another society: A. In such a case, the primary duty bearer with an obligation to remedy P's situation is A itself, who has a *stringent duty of justice* to do so.

**Scenario III.** Now consider this slightly more complex version of scenario II. Imagine that A is either unable, or unwilling to fulfil its duty to P. In this case, the duty would shift to B, a nearby society with the capacity to remedy P's situation (but with no responsibility for causing P's plight).<sup>46</sup> Would this duty be one of justice or one of humanitarian assistance? Miller opts for the latter. He says 'we may think that B cannot be *required* to act, given that the primary responsibility rests with A. That is, we ought not to apply sanctions

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<sup>45</sup> Miller, *National Responsibility and Global Justice*, p. 264.

<sup>46</sup> Miller, *National Responsibility and Global Justice*, p. 267.

to B of the kind that we would be justified in applying if [B] were primarily responsible for relieving P but were refusing to do so'.<sup>47</sup>

All of these examples reflect the intuitive thought that (i) respect for human rights is indeed morally crucial and therefore a matter of justice, and (ii) duty bearers should not be unreasonably burdened. Even though Miller's strategy points in the right direction, the rationale underpinning it is not entirely convincing. To see this, consider the conclusions he reaches in each of the aforementioned examples.

First, it is unclear why a society's duty towards P *remains of the same kind* whether it is responsible for P's plight (scenario II), or whether such plight has been brought on by a natural catastrophe (scenario I). Surely, if I have intentionally or negligently harmed you, I have a much more stringent duty to redress the harm done than if I have nothing to do with the cause of your distress.<sup>48</sup> If I am morally responsible for your suffering, I ought to do my best to relieve it even if this comes at a very high cost to myself. But it seems unreasonable (overdemanding) to ask people to help the victims of unlucky circumstances no matter how costly it is to them.

These reflections further suggest that Miller's claim that the nature of the duty of 'bystander' societies S towards P changes whether P's plight has been caused by a natural catastrophe (scenario I), or by another agent (scenario III) is problematic. S's duty is one *to help those in need* in both cases. If little Charlie is drowning in a shallow pond, why should my duty to save him change whether Charlie has accidentally fallen into the pond, or has been pushed by his evil friend Johnny?<sup>49</sup> Why should my duty be enforceable when he accidentally falls into the water and there is no one else around who could rescue him, but not enforceable when his mother witnesses the scene but fails to jump in and save him? Surely she is the primary duty bearer, but her presence does not make a difference to *my* position vis à vis Charlie. In both cases I have a duty to help him because he is in difficulty, independently of other people's duties.

Miller justifies these disanalogies by appeal to the different plausibility of the enforceability of the duties in question. While in scenario I, S's duty to help P seems rightfully enforceable, this is not so when primary responsibility for the

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<sup>47</sup> Miller, *National Responsibility and Global Justice*, p. 258

<sup>48</sup> Of course, Miller might allow that the duties have different contents across these two scenarios: relief of suffering in scenario I, and compensation for the harm caused (whatever its entity) in scenario II.

<sup>49</sup> This is a variation on a famous example by Peter Singer, 'Famine, Affluence, and Morality', *Philosophy and Public Affairs*, 1 (3) (1972), 229-43. For this variation see David Zimmermann, 'Coercive Wage Offers', *Philosophy and Public Affairs*, 10 (2) (1981), 121-45, p. 135 and Bashshar Haydar, 'Special Responsibility and the Appeal to Cost', *Journal of Political Philosophy* (forthcoming).

fulfilment of the duty falls on some other agent: A in the case in point. The *prima facie* plausibility of Miller's claim that, in scenario I, S's duty towards P is enforceable, diminishes when we focus on who would have the right to do the enforcement. In most cases all other potential enforcers will also be bound by a duty to help P and would therefore have no right to force S to help P in the first place.

Of course, there might also be exceptional cases, like the following one.<sup>50</sup> If there are two bystanders, call them Jack and Max, witnessing Charlie drowning in a shallow pond, but only one of them, Jack, can swim, it would seem entirely permissible for Max to force Jack to save Charlie. I share this intuition, and think Max would be justified 'all things considered' to force Jack to save Charlie, even though forcing Jack is (mildly) wrong. At the very least, Max would *owe* Jack an apology. As I noted earlier, it makes perfect sense to say that something wrong is all-things-considered justified as the lesser of two evils. After all, we sometimes think we are justified in telling lies, but this does not mean that it is not wrong to tell lies. Duties of justice might be overridden by other considerations, however overriding a duty of justice always involves a moral wrong.

