

UNIVERSIDAD DEL ROSARIO

Doctorado en Derecho

Liberal Egalitarianism Beyond the State: Dealing with Global  
Justice

DAVID HERNÁNDEZ-ZAMBRANO

TESIS DOCTORAL

Dirigida por:

Hans Lindahl

Wilson Herrera

Daniel Augenstein

Bogotá, Julio de 2022

# Contents

Abstract.....	4
Chapter 1: The impasse in the debate about global social justice.....	5
1.1 The proposal and structure of the thesis.....	5
1.2 Social and distributive justice: local or global?.....	12
Chapter 2: The challenges against global justice and the indeterminacy in the protection of socioeconomic rights .....	21
2.1 Introduction .....	21
2.2 Particularism: a general outline.....	28
2.2.1 The Rawlsian framing of the problem .....	30
2.2.2 Walzer’s communitarian stance .....	39
2.3 Assessing the basic particularist perspective.....	47
2.4 Can an interpretation of the social contract be reconciled with a renewed version of communitarianism? .....	52
Chapter 3: The particularist loophole: an opening for global justice.....	55
3.1 Introduction .....	55
3.2 The libertarian critique of particularism.....	58
3.3 The particularist defense against libertarianism .....	67
3.4 Problems in the particularist rejection of the broadening of the scope of justice.....	77
3.4.1 The depiction of Cosmopolitanism .....	78
3.4.2 The framing of justice and the political .....	82
3.4.3 What happens with the particularist critique? .....	88
Chapter 4: The need for overcoming particularism.....	97
4.1 Introduction .....	97
4.2 The state-based ideal of socio-economic justice .....	99
4.2.1 State-based justice for particularists and cosmopolitans .....	101
4.3 Justice and the enclosure of the social contract.....	109
4.3.1 The relation between particularism and egalitarianism .....	110
4.3.2 Dissonances between particularism and egalitarianism.....	115
4.3.4 Consent and the moralization of politics .....	120
4.3.5 Distribution of risk: structural injustice and limitations in adjudication .....	127
4.3.6 Considering motives and interests in the particularist justification.....	139
4.4 Local justice and international humanitarianism: particularism giving up on social justice .....	145
4.4.1 The problems of representation.....	146

4.4.2 The double burden .....	151
4.4.3 The impossibility of egalitarian particularism .....	154
Conclusion.....	173
Bibliography .....	181

## Abstract

This thesis lies within the context of the current discussions about global justice. Specifically, within the philosophical liberal egalitarian tradition. The text focuses on analyzing how social justice is excluded from the debate about justice beyond the domestic sphere. It proposes a critique of how traditional theories of justice and political legitimacy prescribe the state as the primary and only unit for social justice and on the inquiry into the possibility of a justification for a global approach to the problem of social justice. This thesis refers to the protection of socio-economic rights globally, focusing on the gaps between the domestic and the international handling of the issue. The challenge, then, is how to achieve such a widening or creation of a political space that could make available the global conception of justice necessary for social rights. A great deal of the argument builds from and refers to terms of distributive justice, given how traditional theories have addressed the topic of socioeconomic justice.

The text is divided into four chapters and a conclusion. This first chapter presents the general outlines of the discussion. The second chapter analyzes the particularist rejection of the broadening of the scope of justice beyond the state, showing how Rawls and Walzer can be taken as representatives of particularism as a whole, and proposing a critique of the particularist prioritization of civil and political rights over socioeconomic ones, given the creation of *indeterminacy* in the protection of the latter. The third chapter shows that the particularist body of theory is subject to inconsistencies between the models of justice it prescribes for the local and the international domain, given the creation of *loopholes* in the recognition and protection of rights and obligations of justice. The chapter argues that the inconsistencies dissolve the distinction between liberal egalitarianism and libertarianism in the theorizations about justice in the international domain. Finally, the fourth chapter takes on the arguments of *indeterminacy* and *loopholes* to show how these justify the need for overcoming particularism.

Having made these considerations, the thesis ends by briefly stating possibilities for a more apt theorization about justice that embraces the global domain by displacing the absolute primordality of the state in liberal egalitarian theories of justice.

# Chapter 1. The impasse in the debate about global social justice

## 1.1 The proposal and structure of the thesis

The endeavor of this thesis lies within the context of the current discussions about global justice and, specifically, within the philosophical liberal egalitarian tradition. The text focuses on the analysis of how the debate about justice beyond the domestic sphere excludes socioeconomic justice. It proposes a critique of how traditional theories of justice and political legitimacy prescribe the state as the primary and only unit for social justice and on the inquiry into the possibility of a justification for a global approach to the problem of social justice. Thus, this thesis refers to the protection of socio-economic rights globally, focusing on the gaps between the domestic and the international handling of the issue. The challenge, then, is how to achieve such a widening or creation of a political space that could make the necessary global conception of justice for social rights available. A great deal of the argument builds from and refers to terms of distributive justice, given how traditional theories have addressed the topic of socioeconomic justice.

Nevertheless, unless made explicitly otherwise, when discussing distribution, the thesis refers to a broad spectrum that includes goods as autonomy, recognition, visibility, and not only money or natural resources. Briefly stated, this thesis proposes a critique of the particularist restriction of justice to the state domain—which makes social justice a local matter and international justice mostly about nonintervention, voluntary cooperation, and humanitarianism—by critically analyzing the arguments from within the particularist framework against global justice presented. To make such a critique, the thesis departs, in the context of the debate about global justice, from the question about the consistency of particularist prescription of the state as the only viable domain for social justice and about if it could be soundly challenged.

This thesis is located in the analytical political philosophy tradition, particularly presupposing the general principles of liberal egalitarianism—the moral primacy of the individual; the commitment to pluralism; equality of respect, recognition, participation, and opportunities; democracy; self-determination; and the ability to have and claim

rights which are consistent with the other principles. The reason for choosing this framework is threefold. First, this philosophical tradition is the one, to my knowledge, that has provided, in recent times, more general theories of justice that are developed in accordance or as part of theories of political legitimacy. This opens the possibility of proposing a debate within general agreed principles and guidelines, thus avoiding the need to offer a new basis for justice and legitimacy. Second, because the so-called analytical political philosophy has become mainstream, doctrinally, to address political debates regarding legitimacy and international relations. Third, given that the practical and theoretical discussions are every day more concerned with the problems of global and international interactions—which include climate change, migration, the behavior of transnational non-state actors, international relations, foreign intervention, etc.—and that the current context tends towards a broadening and strengthening of this kind of interactions, the philosophical inquiry into the foundations for the discussion about justice and legitimacy is pertinent.

Accordingly, in all the thesis, “particularism” is used to refer to liberal egalitarian particularists or, more broadly, to those who think that socioeconomic rights must be accounted for in a theory of—local—justice and that positive institutional involvement is necessary for taking those rights seriously. It is worth noting that, although particularism—as defined here—restricts the scope of justice to the domestic state-based domain, it is committed to liberal universalist values like autonomy and self-determination. Even in the case of particularist communitarians, the generality of the available theorizations about justice is committed to universal values while, at the same time, proposing that their implementation should take the form and sense that the different communities give them.

Consequently, in the foundational distinction between universalism and relativism, particularism opts for universalism. This, of course, has to be explained. Based on the universality of principles as self-determination, political representation, and non-intervention, particularists commit to stating that different peoples should be able to decide how they deliver justice (and to some extent what they consider just) under their differences and independence. Thus, we find the defense of “particularity” in the delimitation and scope of principles of justice. Accordingly, the generality of particularists defend differences in systems of justice and conceptions of the good life

as reasons for avoiding universal principles of justice across countries. However, at the same time, particularism is committed to some general boundaries for the justifiable differences regarding how justice is delivered—usually tied to a defense of the concept or the actual list of human rights.

Following the analysis that results from that inquiry, the thesis proposes that the state-based conception of justice creates inconsistencies that make particularism, as it has been built, unable to deal adequately with the relations between local, international, and global justice. Thus, it proposes that we should abandon the state paradigm in international and global justice discussions. The proposal is, then, that any theorization about justice should make visible other forms of political organization and influence—present in the global domain—while being consistent with the framework of liberal egalitarianism.

Knowing about the objective and the framework of the thesis, let me now present how it is structured. The text is divided into four chapters and a conclusion.

This first chapter presents the general outlines of the discussion. The second chapter analyzes the particularist rejection of the broadening of the scope of justice beyond the state, showing how Rawls and Walzer can be taken as representatives of particularism, and proposing a critique of the particularist prioritization of civil and political rights over socioeconomic ones, given the creation of *indeterminacy* in the protection of the latter. The third chapter shows that the particularist body of theory is subject to inconsistencies between the models of justice it prescribes for the local and the international domain, given the creation of *loopholes* in the recognition and protection of rights and obligations of justice. The chapter argues that the inconsistencies dissolve the distinction between liberal egalitarianism and libertarianism in the theorizations about justice in the international domain. Finally, the fourth chapter takes on the arguments of *indeterminacy* and *loopholes* to show how these justify the need for overcoming particularism.

Briefly stated, the general argument of the thesis first makes a critique of the prioritization of rights within the particularist construction of local justice. Then, it provides a critique of the way in which particularism builds the foundations for justice in the international domain. Afterward, it defends the need to overcome traditional particularism in order to have a theorization about justice—including the local and

global domains—compatible with the general framework of liberal egalitarianism. Finally, the thesis concludes by presenting a general outline of how the core of the particularist consideration of justice, namely, the need for delimitation of less than all-encompassing political memberships as a precondition for the rise of justice and political legitimacy, can be reframed, evading the Westphalian tradition, to include new actors and claims in the general theorization of international and global justice.

Chapters 2 to 4, in which the entire argument is deployed, are divided into four parts which include i) an introduction in which the problem and structure of the chapter are presented, ii) the second part, in which the conceptual framework and guidelines are stated, and iii) the third and fourth parts, in which the discussion and arguments are developed and concluded. In more detail, the argument developed fully from chapter 2 is as follows.

#### Chapter 2:

The second chapter critically delineates the framework of the problem of the thesis by providing an outline of the way in which particularism can be understood concerning projects that, like cosmopolitanism, propose the broadening of the considerations of justice—which includes the possibility of postulating rights and obligations—beyond the domain of the state. The chapter gravitates around the critical reconstruction of the particularist rejections of cosmopolitanism devised by Rawls and Walzer—given subsequent perspectives follow these lines of argument—and around the question about if the theorization on justice requires to be framed in particularist (state-based) terms or if there is an opening for alternatives that, within liberal egalitarianism, modify or prescind from the traditional state-based paradigm.

Rawls', departing from a social contract perspective and Walzer from a communitarian standpoint, focus on the right to political participation and the right to just distribution as main aspects to consider regarding the evaluation of the possibility of expansion of the scope of justice. Although these authors disagree—following the liberal/communitarian divide—about the division and organization of the distinction between the right and the good, they agree on the problematic character of a proposal of global or transnational justice given its oblivion of autonomy and self-determination of peoples and the self-identification of state-based political communities that bind peoples together.

Both lines of the argument agree on the need to keep distance between general morality and political morality. Thus, according to these lines of argument, we should keep in mind the difference of nature between morals and politics. While morals tends toward universalism and abstract duties, politics is socially and historically embedded. Another point of agreement between these perspectives is, following the previous one, the general prioritization of civil and political rights (mainly the right to participation) over socioeconomic rights, identified with distributive justice. This is found in Rawls' lexicographical ordering of the principles of justice. Although Walzer focuses on socioeconomic and distributive justice, following the idea of political particularism—as a necessary feature of politics—proposes a preeminence of civil and political rights, expressed in his assertion that the first good to be distributed is membership and participation. From that basis, particularism draws the double conclusion that justice is better left to the state and that the idea of global justice is a non-starter.

However, the chapter argues that the ordering of civil and political rights over socioeconomic ones creates an indeterminacy in the protection of the latter, given the possibility of advancing the former without a causal relation to link both. Additionally, the chapter delves into the way in which a consequence of this particularist perspective on rights creates a conflation of the concepts of legitimacy and sovereignty, fueling the indeterminacy in the protection of socioeconomic justice.

### Chapter 3:

This chapter focuses on analyzing the debate about socioeconomic justice, departing from the discussion between libertarians and egalitarians and then making a parallel of that discussion with the one held between particularists (the liberal egalitarian ones) and cosmopolitans. The chapter proposes that there is an inconsistency between the way particularism rejects the libertarian arguments and the way it objects to cosmopolitan perspectives. The inconsistency lies in that the rejection of cosmopolitanism advanced by particularists has—particularly regarding the issue of socioeconomic justice—the same structure, principles, and reasons as the one made by the libertarians against egalitarians. The chapter states that, while defending egalitarianism locally, the particularist becomes a libertarian globally. Thus, a loophole is created between international and local justice in which, by prescribing consent and self-determination of peoples as the center of global relations, particularism neglects

outcomes—the objects of socioeconomic justice—and the structural injustices permitted by the Westphalian model of international relations.

The chapter presents the debates concerning libertarians, particularists, and cosmopolitans, emphasizing the connection between theories of justice and political legitimacy. To do this, it emphasizes that the principles and rules of justice presented by particularists are fundamental in the justification of why the liberal egalitarian state is morally and prudentially appealing. Regarding the libertarian attack on egalitarianism, three main features are considered. First, the relevance of consent and specific acts in establishing obligations. Second, the argument against patterned distribution based upon the consideration of history and just procedures. Third, the accusation of the moralization of politics. A concern dealt with transversally in the previous three features is the problem of incentivizing free riding and preventing effort and responsibility.

Particularists—liberal egalitarians—defend their position against the libertarian attack by pointing, regarding consent, that autonomy and its exercise cannot be taken as independent of the objects protected by socioeconomic justice and that explicit consent is not a necessary feature of a sound theory of justice based in the idea of the social contract. Correlatedly, regarding the accusation of an ahistorical take on social matters and about the moralization of politics, particularism defends itself by pointing that, precisely, both at a conceptual and historical level, it is the political community which makes goods, effort, opportunities, and production available and, consequently, they are an object of regulation of justice by political authority. After all, distribution is a product of politics.

However, these argumentative features used by libertarians to argue against the regulation of justice at a socioeconomic level are then used by particularism, now again cosmopolitanism, to reject a global approach to justice. In the international realm, according to particularism, the key features to consider generating obligations are state consent, the consideration of the recent history of fair formal procedures among states, and the actual politics and dynamics of powers present in international relations. At this point of the particularist rejection of cosmopolitanism, the chapter proposes a critique according to which this change in standards required by particularism in the local and global domains creates inconsistencies that create conceptual dissonances and space for (structural) injustice.

#### Chapter 4:

This chapter builds from chapters 2 and 3 to complete the critique of the particularist rejection of a global scope of justice. The argument about the indeterminacy and the loophole are considered together and taken further to show how particularist theorization about justice, when deemed both at the local and global levels, fails to deliver a consistent account of justice beyond borders while having relevant shortcomings at the local level. The chapter primarily builds from the analysis of the descriptive and prescriptive proposals of particularism, showing how it presents the prescription of the state as the primary and only instance of justice, as a description of the nature of political relations. As part of the conclusion of this chapter, the idea of reconsidering the concept of “polity,” as independent of that of the “state,” is presented as an alternative to the traditional particularist framing of the problem of justice. This shift of focus makes available the recognition of actors and relations that cannot be captured by the state-based framework of particularism while keeping the valuable insights and conceptual developments of liberal egalitarianism as part of the new framework for theorizing about justice.

The first part of the chapter departs from the argument presented in chapter 2 offers two lines of argument. The first is that, given the neglect of the multiple relations that exceed the domain of the state (including transnational and global political and economic phenomena), the local theory of justice provided by particularism is not enough for local justice. This line scrutinizes the way in which the disregard of how external factors affect the normative arrangements and ways of life locally affect the aptness of a theory to deal with (socioeconomic) justice. The second line of argument proposes that the idea of international justice presented by particularism, based on non-intervention and voluntary cooperation, exacerbates the theory’s capability of dealing with social justice. There, the chapter proposes that this problem is significantly due to an anachronistic fixation on the state as the unit of social justice and shows the difference between the context of enunciation of the roots of liberal egalitarianism and the current context.

The second part of the chapter departs from the argument presented in chapter 3 to show how, when considering the problem of the *indeterminacy*, addressed in the first part of the chapter, in conjunction with the problem of the *loophole*, particularism

can be said to give up on justice given its rejection of justice beyond state borders. By neglecting its own shortcomings at the local level and proposing a mainly formal model of justice for the international and global sphere, particularism isolates those in need of the protection of socioeconomic justice, keeping the normative means primarily available for those who are not in current need of such protection.

Having made these considerations, the thesis ends by briefly stating possibilities for a more apt theorization about justice that embraces the global domain by displacing the absolute primordality of the state in liberal egalitarian theories of justice.

Now, after presenting the general structure and argument of the thesis, the second part of this chapter is devoted to introducing a general framework for the discussion just explained.

## 1.2 Social and distributive justice: local or global?

The inquiry of the thesis is motivated by the gaps left between the moral, legal, and political justification of social rights in the discussion about global justice. After Rawls' *A Theory of Justice*, the topic of justice, and especially of social justice, became one of the central concerns in political philosophy. Nevertheless, it has been limited to the contours of the territorial and jurisdictional division of the world obtained after the Second World War: sovereign states entitled to enter contracts and agreements with other states and non-state actors. According to this traditional depiction of the context of justice, states are said to be bound to their internal legitimacy procedures and the correlative obligations (usually related to their inner legal and political system) and to the consent-based obligations acquired with external agents. However, this picture is at the same time too broad and too narrow to give an adequate baseline of analysis of justice.

It is too broad since it leaves the questions about internal legitimacy unanswered and, therefore, the criteria for judging legitimacy remain abstract and, to some extent, detached from external sovereignty. On the other hand, it is too narrow because it assumes the de facto configuration of the current political scenario as an unquestioned premise in the normative reflection. The philosophical theorization about justice has long been debated mainly over the first problem by linking the question about justice to

the traditional problem of political philosophy—what does the state’s legitimacy consist of?—while paying less attention to the second. In other words, the philosophy of justice has primarily focused on the enterprise of finding justifiable principles of justice that serve the purpose of addressing the legitimacy of the national political authorities in connection to the protection and fulfillment of rights.

In addition, the reflection over the idea of universal rights has been undertaken with renewed interest after the UDHR, and the massive violation of those rights during the second part of the 20<sup>th</sup> century and what has passed of the 21<sup>st</sup>. Even if, initially, the discussion about human rights was broadly framed in moral philosophy, the ideas of rights and the connection of their content to institutional action have linked their theorization with the one about justice, having, as a result, the displacement of the discussion on justice by the one about human rights.

The power of the discourse of human rights and why it takes over the debates about justice has to do with the ambiguous positioning of those rights in the meeting points between moral, legal, and political theories. Initially, human rights have the appeal of being supported by the universality characteristic of the moral claims— independently of the disagreements about the list of rights that those claims would entail—and therefore seem to be applicable (normatively speaking) independently of the existent political divisions and arrangements. After all, the idea of human rights appeals to the existence of a universal moral community that comprehends the totality of humankind. In addition, the consolidation of the UN after the Second World War and the majoritarian subjection to more than one of the human rights treaties by most of the UN states has linked the universality of the moral justification of human rights to the legal and political obligation of the state-parties to respect, protect and fulfill those rights. Given this overlap between the legal norms, moral principles, and political dynamics,<sup>1</sup> human rights have been filling most of the space traditionally occupied by the discussion about justice. The switch between justice and human rights discourses has had the advantage of linking abstract moral aspirations to the international political sphere but has also left part of the debate on justice unattended. Especially regarding

---

<sup>1</sup> Human rights’ treaties have been constitutionalized or ratified linking, in the case of the states that have consented to such inclusion, their moral content to the internal and external recognition of their legitimacy and therefore introducing some normative content into the traditionally realist way of defining sovereignty.

the international sphere, obligations of social justice are one of the topics that have been left aside with the translation of the discourse of justice into a discussion about human rights, given the way in which socioeconomic justice is addressed.

This displacement could initially seem surprising if considering that the concept of human rights implies the active participation of institutions—since traditionally the main institutions attached to justice are states, they depend on the centralization of resources in order to deliver any protection—and that, following the distinction between welfare and liberty rights, welfare rights, the ones typically associated with social justice and the redistribution of resources, are included in the UDHR through the lists of Economic, Social and Cultural Rights (ESCR). However, considering the historical character of the declaration and the Cold War division, the oblivion of social rights is not that surprising. The consolidation of western capitalism as the predominant model of economic organization, the increase in the scope of what is managed under market-oriented criteria, the consequent decline of the welfare state, and the commitment to the model of the sovereign state and its right to self-determination have focused the attention on some of the rights of the declaration—mainly liberty rights—while leaving the rest aside. In addition, the ESCR are traditionally seen as mostly aspirational and, in their design, are meant to be realized through the means of the state: its legal and political orders and interstates' cooperation.

Acknowledging that the division between civil and political rights and economic, social, and cultural rights is not exhaustive and that the formal acceptance and ratification of the international agreements on civil and political rights is not universal, it is nonetheless evident that in the field of human rights there is more substantial support to civil and political rights (especially the ones directly linked to the idea of liberty rights) than to economic, social and cultural rights<sup>2</sup>. This factual political agreement is reflected in the available philosophical inquiries on the topic of human rights: there is, in general, a broader philosophical agreement on the justification of obligations of justice regarding liberty rights than the one referring to socioeconomic rights, especially regarding their availability in the international sphere.

---

<sup>2</sup> Nonetheless, it is worth clarifying that while human rights are usually taken as an international matter, they have a correlate in constitutional rights, concerning the relationship between the states and the citizens. Although these two sets of rights are connected, there is still a marked division between the relation of the citizen with his state and the relation between states, regarding human rights.

Without coming to conclusions about the explanation of the coincidence between political and philosophical agreement, it is feasible to see some reasons for such an agreement:

- The prohibition of torture, for example, is an easy point of agreement because it has clearly identified obligation bearers<sup>3</sup> and can initially be attained through the abstention from the practice by government officials independently of national borders. At the same time, fulfilling the highest available standard of healthcare seems either too vague or too demanding to constitute a reasonable demand.
- The positive/negative division between rights, no matter how contended, serves also as a reason: it is easier to abstain from harming than to prevent harmful situations through active coordination or to actively promote the fulfillment of positive rights.
- Liberty rights, and civil and political rights, can be taken to suit better the constitutions and characteristics of the national state of the 20th and 21st centuries because of being focused on individual freedom, and because those rights seem to keep their relation to the state independently of the processes of globalization of communication and trade, of denationalization of responsibility for justice through the international commitment to human rights, and of losing part of the national grip over economic policy decisions—no country is really independent of the international agreements and from the functioning of the international market.
- Sovereignty and the liberal ideal of self-determination seem to be closer to uniformly applying rules as non-arbitrary detention, fair trial, or non-torture than to sustenance or social benefits. Even acknowledging that both civil and political rights and socioeconomic rights are widely violated worldwide and that poverty and institutional weakness are sometimes used as an excuse for the failure to fulfill civil and political rights, those rights are typically accepted as candidates for justiciable norms. In contrast, the socioeconomic rights are seen more as moral guides. The latter are taken as aspirations to guide policy making, but not for law and enforcement in how the former are supported.

Given the de facto majoritarian submission of countries to some human rights treaties and not to others and the legal and political (at least apparent) more substantial commitment to some rights than to others has helped the distinction of the streams of justification among rights, civil and political rights are taken to be mostly liberty and negative rights<sup>4</sup> that are justified according to justice and that constitute good

---

<sup>3</sup> See *Social Philosophy* (Feinberg, 1973, Chapter 6).

<sup>4</sup> Omitting the necessary collection and allocation of resources involved in their protection.

candidates for enforcement, while social and economic rights are put under a double limitation.

On the one hand, being defined as rights to redistribution, these rights are subordinated to the collective right to self-determination, to individual autonomy, and the right to political participation. Given that different contexts—varying in wealth, geographical conditions, the strength of institutions, shared values, etc.—are supposed to have different needs and priorities, the transnational homogenization or the globalization of norms protecting socioeconomic rights does not seem instrumentally valuable or morally acceptable. On the other hand, consequently, those rights and the redistributive criteria for their protection is left to be evaluated by the condition of showing efforts (by policy design, for example) to foster them, therefore treating the issue as a matter of national self-control and regulation, rather than as an external sign of legitimacy that could be patently subjected to international agreement and enforcement.

Thus, partly as a result of the shift from justice to human rights and of the conceptual conflict between uniform norms of distribution and self-determination—because different polities are supposed, given pluralism, to be entitled to have different regulations according to their interests, needs and conditions—the idea of social rights and obligations has not been the main focus of the discussion on international and global justice. However, since Beitz's *Political Theory and International Relations* (1999), cosmopolitan proposals have been put forward to show the availability of social justice obligations, including those of redistribution, beyond national borders. Beitz, as later did also Pogge and others, retook the Rawlsian argument of *A Theory of Justice* and attempted to show that trade and economic globalization were enough to affirm the existence of a basic structure that triggers the principles of justice and, in particular, the difference principle in the international sphere. These philosophical enterprises brought the debate back from the pure interest in human rights in the discussion about justice, which is the main interest of this thesis.

However, those attempts of globalizing the scope of the difference principle have been widely contested through two sets of arguments: a communitarian stance according to which the bonds of justice and solidarity are limited to the previous existence of a cultural or communitarian bond, and a liberal perspective that claims that

the attempts of taking the duties of distributive justice to a global scale would necessarily damage the guarantees against despotism and arbitrary intervention that are granted, even if imperfectly, by the national political procedures of political participation.<sup>5</sup>

Usually, political philosophy and theories of justice follow a contractual model of justification for political association according to which, ideally, is justified by putting their members in a better position than the one they hold before entering it. However, the consideration of possible members is never taken as a matter of individuals with previous—and probably conflicting—memberships. Members or citizens are usually taken more as a matter of generic individuals, not initially giving much space for discussing minority rights and, in the international sphere, the rights of transnational groups of people which are subject to precarious living conditions due to institutional action that exceeds the scope of the national jurisdiction. Identifications and associations are considered fluid, but the antecedent, non-voluntary, and permanent subjection to geographical borders, legal jurisdictions, and political bonds are not usually considered. In any case, the initial justification—of liberal particularism—lies in the statement that any assurance given by the association (state) is a step forward for the participant because it represents the availability of a positive mechanism that protects and provides security over something in the individual's interest that had no assurance before. The problem of this strand of explanation is that it is based on the individual maximization of profit and, therefore, by an initial subordination of any duties to the available profit, represents a morally arbitrary criterion for justification. Additionally, there is another relevant consideration regarding the possibility of claiming rights: nobody has a legitimate claim to the impossible; as a result, there would be no legitimate claim towards an undetermined and uncoordinated group of individuals or collectives (for example, wealthy states, corporations, or persons) to provide collectively arranged goods to heterogeneous and uncoordinated groups (in this case, the persons, and peoples with unfulfilled socioeconomic rights).