Moreover, let me point out one particularly troublesome shortcoming of the 'enforceability test' proposal at the heart of Miller's view. If we were to establish the nature of a duty (i.e., of justice *vs.* assistance) by asking, case-by-case, whether it would seem morally plausible to enforce it, we would fail to provide a systematic criterion for distinguishing between different types of duties. According to this proposal, duties of justice are merely those which intuitively strike us as stringent. But this is no *explanation* for the special stringency of justice. What we need is a general account of *why* duties of justice are particularly stringent, and the enforceability test fails to provide such an account.

If this is correct, it seems that Miller's picture is not so different from the agent-based view after all. He posits universal human rights as a matter of justice but, as it turns out, the duties correlative to such rights can be either of justice or of assistance. If such duties are negative (i.e., duties of forbearance), or generated by special responsibilities, they are aptly regarded as stringent duties of justice, otherwise they count as weaker duties of assistance (and the 'rights' correlative to them are, in fact, no rights at all, but merely *prima facie* claims). The one important lesson to learn from Miller's approach is its attempt to integrate agent-based and recipient-based considerations in determining the stringency of duties. Unfortunately, in Miller's case, such an attempt seems to

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<sup>50</sup> A similar case was presented by Miller himself during a talk at University College London in April 2008.

lack an overarching rationale for balancing these two types of claims, and is therefore partly unsatisfactory.

## 6. THE REVISED AGENT-BASED VIEW

Although our exploration of the three preceding views has delivered mostly negative conclusions, there is a lot we can learn from it. Building on my previous discussions, I will now attempt to construct a fourth account of the distinction between justice and assistance capable of overcoming the difficulties with the views analysed up to this point. To recapitulate, we have seen that, by blurring the distinction between justice and assistance, the recipient-based approach is potentially self-defeating. Miller's mixed approach, on the other hand, seemed more promising, but ultimately unable to offer a satisfactory account of the distinction in question. On the basis of these considerations, I suggest that the most fruitful strategy for developing a plausible approach to justice and assistance is to adopt the agent-based view as a starting point, and to relax its claims about duties of justice having to be precisely allocated (perfect) and actually enforceable. The question, of course, is how can we relax such conditions in a way that (i) is sufficiently systematic and (ii) still allows us to make sense of the distinction between justice and assistance?

To answer this question, we first need to uncover the *grounds* of such a distinction. Although the distinction is often taken to be fundamental, the question 'where do duties of justice and duties of assistance come from?' is certainly a legitimate one to ask. Any systematic attempt to distinguish between these duties should thus start by offering an answer to this basic, and often overlooked, question.

### 6.1 EQUAL RESPECT, HARM AND HELP

My answer to this question invokes one of the most widely held principles in contemporary liberal political philosophy: the principle of equal respect for persons *qua* rational, purposive and self-directing agents. I suggest that, properly understood, this principle grounds the following duties:

- a) the universal duty not to harm others.
- b) the universal duty to help those in need when this is not too costly to oneself.<sup>51</sup>

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<sup>51</sup> These duties echo the Rawlsian distinction between the natural duty not to harm, and the natural duty to help others in need – see Rawls, *A Theory of Justice*, pp. 98-9.

Plainly, respecting persons *qua* agents capable of choosing and acting in pursuit of their own ends requires refraining from undermining their agency, that is refraining from harming them. When people are harmed, when their conduct is illegitimately interfered with, they cannot effectively translate their choices into action and their ability to carry out their plans of life is thereby compromised.<sup>52</sup> For instance, if someone forces me to prostitute myself, or if someone steals my property, my capacity to set and pursue ends for myself is severely damaged. In the former case, what I do with my life depends on someone else's will; in the latter, the means with which I could pursue my ends are now serving the ends of another.<sup>53</sup>

Since we live in an imperfect world, refraining from harming others is insufficient as a guarantee that everyone's agency will remain intact.<sup>54</sup> Human beings are vulnerable to natural catastrophes, other people's violence and their own recklessness. Misfortune, injustice and imprudence might also seriously undermine people's agency. This is why, in addition to a duty not to harm, equal respect also grounds a universal duty to help those in need when this is not too costly to oneself.<sup>55</sup> If my property has been stolen and I find myself without any means of subsistence, others have a duty to help me, so long as this does not unreasonably burden them.