The partition of nationality, even if morally arbitrary, makes available, according to the liberal egalitarian perspective, a space for the negotiation between claims

---

<sup>5</sup> These two sets of arguments derive from the dispute between liberalism and communitarianism, having as representative authors John Rawls and Michael Walzer, respectively.

requiring the association to devote its capacities to them. According to this perspective—which includes the communitarian one—there would be no infringement of rights where nobody can do something for you given the lack of political association, and therefore, any duty of aid would appertain to the scope of charity and not of justice. This perspective becomes even more relevant if considering a historically situated view on human rights as the one depicted by Waldron (2010). He defines the UDHR as the result of a discussion about human nature and the inherent needs of humanity from the standpoint of the already existing states. UDHR is an aspirational declaration determined mainly by political ideology (Cold War) that consists of conflicting views over how a polity should be organized. So, to some extent, the declaration is a summary of mutually exclusive claims over the legitimate way of running a polity, and therefore it would initially be contradictory to follow all of them according to a globally defined pattern.

When the organization and delimitation of rights must be done, that ordering has to be established—according to the particularist perspective—through a theory of justice that could have different instantiations within the plurality of domestic agreements. The delimitation of the theorization about justice in this way defines justice in terms of the domestic scope of sovereignty and therefore rules out the possibility of a theory of global or international socioeconomic justice.

In contraposition to the line of arguments held by particularism, theories that aim at taking obligations of social and distributive justice beyond national borders have mainly focused on big scenarios of transnationalization, legal regulation, or conformation of a global system of governance. These theories focus on justifying how people from around the world could claim others to organize in their favor, or with them, in an asymmetrical relation of benefits in which, for example, the global owners of wealth have duties of sharing part of it with the weakest and poorest populations. Those attempts sometimes result in an appealing moral argument. However, the constraints posited by the lack of individual or collective motivation to contribute to a global association of justice and by the difficulties involved in the specification of causal relations between individuals and collectives all over the world, become an important obstacle to the postulation of determinate duties of socioeconomic justice beyond national borders.

Taking the debate about justice, and particularly of socioeconomic justice, into the global sphere requires careful consideration of the ways in which it could go wrong. Being a well-established perspective in the debate, particularism has developed some critiques that ought to be considered. That is the topic of the second chapter.



## Chapter 2. The challenges against global justice and the indeterminacy in the protection of socioeconomic rights

### 2.1 Introduction

Theorizing global justice has the difficulty of being a theoretical inquiry that takes place in an undiscovered empirical space and of still being a relatively recent theoretical endeavor.<sup>6</sup> Even if most thinkers proclaim globalization as an ongoing reality, the availability of justice in the context of globalization is still limited mainly to non-intervention in sovereign states' affairs and some voluntary cooperation schemes between states and non-state actors (Ssenyonjo, 2009). However, the ideas of justice and socioeconomic justice face a change in the context over which it prescribed principles and rules, since the *de facto* relations between social, economic, and political actors are both denser and broader than they used to be at the beginning of the contemporary discussions about justice. This dissonance between the descriptive discourse, according to which the 21<sup>st</sup>-century world is better described as a globalized world, and the scarce enforcement or acceptance of a justification of socioeconomic justice that accounts for such globalization makes relevant the consideration of the inquiries about what counts as living in a globalized context, if we do actually live in a globalized world, and what kind of theorization on justice would better adjust to our current state of affairs.

To immerse into the problem of the dissonance between the broad and intricate web of cross-borders relations and the dismissal, by the mainstream lines of argument in political philosophy, of the possibility of broadening the scope of justice, a brief contextualization of the problem becomes useful. Although being a vast topic, the issue of socioeconomic justice has usually been philosophically addressed from the point of view of distributive justice. Thus, in this thesis, the arguments presented will continuously refer to theories of distributive justice, their justification, and their prescription about the scope and enforceability of rules and principles of justice.

---

<sup>6</sup> Of course cosmopolitanism and similar theorizations can be tracked, in the western tradition, to the stoics (see Chernilo (2012)) but the idea of global justice built upon a political theory and a theory of justice is a recent matter that can be tracked to the late 20<sup>th</sup> century.

The history of the idea of distributive justice and social rights is long and, in the western tradition, can be traced back to the Platonic and Aristotelean inquiries about the meaning of justice, going through the history of political philosophy between the 16<sup>th</sup> and the 18<sup>th</sup> centuries, and until the current debates of global justice. Regarding its actual practice, it can be historically traced to phenomena as the Athenian concern for providing public baths for the population and to the public funding of arts. Something similar happened in Republican Rome where some laws were enacted to guarantee access to a minimum quantity of food; in medieval times with the laws of the poor; or with the French constitutions of 1791 and 1793,<sup>7</sup> which included material assistance for the poor and the right to education. With the rise of modern liberalism in the nineteenth century, the preoccupation for inquiring into the protection of workers from exhausting labor workdays and the exploitation of the poor gave rise, especially in England, to the liberal concern for defining just terms of social cooperation in terms of social justice. This was parallel to the increase of the responsibilities of the state and a relative increase in the availability of civil organization. These conditions made the late nineteenth century a propitious moment for the rising of social rights in the imaginary of social activism.

However, it is still common to depict social rights' history as a recent matter, limited to modern human rights, supporting the idea of generations of rights—and implying a hierarchization between them. Moreover, it is usually thought that the actual emergence of those rights is tied to the second half of the twentieth century. However, we have to take into account that even if the majority of the literature on the topic of socioeconomic rights and distributive justice locate them empirically and conceptually at the end of the twentieth century, the discussion is pretty older, as well as the experiments and institutional attempts to fulfill them. This remark is made as a reminder of the complexity of the topic and the suspicions that the attempts to oversimplify it should be raised. For example, it is relevant to notice that independently of the answer to the question about the necessary conceptual relation between justice, socioeconomic rights, and particularism, there is no necessary conceptual or historical progression from

---

<sup>7</sup> For more on this topic and on the motivation for the inclusion of social rights as an obligatory protection of the polity, see (Pisarello, 2007, pp. 20–25).

civil and political rights to socioeconomic ones, nor is there a simple political explanation for the relationship between the rights contained in this bipartite grouping.

This conceptual/historical arrangement of the conception of rights is an epistemic obstacle to the possibility of global or international enforcement of socioeconomic rights. In addition to being subjected to national sovereignty, those rights are considered derivative of civil and political rights. As we will see in this and the next chapter, although having some theoretical support, presuppositions as this one can be wrongly extrapolated to other parts of the problem of justice—like the one between particularist and non-particularist theories of justice, doing more harm than good to the comprehension of the problem, and the generality of the debate.

Although most of the relevant debate on the topic has taken place in the twentieth century, and the central concern of this thesis is precisely that body of literature, it must be kept in mind that the relevance and awareness about the object of protection of what we now call socioeconomic rights or welfare rights is not a recent matter. The different historical contexts and the difference in the availability of normative and practical control and coercion (and of their scope) have molded the discussion in a way that has made it especially relevant in contemporary times without changing its historical meaningfulness. At least to some extent, as Michael Walzer (1983) realized it, peoples' social gatherings are ultimately distributive arrangements, and the concern over the distribution of resources, goods, services, opportunities, etc. for satisfying the socioeconomic conditions for a decent social life has always been relevant even in castes, class or nobility based social arrangements.

Thus, although a change in the relation between context and theory is noticeable, we must keep in mind the continuities in the debate. The classical question stated in *The Republic* about what is owed to whom—and its correlate “by whom?”—has guided the inquiry about social and distributive justice until our times. Nowadays, tied to a Westphalian understanding of the world, under which global social reality is constituted by a series of independent states that ought to be committed not to intervene with each other, the concept of distributive justice has been developed within the paradigm of a bounded society (state) whose institutional constitution can largely affect the life, plans, and expectations of the members (citizens). It configures a social organization arrangement that is coordinated, managed and molded by the

government, in the name of the members, according to their particular conception of fair cooperation and fair and equal treatment of all individuals. This development of the concept, which is also present in Rawls *A Theory of Justice* and subsequent liberal theorists, constrains the idea of justice to an already constituted social group whose members (individual or collective) are not only clearly identified but are also recognized as belonging to a single bundle whose borders delimit the participants and the scope of assessment of justice.

In other words, the idea of distributive justice has been developed from the point of view of the available kinds of political association, and its principles depend on the availability of those delimited boundaries. The idea of distributive justice is then dependent on the existence of an executive agency with the power to secure it.<sup>8</sup> The evolution of distributive justice is seen as tied to the development of the state, particularly the welfare state,<sup>9</sup> and hence the notion of rights and distribution have been founded under the idea of the state and have been justified accordingly. Moreover, this line of argument has led to the refusal of accepting alternative paths of justification—at least in the liberal tradition.

Since this text aims to examine the possibilities of finding a justification for socioeconomic justice beyond borders, an unavoidable step is analyzing the objections to such a possibility. Therefore, this chapter is devoted to the consideration of particularist perspectives to have an initial critical input for the delimitation of the discussion. In particular, the question that lies under the whole chapter is, why (if so) would the problem of justice support or demand particularism? And more generally, paraphrasing Iris Marion Young (2000, p. 238), which is the scope of obligations of justice to which political institutions can and ought to correspond?

Particularist perspectives about justice cover a wide range of theoretical branches that include deep-seated democrats, realists, nationalists, and

---

<sup>8</sup> This has the implication of making an exclusive distinction between the scope of distributive or social justice, which amounts to the limits of the state's jurisdiction, and the realm of international relations in which, given the lack of strong executive and democratic agencies, justice mostly depends in respecting what states already have, and avoiding arbitrary intrusions or restrictions to those states.

<sup>9</sup> I use the label "welfare state" as a general term for the idea of the state providing general social and economic insurance for citizens. For now there would be no specific distinctions as the ones pointed by Rawls between, for example, welfare-state capitalism and property-owning democracy (Rawls, 2001, p. 140). On the connection between distributive justice and the welfare state see, for example Sassen & Esping-Andersen (2006), and Bauman (2005).

communitarians. Since making an individual analysis of all the possible lines of argument against global justice ideas exceeds the capacity of the present work, for it would amount to a book on its own, in this chapter, the main aim is to condensate the basic arguments present in those positions to have an overlapping, yet precise, line of argument against cosmopolitanism—and more precisely, against socioeconomic justice beyond borders—that can be analyzed and assessed as the departure point for the postulation of any sound proposal for international distributive justice. It has to be acknowledged that those perspectives differ from each other and, strictly speaking, no one can be subsumed under any other. Nevertheless, since the aim here is to clarify the particularist perspective, I will try to find the most substantial arguments from their views in a way that they can be understood not as different theories but as a bundle of reasons that apply against cosmopolitanism and, particularly, against the idea of a unified system of socioeconomic justice in the international or global sphere.

As main referents for the consideration of particularism, I will take John Rawls and Michael Walzer, who, each in their own way, endorse particularist positions and specific views on the relations between particularism, distributive justice, and social rights. Within the purposes of this thesis, these two authors are relevant reference points inasmuch as their lines of argument continue significantly influencing the debate about global justice. The chapter considers John Rawls and Michael Walzer as the main conceptual framework because they are part of the initial debate between communitarianism and liberalism, which includes the different appraisals of the relevance of distributive justice, while they both remain profoundly particularistic.

On his side, Rawls develops the idea of justice as fairness building up from his two principles of justice stringently ordering them lexicographically and enclosing them to the scope of the participation in a fair cooperation system that, if read closely, is represented by the states' boundaries. The presupposition of the state is made evident when individuals are framed as citizens. In *Justice as Fairness*, when defining primary goods, Rawls says, "Primary goods are things needed and required by persons seen in the light of the political conception of persons, as citizens who are fully cooperating members of society, and not merely as human beings apart from any normative conception" (Rawls, 2001, p. 58). The lexicographical order and subordination of

principles are evident, a few pages later, when Rawls starts addressing the Difference Principle:

*“We now turn to the difference principle as a principle of distributive justice in the narrow sense. Recall that it is subordinate to both the first principle of justice (guaranteeing the equal basic liberties) and the principle of fair equality of opportunity (§13.1). It works in tandem with these two prior principles and it is always to be applied within background institutions in which those principles are satisfied” (Rawls, 2001, p. 61)*

Rawls frames his liberal conception of justice upon the possibility of reasonable agreement within a liberal and pluralistic society. His line of argument states that, to have a coherent liberal account of justice, there must be an agreement on what makes the participants equal and an avoidance, in terms of justification, of that which makes them different. Put another way, if there is going to be a justification for the principles to guide and evaluate the constitution of the primary institutions that shape society and give the basis for the existence of a public political culture, the object of the agreement must be found in the sphere in which they find a commonality: their equal stand as citizens.<sup>10</sup>

It is in the political sphere where the only reasonable expectations of a compact lie. Only by avoiding the subjective and the sectarian ways of justification can we find an agreement with fellow citizens who reasonably disagree with our way of justifying our endorsement of values and principles of moral worth. However, according to Rawls, the unavoidable differences in the way of morally substantiating the selection of principles is not an obstacle (at least conceptually) to finding objective agreement: the overlapping consensus, which includes the pluralism of comprehensive doctrines in the objective agreement on a set of social principles and institutions, given some basic rules for justification,<sup>11</sup> provides both the procedural and moral answer to the problem of a legitimate compact.

Given the participants’ equal stand as citizens—which implies reciprocity in the need of justification and rights and obligations—and of their logical capacity along the

---

<sup>10</sup> This is a widespread liberal consensus on equality, which leads to a broad agreement on particularism too.

<sup>11</sup> Which can be found in Rawls’ delimitation of the original position (2001, pp. 14–18).

epistemic restrictions posed by the Rawlsian justification method, what they have to do is to follow a reasonable line of argument until reaching an agreement (pragmatic solution). In addition, since they all participated in the deliberation process, and they are supposed to consent—or for them to be reasonable to do so—the decision would count as autonomous and therefore as morally *permissible* for institutional enforcement: it would be a just conclusion even if not necessarily optimal in moral terms (moral solution). The moral optimality would be, in any case, an elusive answer given that once there is a reasonable solution, the only way of ponderation between that one and any other possible ones would come from a moral doctrine or, as Rawls called it, a comprehensive doctrine of the good, which for him cannot be an evaluative criterion in circumstances of pluralism. Following Rawls' justification for the division between justice and morals closely, the former being available within the means of discussion and agreement, and the latter being a matter not to be agreed upon, we can also see the primordially of political rights over social ones: as long as there are means to discuss how to manage justice among the community, the actual arrangements should follow, procedurally, without any alterations to the morality of the process.

Regarding Walzer, he, among the so-called communitarians, reacted to the Rawlsian argument proposing a different stance on the basic features for generating bonds of justice and on a somehow different focus regarding what is to count first in the discourse of justice. Walzer's central point, presented in *Spheres of Justice* (1983), is much more focused on the idea of distribution. His distributive justice theory is based not on the Rawlsian notion of equality or other egalitarian ideals—which for him almost necessarily miss the point of justice given the inconsistency of their demands—but on the idea of separating spheres of justice in a way that avoids domination and the convertibility of inequality on some aspects of social life (as wealth) into domination in others (as health). This line of argument has also been followed by other communitarians as Sandel (1982; 2012, 2020), stressing the need of limiting the impact of wealth inequality, who tends to focus more on the necessity of restricting the effects of inequality in some goods over basic goods, more than on creating procedures for assuring participation.

Remarkably, theorizations about justice are closely related to limiting the impact of income and wealth or, more generally, of money (which is supposed to be something

akin to a universal value quantifier) on what is considered the topic of socioeconomic rights: protection against natural threats, pressing need, ignominy, domination, and exclusion from societal life. Thus, Walzer stresses the distributive nature of the social compact. In the third chapter of *Spheres of Justice*, even partially agreeing with Rawls about the contingency of the results of the social decision over on which fronts to dedicate the efforts of distribution, he engages in a much more committed defense of the equiprimordiality of the subsets of rights and, to some extent, of the equality and of the partial independency of socioeconomic rights in terms of justification. For Walzer, all rights are based on the rationale of communitarian compact and political purpose but, if we take out the rights to participation, the socioeconomic ones will still stand—assuming the irrelevance of contradiction of suppressing one set of rights from the general list. Walzer rejects the detachedness of the Rawlsian subject and more than a cooperation scheme. He also understands society as a scheme of social goods: no goods are available outside society. In any case, without trying to retake the debate between liberalism and communitarianism,<sup>12</sup> what we see in the contraposition of the Walzerian account of rights is particularism by other means. So, for Walzer, the common stance is particularism, pluralism is also part of the common concerns, but there is a different emphasis on distribution.

## 2.2 Particularism: a general outline

Particularist stances on the debate about socioeconomic justice oppose global-scale obligations of distributive justice<sup>13</sup> given its endorsement of normative or descriptive particularism through different lines of argument. The normative strand defends that the only morally permissible scope of obligations of justice (absent explicit consent) is particularistic in nature: globalist attempts to legitimize universal obligations, according to particularists, necessarily result in oppression and disrespect for the capability and the right to self-determination. On the descriptive strand, the broad claim is that pluralism is inherent to the human association and, therefore, that any

---

<sup>12</sup> See, for example, Sandel (1982).

<sup>13</sup> As said before, the problem of socioeconomic justice is traditionally addressed via the debate about distributive justice.

conceptual work at universal justification of obligations is futile since it will never fit reality.

Particularism, which includes some liberal democrats, communitarians, republicans, nationalists, and realists, has a plurality of strains of arguments<sup>14</sup> that, share some common background understandings. These understandings gravitate around the impossibility of a morally or politically sound foundation for social arrangements—including principles of justice, distribution patterns, and the concept of justice—outside a political community, understood as the state. The definition of goods, the idea of justice, and the patterns that emerge from those definitions arise from procedures within a political community and therefore cannot be unilaterally imposed from the outside of the community or derived from a universal basis of practical reason: practical reason is based upon the procedures of the political community and not the other way around.

It is noteworthy that the particularist viewpoints are not usually against the broad idea of global justice, which they understand as aiming for local justice everywhere. They usually object to the idea of global political power and of rigid and stringent principles of justice and patterns for administering it. Moreover, the core of their objections lies in the rejection of a hypothetical world state and on the assertion of the impossibility of prolonging or extending the obligations or distributive patterns across the jurisdictional, territorial, and identity enclosures represented by the state and the divisions it creates and enforces. In other words, particularists support, among other things, humanitarian rights of subsistence and the corresponding duties of assistance while, at the same time, rejecting global and egalitarian social or distributive justice.

We have to keep in mind that the scenario objected by particularists regarding global justice is usually framed in terms of a political power exercising worldwide domination or oppression, which, according to them, threatens democratic participation and, more broadly, trumps sovereignty, self-determination, and peoples' independence. This objection resembles, to some extent, the libertarian critiques to the state's power because the center of preoccupation rests on losing self-determination and autonomy given the imposition of external patterns that would compromise one's

---

<sup>14</sup> On the topic, see for example Vincent (1997).

work and freedom, and therefore would be a misrecognition and a violation of what makes us agents and right holders (individuals for libertarians and states for particularists).<sup>15</sup>

This analogy and its consequences could lead to a false analogy between individual autonomy and collective self-determination—because the parts of a subject are not moral agents, unlike the case of collectives. Therefore, the division between individual and political responsibility would be blurred, resulting in the validation of internal oppression through an unrestricted endorsement of the state’s sovereignty.

In addition, this line of argument would have the further problem of assuming legitimacy<sup>16</sup> by seeing the correlate of legitimacy in self-determination.<sup>17</sup> The assumption of legitimacy, given the presupposition of its conceptual conflation with self-determination, reinforces the idea of the subordination of socioeconomic rights to the civil and political ones (and more broadly, welfare rights to liberty rights).<sup>18</sup> It is worth noting that the non-ideal definition of legitimacy accompanies these assumptions as the accomplishment of a basic degree of civil and political rights. A thoughtful analysis of particularism and an evaluation of its strengths and weaknesses requires a critical insight into the relationship between sovereignty, participation, rights, and legitimacy, which is the focus of this chapter.

### 2.2.1 The Rawlsian framing of the problem

Rawls elaborated his theory, among other lines, as an alternative that overrides utilitarianism—the predominant ethical theory for addressing justice by the time Rawls wrote *A Theory of Justice*—in the definition, delimitation, and justification of justice,

---

<sup>15</sup> This idea will be developed in the next chapter.

<sup>16</sup> Which has to be distinguished from sovereignty at least in a basic way: sovereignty is the descriptive power of control of significant part of the population and jurisdiction while legitimacy implies the procedural or principled validation of the exercise of that power (this distinction is found in the generality of the political philosophy debate e.g. (Friedman, 1990; Ladenson, 1979, 1990; Raz, 2009; S. J. Shapiro, 2002).

<sup>17</sup> It must be noted that in the debate about external legitimacy, liberal theorists assume, in ideal theory, the democratic character of the political regime, and in non-ideal theory they usually recur to the principles either of world peace (no war / no intervention) or of respect for human rights which is always characterized in terms of a basic degree of respect and fulfillment of civil and political rights.

<sup>18</sup> Because of assuming that the accomplishment of the latter would imply the just fulfillment of the former—or that only until liberty rights are met to some basic extent, can we pursue and demand welfare ones.

especially regarding distributive justice. Moreover, remaining within the Westphalian paradigm of interpretation of politics, the Rawlsian developments deepened the defense of political and moral particularism, and therefore the criticism against the moral and political viability of the globalization of distributive justice.

Mostly based on the liberal tradition and on the Rawlsian framing of the problem, the debate about global justice finds its point of departure in the idea of the state. Rawls' *A Theory of Justice* delimited the reach of the principles of justice within the scope of an autonomous, self-dependent, and enclosed community (Rawls, 1971, p. 13).<sup>19</sup> That delimitation remains constant both in *Political Liberalism* (1993) and in *The Law of Peoples* (2002). Because Rawls preferred to talk about "peoples" (Rawls, 2002), the way in which he describes them plausibly makes the debate a matter about the state and sovereignty. Accordingly, the liberal tradition has tied the obligations of justice to a common polity and constitution. Following Rawls' work's continuities referring to justice as fairness, basic rights, and social stability, we find that political relatedness is of paramount importance in finding a fair scheme of cooperation in which members consider reasonable to participate; and are willing to do so.

The Rawlsian unwillingness to extend the scope of justice (in particular the difference principle) further than the reach of the sovereign state's jurisdiction and geographical boundaries can be interpreted in different ways. In any case, it is not just a Rawlsian bias; the majority of the most debated theories of justice of the 20<sup>th</sup> century are devoted to the assessment of state-like institutional arrangements, disregarding broader scopes. Even libertarian positions (e.g., Nozick (1974)), which are supposed to be the least state-based, and push against any patterned redistribution, assume some kind of state to regulate security. Nevertheless, what is at stake here is the consideration of the possible applications or implications of distributive justice to international and global relations. This, in turn, assumes, to some extent, the moral availability of redistributive policies and actions through authoritative decisions of some agencies.

In his account of the problem of distributive justice, Rawls devotes himself to the elaboration of a mainly ideal theory according to which even if justice should consider

---

<sup>19</sup> Since there is the assumption that we enter the world in a non-voluntary condition of membership of a society, it would be the conformity to justice as fairness which would make that condition nearly voluntary (since the conception of justice is adopted by the participants/citizens by virtue of their common human reason).

the relations among individuals and among peoples, the most salient considerations of justice are addressed to the basic domestic structure, understood as “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls, 1971, p. 7). For Rawls, the domestic organization of peoples is supposed to carry, in ideal circumstances, the responsibility of arranging distribution and therefore for providing a reasonably fair share of costs and benefits to the individuals tied to such organization. In other words, as pointed by Miller, even if the characterization of the Rawlsian basic structure is not an easy task, it is clear that it refers necessarily to the state, which is the central institution whose organization and action contribute to social justice or injustice (Miller, 1999, p. 11).

The way in which Rawls depicts the problem of distributive justice commits his theory to the elaboration of an ideal organization of justice within an already established framework of social relations inside a generally reasonable and liberal society. Therefore, Rawls' initial approach to distributive justice is a matter of social justice in a preexistent domestic sphere. His solution is the postulation of the hypothetical situation of the original position in which, under the veil of ignorance, individuals would agree on choosing the two principles of justice based upon the general Rawlsian formulation of what justice and injustice amount to: “All social values—liberty and opportunity, income and wealth, and the bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values, is to everyone's advantage.” (Rawls, 1971, p. 62).

The two principles of justice, assuming the existence of a generally well-ordered society, are lexicographically ordered, so that conflict between them is avoided, and a categorization of priority and gravity of possible injustices can be made in the process of addressing them (Rawls, 1971, pp. 541–548). This ordering of the principles of justice implies the division of societal and rights structures into the two different categories of civil liberty and social and economic equality. On this account, civil liberty results prior to social and economic inequality. Once achieving the effective social recognition of citizens as free and equal, social and economic inequalities would be automatically addressed by pure procedural justice without creating justifiable envy or jealousy among individuals. Then, basic liberties cannot be contended by other values if the

liberal principles of freedom and equality of citizens are to have a place in the social principles of justice. More precisely, the equality of liberty principle takes priority, followed by the equality of opportunity principle, then confined within the limits of the difference principle (which amounts to the second part of the second principle of justice).

The civil and political liberties defended by the first principle, defended by the specification of liberty rights, are the guarantors and, to some extent, the basis of the second principle. Free and equal individuals under the veil of ignorance agreeing on an adequate scheme of equal basic liberties in which an individual's liberty can only be restricted if it is incompatible with equal liberty for others, would necessarily agree on that socioeconomic inequalities should be attached to the condition of fair equality of opportunity—first condition of the difference principle—and would also agree, given the acknowledgment of the arbitrariness of the distribution of natural assets, on the difference principle. Moreover, the acceptance of the difference principle is rooted in the idea of justice as fairness. In Rawls' words: "In justice as fairness men agree *to share one another's fate*. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit" (Rawls, 1971, p. 102).<sup>20</sup>

Accordingly, the recognition of equality and the agreement on sharing a common fate are the conditions of possibility of enabling the distributive effects of the difference principle. In a society guided by justice as fairness, the (representative) individual's ability to claim a share of the cooperative social enterprise depends on her adequate fitting into the existing social arrangements. Society, as a whole, is (only) obliged to comply with the expectations that are reasonably founded on the social contract:

*"In the way that one has a duty to uphold just arrangements, and an obligation to do one's part when one has accepted a position in them, so a person who has complied with the scheme and done his share has a right to be treated accordingly by others. They are bound to meet his legitimate expectations. [...] a just scheme gives each person his due: that is, it allots to each what he is entitled to as defined by the scheme itself" (Rawls, 1971, p. 313).*

---

<sup>20</sup> Emphasis added.

This delimitation of the application of the principles of distributive justice in the domestic domain is connected, then, to how Rawls builds the liberal principle of political legitimacy. The critical aspect for defining political legitimacy, in accordance with the lexicographical organization of the principles of justice postulated in *A Theory of Justice*, depends on the assurance of equality of recognition and participation of the ones involved as citizens, which, if duly accomplished, would entail different particular arrangements of distributive shares that should be compatible, according to societies' particular circumstances, with the requirements of fair equality of opportunity and of the management of inequality according to the difference principle. However, this approach seems incomplete, and thus Rawls made an argumentative shift later in *Political Liberalism* (1993).

The change from *A Theory of Justice* to *Political Liberalism* lies in that in the former, he delimits the general scheme of the concept of justice while, in the latter, the undertaken challenge is the achievement of an agreement on laws under conditions of reasonable pluralism. While the general Rawlsian theory of justice addresses the content of the concept of justice as fairness, his specification of political liberalism roots the concept in the polity by defining political legitimacy and social stability in the context of reasonability and reciprocity—but always keeping the basic framing of a bounded community:

*"[...]our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason" (Rawls, 1993, p. 137).*

In a just and liberal society, reasonable citizens are willing to abide by a reasonable political conception of justice if the others are willing to do so too. As pointed by Rawls (Rawls, 1993, pp. 100–101), the key to reaching such an agreement lies in the possibility of building up departing from the shared ideas implicit in the public political culture and then, if possible, securing the agreement through an overlapping consensus.

As we have seen until this point, the Rawlsian construction of the idea of justice, as well as those of political legitimacy and social stability, is rooted in the assumption of the previous existence of a palpable scheme of social cooperation under ideal or near to

ideal circumstances of citizens' reasonability and compliance to the law. Thus, as developed by Rawls, the concept of distributive justice is not a matter of simple allocation of resources.

As encompassing the ideal of social justice envisioned by Rawls, distributive justice only makes sense within an ongoing political scheme of cooperation in which members have joint ends that transcend merely instrumental purposes. Those ends, which presuppose a shared public political culture (which includes previous political decisions and legal precedents), imply the willingness to support just institutions that allow and foster just treatment among members and the belief in the common and individual contributions to the social scheme by means of the participation from the different social positions and roles anticipated by the social contract. That is why the difference principle, and distributive principles of justice, have no place in the basic international structure and, therefore, under ideal conditions, no duty-based distribution would take place among people(s). Even in the case of non-ideal theorization, in which there are burdened or outlaw states (or individuals or institutions), the measures to be taken are provisional, context-dependent, largely speculative,<sup>21</sup> and therefore not a part of what justice should look like as a goal to be accomplished.

Therefore, under the Rawlsian paradigm, the only conditions under which duties of justice can be fully justified by political philosophy are those framed within contractualist liberalism, which entails the existence of the proclamation of a people and means of enforcement in a designated territory and population. Defining the legitimate claims of distributive justice is not a matter of solving an epistemological question about how moral principles could be independently acknowledged (as is the attempted Kantian goal in the *Groundwork* (2011)), but of finding a public conception of justice which properly accommodates within people with a similar yet plural conception about the self and of their relationship with society. The basic distribution of recognition as equals—beyond the basic natural duties of not harming—depends on the previous constitution of a sense of commonality and of an ongoing scheme of causal and cooperative interaction.

---

<sup>21</sup> For further development on this topic see *Ideal and Nonideal Theory* (Simmons, 2010).

The only way of having something like “distributive interaction” without falling into unassessable relations of moral anomia is to secure a political relation within those involved in such an interaction. In other words, no morally sound political principles are available prior to the agreements in the original position. The priority of the right over the good, for Rawls, implies that “apart from the procedure of constructing the principles of justice, there are no moral facts” (Rawls, 1980, p. 564) and therefore, as he would later state it, “there is no criterion for a just distribution apart from background institutions and the entitlements that arise from actually working through the procedure. It is background institutions that provide the setting for fair cooperation within which entitlements arise” (Rawls, 2001, p. 51). Having this construction of the justification and legitimacy of distributive justice, the idea of a global scheme of distributive justice would be superfluous in ideal theory and pernicious in non-ideal one.

Mainly referring to the assessment of material inequality and the allocations of goods and services, the stipulated framework of political commonality, if properly arranged, managed, and attended (this would include both ideal and non-ideal circumstances), would imply that even if some could consider the then-ongoing arrangement as morally sub-optimal—an appraisal that would have no valid way of assessment given the possibility of a plurality of moral evaluations applicable to the case—it would be just. Unlike the moral objection to the sub-optimal character of different socio-political arrangements of distribution, which would be politically subjective, their just character would be confirmed by identifying them as the product of a social scheme of cooperation in which civil participation and equal stand under the law would amount to a tacit agreement and therefore to a collective legitimation of the system. If the first principle of justice (and therefore civil and political rights) is secured, the formal requirements for distributing goods and services and managing inequality would be set.

The Rawlsian solution to political injustice resides in the conformation of just (in his terms), or at least decent, basic domestic institutions and social policies. Internally, as he states in *Justice as Fairness* (2001), *Political Liberalism* (1993), *Law of Peoples* (2002), and *A Theory of Justice* (1971), domestically well-ordered societies, as well as decent ones, can avoid political injustice employing the protections provided to their people through the regular and attentive consultation of social groups and responding

in accordance to that processes. Externally, Rawls' point is that well-ordered and decent societies, given their appropriate internal organization, would not be hostile to other societies (Rawls, 1993, 2002). The self-conception of well-ordered societies resembles the self-conception of individual citizens because they will see themselves as free and equal, as equally entitled to respect, and will be motivated to abide by fair and voluntary schemes of cooperation and to avoid imposing their comprehensive conceptions of justice on others under the condition of reciprocity.

As long as peoples respect the eight international principles of justice (Rawls, 2002, p. 37),<sup>22</sup> the worst political evils would be globally avoided. Rawls' international ideal theory rejects the realist statement about the necessary existence of a hostile environment in international relations given the national self-interest and desire of economic and military growth because well-ordered peoples may pursue economic growth having as a limit the achievement of a just society; beyond that point, societies would not necessarily aim at the Hobbesian endless search for increasing their power. In cases of non-compliance, however, actions could be taken in terms of just war (in the case of outlaw states) or international assistance (in the case of burdened states), none of which implies the consideration of principles of social or distributive justice.

Why is this scheme relevant for the present discussion? Because the possibility of agreement and of all political legitimacy lies in the formal requirements posited by what Rawls calls basic liberties.<sup>23</sup> In the Rawlsian theory, as in most contemporary philosophical works about justice, the basic liberties considered as foundational for any social agreement are a list of mostly political liberties. From there, in this line of theory, it follows that moderately egoistic people will opt for rules of distribution whose making, derived from basic liberties, would guarantee the second principle's fulfillment. However, even if he presupposes that any reasonable agreement would include basic primary goods, he forfeits possibilities as the one signaled by Gerald Cohen (2008) of opting for greater risk under the veil of ignorance—which would imply a whole different delimitation of the difference principle—or also, entering the distinction between ideal and non-ideal theory, the straightforward assumption of legitimacy in cases in which the formal rituals are followed. Under that strain of justification, Rawls' ideal theory leaves

---

<sup>22</sup> And, particularly, the sixth one, that demands respect for human rights.

<sup>23</sup> See Rawls (1971, pp. 60–65, 2001, p. 47).

distribution as a purely procedural matter.<sup>24</sup> The problem of understanding distribution in such a way is that it leaves all the evaluative power of the theory in the participation processes and on the vagueness of the mostly procedurally evaluated difference principle.

This way of pointing at the problem amounts to a conceptual priority of the rights defended by the first principle over the rights defended by the second principle and by the clause of the difference principle in particular. The latter would necessarily result from conformity with the former (following the lexicographical order). Moreover, the content of the social arrangements over the difference principle is not a matter of concern for the Rawlsian account. It is understandable because Rawls is confident in the optimal results of the conformity to his ideal theory. Hypothetically, equality of respect of every individual would entail the particular enactment and enforcement of social and legal rules in a way that avoids arbitrariness and the unjust character of the bounds of domination.

His solution to the question about the patterns of distribution is the confidence in the patterns of participation, which is problematic since it is an indirect approach to the problem and restricts participation to predetermined state-based and particularistic enclosures. In addition, the Rawlsian solution would be problematic because the requirement of benefiting the worst-off independently of the proportion of inequality seems to contradict Simmons' (2010) reading of Rawlsian non-ideal theory—which seems reasonable: when dismantling ideal theory to evaluate practical cases, we necessarily fall in a non-ideal theorization over ideal principles. Ideal theory only seems to work as a whole, but if we separately take its components to prescribe over social conditions, the spirit of such a case analysis should be non-ideal: a way of building the path towards an ideal-theory state of affairs.

Nonetheless, suppose we apply the difference principle on its own to further attempts towards ideal theory. In that case, the problem arises: lack of attention to inequality would probably end in realizing the conditions for breaching the principle of fair equality of opportunity. It must be noted that the breaking of the first principle falls

---

<sup>24</sup> In *A Theory of Justice* while talking about the "Grounds for priority of Liberty" (§82) Rawls says: "In a well-ordered society then self-respect is secured by the public affirmation of the status of equal citizenship for all; the distribution of material means is left to take care of itself in accordance to pure procedural justice"(Rawls, 1971, p. 545).

not on the lack of attention over itself but on the ideal of mechanic realization of the second one. If what has been depicted here is correct, the point is that fair equality of opportunity cannot stand on its own and therefore cannot support, on its own (or lexicographically), the rest of the principles that constitute justice in the Rawlsian theory.

One could possibly read the Rawlsian proposal also as a differentiated approach to political and social principles of justice. Only the first would directly create rights: you have the right to participate in political decisions. However, you are not entitled directly to any social or economic protection unless you are first lexicographically covered by the political rights. This, in turn, would create an odd perspective on entitlements if the reading of his proposal is not ideal. We could say that Rawlsian theory would help to point out when (and in limited ways) the political decisions are unjust given the violation of the difference principle but would not say anything directly related to that point. Instead, it would insist on improving the participation, deliberation, and representation mechanisms.

### 2.2.2 Walzer's communitarian stance

In the following pages, the focus will be put on Michael Walzer and his seminal work on the communitarian stance (Walzer, 1983), later developed by him to fit the discussion about global justice.<sup>25</sup> Walzer's critique of the mainstream liberal theorization about justice (shared by other communitarians as Michael Sandel or Alasdair MacIntyre) states that there are significant flaws in the liberal cosmopolitan approach to justice that are reflected sociologically/historically in the conception of the self as independent from social bonds, and also conceptually since it neglects that the conception, meaning, and materialization of justice, rights, and distribution arise from a social order that is already rooted in existing social practices and interactions.

It must be considered here that communitarianism started not as a rebellion against global distributive justice but against liberal atomism while being part of the general particularist theorizations that are usually rooted in the defense of the right to

---

<sup>25</sup> See, for example, Walzer (2010, 2018).

political participation<sup>26</sup> against the risks of the expansion of political power of a hypothetical world government. Communitarians defend the constitution of the political as a community bond and creation that is only forfeited at great cost. Much of their endeavor against global justice targets the political implications of the liberal cosmopolitan premises and not so much their overall moral value.

The objections to theories of distributive justice that encompass the international sphere are based on the denial of the practical or conceptual possibility of enabling the political triggers for redistribution. As Walzer stated in *Spheres of Justice*, distribution is tied to the human association: “human society is a distributive community” (Walzer, 1983, p. 3). Since distribution involves all possible social goods, it cannot be narrowed as to be addressed by one single distributive agency. Moreover, according to Walzer, distributive justice cannot be considered an integrated science but as “an art of differentiation” (Walzer, 1983, p. xv). The distributive processes cannot be tied to a centralized attribution of value and priority of goods since the definition of goods themselves makes it conceptually impossible to link them all together in a coherent group. Any attempt to coordinate distributive justice across different societies would derive necessarily in disrespect for social meanings and decisions and, therefore, in anti-democratic claims to break the fiduciary relationship between the state and the citizens.<sup>27</sup> As a result of Walzer’s considerations, it seems to obtain that any such break will have the consequence of, on the one hand, disrespecting people’s right to participate in the decisions about the rules that apply to them, and on the other hand, of falsifying the idea of rights itself inasmuch as the postulation of a right to a social good that is not already available in one’s own society implies, to some extent, a claim to the impossible; a purely moral claim with no legal or political leverage given its neglect of the nature of the social and political processes of association.

Even with the good intention of assigning rights to people in need around the globe, the simple moralization of the discourse of rights contradicts the necessary circumstances for them to obtain. In Walzer’s words: “Men and women do indeed have rights beyond life and liberty, but these do not follow from our common humanity; they follow from shared conceptions of social goods; they are local and particular in

---

<sup>26</sup> See, for example Maus (2010) and J. Cohen (2010).

<sup>27</sup> See, e.g. “Philosophy and Democracy” (Walzer, 1981).

character” (Walzer, 1983, p. xv). The claims from morality or expertise should never replace the shared social meanings, the existing institutions, and the democratic procedures.

Following these ideas, the central point for Walzer is that what is available for distribution, even being an immense set of possible things, is not the good as a pure entity but the social good.<sup>28</sup> Then, it is not an objective and all-encompassing criterion we should search for while discussing the basis of social and distributive justice, but about a plurality of social meanings that bring about different instantiations and definitions of the fundamental principles of distributive justice in different contexts.

For Walzer, as for most particularists, “social meanings are historical in character; and so distributions, and just and unjust distributions, change over time” (Walzer, 1983, p. 9). There are no universal historical patterns regarding just distribution. The conceptions of just distribution necessarily vary depending on the context according to the reasons considered as relevant and on how the societies define and delimit social goods. Any useful agreement or policy regarding justice and distribution must emerge in the core of what Walzer calls “thick morality.”<sup>29</sup> Consequently, the availability of universal agreements on obligations, if possible, will be restricted to a very narrow (and morally thin) set of possible options, most of which will be represented in terms of negative rights and obligations.

Walzer, more than Rawls, visualizes the problem of justice as one of distribution but to a much deeper extent. Not only does distribution include social features as membership but also the provision of goods and services needed for the common social life of the polity to the members. This last feature –the provision/assignment of goods and services- is for Walzer, unlike Rawls, not lexicographically subordinated to the distribution of liberties or the availability of political participation.<sup>30</sup>

However, this could also be debatable because if it is the social construction of the world which molds, delimits, and ultimately builds the goods to be distributed, then,

---

<sup>28</sup> For him, as for many others identified as communitarians, distributive justice emerges from the core of the agreements and shared conceptions about what a social good is.

<sup>29</sup> Walzer says there are “two different but interrelated kinds of moral argument -- a way of talking among ourselves, here at home, about the thickness of our own history and culture (including our democratic political culture) and a way of talking to people abroad, across different cultures, about the thinner life we have in common” (Walzer, 1994, p. xi).

<sup>30</sup> However, he does say that the first good to be distributed is membership.

read through the liberal lens, political participation would still pre-empt social rights both conceptually and historically. But that is not necessarily the case. The Walzerian work is more insistent on the significance of the management of inequality than the Rawlsian theory is. While Rawls stated that, in a comparison of what would be preferable regarding justice, a profoundly unequal distribution of wealth and income in which the worst-off gained, say, 10, or a substantially more equal one in which they earn 9, Rawls would prefer the first. On the other hand, Walzer makes a much stricter distributive recommendation. Even if a distribution is a matter of choosing what to provide, and to whom, in circumstances of scarcity in which hard political choices ought to be done, even if the fulfillment of rights implies the use of an important quantity of resources, and even if distributive choices, given these circumstances are necessarily political and not philosophical (Walzer, 1983, pp. 66–67), for Walzer the social product against which the needs of the members can be rightfully claimed includes the whole accumulated wealth of its members and therefore “men and women who appropriate vast sums of money for themselves, while needs are still unmet, act like tyrants, dominating and distorting the distribution of security and welfare” (Walzer, 1983, p. 76).

Inequality is relevant when the ones benefiting from it impose and sustain it, and it is especially problematic when there are severe deprivations and an overall possibility of alleviating them. This second point is especially significant because inequality itself might be a symptom of deeper problems if we conceive that the people among whom we point inequality are supposed to be together in some relevant aspect (community, society, polity, agreement, humanity). Because they are somehow connected, inequality is essential to be considered and promoted. However, as we have seen, the nature of the relationship that makes inequality relevant is one of the fundamental topics of debate while talking about distributive justice. The scope of the relatedness of individuals can be measured geographically, jurisdictionally, culturally, ethnically, by religion, by socioeconomic position, etc.. Therefore, the possible distributive outcomes that derive from those considerations may vary according to the groupings taken as initial premises of the argument.

While, in general, the liberal theory depends on a concept of justice based on the model of simple equality,<sup>31</sup> the problem lies, for Walzer, in the separation of the spheres of justice. So, the normative efforts of a theory of justice target, not the monopoly or plain inequality of goods among persons, but the dominance of those goods being translated in dominance over other parts of the social life—that approach is what he calls ‘complex equality.’ Put differently, his concern regarding inequality is not inequality *per se* but the cases in which inequality in one sphere (for example, in education) makes well-educated people take over other goods (like money) in an ever-expanding way.

Instead of aiming at the constant disruption of different goods' monopolization processes, Walzer aims to restrict the monopolies' reach. His core concern is avoiding intrusions between different social goods. For example, it is common, in countries like Colombia, that those who hold wealth and high incomes tend to translate their economic monopoly also in a monopoly over private schools—which happen to be usually of better quality—giving them access to better universities, with better connections, in which they can find their way to political power.<sup>32</sup> Moreover, this is just an example of how holding a privileged position in one social sphere easily leads to dominance over other spheres, making inequality regarding some dominant goods an unsurmountable obstacle for a decent social life. Walzer's point, briefly stated, is that if you can get, for example, quality education independently of your income (the same goes for health or other matters), inequality regarding income would not be necessarily problematic. And that is partly the task of the political community: to disconnect the essential social needs from the free-market allocation system and to provide it according to need.

The previously existent community, which shares meanings and representations of the(ir) world and social environment, results in the keystone of establishing any sound principle of distributive justice. It is—the community—the one that defines the subjects that should be taken into account as rights-bearers in any redistributive policy, rule, or practice. Here, there would be no sharp distinction between distribution and redistribution, which is relevant in theories like Nozick's, since the main concern here is

---

<sup>31</sup> Defined by Walzer as the concern for constantly disrupting distribution to prevent the monopoly of dominant goods.

<sup>32</sup> See *La Quinta Puerta* (Cárdenas et al., 2021).

analyzing possible justifications for socioeconomic rights related to redistributive processes of different nature, and not a question about the original acquisition. The way in which a community defines the relevant subjects of justice (individuals, ethnic groups, representative individuals, associations, etc.) is related to the meaning and value assigned to goods and subjects and will vary the possible outcomes of the decision over what amounts to a just distribution and what is the best way of accomplishing it.

Following this line of argument, the considerations of Walzer in *Spheres of Justice* reject the concept of equality as sheer homogeneity and states that the idea of equality and of egalitarianism is (must be) to abolish some, not all, differences. What makes a difference relevant is, according to him, the imposition of the difference on those who are negatively affected by it by those who profit from it. This definition supports Walzer's statement, according to which equality must be understood as non-domination so that, within a shared understanding of social goods, there is a balance between the subjects holding them and no convertibility of goods into other goods. A communitarian account of particularism as the one defended by Walzer is committed to a pluralist and particularistic definition of goods and agents, and therefore to the impossibility of having a unified concept of justice across different communities which aims to unify distributive policies without sinking into repression and arbitrary coercion on the side of the ones imposing the distributive pattern.

Moreover, Walzer's communitarianism opposes the Rawlsian—and the Kantian—division between the right and the good. Walzer's objection, which is also used against cosmopolitanism, is that justice (the right) cannot be defined independently of the conception of the good shared by the community who face the need to state its principles of justice. The idea of subjects that are already moral agents outside communitarian bonds and that then decide over the principles that should operate within their society is nonsensical from a communitarian standpoint since the conceptions of the good, and the shared commitments and valuations within societies are the only basis for any sound agreement regarding justice. For Walzer, the aim of a theory of distributive justice lies in the acknowledgment of the different understandings of the world that result from a plurality of polities, cultures, religions, etc. For Walzer, it is a comprehensive doctrine of the good (to borrow the Rawlsian term) that makes a community's distributive arrangements legitimate.

Even in pluralistic societies, it is the delimitation of the good life and the definition of what individual members of the polity need to achieve, within a common history, that constitutes the backbone of the delimitation of rights in general and of individual rights. Contrary to the Rawlsian perspective, the idea of individual rights, socioeconomic or not, emerges from a factual history and localization of the community's discussion, not from an abstract and detached discussion independent from the goals pursued by the individuals and groups involved. In other words, even acknowledging the fact of pluralism, in Walzer's perspective, social justice can only be achieved in a historical political community that he equates with the state. He aims to deliver an egalitarian theory that avoids the arbitrariness of homogenization and imposition, an egalitarianism compatible with liberty. This implies, according to him, the renunciation of a purely abstract and ideal theory, typical of liberal cosmopolitanism, and to some extent of Rawlsian liberalism. Any weighty account of justice ought to be available in the existent understandings of social goods. For Walzer, a theory devoted to the construction of hypothetical subjects and contexts to deliver abstract principles is necessarily condemned to failure. Consequently, principles of distributive justice must lay on the existing communitarian relations and shared meanings: "*Our* shared understandings: the vision is relevant to the social world in which it was developed; it is not relevant, or not necessarily, to all social worlds. It fits a certain conception of how human beings relate to one another and how they use the things they make to shape their relations" (Walzer, 1983, p. xiv).

So here we find one of the particularistic challenges, mentioned before, to the formulation of a cosmopolitan account of distributive justice. The challenge is directly related to the communitarian critique of liberalism in the 80s, based on the distinction between moral universalism and political particularism: common humanity is not a substantial basis for the formulation of rights; any account of rights that is to be taken seriously depends on a shared conception of social goods. Abstract theory and the common trend within liberals to derive principles of justice and moral obligations from abstract reason to, then, postulate the existence of rights is a philosophical superfluity: "The effort to produce a complete account of justice or a defense of equality by multiplying rights soon makes a farce of what it multiplies. To say of whatever we think

people ought to have that they have a right to have it is not to say very much.”(Walzer, 1983, p. xv).

However, to have a coherent defense of justice—even within the pluralism he endorses—there must be principles that justify choices and set limits to them. Not every would-be agent or distribution criteria can be accepted in a coherent account. What Walzer says is that pluralism implies pluralism of distributions, and there is where the biggest flaw of the typical liberal-cosmopolitan theorization on distributive justice is found: philosophers tend to think that “there is one, and only one, distributive system that philosophy can rightly encompass” (Walzer, 1983, p. 5).

Therefore, there ought to be several different sets of criteria for distributive justice that emerge from and harmonize with cultural and ethnic diversity and with the process of free political choice. It is the historical and cultural pluralism the one that determines the necessary outcome of a pluralist account of distributive justice. Neglecting difference to give a totalizing account of justice is de facto repressive and logically flawed. Any arrangement compatible with a division of labor and a joint commitment to exchange necessarily avoids universal pattern because the process of becoming a group (collective ‘we’) implies the creation of complex relations that fill reality with meaning and constitute the world of the community; the process implies the definition of what is there to be distributed, how to determine the value of the different goods, and who is entitled to claims of distribution.

In any case, Walzer does not deny the possibility of agreement. He advocates for something like an overlapping consensus in which peoples are open to learning from each other and expanding their possibilities of assigning meaning to and valuing goods. As also endorsed also by Sandel (1982), the objection stated by Walzer does not go against the idea of thinking of an integrated world in which there are global channels of communication, but the postulation of the independence of a theory of justice from the commitments that actual peoples endorse, defend, and fight for. For him, the veil of ignorance is a fiction that would work if actual peoples were not the case: the question asked under the veil of ignorance in Rawls’ theory (what principles of justice would be chosen under the veil of ignorance?) are lacking the content needed to make them in touch with reality, that is, about what to do or to agree, taking into account that they have already taken previous decisions and share common understandings of how to

evaluate the world around them. In the generality of communitarian theorizations, abstract theory loses sight of the interpretative frameworks and of the language and reasons involved in the actual undertaking of any decision regarding principles of justice. Any agreement derived from abstraction is necessarily too vague and wide to be helpful.

In *Spheres of Justice*, Walzer famously proposes an account of distributive justice as a pluralistic theory of goods which, within other things, has the advantage of avoiding the unrealistic depiction of goods as mana from heaven or a neutral object that has to be handed by an indeterminate group (givers) to another indeterminate group (takers), making the matter, instead, a result of the creation and materialization of social relationships. However, this approach to finding practical principles of distributive justice in the common beliefs about justice and the constitution of goods has the problem of being unable to cope with radical disagreement of what justice amounts to within the borders of the community. Walzer's particularistic position and, to some extent, the Rawlsian one, end up having an ambiguous relation with radical disagreement among a political community.

While using particularist perspectives to do case analysis over the current political international context, there is a matching point between theory and practice: there are, in fact, polity bonds akin to nationalism, to a common shared culture, or to what Rawls calls a public political culture. However, at the same time, those shared values, or commitments, even in the case of politically and economically stable countries, when analyzed to specify more clearly their content, show significant vagueness; their object becomes difficult to grasp. What is common to a polity is easier to define in ample terms and hypothetical fashion as "values," "basic institutions." But beyond the presuppositions, factual disagreements over, for example, the interpretation of the constitution, seem to vanish the force of commonality into the pure form of institutional historical permanence, which does not match what particularists expect as the basis for the legitimacy and restriction of distributive principles.

### 2.3 Assessing the basic particularist perspective

The way in which the particularist approaches reviewed until this point restrict the scope of justice, overlaps, and goes in a similar line of a traditional question in

political philosophy: how can political authority be considered legitimate? Employing different lines of argument, the considerations reflected in this chapter, in their most significant conclusions, limit the expansion of the scope of distributive justice or global legislation over distributive mechanisms given two main reasons: cultural/legal pluralism and democracy/self-determination.

So, the arrangement of societal bonds is framed into the discourse of sovereignty as the enactment and enforcement mechanism of rights, making political participation the overriding and primordial right under the premises of i) participatory political organization which, taking into account members as equals, prevents tyranny and abject harms as famine or slavery and ii) accounts for political autonomy of the polity given the enablement of self-determination. Therefore, the efforts of the particularistic stance are instrumental to account for a normative framework of the political power's current situation, denying the possibility of expanding the scope of participation and protection.