The duty not to harm is more stringent than the duty to help: if I have duties to help others, then, *a fortiori*, I have duties not to harm them. For instance, if I have a duty to help the starving, I must have an even stronger duty not to place others in conditions where they are condemned to starvation. This greater stringency is reflected in the fact that the universal duty not to harm is correlative to a universal right not to be harmed, that is a right freely to set and pursue one's ends without violating others' rights to do the same.<sup>56</sup> This is what Kant would call a 'universal right to external freedom'.<sup>57</sup>

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<sup>52</sup> A helpful discussion of this point in relation to Kant's philosophy is offered by Frederick Rauscher, 'Kant's Social and Political Philosophy', in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy*, (Fall 2007 edition), <http://plato.stanford.edu/archives/fall2007/entries/kant-social-political/>.

<sup>53</sup> In offering these examples I draw on Arthur Ripstein's interpretation of Kant in his 'Authority and Coercion', *Philosophy and Public Affairs*, 32 (1) (2004), 2-35, and 'Private Order and Public Justice: Kant and Rawls'.

<sup>54</sup> Cf. O'Neill, *Towards Justice and Virtue*, sec. 7.2.

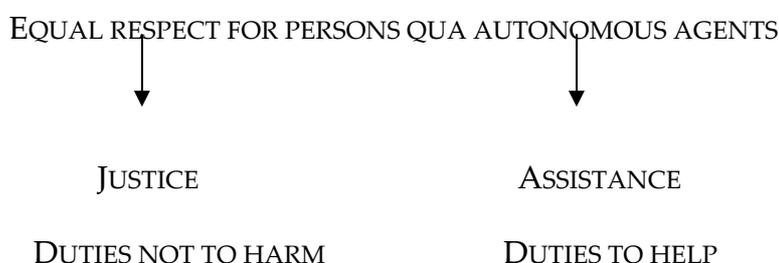
<sup>55</sup> For discussion see O'Neill, *Towards Justice and Virtue*, ch. 7.

<sup>56</sup> See O'Neill, *Towards Justice and Virtue*, ch. 5, particularly her discussion of universal 'liberty rights', i.e., rights to non-interference. See also Buchanan, 'Justice and Charity'.

<sup>57</sup> Kant, *The Metaphysics of Morals*, 6: 237. Of course, autonomy also presupposes that certain 'internal conditions' are fulfilled, such as adequate mental abilities. Notice moreover that here I am using 'autonomy' in a loose sense – in terms of a person's ability to form and pursue her life plans – rather than in Kant's original sense, namely in terms of a person's purity of will.

Given what I argued in the preceding sections, it should be clear by now that *the duty not to harm demarcates the province of justice*.<sup>58</sup> Non-harm is what equal respect in the realm of justice demands. Since human beings have equal worth as autonomous agents, respect for them requires refraining from infringing their right to freedom. Justice draws the boundaries within which each may legitimately exercise her capacity for choice and pursue her ends (be they moral or not), without violating others' rights to do the same.

If duties not to harm demarcate the province of justice, *duties to help demarcate that of assistance*. Duties of assistance are less stringent than duties of justice and, unlike them, they are cost-sensitive. As already observed, even though people have equal moral worth, each has a special interest and responsibility for her own well-being. Given the amount of need and suffering present in the world, an unconditional duty to meet the needs of others would leave people with no resources to pursue their own life-plans and goals, thus defeating the point of the principle of equal respect itself. This also explains why the universal duty to help is *not correlative to a universal right*:<sup>59</sup> a universal duty to help everyone else in the world would be implausibly costly. People have a moral duty to meet needs (if they can do so at not too high a cost to themselves) but when and how they do so is up to their discretion.<sup>60</sup> Schematically put, this is how duties of justice and duties of assistance relate to equal respect.



So far I have uncovered the normative grounds for what I described earlier as the 'common sense' distinction between justice and assistance (see section 2 above). Having done so, we can now approach the task of revising the agent-based view, asking which of its features are worth retaining and which are not.