Popular sovereignty, understood as participation and endorsement of the political order's values and principles, is, to a great extent, the most robust defense of particularists. It can partially avoid the requirement of a shared comprehensive doctrine (and therefore avoiding common morality as a condition for politics) and because it results both abstract and concrete enough as to make identifications of who is entitled to what—a fluid definition encompassing all the subjected to the law as being entitled to representation in legislative decisions. But this line of argument has the limitation of neglecting the factual instances of globalization regarding social interactions as cultural bonds or transnational civil organizations. Additionally, it seems that the philosophical analysis of the criteria for political legitimacy is not worked out to point to the appropriate use of power by the modern state but to show the modern state as the only feasible rightful arrangement for distributive justice. What initially represented an effort to justify the state's power is now retaken to show the state as the only possible legitimate arrangement.

There is a constant tension between the political and social world (as given) and the moral considerations about them (as elucubrations). This is problematic because of fusing the descriptive 'is' into the evaluative 'ought,' and because there we find an implicit rejection of strong deviations from the status quo through drastic normative departures from the ongoing descriptive standpoint. This second attitude is partly

justified (since the demand for the impossible is morally problematic) but is suspect of begging the question because it assumes what has to be proved: that moral value is attached to existing practices and not to justification. And even if not advocating for the most abstract ideal theorizing, the contextual limitation of normative theorization neglects one of the critical features of philosophy and normative theory in general: evaluative analysis can disregard some features of the world (abstraction) as much as it remains weighted against alternative justifications and refuses to adopt plainly false presuppositions. Politics is not only ‘what it is’—self-interest and unwillingness to adopt new obligations—but also a morally relevant sphere that can be understood as having a moral sphere, instrumental values, and possibilities of reform.

Indeed, the change in social context usually implies a difference in valuations and definitions of social goods. However, stating that the line that divides particularism from universalism has to be drawn after the hierarchization or lexicographical organization of rights or that distributive justice considerations cannot enter the universalist scope is still debatable. For example, D. Miller (2007, 2008) recognizes that essential resources for making a living are something that has at least some universal force. But it is still difficult to draw a clear line between the possible agreements, the sort of moral and instrumental perspectives that could fall under an overlapping consensus,<sup>33</sup> and those that will most probably remain in the scope of radical disagreement. One of the risks of this discussion is that it quickly falls into the polarization between (descriptive) relativism and straightforward (normative) universalism. Therefore, it easily blurs the borders of either morals or politics and consequently takes the discussion back to the simplest form of the debate between liberals and communitarians: moral universalism versus political particularism.

Notwithstanding this problem, the discussion can also be interpreted from a different perspective: more than a matter of simply having different priorities, peoples have different goods because their existence as different peoples is the foundation of the existence of those goods. Cooperative schemes are necessary for the creation and management of goods. Accordingly, no one can ask an undetermined or uncoordinated

---

<sup>33</sup> I borrow the term from Rawls, but I use it here in a generic way to include the possibilities of inter-communities’ consensuses proposed by authors as Taylor, Walzer or Todorov.

group of collectives or individuals to provide a good (whose existence depends on the collective arrangement of it) to him.

From the legal perspective, facts are not neutral; they are already filled with meaning when adopted as legal objects. So, to some extent, the issue at stake is that the legal system gives meaning to the set of things to be distributed. And, since legitimacy is rooted (in the liberal tradition) in participation and commonality of agreement, those attributed definitions and valuations have the members as primary addressees. In other words, to make distribution attainable, there has to be a common agreement in the identification of the objects and subjects of that distribution. Most importantly, 'something' must be already owned to make it available to distributors and beneficiaries. That 'something' is supposed to be owned in common, so, at least theoretically, it must come from the common enterprise we endorse as a polity. Therefore, in general, rights cannot directly point to a particular good independently of the social and legal context; the rights to own or be given something demand a collective that previously regulates and controls the relation over the object.<sup>34</sup> The problem, then, would be related to a previous joint possession of an available social product.

Possession can be understood as the exclusion of others from the enjoyment of something. In this way of thinking, if there is something to be distributed, it first has to be possessed, then having an agency in charge of the distribution and then the definition of those among whom things, rights, and obligations are to be distributed. The conformation of the polity ideally contains a commonality of agreement and common right (or communal possession) of different kinds of goods. Usually, the first thing to be considered would be land/territory, but it also includes wealth, coercion, power, claims to jurisdiction over people (not necessarily over the territory since there are imaginable nations without land), etc. The polity's common creation and possession of the social goods imply the *prima facie* exclusion of others from any claims over "our" common goods and "our" decisions over them; therefore, there is a necessary exclusion of outer claims to distributive justice. Taking into account that collective organization (usually the state) is required for the generation of distributable goods and for decreasing the

---

<sup>34</sup> This is analogous to the way in which Kant, as a part of the legal tradition, depicted the conceptual possibility of property rights: "[...] speaking strictly and literally, there is also no (direct) right to a thing. What is called a right to a thing is only that right someone has against a person who is in possession of it in common with all others (in the civil condition)" (Kant, 1996, p. 49 [Ak. 6:261]).

individual costs in fulfilling one's fellows pressing needs<sup>35</sup> (that can be represented in moral claims), we find both moral and practical reasons to respect the existent political organization of peoples if the concept of rights is to fit in a morally coherent theory (breaking rights to keep them is not a morally acceptable justification) and a conceptually sound theorization of politics—which involves, in liberal theory, the individual participation in the public sphere and the sharing the benefits and burdens of political decisions among the participants.

Therefore, particularism takes distributive justice as part of the authority of the state and functionally defines authority, according to which we have a cooperative scheme that enables prosperity and mutual bonds of obligation. Under a justification of distributive justice, not even authority should take those resources to the outside without explicit permission of the citizenship. Going one step further, one could even say that unless all needs regarding the fulfillment of rights are met towards the inside, no resources could be dedicated to the outside, in a morally acceptable way, because it would imply the instrumentalization of the common efforts, and therefore of the people belonging to inside, to meet someone else's claims or needs. Moreover, no "surplus" would exist until the inside rights are decently met. But that normative appraisal has the problematic outcome of the impossibility of coherent realization because if we demand the fulfillment of the demands of the principles of justice to conceive its authority as legitimate, no moral obligation will derive in any of the existing states. If tying the legitimacy of the state to the accomplishment of the full materialization of rights, we would necessarily fall under the need of acting "as if" that authority was legitimate—given the impossibility of the absolute fulfillment. Therefore, it would not be its legitimacy, but its efforts or its proximity to the ideal, what would count as the basis for the moral obligation of the citizen to follow its commands. The problem, then, is where to draw the line between legitimacy (right to command and be obeyed) and non-legitimacy.

In consequence, even the claims to distribution from the inside would be impaired because, without the legitimacy of the authoritative decision, people would act "as if" there was a legitimate scheme while also acknowledging the absence of moral

---

<sup>35</sup> On this topic further development can be found in "Samaritanism and the Duty to Obey the Law" (Wellman, 2005).

obligation and therefore conflating the normative concept of legitimacy with the descriptive concept of sovereignty—as control over people and territory—and leaving the idea of obligations in the empirical field and totally detached from an evaluative role. It would result problematic to assume such a perspective on the existence of obligations because it would impose the ideal criterion of having an obligation by the cooperation and reception of benefits, by substantial agreement, or by the effective protection of welfare and security, over the non-ideal circumstances of unequal protection of welfare, unequal reception of socially given benefits and partial abidance of the social rules given deep pluralism or radical disagreement.

Of course, there could be weaker versions according to which the (received) right that justifies the political obligations can be interpreted as the right to be heard and represented impartially, leaving aside, to some extent, the actual fulfillment of rights; but such perspectives would imply a conceptual denial of internal legitimacy: if a state is legitimate according to its fulfillment of rights—and therefore citizens would be tied to a duty to obey and conform to their political obligations. Then, if no outside independent criteria and evaluation agency could assess the inner performance—and therefore if no outside obligations could be delineated—the concept of internal legitimacy would tremble since it would fall under the relativism of the particular rights delineated by the community. Even if social goods are to be conceived as a communitarian or particularistic construction, the moral idea of rights resists its reduction to the purely contextual domain of the societal agreements. If this is the case, there might be a possibility of conciliation.

#### 2.4 Can an interpretation of the social contract be reconciled with a renewed version of communitarianism?

The problem of having a restrictive understanding of society or polity, in which society corresponds to the population of a state, is that, when the politically organized society becomes the primary and ultimate source of social analysis, the international

and transnational relationships, and their need for international regulation are left aside. Consequently, they end up adopting a wrong empirical framework.<sup>36</sup>

This could be considered as deepening Walzer's call for considering communitarian pluralism in understanding regulation and its justification in principles of distributive justice. Dissolving pluralism through an all-encompassing system of legal regulation, beyond being conceptually problematic, is itself a wrong approach to human diversity in the social context.

Taking into account that both Walzer and Rawls pursue a general justification of political authority based on the participation of society members in the recognition and enactment of the norms that would apply to them, there would be common stress in the limitations that any attempt to widen the scope of justice would necessarily encounter. Democracy mandates that law should be given by, and to, the same set of peoples and therefore the extension of obligations beyond the set of society members would be illegitimate. In that line of argument, any depiction of cosmopolitanism would be necessarily a failure.

If we agree with Walzer about the problem of uncertainty of the agent with respect to what is demanded from him in the original position, or in other words, if we accept that a conception of justice is necessarily tied to a shared conception of the good and that therefore the abstract results of the debate about justice can only be validated through some moral agreement, the case for communitarianism could be strengthened inasmuch as it provides a moral and procedural justification of the legitimacy of the binding character of law and its powers of enforcement and adjudication.

Nevertheless, the way out of the accusations of one-sided moralization of liberalism and of the postulation of moral homogeneity in a simple account of communitarianism is already in the possible agreements between Rawls and Walzer: the overlapping consensus; the moral doctrine stated by the particular political conception of justice is sustained by moral, yet divergent, reasons contained in the different comprehensive doctrines involved in the legitimation of the political power. In the cases in which such consensus is not accessible given profound disagreements, democratic procedures, through granting political representation and checks and balances in the

---

<sup>36</sup> On this topic see Cotterrell (2008).

power of the state, could maintain the moral legitimacy of the national system of socioeconomic justice. These procedures would also make it possible to, at least theoretically, break through the national borders in terms of transnationalizing the reach of justice, therefore opening new possibilities of imagining distributive justice.

Assuming the possibility of transnational communities, we find the possibility of retaining the relevance of domestic sovereignty (preached by particularist positions) while at the same time liberating the definition of community from strict ties to the national framework and, therefore, conciliating the 'reality' of globalization with the particularist position. Even if, in the end, the decisions about the legislation on matters of welfare, social rights, and distributive justice would lie in the realm of the state's decision, it would also necessarily depend on the shared or overlapping moral values of the various domestic and transnational communities that take part in the different domestic arrangements of distributive justice.

But this new step towards the foundation of a particularist stance comes at the cost of abandoning what is traditionally called 'communitarianism,' and more generally, particularism. Against it, the implications of coming back to the idea of the social contract could imply a notorious desubstantialization of political identity and association. This, in turn, would trump the basic concepts of membership, goods, and principles of justice as built by theories like Rawls' or Walzer's, bringing down with them the egalitarian foundation of particularism, in its more communitarian or more liberal forms.

This being a matter of paramount importance, the next chapter will analyze the egalitarian character of traditional theories of justice and its implications for the debate about global justice.

## Chapter 3. The particularist loophole: an opening for global justice

### 3.1 Introduction

The previous chapter was dedicated to considering the foundations of the particularist refusal to accept the broadening of the scope of justice by the insistence in that the analysis of the problem of justice needs and supports the particularist stance in the debate about global justice. According to particularism, any analysis of the problem of justice, in order to be intelligible, demands the framing of a political community with working institutions of norm-making and norm-enforcement. This arrangement permits the conceptual availability of common goods, sources of legitimacy, and popular sovereignty, as the rightful (necessary or sufficient) conditions for the existence of normative regulation. Having this necessary arrangement makes the idea of what is owed to whom more transparent, substantiating the possibility of political bonds (as different or independent from moral ones), and therefore configures the essential basis for rights and obligations. Briefly put, the particularist claims that a lucid account of justice will necessarily end up postulating something very similar to a state-based framework because it is the best way to identify what makes the participants in a scheme of justice equal and, correlatively, different, for purposes of justification.

Behind the particularist considerations about the necessary framework for inquiring about justice, we find descriptive and normative lines of argument. According to these lines of argument, respectively, pluralism makes non-particularist (universalist)<sup>37</sup> approaches to justice idealistic because of being incapable of fitting into the factual diversity of arrangements of justice and, on the normative side, the only morally permissible scope of obligations of justice would be a particularist one, given that any alternative would be inherently oppressive.

---

<sup>37</sup> “Universalist” and “non-particularist” are used here as an acknowledgement that particularism rejects the universalization of the scope of justice without giving up on normative universalism. Traditional particularist theories accept or defend the universalism of liberal values as autonomy and participation, and the universality of the moral weight of claims for respecting those values, while affirming the necessity of local, independent, and clearly differentiated political communities and sets of institutions, for the protection of the aforementioned universal values.

In addition to these considerations, and partly as a consequence of them, the liberal-particularist defenses of justice can be said to focus their rejection of cosmopolitanism and other broad approaches to justice in three general considerations: pluralism, democracy, and self-determination, and sovereignty and enclosures for identification. These three pillars are taken here as the starting point for inquiring into the particularist defense of national socioeconomic justice and their critiques of broader approaches. As stated in the previous chapter, the philosophy of justice and the philosophical accounts of political authority are interdependent, and in the intertwinement between them lies the touchstone of the debate about global justice.

The liberal question about how individuals can live together, which amounts to an explanation about why we should abide by the state or bring the state about, is subsumed under the question of why the liberal state is a morally appealing option. The answer, partly, is that the liberal state is morally appealing given its practical capacity to secure the relevant prudential interests of individuals and respect their moral worth through a morally neutral system. The argument emphasizes that the liberal political regime makes goods—unattainable by uncoordinated action—available and gives guarantees for the exercise of autonomy. The background statement is, thus, that the liberal state delivers justice in a morally acceptable way. It asks the least possible from individuals while providing them with enough social and political rights to justify its minimal impositions.

This chapter aims to analyze the particularist justification for socioeconomic justice to show that there is an impasse created by the inconsistencies it incurs with its rejection of cosmopolitanism. This chapter presents a critique of the particularist objections against the broadening of the scope of justice by showing the inconsistencies created by, on the one hand, the egalitarian defense of social justice against the libertarian in the national sphere and, on the other hand, the use of arguments analog to the libertarian rejection of enforceable means for social justice, but applied to the global sphere. The main line of argument in the chapter is that, by making social and distributive justice matters of purely local and procedural justice, the particularist argument loses a great deal of its justificatory force once it rejects the cosmopolitan and

other justice-broadening arguments because of the gaps created between the local and the global means of representation.<sup>38</sup>

As pointed out in the last chapter, understanding the particularist take on social and economic justice involves reflecting on the relationship between sovereignty, rights, and legitimacy. The relevance of this relation, in turn, makes the problem one that largely depends on the classic questions in political philosophy about how to justify the exercise of political power, how to evaluate it, and which kind of political power is acceptable. Without aiming to solve these problems, in this chapter, the proposal is that given the way in which the conceptions of political authority have developed in the philosophical tradition, particularism has noticeable weaknesses in the rejection of cosmopolitanism and alternative proposals for including social justice in the international realm are preferable. The weakness is partly due to the lack of a precise delimitation of the field of action of philosophy and the denial of alternatives to a particularist theoretical presupposition: the state.<sup>39</sup> As we will see in the next chapter, the relevance of the state is only empirically fundamental, not conceptually, and the relevance of the state in the philosophical tradition has been a conceptual assumption given its actual availability, without a robust conceptual-prescriptive argumentation behind it.

This chapter presents a critique of the particularist objections against cosmopolitanism. The critique is stated by showing the inconsistencies created by the

---

<sup>38</sup> Lea Ypi (2013, pp. 82–87) sketches, very briefly, a similar argument—about the analogy between the libertarian and the statist. However, her argument refers specifically to the problem of leaving global justice (justice beyond the state barriers) as a matter of interstate voluntarism, while the argument here proposed refers to the inner problem of justification of authority. Ypi’s basis for her critique are that global justice as a matter of charity is problematic at a motivational level (without coercion there is no motivation to contribute), at an epistemic level (agreements on the size and distribution of contributions is unlikely without central decision-making), and at the level of interpretation of norms (the charity argument is oblivious about the systematic nature of global injustice). Our arguments point at the problematic argument for leaving global social justice as a matter of charity (as almost all transnational and cosmopolitan theories on the subject do) but through very different lines of argument.

<sup>39</sup> It must be noted that within the scope of this work, the debate does not direct its attention toward the broad theories of justice but the consequences of their moral and political values. I follow here Andrea Sangiovanni’s (2013, pp. 66–67) distinction between general and specific theories of equality. In the discussion about global justice, we are addressing specific conceptions of equality and not general ones. General ones, as Dworkin’s, Kant’s, or Rawls’, provide a comprehensive first order moral system and then derive conclusions from it. Specific ones only aim for narrower questions as human rights instead of general moral rights and focus mainly on the violation of those specific rights. As stated by him, I agree here that the debate of global justice, if focused on general theories, has either to deploy a full new theory of justice or depend on the independent justifications of the general theories; both cases resulting in efforts that nor this work, neither the general discussion on global justice, are interested in.

particularist-egalitarian defense of social justice against the libertarian in the national sphere and by the use of arguments analog to the libertarian rejection of enforceable means for social justice but applied to the global sphere. By putting social justice as an essential part of the legitimation of the state that egalitarian particularists endorse (which implies a relevant extension of what libertarians would allow), the reasons applied against the broadening of the scope and contexts<sup>40</sup> of justice enter in tension with the reasons given against the libertarian critique of social justice in the hands of the state.

### 3.2 The libertarian critique of particularism

Except for very radical authors, even libertarians<sup>41</sup> advocate for particularism in closely related terms to that of having different states. Although libertarianism propends for economic freedom—in addition to a thesis about the limits of the scope of political authority, libertarianism defends the primordality of economic rights, even over civil ones (J. Brennan & Tomasi, 2012)—they would not mind having state-like enforcement to secure transactions and could even accept more than that. I do not include libertarians in the cosmopolitan-particularist division because, as Nozick (1974) or Tomasi (2012, Chapter 4), they could advocate for a reduced version of the state or, as anarchic libertarians do, for the elimination of political authority and the traditional sphere of the *civil* society altogether. Additionally, I keep them out of the distinction between the two normative approaches to social justice, given that the reasons for accepting local public authorities or for not accepting them are, within libertarianism, considerations other than those about justice or moral value. The provision of some public goods, as proposed by Hayek, or the proposal of full public deregulation, stem from instrumental reasons for the functioning of the market, for the efficiency of knowledge, or other features that are only indirectly related to normative considerations.

---

<sup>40</sup> I understand “context of justice” as depicted by Forst: “a context characterized by conflicting claims that call for adjudication in light of principles of justice” (2001, p. 161). Furthermore, on the question about the delimitation and acknowledgement of different contexts and claims of justice, see, for example Rawls (2002, pp. 113 - ff.) and Forst (2005).

<sup>41</sup> Right libertarians as Nozick, classical liberals as Hayek or neoclassical liberals as Schmidtz and Tomasi.

While trying to figure out the problem of the scope of justice discussed in the previous chapter, a relevant question was how to normatively justify obligations of justice given the relevance of what makes the members equal and a justified disregard of what makes them different. As seen in that chapter, the argument relies upon membership as the key element for defining the relevant equality for justice. Membership represents a constraint and a guide for the processes of practical reasoning. However, this question already presupposes the existence of a predefined set of rights and obligations of justice that are supposed to be evenly allocated—bonds of obligation whose content is a contentious matter. Before getting to an answer to that question, those favoring that justice is concerned (also) with social and economic matters have to prove their point against those who restrict justice to minimalist formal proceduralism. The liberal egalitarian has to confront the libertarian position, which defends that justice should be reduced to checking the instantiation of fair transactions among consenting individuals, regardless of the outcomes those interactions may produce. In this particular debate, the aim of the liberal egalitarian is not winning an argument about the identification and delimitation of the relevant members for the administration of justice,<sup>42</sup> but about what the members of a polity owe to each other and, specifically, about granting individuals the means for social subsistence.

In other words, while the debate about global justice traditionally focuses on the scope of the subjects of justice, the debate about local social justice refers to the scope of the objects (burdens and benefits) of justice. Then, in the particularist-libertarian debate, the question is why, if so, would justice be concerned with institutionally mediated bonds of cooperation between individuals to secure particular social and economic benefits—and not among whom could these bonds take place. In the latter debate, egalitarian particularists—who endorse securing socioeconomic rights—find their opponents in the libertarian stance. Thus, placing our discussion about particularism within the scope of liberal egalitarianism, libertarianism becomes a relevant actor in the debate.

---

<sup>42</sup> Albeit the democratic theory debate about the inclusion of all the affected/subjected has been referred to in the discussions about philosophy of justice, the generality of the debate focuses on what should be provided and about how should the burdens of provision be distributed, among the pre-established set of citizens. For an illustrative example of this see Feinberg (2003, Chapter 5) or Miller (1999).

Although there are many kinds of libertarians,<sup>43</sup> libertarianism is primarily renowned as endorsing a Nozickean line of argument:<sup>44</sup> the need for a minimal state that assures security and justice in transactions, causing the least possible impact in the general exercise of individual liberty. I delimit the discussion to this particular kind of libertarianism given that it is the intuitive object of the idea of libertarianism and because it is the form it has taken since it emerged in the 60s. In what matters to the present analysis, the liberal-libertarian debate focuses on the disagreement about the scope of state authority—and the obligations and rights it can justify—and not an argument about the justifiability of the existence of the state in general.

Libertarians, trying to answer the question of cohabitation of individuals, which is the foundational question of the contemporary theories of philosophy of justice, take the analysis of society and the state as a necessarily posterior matter of discussion regarding the individual's ontological preexistence and moral priority. In the libertarian line of argument, this results in prioritizing the point of view of the individual facing society and its powers over the individual's perspective as part of society. This prioritization, in turn, delivers a generally negative and formal account of the morally and legally available rights for individuals: in a symmetrical relationship between individuals, the only valuable exchange is, regarding mutual claims, that of respecting other's autonomy and self-ownership. Non-symmetrical relations necessary for the liberal ideal of social justice, like those of regulation of the economy, or public redistribution, provision, and funding (in which some subsidize others or the state takes decisions on behalf of the community), result immoral for libertarianism, unless those involved can freely consent—and actually do it: "That from a just situation a situation *could* have arisen via justice preserving means does *not* suffice to show its justice." (Nozick, 1974, p. 151).

---

<sup>43</sup> Ranging from left to right according to their interpretation of the Lockean proviso (the common ownership of the world or the initially unowned world) and differing about the scope of participation of the state being classical liberals or anarcho-capitalists (from moderate to none). On these distinctions, see Brennan & Tomasi (2012).

<sup>44</sup> When talking about libertarianism here I am referring to this line of argument and therefore there will not be discussions about the differences between classical liberals, libertarians from left or right, etc. In addition, it is not the task of this chapter follow up the discussion between particularist egalitarians and libertarians and therefore no conclusion is given about that debate.

Since this voluntaristic approach results almost impossible as the basis of a continuous pattern of social distribution, the normative recommendation and the practical optimum for distribution is to leave it to unfold through private interaction and to avoid public regulation interfering with those processes. In other words, the tasks that particularists demand from the state as a matter of justice, regarding social justice, are better left, according to the libertarian perspective, to private hands and as provisional matters. For the libertarian, self-ownership and freedom are what make individuals equal, making respect for that freedom the only justification for institutional intervention.

Following this line of argument, the problem of the egalitarian ideal of social and distributive justice is that, independently of its good intentions, it ends up supporting immoral or impractical measures. In the egalitarian theory, according to the libertarian, there is either exploitation of the capacities of some—which would be morally wrong since it amounts to a violation of liberty and autonomy—in favor of others or an indulgent attitude (or incentives) towards free riding—which is at least instrumentally problematic.<sup>45</sup> In turn, the main point stressed by the libertarian critiques is the accusation, against the egalitarian, of not taking autonomy seriously enough. If we take individual freedom as genuinely relevant, Nozick said, “the minimal state is the most extensive state that can be justified. Any state more extensive violates people’s rights” (Nozick, 1974, p. 149).

Nozick dissented from Rawls’ theorization about social justice in the way of considering the subjects involved. By appealing to the need to recognize the individuals as persons with accomplishments in the past, Nozick and Hayek (1997) see a failure in Rawls’ account of justice because of depicting individuals as ahistorical subjects looking towards the future from a blank slate. He states that respecting the separateness of individuals implies respecting what they have done and that the best way of so doing is to focus on their capacity of consenting or dissenting in trading with others. Accordingly, justice should only be concerned with the procedures that took people to have what they have. And since the procedures of interest for the libertarian stance are

---

<sup>45</sup> For an extended exposition of this issue, see Elizabeth Anderson (1999) and Michael Sandel (1982).

transactions, as long as they are not forced by coercion or trickery, the negotiation conditions agreed by the parties and their outcomes should be left untouched.<sup>46</sup>

To that extent, libertarians see in the patterns defended by particularists (as the conditions for social justice) the government's imposition of burdens on individuals based on the manifestation of their autonomy. Taxes are considered, therefore, as a way of charging people for having and acting upon their desires and redistribution, on the same line of argument, would be the instrumentalization of the efforts of some in favor of the welfare of others, which amounts to a morally unacceptable imposition (Nozick, 1974, p. 34). Therefore, patterned approaches to justice would be incompatible with individual autonomy and free interaction, making distributive interventions incompatible with a legitimate political system.

The individual, as depicted by the libertarian stance, preexists any social arrangement, configures the basic unit of what is governed by justice, and therefore is the moral measure for the specification of moral rights and the limitation of obligations of justice. In his explanation of individual rights, Nozick emphasizes this priority and the effect it has on what can be demanded: "There are only individual people, different individual people, with their own individual lives [...]. The moral side constraints upon what we may do, I claim, reflect the fact of our separate existences" (Nozick, 1974, p. 33). Thus, the best we can do is not to instrumentalize others and not prevent them from leading their own lives, and so should the government do.

Being prior to any social bond and being independent of all others, the individual should never be sacrificed in favor of others and, therefore, should not be subjected to utilitarian calculations either. Moreover, his independence makes him *prima facie* free from positive obligations and in liberty to pursue his own ends. That being the case, this framework of liberty would apply to people's goods too. As long as those goods are in the individuals' hands through just means (according to the principles of justice in acquisition and transaction), they are attached to people as a part of their freedom. Moreover, goods only become goods because someone made them valuable by appropriating and trading them.

---

<sup>46</sup> As it will be discussed later in this chapter, communitarians make a particularist critique of the lack of historicity of liberalism, constituting a correction of liberal theory (See Walzer (1990)).

Although initially stated as a matter of distribution of goods and as a critique of the liberal idea of distributive justice, the libertarian objection to the separation of goods and people present in most egalitarian theories affects the broader question about social justice. Unlike the libertarian way of depicting the initial egalitarian setting of the question about distribution, according to which some individuals take decisions about a pile of goods in front of them when facing the question about justice, libertarians state that goods are already in people's hands, and they are attached to those hands through autonomous actions. In other words, as Locke (1980) described it, goods are attached to work, which is attached to people. Therefore, the principles and public actions of (re)distribution endorsed by particularists are mistaken and oppressive because they take production and distribution as independent phenomena. Put in terms of the present discussion, within the libertarian perspective, civil and political rights amount to rights to non-interference that maximize and protect private autonomy; these are the only justifiable rights. Social rights, although some accounts concede minimum subsistence standards, would not amount to rights in the continuous and incremental way in which they take place within egalitarian theories.

The libertarian reasons for rejecting the particularist prescription of the state's involvement in matters of social justice that are of interest for this chapter relate to the (wrong) way in which egalitarians depict the subjects, goods, and relations involved in theorizing about justice. I will focus here mainly on the problems of consent, the history of the processes that led toward a particular distribution, and the problem of imposing moral content over legal rules. A fourth point, essential for the debate, is the problem of free-riding, which will be addressed transversally given that it is related to the other features in different ways. Free riding is a foundational feature in any theory of justice—and in the liberal ones in particular—because the main task of a theory of justice is to define and propose ways to prevent the undue allocation of benefits and costs in the social realm. Independently of additional moral considerations, theories of justice deal with the distribution and rules of exchange and allocation of scarce goods—the threat of unavailability is one of the main reasons for these theories to exist.

Free riding relates to the other three points by different means. It is related to consent in terms of responsibility and obligation, for example, in the discussion of the typical case of consenting to the receipt of benefits and the refusal to contribute in the

scheme that produces those goods;<sup>47</sup> in terms of how historical interactions create bonds of obligation that might be unavailable in the absence of the factual interaction—which is also related to the relational/non-relational debate about obligations of justice; or, regarding the moralization of the legal debate, free-riding becomes a relevant variable in cases of, for example, imposing burdens of some groups or individuals in order to provide benefits for others independently of the social, political, and legal rules and agreements that de facto regulate the interactions of those involved. There are many other ways in which the relation between the four axes of analysis manifests, and there are other features that could be added to the list of features to be analyzed along the ones stated here, but these ones will suffice for the present argument.

Libertarian lines of argument as those from Hayek (1997) and Nozick (1974) take the public intervention regarding matters of social and distributive justice as unacceptable oblivion of people's actual lives: it disregards the previous efforts people have done that, as a result, made them owners of their property; the decisions they undertook, and notably, it neglects their consent or dissent to the social justice measures implemented by the public system of political authority. This oblivion, the libertarian says, morally impairs the legitimacy of the patterned approaches to social justice endorsed by the liberal egalitarian.

It is precisely the actual consent of people in the interactions that create the inequalities in resources, power, social position, etc., the basis for conferring moral value to the outcomes of those interactions. Actual consent is a very significant criterion for identifying who has the right to what, especially regarding the identification of positive rights. Consent marks the boundaries between individuals as rational agents and makes them part of the realm of moral worth; disrespecting the person's autonomy by disregarding her consent is paternalistic and must be normatively rejected.<sup>48</sup> Moreover, and thinking particularly about obligations of social justice, the libertarian objects having any positive obligations without any acts that create them. The egalitarian's cost for endorsing distribution and a broad scope of objects of justice is

---

<sup>47</sup> An interesting commentary on this topic, in particular about the justification of fair play as a source of political obligation, is made by Simmons (1981, Chapter III, V, 2001, Chapters 1–2).

<sup>48</sup> This is a general feature of the libertarian position although it is not an absolute one. For example, for particular cases, Nozick (1974, Chapter 4) backs the possibility of breaching people's entitlements as long as there is adequate compensation for the disserve.

forfeiting the clarity offered by the idea of particular actions that serve as the basis for obligation. Explicit consent, a promise, a pledge of allegiance are acts that the libertarian would acknowledge as the basis for creating obligations of justice, yet none of these seem to be available in the scale demanded by the egalitarian state.

There are people poorly equipped to pursue their ends, and they need assistance to improve their situation. However, necessity is not enough for curtailing liberty. Tragedy and injustice are not equivalent, and even if we could find an argument for affirming obligations on the basis of them, the obligations arising from each would be different, and only some of them—those mediated by acts like consent—could be rightfully enforced.<sup>49</sup> The libertarian opts for the protection of the transaction, of the conservation of autonomy through the procedure of freely trading among consenting individuals. By taking this option, the libertarian assures that any external standards need not judge the outcomes of the process, and by granting that independence, the libertarian keeps the philosophical judgment immune from accusations of the arbitrary introduction of external criteria of assessment, making the main procedure a case of justice in procedure: as long as the process is followed, which for libertarians means free transactions, the justice of the outcomes, independently of what those outcomes might be, should be guaranteed. The autonomy of individuals, exercised by consenting in trade, puts the subject in control of his own life.

Through the provision of public goods, taxation, etc., public intervention distorts the subjects' decisions, making them different from what the subject would decide in a free context—which refers to the unregulated market. Given that the state regulation is coercive, its intervention is seen by the libertarian as a coercive altering of individual decisions that withdraws the individuals' control over their own life. Plus, this distortion of the basis for decision-making ends up creating wrong incentives<sup>50</sup> affecting the general social productivity. The requirements for positively delivering social justice impose costs on activities that are already costly for the individuals, while at the same time leaving free of any charge those who will not undertake any valuable activity, diminishing, in the end, the available goods, and therefore the possibility of social well-

---

<sup>49</sup> Especially for libertarianism, having a right is different to having a right to the protection, by someone else, of that right. The latter right implies a contract or another obligation-creating action.

<sup>50</sup> Incentives towards stealing and being idle are commonly pointed.

being. The solution, for the libertarian, is not interfering, case in which people can keep their autonomy and cannot be victimized given that the outcomes are either a product of their own will or the byproduct of the collective exercise of autonomy through trade which, not being intentional in itself, would not be a matter to be judged by moral standards.

The Nozickean approach to the preservation of justice, which aims at protecting autonomy and freedom, proposes the abandonment of the liberal egalitarian framework of distributive justice in favor of the more uncomplicated principles of justice in acquisition and transfer. In Nozick's argument, these principles are referred to peoples' actions and must be verified in real life. For the libertarian, the concrete instantiation of processes of production and transaction must take place for justice to apply and be preserved. Regarding this point, the libertarian finds liberal egalitarianism wrong. According to Nozick, the egalitarian account of distributive justice omits the condition of existence of any good available for distribution: the individuals that produce it and consent to exchange it.

The lack of attention to the way acquisition has taken place and the disregard of the histories of the subjects involved in social interaction led to the conclusion that they can decide about work, belongings, and social positions independently of the differentiated individuals, their decisions, and their actual interactions. Not considering the giving or withholding of consent, people's desires and accomplishments, and their embeddedness in the real world (in which they get recognition, produce goods, etc.) makes the liberal a-egalitarian account of freedom and autonomy void. Without the idea of self-ownership and the ability to work and interact with others freely, individuals are just objects arranged by a set of principles to be used as means for the realization of a pattern.

Following the libertarian argument, the liberal egalitarian defense of social justice is an idealization<sup>51</sup> of the contexts of justice and of the coercive power of the state, and a moralization of trade—which implies the imposition of an arbitrary moral

---

<sup>51</sup> I use the term idealization as defined by Onora O'Neill: "An idealized account or theory not merely omits certain predicates that are true of the matter to be considered but also adds predicates that are false of the matters to be considered" (2016, p. 86). Therefore, the liberal defense of social justice would homogenize individual preferences and add moral permissions for the state to redefine (being both false predicates according to the libertarian view) its coercion as needed to account for what justice requires.

criterion over different individuals, groups, etc. that are not given the choice of adopting those principles—that overlooks pluralism and becomes, therefore, oppressive. To a great extent, the problem with the egalitarian, according to the libertarian, is assuming that morally desirable social outcomes are better served by positive and intentional action on the part of centralized institutions, neglecting the moral and practical costs of assigning positive obligations and denying the possibility of desirable outcomes by giving people space for exercising freedom. In other words, the problem is “that naïve conceptions of what is possible or what is at stake can leave people vastly overconfident about the likelihood of achieving a result by creating the political power to obtain that result by force” (J. Brennan & Schmidt, 2010). As we will see later in section 3.4, what libertarians consider a *normatively desirable* conception of (social) justice corresponds to mainstream *descriptions* of social interaction at the global level.

### 3.3 The particularist defense against libertarianism

In order to defend social and distributive justice, the challenge for the egalitarian particularist is to show his commitment to individualism while endorsing the moral need for a set of institutions that take care of people’s security and regulate their interactions in a manner that enables liberty by positively making available the means for its exercise. This defense implies an alternative version of the relationship between political institutions and individuals, between individuals and goods, and between moral justification and institutional rules.<sup>52</sup>

In its contemporary forms, particularism always relies on some version of contractualism to fix the principles that should evaluate social institutions, according to which social rules should be arranged. All accounts of justice in the contemporary debate about justice are tied to a theory of legitimacy and a theory of moral norms

---

<sup>52</sup> The reframing of the relations becomes necessary because the libertarian stand relies on the normative and ontological priority of the individual *vis-à-vis* social institutions, on the idea that goods come into the world already tied to individuals’ hands—and that individual production is the first step in analyzing demands of justice and in the idea, expressed in different ways, of natural rights preempting and prohibiting, depending on the case, rival institutional rules.

according to which legitimacy and sound moral norms depend on some kind of contractual agreement.<sup>53</sup>

Despite having many different variables, the point of departure for the particularist theorizations about social justice is somewhat akin to the Rawlsian idea of society: “[...] a society is a more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for the most part act in accordance with them” (Rawls, 1971, p. 4). Departing from there, individuals will have to find agreements that make their life together acceptable and stable in time. Distributive justice, and social justice in general, becomes the problem to be solved in order to answer the question about “how are the institutions of the basic structure to be regulated as one unified scheme of institutions so that a fair, efficient, and productive system of social cooperation can be maintained over time [...]”?<sup>54</sup> (Rawls, 2001, p. 50). In other words, and generalizing the point to liberal theories of justice, the problem to be solved is how to design a prescriptive and evaluative model for social institutions that is morally and prudentially reasonable to follow (as individuals or as part of a social group), and that embraces egalitarian principles.

Egalitarian particularists accept the liberal priority of individuals and the weighty moral value of their will and autonomy,<sup>55</sup> which gives them a minimal common ground for debating with the libertarians. Nevertheless, two relevant features make them disagree with the libertarian claims: for them, i. autonomy and the right to freedom are not independent of individuals' social and economic conditions, and ii. Goods—more broadly, benefits and burdens—can not be reasonably seen as detached from the overall social system of cooperation in which individuals interact. Therefore, confronting the task of justifying political power, and delimiting what should it do and what should it avoid, particularism recognizes three relevant matters to take into account if political authority pretends legitimacy *vis a vis* those subjected to it: the respect of people's

---

<sup>53</sup> Reasons and circumstances for the contract and agreement might vary—e.g. between D. Gauthier's (1992) or J. Buchanan's (1986, Chapter 2) contractarianism and Scanlon's or Rawls' (1971) contractualism—but all contemporary liberal political theories have in common the pursuit of a demonstration of the need for mutual moral or political agreement and the existence of compelling reasons for effecting such agreement.

<sup>54</sup> I omit here Rawls' reference to different generations because, for the purposes of the present chapter, it is unnecessary.

<sup>55</sup> Nevertheless, as seen in the previous chapter, communitarians differ in their appreciation of these features.

choices, the positive enablement of choice by securing alternatives in social life, and the protection of the individual from fortuitous events and circumstances that would put him in severely disadvantaged social circumstances.<sup>56</sup>

Assuming equal moral worth for individuals and referring to the ongoing most relevant social set of institutions, particularists agree that “the fundamental aim of the state is to secure the liberty of its members [...]. Since the democratic state is nothing more than citizens acting collectively, it follows that the fundamental obligation of citizens to one another is to secure the social conditions for everyone’s freedom” (Anderson, 1999, p. 314).

As a result, liberal egalitarian thinkers argue that a decent society requires equality of opportunity and that securing it requires a principled approach to the social distribution of assets and burdens. The justification of the coercive attributes of the state that go beyond security lies in the acknowledgment, by liberal egalitarian theories, of the need for more than the purely formal and negative approach to justice defended by libertarians. The moral values that back the liberal tradition are then fitted into arguments according to which the individual’s moral value can only be respected by providing, at least in terms of institutional design, the necessary means to enable the actual exercise of autonomous decisions,<sup>57</sup> having consequently the need for the active intervention of a public authority to enable<sup>58</sup> the subjects’ will. Positive action<sup>59</sup> on the

---

<sup>56</sup> Albeit with different emphasis, all the particularist tradition shares these preoccupations. For example, Feinberg (1970), Raz (2009), Dworkin (2002), or Estlund (2008).

<sup>57</sup> Among others, Rawls (1971, 1993, 2001), Barry (2005), Gewirth (1996, Chapters 1–2) and Dworkin (2002).

<sup>58</sup> Through different means. For example, Barry (2005) says it can be done by spending, providing or distributing, which is related to the difference he makes between expenditures and transfers (Barry, 2005, p. 218).

<sup>59</sup> However, this does not imply the endorsement of a fully substantial and positive approach to justice. Here it must be noted that the division between positive and negative rights and duties is deeply entrenched in the debate about distributive and socioeconomic justice. The distinction is used as a heuristic tool for understanding the strength of duties and obligations and for deciding, consequently, what can be meaningfully demanded by and from different agents according to a defined set of principles of justice. On this debate, see, among others, Feinberg (1973, pp. 71–72), Holmes & Sunstein (1999), Pogge (2005), Ssenyonjo (2009). The mainstream formulation conceives the discussion about negative/positive duties upon the correspondent distinction between restraining/doing as related to the claims people can rightfully make on others and the effort demanded to fulfill the content of the claim. Accordingly, the prioritization, supposedly based upon the feasibility of accomplishing what is demanded from the different (positive/negative) rights is decided in favor of negative rights, accommodating the positive ones afterwards—as seen in Rawls’ *A Theory of Justice*. This is sometimes explained as a result of the consideration of the possibility of delivering what the duty demands: while refraining from action is

part of authority is needed for securing even the rights that are traditionally defined as negative (as political participation or assembly).<sup>60</sup>

For the particularist view, the justification of a political scheme depends on showing the individual that his best option, morally and prudentially, is to accept and endorse it. Assuming that the individual is capable and sensible to moral reasoning, and is also moderately self-interested, particularist theory, through different means, arrives at the conclusion that it is morally required to gather under a just political scheme and that so doing is beneficial for the individual.<sup>61</sup> Only by consolidating a political authority is it possible for individuals to secure a context in which justice applies for their reciprocal protection.

It is important to remember here that given the priority of autonomy and the correspondent necessity for respecting individuals as rational and moral agents, the particularist justifications of political authority and its principles of justice are addressed to the person. To that extent, the argumentative exercise done in the process of justification, correlated to the general ideal of promoting the biggest possible scheme of liberties, is a balance between what the subject would be willing to demand from others and what could be asked from him to fulfill those demands for everyone else. Consequently, we would have to see what is there to be demanded.

At this point, a feature of these theories of justice and political authority becomes salient: they are not addressed at an individual living in the state of nature or to an abstracted individual under the veil of ignorance. These individuals are theoretical devices for justifying—to citizens—the moral and prudential need for embracing people's own social order or to take the necessary steps to make that social order better. Therefore, as stated before, opposed to the libertarian way of understanding the creation of goods, according to which work adds value to the world, the particularist claims that the coordination and the creation of social bonds of cooperation made

---

always possible, acting, and successfully acting, depends on more than the will and therefore becomes a context-dependent matter in which considerations about scarcity, suitability, relatedness in the past (between the actors) have to be cleared before having the moral discussion about duties. Therefore, in the debate about global justice, positive rights, being more morally and demanding in terms of their accomplishment, are usually left, by particularists, as a matter of "thicker relations" in which consent, or a common political community are necessarily involved.

<sup>60</sup> On this topic see *The cost of Rights* (Holmes & Sunstein, 1999).

<sup>61</sup> Kantian, Lockean, and Hobbesian lines of argument concur to these conclusions, as well as theories influenced by Marxism as Walzer's or G.A. Cohen's.

possible by the state is the precondition for the existence of goods. In other words, justice is a discussion that refers to the outcomes of a cooperative enterprise.

Goods are only produced within schemes of cooperation and coordination that call for moral principles of regulation (procedural or substantive), making social justice a necessary step towards a morally legitimate scheme of production. To that extent, the existence of goods presupposes a joint venture that, on the one hand, calls for fair rules of cooperation and, on the other hand, has to be justified to the participants as a morally acceptable scheme of production of goods to which the contingent feature of nationality ties them. Briefly put, individuals are taken as coming to life within a particular scheme of production of burdens and assets, which then has to be justified to them in morally acceptable terms as self-interested individuals who, as forceful participants, consume the outcomes of that scheme.

Given these considerations, the proposition of ways to deal with social justice turns toward a regulated scheme, usually pointed as available within the context of an ongoing set of political institutions and framed within democratic principles under the predominant liberal-contractual theorizations about justice.<sup>62</sup> The democratic decision within the state gives precise definitions of benefits and burdens, along with a delimitation of the participants, in a way that provides efficacy and efficiency in the allocation of benefits and enforcement of positive and negative incentives, that, by limiting the processes of inclusion, protect the collective from free riding, and by the maintenance of democratic processes, protects individuals and groups from exploitation.

In this way, the cooperative venture of the polity, not being a zero-sum game—in which production distributive transfers are made but in which cooperation bonds increase the profit for all parties involved—has to deal with inequality to be justified to those subjected to it. If individuals' membership and participation in the polity make wealth and other goods available, they should be entitled at least to have the option of retrieving a portion of those goods. The possibility of consenting to distributions is not something that the individual has ontologically beforehand but something that is given to the individual as a normative way of legitimizing the available social goods and

---

<sup>62</sup> As in Rawls (1971, p. 102, 1993) and Walzer (1983).

distributions. That being the case, the particularist question turns to the design of a political regime of distribution that gives the individual prudential reasons to embrace its benefits and the moral duties of bearing the burdens the system creates to sustain the benefits it produces.

Unlike the ideal of a system of natural rights, which some libertarian theories (following ideas as Locke's) take as their initial standpoint, the generality of particularist theories propose that the political system's recognition and enforcement of rights give the subjects a priority and a special value in the world. Translated to the regular discourse about rights (and human rights), it is not that an inherent human dignity gives people their rights but that rights give a unique dignity to individuals. That is a crucial point in the liberal defense against libertarianism: our organization with others makes justice available, and therefore it is the creation of the public sphere that ultimately recognizes the worth of individual autonomy.<sup>63</sup>

Thus, the justification for distributive patterns and their enforcement lies on a twofold basis. On the one hand, being in an enclosed group of individuals in which the existence and functioning of the collective creates benefits and ties its members' fate together and given the right of participating in the norms that rule over the political system, the individual has a duty of contributing to social justice. On the other hand, by accepting the enforcement of social justice by the political regime, the individual is assured that his contribution will be, in general, equitable with respect to others, given that the system would create incentives against free riding. To apply normative principles of justice in real-world interactions, given the common concerns about the unfair division of burdens,<sup>64</sup> some rules should be established so that the protections proposed by the normative theory demand, at least to some extent, a productive and abiding agency on the part of those benefiting from it.

In addition to these considerations—that generally apply for the particularist discourse—some of the particularist defenses of distributive justice against the

---

<sup>63</sup> This disparities between libertarianism and liberalism have led to attempts of building bridges between libertarianism and classical liberalism, and welfarist liberalism (usually called also "high liberalism.") For example, J. Tomasi (2012) builds the idea of "market democracy" partly trying to answer the liberal critique against libertarianism according to which "it can provide no principled rationale for the provision of a safety net, and that it requires the state to enforce contracts that alleviate other basic liberties" (Tomasi, 2012, p. 69).

<sup>64</sup> In this particular case, free riding and a consequent exploitation of the productive agents

libertarian critiques come from communitarian considerations. For example, Walzer's construction of the idea of distributive justice helps to answer to the libertarian critique of the liberal, idealistic distribution of goods as if they were mana from heaven. Unlike the previous liberal idea of distribution as a relation between givers and receivers, Walzer, already in his 1983 *Spheres of Justice*, asserts that there is history preceding the available goods for distribution and, therefore, goods are attached to the people that produce them: "*People conceive and create goods, which they then distribute among themselves*" (1983, p. 6). Moreover, given his endorsement of pluralism and his idea that all distributable goods are a matter of social goods,<sup>65</sup> he says that his argument about goods is almost the same as Nozick's but without individualistic conclusions. By focusing on the creation of goods and not on the abstract idea of human agency, Walzer already moves the particularist position one step forward in the defense against the accusations of idealization of distributive justice and of the ahistorical treatment of the problem of the creation and allocation of goods.

In his proposal of justice as a matter of complex equality, according to which the critical problem to solve is the possibility of domination through the conversion of goods across different distributive spheres,<sup>66</sup> deals with the possible flaw of oversimplification, in liberal theory, of the social justice as a matter of abstract principles applied to abstract goods under the consent of individuals under the veil of ignorance. Walzer's general way of arguing focuses on the need to put normative political theory in a better-contextualized framework about what politics and societies are about. That implies abandoning the easiness of the model of simple equality, according to which "one dominant good widely distributed makes an egalitarian society" (1983, p. 28), and the assumption of the existence of a normative theory that can specify a one-size-fits-all

---

<sup>65</sup> Having their value dependent in the particular social arrangements and construction processes that brought them into the world.

<sup>66</sup> Walzer puts the distributive principle as follows: "*No social good x should be distributed to men and women who possess some other good y merely because they possess y and without regard to the meaning of x*" (1983, p. 20). The general idea behind Walzer's approach to justice is that the state should prevent the convertibility of goods so that, for example, money, being from one distributive sphere, do not define access to other goods as health or education. A contemporary reflection of this convertibility for the case of money is made by the also communitarian Michael Sandel in *What Money Can't Buy* (2012), focusing on how the switch from a market economy to a market society, and therefore the rise of money as the dominant good, breaks the boundaries between distributive spheres in which economic efficiency should be a priority (like the market) and those in which other values should be prioritized (as democratic politics). Sandel's book exemplifies Walzer stipulation of complex equality as the protection of boundaries that differentiate goods.

approach to political problems. In contrast, political philosophy and any committed form of egalitarianism should deal with the multiplicity of boundaries and spheres that characterize people's actual lives in specific contexts.<sup>67</sup> As he would later say, concluding *Politics and Passion*, “We need a political theory, and a politics, as complicated as our own lives.” (Walzer, 2004, p. 140).

Following this line of argument, he argues against the libertarian idea according to which, with respect to the problem of inequality—which is the foundational issue regarding social and economic justice— nothing should be done. Walzer describes the libertarian<sup>68</sup> stance as saying: ““we” shouldn’t do anything; individual men and women must take responsibility for their own lives—not only individually but also in (voluntary) association, pooling resources, bringing their numbers to bear, acting on their own behalf.” (2004, p. 80). The idea that social life is and should be self-correcting and that there should not be public interference in the deals among free individuals and their outcomes fails as prescriptive political philosophy because the individual or collective action arising from the civil society simply cannot work without state action. Using the United States as an example, he shows how a great deal of the funding and invigoration of the privately—and of course publicly—run production of goods and services depend on state action. As he ironically puts it: “In a famous speech, the first President Bush spoke of voluntary associations as “points of light” in American society, as if government, by contrast, was a realm of darkness. In fact, there would be very little light if the state did not organize and maintain the electrical networks and subsidize the costs of energy” (Walzer, 2004, p. 82).

This line of argument is shared by other egalitarians. For example, the idea behind Walzer’s critique of the libertarian position is amplified, against the libertarian position, by L. Murphy and T. Nagel when they criticize the idea of prepolitical sovereignty and self-ownership of individuals as a reason against the public regulation of social rights. Regarding taxes, they emphasize that since private property is a

---

<sup>67</sup> This kind of criticisms to traditional liberal theory led Rawls and other political philosophers to tinge their prescriptive and evaluative theories. In Rawls’ case, his later work on the ideas of a political conception of justice (1993), of public reason (1997), and of the possibility that liberalism might not be suitable for all societies in their particular circumstances (2002), are good examples of his trying to include the complexities of pluralism into his body of theory.

<sup>68</sup> He calls this perspective “neoconservative”.

convention created by the legal system, you cannot say you have a prepolitical claim to your property in a way that forbids taxation. Therefore, if idealization has to be avoided and the complexity of the political has to be taken into account,

*“[...] when we ask what we owe to our fellow citizens, by way of positive assistance or mutual restraint, it cannot be understood as a question addressed to us as prepolitical beings, who will use the state as an instrument to fulfill our interpersonal obligations. The situation is rather that we begin from the point of view of members of an existing society—beings formed by a civilization and leading lives that would be inconceivable without it—and our task is to decide what norms the design and regulation of that social structure should respect [...]” (Murphy & Nagel, 2002, pp. 41–42)*

As is the case for the authors just discussed, in the liberal tradition,<sup>69</sup> the assessment of justifications usually has the respect for autonomy as evaluative criteria and, relatedly, the adequacy of the proposal regarding what the proponent postulates as the de facto political/practical motivations of people. These criteria of assessment take different forms depending on its application to domestic or global distributive justice. This kind of approach aims at solving the problem of accounting for the existence of bonds of obligation between subjects by showing that the domestic-political organization serves the purposes of coordinating individual action, materializing bonds of cooperation that help in fulfilling natural moral duties (indirectly, through institutions), and promoting the liberal ideal of autonomy, while keeping contact with what the real motivations of people are<sup>70</sup> (so that the burdens socially imposed to people are reasonable).

Hence, the moral and the practical stances are concerns considered by the traditional debate on distributive justice to show that the state, and therefore the citizens, in order to successfully cooperate and function, have a moral and political duty to dedicate efforts to the maintenance of a basic standard of life—which largely overlaps with the content of socio-economic rights. Therefore, a general conclusion among these

---

<sup>69</sup> I refer here to liberalism to point at the protection of autonomy, the centrality of the individual in moral and political considerations, the values of democracy and rule of law, and also to refer to the struggle of making those endorsements a viable theory; the enterprise of building what Rawls called a “realistic utopia”.

<sup>70</sup> The delimitation of the motivations of individuals are assumptions that include relative egoism, desire of maximization, and desire of belonging to a group or the self-identification with one.

thinkers is that there is a need for a distributive system that guarantees the protection or advancement of equality as a precondition for a just society. However, all these theories remain in the domain of domestic justice, restricting the scope of justice to territorial and/or jurisdictional borders within the nation-state paradigm.