<sup>58</sup> Cf. O'Neill's defence of the non-injury principle as a principle of justice, *Towards Justice and Virtue*, ch. 6.

<sup>59</sup> See O'Neill, *Towards Justice and Virtue*, ch. 5, esp. sec. 5.3 and Thomas W. Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002).

<sup>60</sup> As Ripstein correctly notices, positing a duty to help correlative to a right would constitute a violation of peoples' autonomy – it would be equal to placing the means legitimately owned by the duty bearer under someone else's control (i.e., the recipient's) without the duty bearer's consent. See Ripstein, 'Private Order and Public Justice', p. 1408.

## 6.2 RECONCEPTUALISING JUSTICE AND ASSISTANCE : THE REVISED AGENT-BASED VIEW

Let us begin by considering the ‘perfection’ requirement. On the agent-based view, positive duties of justice – i.e., duties to ‘provide’ – only exist when they are institutionally allocated. In so claiming, the view sees just institutions, or at least institutions allocating putative duties of distributive justice, as an existence condition of such duties. As I will argue shortly, the claim that institutions, and shared systems of legal, political and economic rules more broadly, constitute an existence condition of duties of distributive justice is in no way misguided. What is misguided is the claim that institutions *which have already successfully allocated duties of distributive justice*, i.e., institutions which have turned the demands of justice into perfect duties, are a necessary condition for such duties to exist.

Legal, political and economic institutions – i.e., the kinds of institutions which characterise our societies – are indeed an existence condition of duties of distributive justice. In the state of nature, where there exist no coordination mechanisms, no formal or *de facto* rules allocating resources (property rights), and no shared understandings on the basis of which resources can be inter-subjectively valued, nobody can *make sense* of how her actions, in conjunction with those of others, will eventually shape up into an overall scheme of mutual constraints on freedom.<sup>61</sup> This suggests that outside societal contexts – in a pure state of nature – refraining from harming others simply means ‘leaving them alone’: no positive (distributive) measures can be appealed to in order to fulfil the moral imperative of non-harm.

When we move from scenarios characterised by scarce and irregular interaction – for instance scenarios where property rights have not yet been established – to societal institutions, the duty not to harm takes on a richer, more complex, meaning, expressed by standards of distributive justice.<sup>62</sup> On this view, the reason why we have certain duties of distributive justice in the domestic context is that only by fulfilling such duties can we make sure not to infringe others’ right to freedom.

Take Rawls’s theory of justice as an example. This may plausibly be understood as an attempt to elaborate the substantive content of the equal right

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<sup>61</sup> Cf. David Miller’s ‘metric’ critique of global equality of opportunity in ‘Against Global Egalitarianism’, *The Journal of Ethics*, 9 (1/2) (2005), 55-79.

<sup>62</sup> These two scenarios can be seen as representing the ends of a continuum: from the state of nature to society. Since the world in which we live falls on the ‘society’ end of the spectrum (our world is populated by states), we need not ask ourselves what principles would apply in the in-between stages. Such a question is an extremely difficult one to answer and has little normative significance for the world in which we live.

to freedom in the context of a liberal democratic society.<sup>63</sup> The theory assesses the fairness of the relations between people's 'spheres of freedom' by focusing on how these are shaped by the basic structure of society. Its central question is: How should society be structured for the social order to be justified in the eyes of all members, given their fundamental equal right to lead their lives in accordance with their own conceptions of the good? Rawls's answer involves two strongly egalitarian principles of justice. When state institutions fail to meet Rawls's standards of justice, citizens end up occupying very different positions in terms of life prospects: some have plenty of opportunities to lead the lives they wish to lead, while others' overall opportunity-sets are significantly smaller. In such circumstances, some citizens' equal right to freedom, one might say, is violated, which makes them the victims of (social) injustice.