Let us remember that particularism refers here to the liberal egalitarian theories of justice. As seen in the last chapter, it confines a series of normative and descriptive claims about the desirability and feasibility of the limited scope of justice that groups together different lines of theory and, most prominently, liberals and communitarians. This categorization is relevant given that the principles endorsed by both sets of theories, notwithstanding their disagreements about topics such as the prioritization of the right or the good or the considerations to take into account when thinking about individuals, defend generally cohesive and coherent criteria about justice. In what matters for the present discussion, communitarians and liberals share the three basic characteristics of philosophical liberalism depicted by S. Freeman (2001, p. 105): i) the postulation of intrinsic goods as necessarily plural and the consequent irreducibility of that plurality to a single way of life, ii) that individuals should be free to determine and pursue their own conception of the good in order to have a good life, and iii) that the conceptions of the good chosen by individuals be consistent with justice.<sup>71</sup>

For example, Walzer (1990) noted that liberalism and communitarianism are interdependent theories. These two theories keep coming back and forth concerning the relationship between the individual and society, nevertheless sharing the same core values of autonomy, pluralism and tolerance, the rule of law, and the promotion of the common good by a political authority in a uniform and impartial way. Walzer notes that there is, especially in contemporary times,<sup>72</sup> an agreement on liberal values,<sup>73</sup> which is threatened, from the inside, by the possible outcomes of the “endlessness of liberal liberation.”

---

<sup>71</sup> The listing of characteristics applies to individuals and communities alike without creating conflict between the two theories at a normative level. Communitarians, in this respect, are not against the normative demand of respect for individual conceptions of the good, they just think that the individual is a misplaced object while looking for conceptions of the good given that they occur within communities.

<sup>72</sup> Although published in 1990, Walzer's article, “The Communitarian Critique of Liberalism”, is still compelling and aligned with the current circumstances.

<sup>73</sup> At least philosophically.

The debate between communitarians and liberals<sup>74</sup> is the manifestation of the constant liberal tension between association and dissociation:

*“Liberalism is a self-subverting doctrine; for that reason, it really does require periodic communitarian correction. But it is not a particularly helpful form of correction to suggest that liberalism is literally incoherent or that it can be replaced by some preliberal or antiliberal community waiting somehow just beneath the surface or just beyond the horizon” (Walzer, 1990, p. 15).*

We are all liberals now. Moreover, these theories have their need and reliance on the liberal state in common. On the one hand, the more cohesive a society is, the closer would their political system be to the communitarian ideal, and therefore the stronger their political community. Interestingly, the same happens in the individualistic liberal model: “The more dissociated individuals are, the stronger the state is likely to be since it will be the only or the most important social union. And then membership in the state, the only good that is shared by all individuals, may well come to seem the good that is “best.”” (1990, p. 17).

### 3.4 Problems in the particularist rejection of the broadening of the scope of justice

After defending himself from the libertarian argument, the particularist adopts a very similar structure of argument of that which he rejected previously in his defense, but this time against the cosmopolitan stance. As when libertarianism targeted egalitarian liberalism (or “high liberalism”) in the debate about justice, egalitarian particularists (which are high liberals) later targeted cosmopolitans. A brief exposition of the cosmopolitan stance is helpful to grasp this argument. Moreover, an exposition of how particularism sees cosmopolitanism gives us some clues for clarifying the pith of the disagreements between those bodies of theory. It is important to note here that particularists target “cosmopolitanism” as their opponent in their debate about the borders of justice probably because of being the clear contender to the state-based particularist prescriptions. However, this opposition can also be a matter of debate. As

---

<sup>74</sup> As has been commonly cited in the literature about the topic.

Brennan and Tomasi (2012) propose that one mistake of libertarianism is adopting high liberalism as its foe, some say—mostly authors that advocate for transnational justice—that liberal particularism misplaces its critiques when pointing at cosmopolitanism.

### 3.4.1 The depiction of Cosmopolitanism

Even if mostly remaining within the idea of political institutions characteristic of liberal political philosophy,<sup>75</sup> cosmopolitans always explore alternative approaches to the problems of the conditions required for justice to apply and the possible scope of the obligations it could create. Stepping aside from the ideas of the nation and state, cosmopolitanism investigates normative arguments for transnational and global regulation, the involvement of non-state actors in global politics, and in global advancement on the fulfillment of rights, the possibility of transnational civil communities, and global relations of power.

The obvious way of distancing from the ideal of the state (besides anarchy) is retreating in the moral discourse and forfeiting the advantages of procedural-political justifications of justice. This retreat is commonly addressed as moral cosmopolitanism,<sup>76</sup> meaning that justice corresponds to invariable and independent principles which morally legislate over politics and institutions, positioning itself beyond them. In this approach, even if politics is still an issue to be discussed, the first question is not necessarily directed at the institutions (that are assumed to be compulsorily adapted to the moral standards) but about which and whose conflicting moral and practical interests and claims are suitable and, even more, paradigmatic to necessitate settlement through principles of justice.

However, this obviously problematic solution is seldom the initial statement of cosmopolitan theories, but mostly an assumption or a result that raises critiques inside and outside cosmopolitan philosophy. As is the case for contemporary liberalism, cosmopolitanism constantly tries to avoid moral foundationalism.

---

<sup>75</sup> Cosmopolitans acknowledge the practical relevance of states in the current global order and endorse liberal institutions—how liberal is a matter of the debate with the particularists—at a global level.

<sup>76</sup> See, for example, Brock (2013b), Pogge (1992), and Chernilo (2012).

This change of point of view introduces a relevant characteristic of cosmopolitanism. Usually, keeping the liberal premise of the individual as the ultimate unit of moral value, cosmopolitanism doubts the state as the correct place to find ideal institutions of adjudication and implementation of justice. There is a cosmopolitan rejection of a moral prima facie value of nationality and/or sovereignty. In other words, there is a questioning of the presupposition of the state as the proper context of justice, therefore casting doubt on the moral value and the moral neutrality of boundaries. In the cosmopolitan general remarks, there is a demand for the justification of the state's institutional structure and states' boundaries, instead of accepting them as default.

These doubts have different implications among which one of the most salient is the normative distrust (regarding legitimacy) of the idea of international justice through the collaboration of independent states as the answer to global concerns for socioeconomic justice, partly because of being unable to cope with transnational non-state actors and several global consequences of the relations between countries, which are key actors in the global political, social, and economic state of affairs.<sup>77</sup> Furthermore, cosmopolitanism prioritizes the question about the legitimacy of the global context over the local one, making national legitimacy dependent on the overall justice of the global system or to the attribution of the adjective "well-ordered" to the global state of affairs (C. Beitz, 2009; Forst, 2001; T. Pogge, 2005).

General descriptions must be interpreted with caution because, as stated by Ronzoni (2018), the nuances in the debate give rise to ways of problematizing the topic that are inaccessible for broad categorizations. However, being a difficult task, a general description of cosmopolitanism (as in the case of particularism and libertarianism above) is a good heuristic<sup>78</sup> approach to the body of theory because it helps to find and wield the general lines of argument about global justice. For example, Pogge's definition

---

<sup>77</sup> See chapters 6 and 9 of *Justice Across Boundaries* (O'Neill, 2016). Additionally, a present-day example of these relations is the consideration of how sweatshops, that provide the market of fast fashion, and the conditions of injustice they create, cannot be managed by the traditional accounts of state-based-justice, can be found in Young (2011, Chapter 5).

<sup>78</sup> Heuristic given that the categorizations of cosmopolitanism are not stable among authors and what counts as moral cosmopolitanism, political cosmopolitanism, legal cosmopolitanism, and institutional cosmopolitanism, or how these categories overlap with the division between relational and non-relational cosmopolitanism (some of the categories found in the depiction of this line of philosophical thought), varies according to the different authors and their intentions with the classification. On this distinctions see, among others, (C. R. Beitz, 2004; Brock, 2013a, 2013b; Miller, 2007; O'Neill, 2016; T. Pogge, 2008; Ronzoni, 2009; Sangiovanni, 2013; Ypi, 2008, 2013).

(2008, pp. 175–183) helps to get a first glimpse of the basic theoretical features of cosmopolitanism: the endorsement of individuality, universality, and generality.

Although Pogge is delimiting the cosmopolitan body of theory, it is not far from liberal particularism. Reflecting on individualism, being the general liberal value, is not a matter of discussion between particularists and cosmopolitans. The same could happen with universality: being a claim about the equal worth of all individuals independently of their social role, it does not seem *prima facie* problematic. Regarding generality, which is the idea that the special status of individuals has global force, meaning that “persons are the ultimate unit of moral concern for *everyone* –not only for their compatriots, fellow religionists, or alike” (T. Pogge, 2008, p. 175), could also be read as a standard principle particularist would agree with.<sup>79</sup>

In Pogge’s account, the following distinction is about two kinds of cosmopolitanism: moral and legal.<sup>80</sup> On the one hand, the legal version claims the need for a global state. Pogge does not pursue this line of cosmopolitanism—neither do cosmopolitan philosophers in general. The moral line of cosmopolitanism,<sup>81</sup> on the other hand, refers to principles that render institutions loyal to the three cosmopolitan features explained above. In addition, moral cosmopolitanism has two compatible yet independent lines of research: the inquiry into principles to assess institutions and the inquiry into what basic institutional principles should be (Pogge calls this two inquires institutional and interactional, respectively).

And there is where the particularists have something to say. The feud between particularists and cosmopolitans, particularly the particularist rejection of the expansion of the scope of justice, lies in interpreting the three initially acceptable liberal principles when dealing with the evaluation and prescription of institutional structures. Particularism rejects cosmopolitanism, given the possible institutional outcomes of their

---

<sup>79</sup> In fact, Sangiovanni, being a particularist, begins his article “Global Justice, Reciprocity, and the State” (2007) with the explicit acceptance of those three principles. Rawls also recognizes individualism, when rejecting utilitarianism (1971, p. 27), and generality and universality as the basis for first principles as a commonplace in moral philosophy (1971, p. 132, 2001, p. 86).

<sup>80</sup> Although drawing clear boundaries between cosmopolitan and other related theories is not an easy task, as it will be shown in chapter 4, the proposal in this thesis tries to cover the moral arguments as much as the legal and political considerations that unravel around them within the context of global and transnational justice.

<sup>81</sup> It must be noted, at this point, that this definition of moral cosmopolitanism differs from the one provided by particularism.

moral stance. Therefore, the particularist depiction of their philosophical contender is the next thing to focus on.

A general feature of the particularist portrayal of cosmopolitanism is the literal interpretation of the idea of a cosmo-polis: a world government under which the categories 'humanity' and 'citizenship' become equivalent. According to the particularist stance, the commitment to the ideal of equal moral worth takes the cosmopolitan from the description of the universe of agency to the prescription of universal political membership. This implies, in turn, three derivative theses: that justice can only be global, that it does not depend on social interaction, and that principles of justice are universal and necessary. Then, the question is why this set of features is wrong according to the particularist view.

Although, as we have seen, particularism encompasses different normative points of view, their general lines of critique can be found in Kant's *Toward Perpetual Peace: A philosophical Sketch*. First, that pluralism is a fact that prevents the universal subjection of people to one political power without falling into despotism:

*"[...] laws increasingly lose their force as the borders of a government are extended, and a soulless despotism, after having eliminated the seeds of good, ultimately declines into anarchy. [...] peace is not, as with the aforementioned despotism (in the graveyard of freedom), brought about and secured by the weakening of all energies, but rather by means of the liveliest competition among the same." (2006, pp. 91-92 [Ak. 8:367-8:368]).*

Second, that the concept of the state is a formal condition for the existence of a legal order, and therefore a necessary condition for the existence of rights; As a result, the primary allegiance of individuals has to be pledged to legitimate sovereignty and not to the human moral community, even when the sovereign commands are unjust (2006, pp. 105-106 [Ak. 8:382]).

These two features are the basis of the normative and descriptive lines of particularist critique against cosmopolitanism<sup>82</sup> and help us conceptualize the critique from the perspectives of Rawls and Walzer as representatives of the particularist

---

<sup>82</sup> As mentioned in chapter 2, in the section "Particularism: a general outline"

argument.<sup>83</sup> Then, respect for pluralism and the state as the framework for justice will give rise to three lines of criticism to the proposal of widening the scope of social justice: the disrespect for sovereign consent—claim based on the right to self-determination of representative governments—the lack of attention to the practical circumstances and the history behind them, and the moralization and idealization of the sphere of international politics. These three lines, which lines of argument are akin to the three lines of libertarian critique discussed above, are also intimately related to the problem of free-riding and the need for a theory of justice to create incentives for productive agency and against unfair handouts.<sup>84</sup>

### 3.4.2 The framing of justice and the political

As stated in the previous chapter, theories of justice are usually delineated assuming justice as a matter of the relationship between subjects and institutions in a context in which those institutions are represented as a sovereign, liberal, and democratic state. To that extent, theories of justice are evaluative/normative<sup>85</sup> endeavors that refer mainly (when not exclusively) to the relation between state-like political institutions and citizen-like individuals.<sup>86</sup> Moreover, theories of justice are traditionally focused on how the power of the state relates to its subjects who, at the

---

<sup>83</sup> These two authors consider the problems of fairness in the allocation of burdens within a productive endeavor, pluralism, self-determination, legitimacy, the debate of the prioritization between the right and the good, the relevance of democratic governance, the value of social compact, the institutional limits imposed by human nature, and the problem of knowledge (how to make good and accurate calculations for justice in large-scale human associations). Hence, through this lens, we can cover the lines of argument provided, for example, by Sangiovanni (2008, 2013) about the right and the good and about the kind of relation needed for bonds of justice to arise; by Maus (2006, 2010) in her defense of democratic self-determination and her suspicion about the danger of oppression that accompanies cosmopolitan governance; Valentini (2013, 2017b) and the problems of idealization and the lack of proper foundations for justice in cosmopolitan theories; Miller (1999, 2007, 2013) with his definition of social justice and his defense of borders at a global scale; Ronzoni (2013) and her doubts about moral cosmopolitanism; Blake (2012) with the critique of neglect of the empirical world; and a very long list of other criticisms against cosmopolitanism.

<sup>84</sup> In addition, it is worth noting that these lines of criticism are directly related to the three derivative theses mentioned above.

<sup>85</sup> They either evaluate the rightness or wrongness of a particular situation or prescribe ways of addressing that situation. On the distinction, see, for example, Forst (2001).

<sup>86</sup> Rawls, for example, uses the concept of *people* instead of state to make room for his theory of justice in the international domain by including the idea of well-ordered societies, and to take distance from the realist conception of the state as an entity with unrestricted sovereignty whose purpose is the maximization of the fulfillment of its self-interest.

same time, are bound to it by means of participation, common interest, and arbitrary but unavoidable belonging, culture, or identity. Additionally, the now classical theories of political philosophy, within the liberal framework, built their conceptual structure within the context of ongoing institutions that correspond to the general idea of the division of the world in an international system.

Therefore, when addressing contemporary politics, given the path undertaken by the contemporary philosophical discussion about justice, we find that the ideas of the nation-state, political community, and citizenship result in constituent parts of political philosophy and the concept of justice (especially of socioeconomic justice).<sup>87</sup> The consequence of that way of portraying the philosophical discussion about justice and politics is that, in the particularist view, pluralism and democracy are normatively opposed to the cosmopolitan proclamation of universalism and the global scope of justice. Therefore, the statement or demand of social justice beyond state-politics is idealistic and moralistic given its disregard of the place in which politics takes place: the state.

These lines of argument against the cosmopolitan stance follow the path undertaken by Rawls in the way they are formulated. To begin with, Rawls makes it clear that *The Law of Peoples* is the continuation of his general theory of justice, which, to be coherent, implies a different set of principles within and outside the state. If the ideal theory sketched in *A Theory of Justice and Political Liberalism* is coherent, a conceptualization of justice for the whole world will not amount to a theory about the welfare of individuals, which is addressed in his previous work, but to something else. That's why, since the beginning of *The Law of Peoples*, Rawls makes it clear that the correspondent endeavor is to "work out the ideals and principles of the *foreign policy* of a reasonably just *liberal* people" (Rawls, 2002, p. 10).

Here, it is important to note what Rawls and other particularists assume about the structure of the theoretical inquiry about justice. As long as a people have a just or nearly-just set of public institutions, grave harms will be prevented, and individual autonomy, the primary source of moral value, will be respected. Even if disagreement and pluralism are inevitable in free institutions, political justice can be reached by means

---

<sup>87</sup> See, for example, (Maus, 2006, 2010), (Miller, 2008), (Valentini, 2017b, 2017a), (Walzer, 1983, 1994, 2004), (Rawls, 1971, 2001, 2002).

of liberal and democratic processes, and therefore political injustice is duly confronted.<sup>88</sup> Following this line of argument, given that in ideal circumstances disagreement is kept reasonable and the local achievement of a political conception of justice is reached, the aim to be targeted is protecting and fostering a well-ordered model of governance for all societies. In other words, global justice is, for particularists, local justice everywhere.

If that is the case, justice protects free individuals locally, and the preoccupation left to be attended is not about individuals anymore but about societies and the relations among them. Thus, this field, although being an object of justice—therefore capable of injustice—calls for different normative principles inasmuch as the agents involved are now states and their interests differ from those of individuals, although they are, ideally, compatible. Ideally, if the different peoples around the world are just, each one will tend to be satisfied with its own status quo and provided they are generally self-reliant, no serious conflicts would arise between them.<sup>89</sup> Arguing for this transitivity, the abstract ideal of global justice is, for particularists, in Rawls' terms: “the great evils of human history [...] follow from political injustice [and therefore] once the gravest forms of political injustice are eliminated [...] these great evils will eventually disappear” (2002, pp. 6–7).

The idea of (local) justice leading to prosperity and stable peace, and not the other way around, not only motivates the argument in *The Law of Peoples* and other philosophical approaches to the normative foundations for international law and international relations<sup>90</sup> but is also useful to rebuke the libertarian argument that precludes liberal justice because of its alleged adverse effects on productivity and prosperity, and because of the violence it represents. Here, we can see how the libertarian critique of particularists' patterned principles of distributive justice—according to which it fails to account for the production of goods because of focusing in their allocation—is contested by arguing that the difference principle is concerned with production and not with allocation.<sup>91</sup> This means that distributive justice, being

---

<sup>88</sup> That is the project defended in *Political Liberalism* (1993).

<sup>89</sup> Rawls follows Raymond Aron (2003) in the making of this argument in the fifth section of *The Law of Peoples*.

<sup>90</sup> E.g. *Justice, Legitimacy, and Self-Determination* (Buchanan, 2007).

<sup>91</sup> See Rawls (1971, p. 285, 2001, p. 49-ff.).

dependent on the criterion of reciprocity,<sup>92</sup> is a domestic political issue and in nothing resembles the accusation of thinking about the share-out of mana from heaven: “Observe that particular distributions cannot be judged at all apart from the claims (entitlements) of individuals earned by their efforts within the fair system of cooperation from which those distributions result” (Rawls, 2001, p. 50). This remark points at two things: first, as explained in the previous chapter, that the political stance of the individual as a citizen within a liberal-democratic system of governance—or at least a decent one—which gives him means of representation, covers the defense of his individuality and, second, that his right to participate arises from his actual contribution to the cooperative production of the political community.

At the same time, then, the “mana from heaven” objection is now pointed at cosmopolitanism by pointing out that a distributive principle in the global arena, at least within an ideal theory, would necessarily disregard peoples’ responsibility for their own decisions and equally important, their right to self-determination, derived from their having an acceptable political organization. This being the case, obligations of global or international distribution could only be provisional matters, which would need a precise confinement, and in no way would constitute an object of the general principles of justice. Instead, as for the case of poverty or lack of health care, a temporary duty of assistance would be the suitable normative solution. In other words, as can be inferred from Rawls when addressing Beitz and Pogge (2002, pp. 117–120), the cosmopolitan preoccupation for the welfare of individuals is misplaced by cosmopolitans when putting it in the global or international realm.

The Rawlsian model of distributive justice stops its positive endeavor in the boundaries of the state. Because his main concern is the establishment of a *reasonable* theory of international justice; because well-ordered societies can take care on their own (2002, p. 119); because principles of justice must be political principles—not derived from a comprehensive conception of the good—(2002, p. 17); because there is no world state—and it is neither realistic nor desirable—(2002, p. 36); and because peoples have interests based in their reasonable conception of political justice (2002,

---

<sup>92</sup> That according to Rawls has as a role “[...] to specify the nature of the political relation in a constitutional democratic regime as one of civic friendship” (1997, p. 771), which makes it an essentially domestic criterion.

pp. 29, 34); the problem of justice for the international sphere is only concerned with the greatest evils (war, genocide, colonization, etc.) and therefore with very basic principles for coexistence and reciprocity.

Venturing the introduction of further requirements would trump both the soundness of the argument in favor of justice and the practical stability of the international realm. On the one hand, going beyond the eight principles of justice of *The Law of Peoples*<sup>93</sup> would imply the impossibility of domestic-well-ordered societies or the need for a world state which would necessarily end up in functional global despotism or a weak empire constantly convulsed by local campaigns for political independence. The reason for this is that the expansion of justice would imply trying to force an expansion of the public political culture. In particular, the problem in which to find the focus of the debate is the expansion of social justice, and for Rawls, of the difference principle. And then, since peoples have their own political conceptions of the good and the means for social justice (means of production, regulation of the economy, the defense of private property, etc.) are political decisions, as Samuel Freeman states in one of his analyses of *The Law of Peoples*, “to apply the difference principle at the global level is to misunderstand its function in specifying the special cooperative relations of reciprocity that define a democratic people” (2010, p. 442). Moreover, beyond the punctual discussion of the difference principle,

*“A primary role for a principle of distributive justice is to provide standards for designing, assessing, and publicly justifying the many legal and economic institutions that structure daily life. Since these basic institutions are social and political it follows for Rawls that distributive justice also should be social and political. If so, then in the absence of a world state, there can be no global basic structure on a par with the basic structure of society”. (S. R. Freeman, 2010, p. 450)*

In the absence of a global political authority, justice cannot arise as a political outcome, and the neutral basis for its obligations, along with its democratic justification, is not available anymore. This lack creates a series of related problems. In the absence of global enforcing mechanisms, no public adjudication is possible. Even if we could build the institutions to enforce global social justice, the links between people are not enough

---

<sup>93</sup> See Rawls (2002, p. 37).

for the legitimacy of a world order. Following the general liberal theory of political authority, this can be framed within the requirement that coercion, and the generality of the effects of authority, must have as a correlate a normative arrangement in which the implicated parties recognize and embrace them.<sup>94</sup> And in the liberal-contractualist theory, this means the subjection under a system of authority given the bond of consent created by the normative involvement of the subjects in the creation of state law—as defended by Nagel (2005) or Maus (2006)—, by the special obligations created by the processes of social cooperation—like in Sangiovanni (2007)—or by the implication of distributive justice being dependent on the participation of the process of definition and especially of the production of the goods available for distribution—like seen in the analysis of Walzer (1983) and in the Rawlsian account of the difference principle in *The Law of Peoples*.

When addressing international relations, particularist lines of argument become similar to the ones employed by the libertarian at the local level: in the absence of actual consent, normative imposition of obligations for others' social welfare is bogus and/or oppressive; there is a right to enjoy the fruits of one's work, thus making the idea of international redistribution, or obligations for international social justice, comparable to theft (illegitimate appropriation of rightfully owned wealth and efforts) or to the instrumentalization of some people in favor of the welfare of others; among states, what we should be looking out for, is the justice in transactions within a reasonable timespan because having no prior distributive or productive process, and therefore international obligations for social justice are conceptually a *non-sequitur*: only that which has been purposefully done can be purposefully changed.

In short, the particularist discontent with cosmopolitanism aligns with the three lines of argument of the libertarian critiques of particularism: the problems of consent, history, and moralization.

---

<sup>94</sup> A good general introduction and explanation of the philosophical discussion of political authority can be found in Friedman (1990) and Shapiro (2002).

### 3.4.3 What happens with the particularist critique?

Until this point of the text, we have kept a parallel between the paradigmatically liberal and communitarian approaches to social justice of John Rawls and Michael Walzer, but here the parallel will be broken for two reasons: first, because the liberal-contractualist arguments tend to become one—as shown when talking about Walzer’s *The Communitarian Critique of liberalism* (1990)—, and second, because given the contingent chronological mismatch between Rawls and Walzer, the latter has been able to, remaining a particularist, go further into the conceptualization of the contemporary problems that globalization poses to the theorization about justice. However, as stated before, these authors serve as a guide to the reasons involved in the debate and, as representatives of the particularist stance, their ideas can be followed through the analysis of the evolution of the debate in contemporary times.

The particularist stance affirms that the individual is protected by means of the assurance of the locally based right to participation, and the individual is considered as a rights-bearing subject given his involvement in the common political space of the state. The individual only becomes a right-bearer if involved in a state, and the right to a nationality is normatively assumed as necessary to fit the particularistic organization of the political scheme. Thus, the priority of the individual or his possession of any rights depends on her involvement in a state-like political relation. The particularist idea of the background political unit becomes salient in terms of the logical connections between rights, democratic procedures, and the political means of enforcement in a way that makes the consideration of the existing states as the point of departure of the consideration of what is owed to individuals, and by whom. Plus, this approach to the topic of justice is not only a consideration of the already established value of the existing citizenships and their procedural agreements, but a delimitation of what politics is and what its necessary foundations are about both in normative and descriptive terms. Hence, to some extent, the particularist premise of the priority of the individual is self-fulfilling by conflating the “entering” into a local pact with being the ultimate source of moral value. What the libertarian argument takes as the individual’s natural rights is functionally replaced by the particularist with the demand for respect of autonomy by means of the positive enactment of the citizen’s participation rights.

The best available level of protection of individual welfare and autonomy is, for a particularist, granted by edifying a domestic and political conception of justice. The political conception can be morally neutral—as in Rawls’ proposal—or can depend on a shared conception of the good or a set of common values—as in Walzer or Miller, respectively—but the fundamental point is that whatever measure or proclamation reached must be reached by a political procedure. Therefore, in the name of pluralism, the best available protection renounces to moral and political cosmopolitanism and to the guarantee of objective moral optimality. It is because people consent and adhere to particular political commitments that, in order to take them seriously, it should be those local agreements the ones to decide their social entitlements. The mistake of cosmopolitanism is, then, thinking that individual well-being is a global concern. On the contrary, domestic protection is the option that gets as-good-as-it-gets within the scope of conceptual validity and moral acceptability. As in Rawls (2002, p. 119), the only thing left to think about is making the coexistence of the domestic schemes of protection morally and prudentially viable.

Thus, summarizing, consent, as the action that makes obligations of justice available in the libertarian paradigm, is subsumed or replaced by the process of political participation in the local sphere. The power of participation within the particularist justification of the local political authorities is a postulate based chiefly on a formal conception of justice avoiding any independent principles of social and distributive justice.<sup>95</sup> We could think of the argument sketched by the particularist position in this way: individuals have participation rights, within the state, to procedurally decide about social and distributive justice. Then, making social and distributive justice a matter to be discussed beyond the states’ boundaries is illegitimate because it would conflict with the state-based scheme of justification of political authority and ways of participation.

Particularists defend an interpretation of states according to which they are the main actors in the international sphere. Therefore, states should be entitled to interact in fair terms with each other keeping their wealth and political decisions independent

---

<sup>95</sup> As explained in the previous chapter.

from economic or political imposition that is not based upon their explicit consent.<sup>96</sup> When arguing against the cosmopolitan, particularists consider the state as already available and, for better or worse, as already creating bonds of transaction and cooperation that have moral value. Hence, having internal procedures for the definition of principles and rules of justice, the state should be free from any international or global obligations of social or distributive justice. In other words, what particularists state against libertarians—that distributive justice is justified because as participants in the production of goods and social representative positions, we should be entitled to the system's outcomes—is what they would not accept at a global level in the cosmopolitan argument.

Additionally, particularists take the idea of the exploitation of some in favor of others, pointed at by the libertarians, as an objection to international or global distributive justice. The state is taken as the international prepolitical basis for the assignment of the moral worth of individuals and as the basic unit of production of the goods available for distribution. In the generality of the philosophical debate about global justice, the state represents, in the international realm, the basic political unit to be considered.

As the libertarian advises against any patterned distribution and prescribes a historical approach to the legitimacy of holdings and interactions (limited to relatively recent span), the particularist demands that above the state level, if anything further is needed in terms of social justice, it should be accommodated within voluntary transferences and actions, and minimal humanitarian duties of assistance—but no collective politics necessary for distributive decisions. Therefore, social justice is a procedural issue that should only be a concern for the state's internal decision-making processes and for consented and enforced international pacts. While the libertarian asks for actual consent since the most basic interaction among individuals given their position as producers and traders, the particularist requests actual consent in the international sphere and relies on a hypothetical consent of the subjects within the

---

<sup>96</sup> This point is discussed also among the defenders of broader scopes of justice. For example, as Lea Ypi (2008) noted, the wealth derived even from states' natural resources can be fairly conceptualized, in the cases in which there is no clear injustice, as covered by the Lockean view on appropriation. Independently of deserving the fruits of what they have at hand given the natural lottery of resources, the point is that they made those resources available and profitable.

state. The reason for this change is that if the state is the political unit that regulates and makes possible the creation of the available goods, so should it be, as an agent, in charge of deciding over the regulation of its ways of distribution.

Similarly, as Hayek pointed out about the egalitarian perspectives on social development and the factual involvement of rich states in global economic and social development, the problem is the idea that before the liberal intervention, there is nothing to care about. As Hayek was worried at the local level with a complete remodeling of society (Hayek, 2001, pp. 19–21), particularists worry about not going with the pace of historical events given the cosmopolitan attempts of modifying international relations out of the blue, based on principles and decisions that real interactions, in actual democracies, would probably never agree to. Slow change should be preferred to any principled approach. What libertarians object to about the intervention of local politics in people's decisions is restated by the particularist as an objection against the intervention of global or international politics in the states' autonomous decisions.

In many ways, the particularist critiques aim at showing that cosmopolitanism has a misled and misleading way of linking and prioritizing the discourses of morals and politics in its normative proposal about social justice. The moralization of politics, typically pointed at as the main cosmopolitan problem, consists of imposing moral arguments over the discussion about justice regardless of the institutional factors<sup>97</sup> and trying to force politics towards normative goals through justifications external to politics itself. If the particularist objections to cosmopolitanism are correct, cosmopolitanism would only be a declaration of moral desires with no real grip on the discussion about justice.

Until this point of the discussion, we can see that the concern for consent, self-determination, factual historical relations, and for avoiding idealization and free riding are constants across the debates between the libertarians, the particularists, and the cosmopolitans. However, before considering broader scopes of justice, the last reflection about this coincidence has to be considered.

---

<sup>97</sup> Which can be interpreted as the oblivion of the moral value created by and in political institutions therefore lacking a valid justification of the arguments introduced or as a literal reading of Rawls according to which the only possible justifications for principles of social justice are to be found exclusively in the current institutional frameworks.

The purely procedural approach to social justice, within the particularist perspective, even if having the advantage of theorizing over already running procedures and local democratic legitimation of state's decisions, has the problem of being loose in the relation between the legitimacy and justice of state arrangements and of those at the international realm.

The normative discourse, within the particularist stance, frames the political sphere of the individual in the right to participate, if subjected, in the authorship of the rules that are imposed on him. This perspective is not a method for recognizing contexts of justice but for justifying the state holding popular sovereignty. To this extent, the particularist approach to the needs of social life both depicts and prescribes the liberal and democratic way of social assembly. The particularists alluded to the pluralism, sovereignty, and legitimacy as the necessary features of a liberal theory that make particularism the only viable option for decent politics and for a sound structuration of justice.

Regarding the delimitation of politics, we find that the justification of rules and, consequently, the values and priorities attached to it are said to be variable given the variations in the deliberative processes of different associations. More precisely, quoting Andrea Sangiovanni: "the content, scope, and justification of a conception of justice depends on the structure and form of the practices that the conception is intended to govern" (2008, p. 138). Accordingly, different social arrangements, with their practices, could have their own sets of rules and their own perceived legitimacy, in accordance with the principles of justice recognized in each context. That being the case, the schemes of regulation, within particularism, preempt, and in their absence forestall, the viability and the procedures of justification of obligations of justice. To some extent, this amounts to what Nagel (2005) said about the factual sequence of possibility for the consolidation of the political: first comes sovereignty, and then legitimacy—with the correlative claims for justification. Therefore, when factually identifying where a political unit can be found, the particularist perspective abandons the normative claims and settles for the recognition of sovereignty.<sup>98</sup>

---

<sup>98</sup> Rawls (2002), for example, asks for non-intervention on illiberal states as a way of respecting agency and self-determination. Even if there is an ongoing debate about the recognition and respect for

The problem signaled by particularists against cosmopolitanism here is that the latter misses the relevance of *real politics*. Real politics takes place in the internal decisions of states and in the relation among different states, not among the moral agents of the globe. Real politics, the particularist says, cannot be replaced by abstract or comprehensive doctrines—to use the Rawlsian language—of the good. However, even if there is, indeed, a field in which real politics take place, real politics as a subject is both a descriptive and normative concept in the liberal-particularist tradition.

On the factual side, there have been studies about the exercise and dynamics of power,<sup>99</sup> but the normative-conceptual side of the discussion is usually neglected by assuming that both sides overlap, that there is no prescriptive side of it. Although part of the debate refers to where politics takes place—domestic, international, or global spheres—there is already a normative side of it: particularism prescribes the particularist model of politics as a viable justification for obligations of justice, while at the same time this particularist model is taken as a precondition for politics proper.

Summarizing this point, the problem is that in the play between internal and external legitimacy, the recognition by the international community of countries, beyond the pure respect of the non-intervention principle, assumes that the right to participation validates states (and its current government) as legitimate and as representative interlocutors that do actually take care of the procedural aspects of justice, therefore legitimizing them as being based on the liberal principle of respect for individuals. In the same way, in which the libertarian argument claims that it is up to the individual's will to take care of social shortcomings, the particularist claims that the state has no social or distributive justice duties to anyone but its constituents.

States are taken, by the particularist position, to have a right to independence based on i) the *representative* character of those states (representing the people that theoretically decide about their rules, future, and status quo) and ii) their *constitutive* role as central actors in the international realm. However, the hypothetical liberal justification for the state representativeness is lax in its application, which is a practical necessity if moral philosophy is to bear any place on everyday affairs but has the risk of

---

sovereignty in the case of states considered to be unjust, there is a consensus, through the affirmation of the respect for pluralism and self-determination, of the moral value of sovereignty as ideally representing political collective agency.

<sup>99</sup> For example, regarding parliamentary discussions, see Waldron (1999).

normalizing what applied theory accepts for the sake of pragmatic considerations, as the ethical baseline. The typical particularistic justification for the state's authority and justice postulates that a state is just, given the possibility of democratic participation. The downside, which is assumed by the application of principles, is that even having channels of participation, flaws in the system will keep some social groups under or misrepresented (in the middle of the process of improving the system) creating a de facto lack of protection of rights (especially those regarding social justice) or the misrecognition of some of the weakest positions in society.

The particularists, however, regard these flaws as part of the process of perfecting the system. As stated by Rawls (1971), even if actual institutions present grave injustices, as long as they keep focusing on equality of participation and opportunities, they are still compatible with the basic principles for justice. They therefore are legitimated as being in the process of perfecting the implementation of justice. Ongoing procedures and transactions will stabilize the system sooner or later.<sup>100</sup>

The concessive means of participation, even if criticized, are generally taken as permissible by political philosophy (for practical reasons) and then are inserted as having the individuals' moral value secured—and to some extent as incarnating a representative individual in the international scenario. The result is that if we take representation as the premise to be analyzed, given its role of defending individual autonomy, the liberal recommendation of making the international affairs to be managed as a problem of justice in transaction, correction of harm, and alleviation of social justice only through voluntary means—premise which is structurally analog to the libertarian recommendations for local justice—, concedes space to structural injustice twice: in the local level and the international level.

At the local level, particularists concede the possibility of neglecting justice for some of the most disadvantaged while, at the same time, the state is considered to be the only available political unit that protects social justice by enacting and enforcing equal consideration. This restriction raises two related problems: first, that the ongoing

---

<sup>100</sup> Rawls says: "As these institutions presently exist, they are riddled with grave injustices. But there presumably are ways of running them compatible with their basic design and intention so that the difference-principle is satisfied consistent with the demands of liberty and fair equality of opportunity. It is this fact which underlies our assurance that these arrangements can be made just." (Rawls, 1971, p. 87).

enclosures already delimit the scope of justice (at least in some respects, because we are not talking to individuals as such but to individuals that already appertain to political schemes that claim not only legal validity but also moral value); and second, regarding democracy (and pluralism), the drawing of a relation between self-determination and legitimacy. This second feature, defended among others by Maus (2006), creates an indissoluble relation between ongoing democracy and political legitimacy, and therefore sweeps aside the possibility of having politically legitimate claims of social justice beyond the reach of the present local democratic arrangements. Therefore, these concessions would make the particularist perspective very limited in terms of justifying that social and distributive justice should be kept as a matter of local procedural justice.

Particularists disregard the consideration according to which local sovereignty, and therefore the state's freedom, can only be accounted for by the background of international politics. Sovereignty and the state's freedom from obligations towards other states or individual outsiders have to be accounted for from the perspective of its political interaction (transactional and cooperative) with other actors in the global realm. Thus, the particularist defense of social justice, by saying that independently of the merits of your situation, the existence of background conditions of interaction will hold you both accountable and as a beneficiary of the social scheme of cooperation, could apply to the international realm: given that the state's freedom is enabled by an international system that defends its sovereignty and enables stability in economic interactions, the state's freedom, or sovereignty, is not incompatible with obligations of social and distributive justice within that broader system.



## Chapter 4. The need for overcoming particularism

### 4.1 Introduction

The main point of this chapter, which serves as a closure for the lines of argumentation presented in the previous two, is to state that liberal egalitarianism must endorse the idea of duties of justice beyond borders to be consistent with its professed concern for equality and distributive justice. This leads toward supporting a modification of the institutional framework of international justice. To defend this thesis, this chapter splits the argument into two parts. The first part contains two sub-theses in section 4.3 that jointly support a third one, which appears in section 4.4 and connects directly to the central thesis. Section 4.2 is dedicated to delineating a general framework for the debate between particularism and cosmopolitanism that opens the discussion of the argument.

The first part of the argument, which comes from the second chapter, retakes the discussion of the *moral indeterminacy* created by the lexicographical prioritization of rights and presents two lines of argument.

The first claims that the particularist justification for confining socio-economic justice to the state can and should be challenged because it fails to deliver what it promises at a local level. By neglecting the context within which states operate, particularism does not consider how external factors affect the state's local normative arrangements and institutional settings. Thus, the traditional defense of sovereignty does not necessarily enhance the self-determination of peoples because it does not consider how it is affected by international actors (private and public).

The second line makes the claim that the particularist solution to the international sphere—an international system of states organized in a way akin to the Westphalian model—is not enough for addressing the problems of justice that arise given international interdependency. The basis of this second line of argument is that the particularist theorization about justice is fixated on the idea of the state as the only source of justice, which does not match the ongoing global context in which NGOs, central banks, business partners, advocacy groups, and other actors have transnational relations which cannot be addressed locally. This mismatch is linked to an idealization

of the reach of state consent and of the representation of people in the international sphere, overlooking the lack of access of individuals to international justice when local justice does not address their demands of social justice. Moreover, as it is stated in the last section of this first part of the chapter, a salient and problematic characteristic of the particularist justification for the prescription of confining social justice to the state borders is an anachronistic fixation, of contemporary political philosophy, on the concept of the state. This fixation creates a mismatch between the egalitarian concerns of contemporary particularists with other aims of particularism. Additionally, it conceptually conflates the concepts of the state and the polity, enclosing, by definition, the political sphere—and therefore the sphere of justice—within the limits of the state.

The second part of the chapter, which is founded upon the analysis made in chapter 3, shows that, when considering the implications of the aforementioned lines of argument, we can postulate that, beyond state regulation, particularism gives up on justice. On the one hand, it is blind to its local shortcomings when superimposing the ideal of a meager international justice system over a more substantial local one. On the other, at the international level, by replacing the individual as the unit of moral value with the citizen, particularism ends up isolating the individual, instead of protecting her—membership, instead of shielding it becomes an isolation cage. As it is shown in the chapter, by proclaiming that socioeconomic rights ought to be let loose of enforceable obligations so that each state can decide and manage them on its own, particularism ends up defending a libertarian-like line of argument against the regulation of social and distributive arrangements. Thus, particularism's stance results in the extension of the institutional protection of justice mainly for those who are not in immediate need of such protection.

Following the critique outlined in this second part, which asserts that keeping the state-based approach to justice makes a libertarian out of the liberal particularist, two options are left open: either committing to egalitarianism and some transnational or global justice model accepting a libertarian configuration of the argument. This bipartite division of options could be criticized by pointing at the fact that what particularism is defending is a series of enclosed welfare states and that, then labeling that proposal as a libertarian one would be contradictory. However, the contradiction is

not in the labeling but in the proposal of an egalitarian form of particularism which can be described globally as libertarian.<sup>101</sup>

Briefly put, the problem is that if the injustice to be addressed is left to be solved by voluntary initiatives—therefore making the solution a somewhat supererogatory action—, there is a tacit statement that it is not a proper matter of justice. In fact, as stated in the second chapter, when talking about the lexicographical order of the principles of justice made by Rawls, saying that something—as the difference principle—is a (key) matter of justice, nevertheless devising no direct ways of addressing it, implies not taking it seriously as a matter of justice but as an aspiration. The problem is, in other words, that the theory seems to assert the ends as a matter of justice, leaving aside the means to achieve them.

## 4.2 The state-based ideal of socio-economic justice

Let us begin with the general context of the problem of this chapter by retrieving the debate about how to depict the global sphere—between particularists and cosmopolitans—and how to best address it from the perspective of justice.

The general description of the situation in the global realm that elicits the debate about global justice is based upon the dynamics created by the increase in relations across borders at many levels. As explained by Roger Cotterrell

*“To invoke “globalisation,” [...] is always problematic. To refer to it is to indicate a vast and indeterminate topic. Most often the term is taken to encompass a range of (possibly interrelated) changes in the nature of (i) transnational economic (commercial, financial, etc.) relations, (ii) population movements between countries, (iii) cultural influences, commitments and bonds, and (iv) processes of global communication. More specifically, it usually refers to claims about the increasing intensity and scale of these relations, movements and processes, and to a sense of the compression of global space and time, so that the transnational effects of events, situations and actions arise more quickly, directly and powerfully than in the past.” (Cotterrell, 2008, p. 1).*

---

<sup>101</sup> Letting socioeconomic justice, contrary to the case of political justice, operate separately in different jurisdictions, configures a system of states that resembles what Nozick devised as the free market of political communities which would create a set of options for individuals that could choose among them.

However problematic the delimitation of globalization can be, there are some points of general agreement—within the points mentioned by Cotterrell—that make the discussion between particularism and other theories possible. For example, regarding economic affairs, we find the organized actions of non-state actors, such as corporations and international chambers of commerce, that establish transnational rules for the management of their common-concern interests and dynamics. Additionally, corporations manage their production, commercialization, and taxation sites in a dispersed manner around the world. This creates dynamics that represent benefits for some actors but also problematic situations. For example, regarding the chain of production of clothing (which also apply for technology and other products as toys), which has sales around the world, production sites mostly in the global south and financial management spread between the global north and tax havens create the problem of finding someone directly accountable for the inhumane conditions under which the workers that produce the items live.<sup>102</sup> The problem is about working conditions *and* the legally elusive nature of these kinds of activities. As pointed by Young

*“Perhaps even more challenging to principles of democracy and the rule of law, the activities of some international actors, such as transnational corporations, sometimes escape the regulatory net of any state because they can shift jurisdictions. In these ways, as well as others, states today find their ability to regulate the institutional conditions within which their citizens live and work severely curtailed.”*  
(Young, 2007, p. 249).

Also, regarding economic operations, interconnected with the availability of opportunities to exercise political sovereignty and of the construction and sustenance of the identity of groups as peasant farmers or indigenous peoples, we find the global trade of land used for the production of food, biofuels, and mining, among others. In *Expulsions* (2014, Chapter 2), Sassen shows how the notable increase in land acquisitions, especially in the third world, by foreign agents, including governments and private businesses, is one of the ways the radical inequality entailed by expulsions is instantiated. Massive acquisitions create local displacement of people (usually poor, and in many cases farmers who, by being displaced, will lose the ability to feed themselves)

---

<sup>102</sup> See for example, “Responsibility Across Borders” in *Responsibility for Justice* (Young, 2011).

and transform territory into land, moving it from a political to an economical category.<sup>103</sup> Thus, these acquisitions have the effect of changing the scope of action of sovereign countries and undoing the intersection between territory and sovereignty, which was the analytical basis of the modern state.

These phenomena are common in contemporary times and join other trends, such as transnational regulation within corporations (applying to all their sites around the globe), that create conflicts with national regulation by the creation of transnational regulations,<sup>104</sup> and create normative instances which break the public/private divide, leaving the traditional public power over the life of individuals in private hands<sup>105</sup> by means of the functioning of workplace government in transnational corporations. But economic phenomena, being salient, are not the only relevant changes. There are also intergovernmental arrangements at different levels of legalization, political participation of NGOs and transnational advocacy groups in various domains of global governance, and international coordination of political parties and movements.

All these issues are acknowledged in the debate about global justice, as are the problems of poverty and very short lifespans in some parts of the world. However, the way in which these facts are framed and defined creates an entirely different approach from the parties involved in the debate. In any case, these phenomena have been normatively interpreted in different ways, according to the kind of framework used to approach it. In the next section, we will see the differences in the ways in which cosmopolitans and particularists have addressed the issue.

#### 4.2.1 State-based justice for particularists and cosmopolitans

Particularists reject the idea of the broadening of justice, mainly given the claim that the concentration of power would lead to bonds of dominion and oppression—

---

<sup>103</sup> This change represents the conversion of the traditional idea of national territory, subjected to decisions about social and distributive justice, into an economic category ruled by the principles of formal equality and private contracts. The statement advanced by Sassen regarding this point is that the economic transactions involving inter and transnational actors cannot be addressed by the Westphalian paradigm.

<sup>104</sup> See “Transnational Communities and the Concept of Law” (Cotterrell, 2008).

<sup>105</sup> For an extended account of how the public/private divide does not account for work relations and how there is a privatization of public power without significant accountability see “Private Government” (Anderson, 2017, Chapter 2).

these bonds refer not only to a centralized government<sup>106</sup> but also to an indirect way of oppression via the interference of powerful actors in the design and deployment of a worldwide political system. They see the international sphere as akin, to some extent, to the classic ideal of civil society, in which the participants—states, in this case—relate to each other as equals, freely making pacts and contracts and holding bonds of solidarity among them. Thus, states should be free to collaborate with others and, especially, to lead their own plans and actions the way they consider best. This analogy is restricted to pointing at the ideals of freedom to choose how to live one’s own life and an endorsement of plurality both as a way of respecting autonomy (individual and collective) and of promoting the common good (from a consequentialist perspective according to which difference improves, overall, the social sphere.)

This creates a framework for the particularist theory according to which states would be free to decide how justice unfolds in their specific contexts by means of the exercise of sovereignty. Any different kind of solution would be, for the particularist, distinct from that of a justice-based approach. The breach of that local limit to social and distributive justice is taken to be an invalid conceptual move or an inegalitarian proposal that counters self-determination and opens the door for domination<sup>107</sup> and tyranny.<sup>108</sup>

These features of the particularist defense of local-only justice are deeply rooted in the fixation on the state-based argument of traditional theories of distributive justice. This fixation is due to the use of lines of argument that respond to other problems (mostly being those of the creation and justification of the modern state back in the seventeenth and eighteenth centuries) favoring the confinement of justice to the boundaries of the state.

Added to the way in which Walzer and Rawls have defended particularism—by identifying the state as the only viable institutional arrangement for social justice (cf. sections 2.2.1 and 2.2.2)—and to the libertarian-like arguments used by particularism to

---

<sup>106</sup> Let us remember that the generality of particularist theories depict the problem of justice as a binary matter in which the only possibilities available are state-based particularism or cosmopolitanism in a literal way. This matter has been discussed in the second chapter (section 2.2) and in the third chapter (section 3.4.1.)

<sup>107</sup> I am using “domination” in the way republicanism has defined it: as being subjected to the possible exercise of arbitrary power. See Pettit (1997, Chapters 2–3) and more recently Young (2004) and Walzer (2004, Chapters 1–2).

<sup>108</sup> For a recent reflection of the susceptibility of global power to domination and tyranny see, for example, Walzer’s *A Foreign Policy for the Left* (Walzer, 2018, Chapters 5–6).

reject cosmopolitanism (presented in the last chapter in 3.4), three motives lead the particularist argument.<sup>109</sup>

First, the ideal of international responsibility in terms of humanitarianism and including clear positive obligations only in cases of very conspicuous and cruel injustice (as defended by Miller and others) is conceptually and institutionally simpler to manage. It is more readily available to ethical and political common sense (although it is a very debated topic even within the particularist theory). Humanitarianism, temporary bonds of cooperation, and direct accountability for justice (only under extreme cases of injustice) are closer to the organization of the world around a system of sovereign states that manage justice on their own, being able to make pacts about common efforts toward the amelioration of the protection of rights. On the other hand, the postulation of a global range of rights and political obligations seems too stringent and, at least *prima facie*, clashes against the principle of self-determination and with the particularist and democratic configuration of legitimacy around political participation in local political systems.

Second, as Nagel (2005) points out, the open exercise of power leads to claims for accountability; however, although power is desirable for political communities—since it enhances freedom, self-determination, and collective self-efficacy—, new bonds of accountability are not. Besides, the liberal praise for the values of self-determination and autonomy leads to a tendency to distrust international political bonds that complicate the system of legitimacy created by traditional particularist political philosophy. Hence, voluntary international cooperation backed only by the principle of beneficence or humanitarianism and the limited<sup>110</sup> relations that create an international civic sphere for states—in which institutions as the World Bank operate—, are better suited for particularism than imperative and enforceable bonds of obligation.

---

<sup>109</sup> These reasons are related to the reasons held by particularism to reject cosmopolitanism—which have the same structure of those of the libertarian against the egalitarian, presented in the previous chapter (consent, historical context, moralization of politics, and free riding). However, although related, the reasons here treated are focused on an explanation why particularism ends up defending a libertarian-like line of argument and therefore forced into the dichotomy of opting for libertarianism or some form of transnationalism or cosmopolitanism.

<sup>110</sup> These relations are limited since the international sphere mainly imposes second-order obligations on states (the obligation of doing something about rights, the environment, needed regulation, etc.), to be implemented, as a first-order obligation (the obligation of carrying out a particular path of action) domestically and realized internationally through inter-state cooperation.

Third, as seen in the previous chapters, a widespread line of particularist argument against the broadening of the bonds of justice beyond the state is the peril of oppression and tyranny and the threat to pluralism, assuming that self-determination, in the traditional sense of independent sovereignty, keeps autonomy and the power for the exercise of agency within the state so that it can use it toward the inside and be defended from outsiders' intrusions.<sup>111</sup>

These motives take particularism to defend the proposition of an international order of states which, as in works as *The Law of Peoples* (Rawls, 2002), *Toward Perpetual Peace* (Kant, 2006), or *A Foreign Policy for the Left* (Walzer, 2018), would ideally hold amicable and respectful relations among themselves. This leads us to see why particularism holds that relations among states are similar to those of civil society, in which participants are supposed to associate freely and remain independent of each other while, however, not being similar enough to legitimize the imposition of distributive or other socioeconomic duties.

By considering the descriptive part of the debate about the international sphere and focusing on the worst-off states, following particularism, we could state that an analog to the particularist ideal of justice is already in place at the international level. It could be taken as *a twist* of the difference principle that would keep the similarity between the local civil society and the international community of states without having to accept an overarching government or the distributive effects of local justice. According to the criterion of socioeconomic rights and wealth, the worst-off states have a compensatory benefit regarding the existing inequality among states: freedom from political oppression. The "twist" consists of regarding the disparity among states as permissible because intrinsically tied to the Westphalian dimension of politics, it assures the independence of states, especially for those counted as the worst-off.

To this extent, particularists acknowledge the international context in which economic relations take place, where some multilateral organizations and institutions act in different countries, where there are political negotiations for the establishment

---

<sup>111</sup> Notably, among these set of arguments, Maus (2010), Walzer (2018, Chapters 5–6), and Miller (2007).

of rules for issues as trade or immigration,<sup>112</sup> and in which countries deal with public and private entities, while, at the same time, keeping the role of exclusive national sovereignty as the basis for decisions and as a safeguard for the self-determination of peoples so that different communities can pursue justice in a way that reasonable disagreement<sup>113</sup> about how to pursue and deliver justice is protected and promoted. The particularists consider this way of organization beneficial, among other reasons, because the cost of failure is contained within closed communities—that can be held responsible since their failure to promote justice can be ascribable to the exercise of their agency—, keeping the possibility of helping burdened communities to mitigate those failures by means of international cooperation. On the side of the benefits of success, the particularist considers that any local success becomes an event available for replication. Coincidences in ways of managing justice would derive from the exercise of freedom, not the imposition of principles and practices, while keeping the opportunity of finely tuning those coincidences to the different local needs and political arrangements.