To be sure, Rawls's theory offers only *one* possible interpretation of what respecting others' right to freedom requires. For instance, the conceptual scheme I have outlined can also accommodate libertarian approaches to justice, according to which egalitarian redistribution is a violation of persons' right to freedom, rather than a means to its realisation.<sup>64</sup> Conceptualising justice in terms of non-harm does not pre-empt the substantive question of what baseline should be employed to establish whether harm has been done within specific social contexts. Different substantive theories of justice will offer different answers to this question. Moreover, depending on how demanding our conception of justice is – at least domestically – there might be more or less of a role for assistance to play.<sup>65</sup> So, for instance, on a Nozickian view, duties of assistance are indeed quite crucial to our overall political morality. In a Nozickian minimal state there will be much scope for the exercise of assistance, given the poverty and destitution that are likely to result from the unregulated market processes Nozick advocates. Things would look different within a fully just Rawlsian society, where people's material needs would be met as a matter of justice. In such circumstances, people would have no occasion to act on the moral imperative of assistance.

Is this a serious embarrassment for those theorists who, like Rawls, defend a fairly demanding conception of justice and still want to draw a distinction between justice and assistance? I believe not. Although on certain accounts of justice, once we assume full compliance and favourable conditions,<sup>66</sup> assistance becomes redundant, assistance is not redundant in real-world scenarios. Where

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<sup>63</sup> See John Rawls, 'Kantian Constructivism in Moral Theory' (1980), in Samuel Freeman (ed.) *Collected Papers* (Cambridge, MA: Harvard University Press, 1999), 303-58, and *Political Liberalism*.

<sup>64</sup> See Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974). For discussion see Jonathan Wolff, *Robert Nozick: Property, Justice and the Minimal State* (Cambridge: Polity Press, 1991).

<sup>65</sup> I wish to thank David Miller and Robert Jubb for urging me to make this point explicit.

<sup>66</sup> These features characterise what Rawls calls 'ideal theory'. See *A Theory of Justice*, p. 8.

justice fails to be realised, either because of unfavourable conditions – e.g., natural catastrophes – or because of people’s reckless and inconsiderate conduct, principles of assistance will always have some part to play. The fact that they might become redundant under ideal conditions does not mean that they are redundant in relation to real-world moral reasoning: especially when it comes to the highly non-ideal circumstances of today’s international politics.

Going back to our main argument, the presence of institutions – legal, political, and economic – thus seems to be a necessary precondition for the application of principles of *distributive* justice, i.e., principles of justice which require the provision, and distribution, of certain goods. What is not a precondition is that such institutions should *already be just*: that they should have already successfully translated general principles of justice into perfect duties. There is a difference between (a) the presence of institutional interdependence (which is an existence condition of duties of distributive justice) and (b) the presence of just institutions allocating duties and responsibilities in accordance with the demands of justice. The former does not entail the latter. Indeed, realising justice requires moving from (a) to (b).

Of course, the path from (a) to (b) is often difficult and complex. It is hard for any given individual to work out what is required of her in order to bring about just arrangements. The duties involved in such circumstances will in all likelihood end up being imperfect. Lack of information about (i) the exact impact of one’s agency on that of distant, institutionally connected, others (ii) what would be the best way to remedy current injustices, and (iii) what one’s fair share is, prevents ‘duties of justice to further just arrangements not yet established’ from being perfect in kind.<sup>67</sup> This does not mean that such duties *do not exist*. Instead, it means that their content is hard to establish with any degree of precision. There is clearly a crucial difference between saying that a duty does not exist, and saying that a duty exists but its content is less than fully specified. The former claim – about existence – is an ontological one; the latter – about insufficient information – is an epistemic one.

Let me now turn to the second feature of the agent-based view, namely the idea that duties of justice are only those duties which can be effectively enforced. Once again, proponents of the agent-based view are not mistaken in regarding enforceability as a distinctive feature of duties of justice. However, they err in thinking that *actual enforceability* is the only enforceability that matters. Instead, the enforceability that matters with respect to justice is of a principled, rather than an actual, kind. For instance, if it could be shown that, as forcefully argued by Thomas Pogge, citizens of wealthy western societies

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<sup>67</sup> Rawls, *A Theory of Justice*, p. 99. For a defence of the claim that duties of justice might also be imperfect (and positive) see Ashford, ‘The Alleged Dichotomy between Positive and Negative Duties of Justice’.

support a legal and economic global order which contributes to the plight of the world's poor, there would be nothing wrong in their governments imposing a tax on them, whose revenue could then be used to improve the conditions of the global worst-off.<sup>68</sup> This is because by supporting such an institutional order, so the argument goes, the citizens of rich and powerful states are appropriating what already rightfully belongs to the poor. Of course, existing governments might lack the power – or, more realistically, the motivation – to force their citizens to redress such injustices, but it would be absurd to claim that, as a result, such duties of justice do not exist.

At this point one might object that it is unclear how the principled enforceability requirement is supposed to work when duties of justice are not precisely allocated and therefore epistemically indeterminate.<sup>69</sup> To see how the idea of principled enforceability still makes sense under such conditions, think about an unjust society in which part of the citizenry is unfairly disadvantaged (group D) and part of it is unfairly advantaged (group A). On the view I propose, by supporting an unjust institutional system, group A may be said to undermine the agency of the members of group D. As a result, group A has a duty of justice towards D to rectify the harm done and further just institutional arrangements with a view to putting an end to social injustice.<sup>70</sup> Even though it is virtually impossible to establish what each member of group A ought to do in order to fulfil her duties of justice, it is still meaningful to say that A 'as a group' (with different allocations of responsibility within it) *owes* D duties of justice which can be discharged only through institutional reform. This, in turn, means that there would be nothing wrong if group A were forced to discharge such duties. In principle, there would be nothing wrong if members of D forcibly took from A those 'advantages' that are rightfully theirs as a matter of justice. The fact that, from an empirical viewpoint, it is hard to envisage how this could happen, does not undermine the conceptual tie between justice and principled enforceability.

To conclude, in this section we have seen that interaction against the background of institutional rules is indeed an existence condition of duties of *distributive* justice (i.e., of duties of justice to 'provide' certain resources): however, such duties exist even when actual institutions do not allocate rights and obligations in a way that tracks the demands of justice, and even if these demands are not effectively enforced. On this revised agent-based view, *distributive duties of justice need not always be perfect, but must always be special*. That is, there must always be some kind of direct or indirect connection (through institutions) between duty bearers and the recipients of such duties. In

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<sup>68</sup> Pogge, *World Poverty and Human Rights*.

<sup>69</sup> I owe this objection to Robert Jubb.

<sup>70</sup> Cf. Pogge's arguments in *World Poverty and Human Rights*.

the case of institutionally mediated connections, right holders are not straightforwardly matched with duty bearers, but rather their respective fates are tied to one another through complex processes over which each of them has only very limited control.

Moreover, as the example of Rawls's theory of justice shows, distributive duties of justice – which are typically described as positive duties – are grounded in the universal negative duty not to harm.<sup>71</sup> They represent what refraining from harming others requires within complex institutional systems. This suggests that while just societies are often conceptualised as systems for the mutual provision of benefits (as systems for 'mutual assistance'), their basic functional rationale is mutual non-harm.

## 7. CONCLUSION

It is now time to bring this paper to a close. In the preceding sections I have examined three different ways of drawing the distinction between justice and assistance, and concluded that they are all unsatisfactory for different reasons. Finally, I have developed an alternative conceptual framework: the revised agent-based view.

By relaxing the 'perfection' and 'enforceability' requirements, the revised agent-based view can successfully avoid the conservative implications of its weak and strong counterparts. Moreover, since it traces duties of distributive justice to negative duties not to harm, the revised agent-based view can also easily avoid the overdemandingness charge levelled against the recipient-based approach: refraining from harming others is paradigmatically less costly than benefiting them. Finally, like the mixed view, the approach I propose is sensitive to the position of right holders as well as to that of duty bearers, without being excessively *ad hoc*. The revised agent-based view does not leave those who are harmed outside the scope of justice simply because those who are harming them are not easily identifiable, or cannot easily be stopped. Yet, unlike the recipient-based view, it does not treat any form of deprivation as a basis for duties of justice: on this view, whenever there is an injustice, there must also be a *perpetrator*, and natural disasters cannot plausibly fulfil this role.

Of course, given the complexity of the issues examined and the extent to which our intuitions about justice and assistance seem to conflict, some might want to defend the sceptical conclusion that the distinction between these two types of moral concern is, after all, of little significance. In this paper, I hope to have offered reasons to resist such a view, by showing how there can be a

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<sup>71</sup> I take this to be one of the key implications of the approach taken by Pogge in his *World Poverty and Human Right*.

plausible account of the distinction between justice and assistance that captures something of deep moral significance.