A prominent answer to this postulation of similarity between civil society and the international community of states is that, as Pogge (2005, 2009; 1992) or Beitz (2009; 1999, 2004) would argue from a cosmopolitan perspective, this similarity between the international realm and civil society is necessarily too strong as to be limited to the feature of the freedom of the parties involved. Hence, it would necessarily expand to distributive justice and, in general, to political matters. What cosmopolitans of this sort

---

<sup>112</sup> Within the discussion of these topics there are several pressure groups and public and private actors participating in political debate, outside the traditional realm of local sovereignty. A specific example of this kind of dynamic can be found in the business collective actions against transnational corruption. One of such mechanisms is called “integrity pacts”, in which there is the creation of standards, rules and procedures aiming at countering corruption. The salient characteristic of these pacts is that they are private-lead initiatives that may or may not include states or other public actors, aiming at public and private goods and interests (prevention of corruption makes the state better equipped for serving citizens and reduce costs for corporations in public biddings or transactions with other private actors). One of those initiatives, called Alliance for Integrity, define themselves as “The Alliance for Integrity is a platform that offers practical solutions to strengthen the compliance capacities of companies and their supply chains. In addition, the Alliance for Integrity contributes to the improvement of framework conditions by fostering dialogue between the public and private sectors. Therefore, the Alliance for Integrity is the significant global contact point for businesses countering corruption collectively” (<https://bit.ly/3xXHVXU>).

<sup>113</sup> Although I mention here “reasonable disagreement” in Rawlsian terms, the general idea is also fit for a Walzerian perspective of the problem according to which goods are the product of the interactions of a community, thus varying from one community to another.

argue for is an inversion of the particularist argument against justice beyond borders. The inversion of the argument claims that there is already a context of justice in which some parties, both private and public, face risks and benefits from how the overall institutional system works.

For example, reflecting on human rights generates an objection to particularist perspectives departing from their presuppositions. It follows from these theories that the primary responsibility for human rights is addressed at domestic-level societies and, therefore, states should take steps to guarantee enough resources for people to achieve the basic capabilities. However, since human rights are supposed to be a matter of global concern, something is missing in this framework. First, a state can have the capacity to fulfill the right but fail to do it effectively. Beitz argues that “the fact that there is a human right means that a government cannot object that external interference aimed at making good this failure, assuming this was to be feasible and likely to succeed, is a violation of its sovereign prerogatives” (C. R. Beitz, 2004, pp. 207–208). Second, society might have the will but lack the capacity; “in such cases, the human right to an adequate standard of living serves as the ground of a duty on appropriately placed outside agents to assist the society to satisfy the right” (C. R. Beitz, 2004, p. 208). In his view, “the right to an adequate standard of living is an element of the Law of Peoples, or as we might say, a requirement of international justice. It states a condition that anyone could reasonably expect social institutions to satisfy, and whose satisfaction in all societies represents a reasonable long-term goal of the international community” (C. R. Beitz, 2004, p. 210). Beitz does not consider that arriving at this conclusion needs to adopt an entirely cosmopolitan perspective, according to which the only unit of concern is the individual as a human being. On the contrary, it would be the result of a veil of ignorance (regarding economic situation) in a “global original position composed of representatives of peoples,” which would amount to the international community of peoples endorsed by the particularist perspective.

However, this line of argument, focused on the quarrel about the absence or existence of a context of justice in the international arena, just inverts the preoccupation of particularism. While particularism focuses on civil and political justice and keeps focusing on the possibility of addressing local justice through a better organization of the international system—like in Miller (2007)—, its cosmopolitan contestants say that

political and distributive injustices are possible precisely because of the state-based compartmentalization of the world: Governments can oppress their own people because of the blind protection of sovereignty and, in the case of states, other international actors can dominate these given the lack of more homogeneous or centralized governance.

From the cosmopolitan perspective, the most relevant part of the global affairs description is that there are worst-off states and worst-off people because of the international framework of justice. The flawed composition of the system is the cause of the problem, and it can be fixed by adjusting some parts of the international system without having to withdraw entirely from it. From a particularist perspective, the relevant part of the description is that inequalities are the product of a plurality of closed political communities and thus of a plurality of different exercises of political arrangements and the practice of self-determination. Inequality is, thus, a result of the international system, and, therefore, it presents at least some examples of how political experiments can be successful.

On the normative side, the conclusions of cosmopolitans and particularists pull further apart. For the particularist, the main conclusion is that protecting the values of sovereignty and self-determination calls for a state-based arrangement of political world affairs. Retaking the *twist* to the difference principle, international inequality, mild forms of injustice (as opposed to the explicit and brutal ones that would trigger the permissibility of international intervention) are *permissible* and therefore an acceptable outcome of an obligatory separation of states. This, given that i) separate polities keep us from a global system of domination<sup>114</sup> and ii) local misfortune is a product of an international system of states since it is caused by an ill-fated use of self-determination and sovereignty, which is a consequence of the right of peoples to err, try, and experiment with the definition of their fate as a political community. In other words, inequalities are permitted by the system, and this situation is desirable since it gives peoples the possibility of doing well due to their effort and luck—these peoples would be prevented from their good fortune in a global system of governance—and because

---

<sup>114</sup> Walzer (2018, Chapters 5–6), for example, says that in such a particularist system, wherever injustice rises it can be contained and there are some local and international mechanisms to try to avoid it.

this inequality is useful to have available support (technical know-how, resources, etc.) for those states struggling to find their way.

As we have seen, the cosmopolitan normative stance is that rich and powerful countries are profiting from the existing state of affairs and imposing their terms in international negotiations; and that several governments of the worst-off states (and their elites) are profiting from inegalitarian local conditions, and sometimes artificially creating them, because, given the international protection of sovereignty, no one can or is interested in stopping them. Hence, there should be a global regulation to correct those injustices. The de facto profits from the international system and the de facto inequalities and forms of exploitation made possible by the system call for an overarching regulation of states.

On the cosmopolitan side, although there are proposals for the dispersion of sovereignty, very few of them prescribe a world government, and, among the general lines of argument, the cosmopolitan position argues for distributive justice among states. Even the cosmopolitan position begins with the presupposition of the state as the entity conceptually tied to that of the polity, thus proposing distributions and compensation between states or taxations by states of private entities. Nonetheless, partly because prominent cosmopolitans as Pogge (2008; 1992), Beitz (2009; 1999) or Held (2004, 2005), take on the debate of Kantian input based mostly on Rawls' theory,<sup>115</sup> and partly because of moral philosophy's permission (or prescription) of the prioritization of the duties and obligations to those closest to us, even the cosmopolitan arguments in the mainstream debate about justice are based upon the ideas of enclosed states and moral proximity within the political borders. For better or worse, cosmopolitans still follow the particularist division of the world into states as main actors and distributors of justice.

At this point, it is important to consider that the discussion, both for particularists and cosmopolitans, relies on the background of a globalized world context discussed in

---

<sup>115</sup> Beitz and Pogge, for example, have advocated for applying the idea of "basic structure" at a global scale by pointing out that there are enough bonds of cooperation in the international sphere as to apply the two principles of justice stated by Rawls in *A Theory of Justice*.

4.2<sup>116</sup> that is accompanied and related to an intricate web of private and public international relations. This assumption of a global context does not imply begging the question of whether social justice is better accounted for by particularism or by an alternative model. Here the idea of a denser web of relations across borders is kept—something that particularists as Blake (2012) or Miller (2007, 2013) would accept—, while leaving the central question about how to understand social justice intact.

The disagreements over the use of the term “globalization”—and those related to it—lie in the discussion about how to address the economic, social, and political interactions that concern the debate (transnational corporations, outsourcing across borders, the constitution, and actions of institutions as the WB or the IMF, NGOs as the Red Cross, etc.). The problem arises in disagreement about the existence of anything that goes beyond the international political and economic jurisdictions. Those against the use of the term claim that a “globalized world” is nothing more than a complex set of international relations. This does not imply that this perspective is blind to the processes across orders but that social justice remains a local matter independent of the political, economic, or social movements involved. There cannot be a global social injustice to address since there is no global society.

Having offered an overview of the conflict between particularist and nonparticularist perspectives over the problematization of global (in)justice, let us now consider the argument, depicted in the introductory section of the chapter, challenging the particularist confinement of socioeconomic rights to the state and the critique of the inter-nations-based solution to the problems of global justice.

### 4.3 Justice and the enclosure of the social contract

If political philosophy is to be consistent with the preoccupations of egalitarian liberalism, then particularism, as the conceptual framework of justice, must be

---

<sup>116</sup> Based both on the common sense within the debate—the globalization of political and economic relations is agreed by most authors in the debate (among others Sangiovanni, Miller, Walzer, Ypi) the disagreement does not lie in the influence, across borders, of those relations but on how to solve them (thus creating the cosmopolitan/particularist debates)—as well as on particular works as Sassen’s (1996, 2014; 2006), Moyn’s (2018), Young’s (2006, 2007), Bauman’s (2005, 2011). The facts seem clear enough for the parts in the debate. However, when coming to the explanation, perspective and definition of those facts, the agreements come to an end.

overcome. To understand why, the findings of the previous chapters are helpful. The way these findings add up makes the foundation upon which the main argument of this chapter is built. In this section, I will explain, first, how particularism is intrinsically related to an egalitarian perspective about justice and, second, following this connection, how the particularist commitment to state-based justice creates dissonances with egalitarianism.

#### 4.3.1 The relation between particularism and egalitarianism

As it has been outlined in previous chapters, I take egalitarian liberalism as being preoccupied with assuring the conditions for granting rights to individuals and, correlatively, to peoples. Moreover, egalitarian particularism promotes relations in which individuals participate as equals, avoiding hierarchies at a social level. The liberal egalitarian point is, briefly put, that people should be able to decide and pursue their goals as equals among others, not depending on others' benevolence to pursue those goals.<sup>117</sup> Moreover, this liberal egalitarianism considers the need for keeping the individual as the source of moral value foundational, therefore putting persons before institutions.<sup>118</sup>

Following the division between liberalism and communitarianism, we can see that two salient theorists of the problem of social justice—Rawls and Walzer—are committed to egalitarianism so that people can pursue their life goals as free and equal persons among a myriad of others in the bounded space of the political community. The traditional liberal accounts of justice, as stated in the previous chapters, have devoted significant effort to pursuing egalitarian goals to empower the subjects in their social

---

<sup>117</sup> The dignity and respect predicated over people depend in making their liberty, and the means needed to exercise it, a matter of justice in which everyone, as an equal, can claim the respect and fulfillment of some of their legitimate interests, and not just awaiting them to be accommodated in someone else's will. As Anderson states while reflecting on Adam Smith's rejection of benevolence, "to depend on the good will of another for one's subsistence puts one at the mercy of the other, and under his subjection" (Anderson, 2017, p. 19). On Smith's rejection of benevolence, see also Fleischacker (2004, pp. 62–68).

<sup>118</sup> Regarding this point, a good example of the defense of this priority is Waldron's *Are Sovereigns Entitled to the Benefit of the International Rule of Law?* (2011). Waldron's point in that article is the problem involved in the application of the rule of law for sovereigns. In his words: "In the last resort, states are not the bearers of ultimate value. They exist for the sake of human individuals. To use Kant's terminology, they are not ends in themselves, but means for the nurture, protection, and freedom of those who are ends in themselves" (2011, p. 325).

life. On the one hand, we find Rawls, who reinstates the social contract in the political philosophy's investigations through the considerations of equality of opportunity and the difference principle. On the other, Walzer, with his proposal of non-domination, will later be a foundational idea in influential works about justice, such as P. Pettit's republicanism and I.M. Young's account of relational autonomy and relational self-determination.<sup>119</sup>

But independently of the kind of equality endorsed—the “equality of what?” debate has occupied liberal theory for decades, political philosophy, regarding the theorization about justice, has always taken inequality as bearing the burden of proof in the social realm; departures from equality ought to be justified and not the other way around.

The general idea behind this concern for social rights and the need to take distributive justice seriously is that, as stated by Dworkin in the introduction of *Sovereign Virtue*,

*“[...] the distribution of wealth is the product of a legal order: a citizen's wealth massively depends on which laws its community has enacted—not only its laws governing ownership, theft, contract, and tort, but its welfare law, tax law, labor law, civil rights law, environmental regulation law, and laws of practically everything else” (2002, p. 1)*

This has, as a correlate, the defense of public intervention in favor of social and economic rights by different means (redistribution, provision, subsidizing, etc.), given the acceptance of the idea that the existence of a system of rules and relations is the condition of possibility for the existence of the rights, resources, powers, permissions, etc., available to people.<sup>120</sup>

More generally, the idea under these conclusions is that the burdens and benefits generated by a system must be fairly distributed among those affected by it. Moreover, there is an acceptance of the primordial moral importance of the individual, and therefore, where there is no institutional setting to protect her—or the setting is insufficient—there is an obligation to foster its formation or reform. At the same time, these theories are particularist theories that, as we have seen before, justify and

---

<sup>119</sup> See, for example Pettit (1997) and Young (2004, 2011).

<sup>120</sup> A clear example of this line of argument can be found in *The Myth of Ownership* (Murphy & Nagel, 2002) or Feinberg's “Not With My Tax Money” (1994).

prescribe the state as the only source of obligations of justice and as its primary protector.

Thus, the mainstream theories of justice available today—which are included among the lines of egalitarian liberalism—share a preoccupation for the assurance of social justice<sup>121</sup> in a continuous manner during people’s lives in a way that differentiates this body of theory from the classical liberals, the self-proclaimed neoclassical liberals, and in particular from the neoliberals or libertarians.<sup>122</sup> Here it is important to emphasize that egalitarianism distinguishes itself from other accounts about rights and obligations since it makes people’s possibility of success in social life a matter of justice (something that can be claimed), the realization of which is an obligation for their peers, not something they do out of sheer solidarity, altruism or voluntary cooperation. Moreover, what makes them notably different is how they state and resolve the problem of accessing better living conditions and of fulfilling our moral obligations toward others.

Unlike these theories, nonegalitarian theories state that justice does not demand that the conditions for social justice be met but only accept the absence of direct interferences in the efforts to attain them. The point is that the equality of opportunity granted by liberals is only different from libertarian equality in that it secures the obligation to provide the means for equality of opportunity<sup>123</sup>, which are social and economic rights.

Besides, egalitarian theories are explicitly aware of the relation between their prescriptions and the set of criteria they do—or would—postulate as necessary and sufficient for the legitimacy of the exercise of political power and coercion. All these theories see egalitarian distribution as a critical feature of legitimate power. Although some authors, like Walzer, focus more intensely on the distribution of goods, and others, like Rawls, in the possibility of participating in the political processes that decide how

---

<sup>121</sup> Rawls, Walzer, Dworkin, Barry, Miller, Feinberg, and other authors that are representative of the liberal egalitarian stance of the theories of justice all have, by different means, ways of supporting the positive political duty of guaranteeing social justice in terms of public provision, allocation, and distribution.

<sup>122</sup> On the distinction see Brennan & Tomasi (2012, pp. 115–117).

<sup>123</sup> There is a long debate about if equality of opportunity is, in fact, an egalitarian proposal. Elizabeth Anderson is a salient example of such objections to the ideal of equality of opportunity, while Scanlon (2018, Chapter 5) proposes a relevant defense, by substantially intervening the general definition of the ideal.

the distributions will come about, the preoccupation for a more or less egalitarian distribution of resources as a way of giving subjects what is owed to them is a constant which defines them as a group (cf. Anderson (1999)).

As a framework for this preoccupation, which makes most of these theories particularist, it must be noted that the equality advocated by particularism is an ideal of social relations that understands them as those held among the *members* of a particular political society. As shown in the second chapter, in particularist theories, equality counts (substantially) only for those equalized by membership and, in particular, by *political* membership. Thus, equal standing and the avoidance of dependency on others' benevolence or goodwill is made a public matter. Because of the equality provided by membership and the (ideally) proportional contributions of all, individuals are given the possibility of claiming<sup>124</sup> decent<sup>125</sup> conditions of living. Due to their membership in political communities, their standing as persons and equals makes their interests a necessary consideration of justice instead of a desirable or supererogatory goal. Thus, the constitution of the polity is a moral imperative because it facilitates the delivery of our moral obligations toward others.<sup>126</sup> The purely prudential argument, according to which it is rational to join a polity given that the conditions it creates are better than the ones of not belonging to it, does not suffice for claiming obligations, having as a premise only the involuntary belonging to a polity.

However, although egalitarians care about distributive justice and socio-economic rights, their primary argument is initially founded on a negative perspective of rights: the right not to be unjustly intervened. This beginning of the foundation of those theories is related partly to a reactive nature of egalitarianism. In Walzer's words:

*"The root meaning of equality is negative; egalitarianism in its origins is an abolitionist politics. It aims at eliminating not all differences but a particular set of differences, and a different set in different times and places. Its targets are always specific: aristocratic privilege, capitalist*

---

<sup>124</sup> On the relevance of claiming as a constitutive feature of having a right see "The Nature and Value of Rights" (Feinberg, 1970).

<sup>125</sup> Here "decent" refers both to the basic social conditions for flourishing, as described by Gewirth (1996, Chapters 1–2), and to a social system which doesn't humiliate people as in Margalit (1996).

<sup>126</sup> Framing the problem as a matter of facilitating the accomplishment of duties makes the point clearer. It is not a matter of departing from an existent right but from the duty to instantiate and secure rights. Although not very common nowadays, a deontological perspective (based upon duties) would make a much clearer framework for the problem (cf. O'Neill, 2020).

*wealth, bureaucratic power, racial or sexual supremacy. [...] What is at stake is the ability of a group of people to dominate their fellows”*  
(Walzer, 1983, p. xii)

To this extent, the historical confinement of these theories and their concern for factual matters as those of feasibility and scarcity seem to make the absolute declaration of socioeconomic rights unreasonable, while that of some civil and political rights much more suited to particularism.<sup>127</sup> This negative approach makes particularism a natural approach to the problem because policing is easier under existent enclosures and already constituted jurisdictions and enforcement powers. Given different dynamics in different places, the assurance of negative rights is better thought of as a local matter. Especially when there is not much to provide but, instead, the task is to prohibit, it is best done, designed, and managed in situ. The most significant point here—about the initially negative character of egalitarianism—is that although there is much literature stressing the fact that there are hardly any (if any) purely negative rights, particularist skepticism about expanding the scope of positive duties is partly a reminder of the negative nature of egalitarianism. There is an overly careful attitude regarding the establishment of obligations due to the liberal ideal of making the system of justice as minimal as possible for autonomy to be protected and fostered. In other words, the tendency towards interpreting equality in a negative manner (eliminating active discrimination instead of actively demanding the creation of means and modification of institutions to fulfill the purposes of equality) added to the prioritization of civil and political rights over social and economic ones, is an incentive for particularism to remain within the paradigm of the state to interpret justice in the light of the availability of local institutions of adjudication, and inhibiting the possibilities created by the present inexistence of global ones.

Even if we take a broader perspective about rights—including the idea of positive obligations to fulfill any kind of right—, we find that even the idea of right seems to be taken legalistically (defined in terms of existing norms). However, what people can currently claim is far from enough to properly understand justice. Considering the label of “aspirational” assigned to human rights, which in turn appeals to enforcement as a

---

<sup>127</sup> But, at the same time, in the recognition of the benefits of political enclosure and making rights a matter of a collective and joint effort on the side of the state, particularism acknowledges that no right is costless.

precondition for a substantive act of claiming, we can see how the initially negative framework for obligations engenders reticence to demanding anything more than what the “pact” has already declared. The quest for justice, aiming at neutrality and impartiality, is not able to positively voice its principles, justified in the detached procedure of the hypothetical social contract or the spontaneous communitarian construction and agreement over goods and values examined by Walzer. However, this detachment cannot be in line with a principled explanation of equality, rights, and justice.

#### 4.3.2 Dissonances between particularism and egalitarianism

Although the initial prescription of particularism might be thought of as well suited to the problems it was attempting to answer, current problems do not match these particular ideas of the state, justice, or the social contract. It is sometimes difficult to acknowledge problematic statements—of theories—which are perfectly consistent with the sets of beliefs and interpretations one currently holds. When ideas or conceptual frameworks become part of a discipline’s common sense, their critical scrutiny becomes lax or inconsistent. Consequently, some mainstream arguments—and the sense of their interpretations—become part of the argumentative orthodoxy, limiting the range of acceptable and unacceptable interpretations, lines of argument, and uses of the mainstream theories and concepts. Such simplification hinders the work of philosophy.

As stated by M. Midgley (2011, Chapter 2), we keep schemes of thought that in many cases are not adjusted to the problems at hand, thus eliding the problems facing us to keep our old ways of understanding intact. One of these mismatches pointed by Midgley is the social contract. She does not go far in the argument since her aims in the book are more general; but here, I want to depart from that idea and state it, against particularism, when referred to justice.

Contrary to Locke’s or Kant’s, the contemporary struggle is not so much about tyranny—in the way experienced in their times. In addition, even though the embeddedness of goods in social groups or the necessary existence of different political groups for politics to exist can be debated, it is important to take into account that the

general experience of people includes the findings and creation of global similarities, shared ideas and beliefs, and broad transnational groups of people participating in the creation, sustenance, consumption, and promotion of goods.

Thus, using these considerations, we can see one of the foundations for a critique that identifies and retrieves key characteristics of the traditional perspectives about justice. Specifically, I want to show that the problematic fixation on the state is based upon the ideal of the need of a political community for bonds of justice to be ascribable and understandable and of the need of politics for a system of justice to operate. Abstracting these features, we get the ideas of the polity and of the right and duty of exercising politics. This abstraction gives us the opportunity of thinking about the organization of political bonds and institutions that make the opening necessary for justice. Philosophy cannot disregard these spaces in the face of their open manifestation in recent times. For example, although historically close, recent exchanges between the US and Colombia became politically salient given common political enterprises—in some right-wing parties in both countries—not just for advancing their nationally-based interests but hinting at common political interests and ideological struggles not only transnationally—as happening simultaneously—but coordinately.<sup>128</sup>

The particularist commitment to an egalitarian stance is problematic, starting at the local level. The problem at this level is that the delimitation of the circumstances of justice, and the reasons involved in the social contract, are incapable of taking external influencing factors into account unless the localized model of construction of justice is abandoned. This problematic feature of the particularist depiction of justice, in which states are considered as large territories with a somewhat homogenous population that exercises strong self-government and which is largely independent (generally self-sufficient),<sup>129</sup> by definition neglects the interdependency of states. Additionally, it confines social justice to the state, and by definition too, rules out relations that affect or determine the social conditions of living across borders—considering only unjust interference with the principles of sovereignty and self-determination. In short, the problem of particularism is, at this level, that it still depends on a moral model designed

---

<sup>128</sup> See the note made on October 27, 2020, by the Colombian newspaper El Tiempo about this case in <https://bit.ly/36MqcGH>.

<sup>129</sup> A critique of this perspective is found on Young's presentation of her relational model of self-determination. See Young (2000, Chapter 7, 2004, 2006).

and thought for a more contained set of social relations which, being a reaction to despotism (like in Locke (1980)[1689] and Rousseau (2002)[1762]), or international violence (e.g., Kant (2006)[1795]), prescribed that confinement as an aspiration of self-determination, not having in mind matters of social justice as a priority.

We can find the mismatch just mentioned when thinking about the roots of distributive justice, the social contract, and political legitimacy. In Locke's *Second Treatise*, rights that arise from ownership and property-owning were the basis for political participation, something that seems at odds with his idea of the fiduciary role of political authority and his endorsement of equality. In Rousseau's case, his primary preoccupation is the conservation of politics—thus thinking in terms of the citizen and not of the human being—partly because his idea of freedom (being governed by rules made or co-authored by those subjected to them) is focused in objecting and countering tyranny and because it depends on the assumption of citizenship as the most important part of a person's life (cf. Fleischacker, 2004, pp. 55–61). On the other hand, in the *Metaphysics of Morals* (1996), Kant talks about distributive justice in the way we conceive now the general idea of the rule of law, and not as a matter of socioeconomic justice.<sup>130</sup> However, they were not against social justice—in fact, in western philosophy, they are the pillars of it; they aimed at despotism and thought about the possibility of peace among nations. All these authors made key arguments for what we now call distributive and socioeconomic justice, and, based on pressing political and moral concerns, all of them prescribed state-based particularism. However, their main preoccupations were not social justice problems the way we conceive them now, but rather their perspective on the issue in their time.

Being loyal to the ideas of reasonable pluralism (Rawls), of the plurality of goods (Walzer), or a realist<sup>131</sup> version of distributive justice, the ideal of rights defined as morally relevant claims towards the state—defined, in turn, as a purposeful and

---

<sup>130</sup> “[...] when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice” (Kant, 1996, p. 86 [6:307]).

<sup>131</sup> I use “realist” in the way used by Valentini (2012) and Stemplowska (2017), to refer to perspectives as Waldron's (1999) or Sangiovanni's (2007, 2008, 2013), according to which, with respect to the Rawlsian standard, there should be more emphasis on accounting for feasibility constraints, on taking politics and its factual dynamics seriously, and on avoiding the moralization of politics.

organized system of cooperation<sup>132</sup>—delivers a consistent and principled procedure for the adjudication of rights and obligations. Therefore, this approach delivers a universal prescription in a way that the process remains the same, although the outcomes are left to be decided by factual deliberations involving those affected, admitting different ways of arranging social justice. The opening to different arrangements is intended to make these theories compatible with contextual particularities—for example, in terms of needs and preferences—and therefore with cultural, political, and moral pluralism.<sup>133</sup> Nevertheless, although we can see in that opening towards pluralism<sup>134</sup> an asset for theorizing about justice, the indeterminacy affects the outcomes of social justice—like the provision of affordable and quality public health or education systems—which are necessary for making egalitarian principles possible.

There we find the primary reason for the particularist rejection of broader perspectives about justice:<sup>135</sup> people’s entitlements, defined by the formal social processes of political decision-making, are all that anyone can legitimately claim. In other words, politically recognized rights are the only justified/justifiable rights. And it is at this point where the division between the prescriptive and the descriptive viewpoints brings problems into the particularist theory: the fact that moral normativity prevents me from demanding of others the positive support or fulfillment of interests of mine without their consent or recognition—direct, personally, or indirectly, by representative institutions—does not preclude the possibility of effecting political changes or of a sound political argument in favor of making my claim socially and legally legitimate. Thus, the statement that there are no global rights could be true, and the

---

<sup>132</sup> I refer here to the idea, generally consistent with the above-mentioned authors, according to which a fundamental characteristic of rights is the recognition of the right-holder as someone who can claim those rights. The recognition of agency is done through the enablement of self-efficacy of individuals by the possibility of claiming others (represented by the state), the protection of the object of the right. This idea can be traced to classic texts by authors as Feinberg (1970, 1973, Chapter 4) or Hart (1955). It must be clarified that I’m not following here the Hohfeldian (1917) distinction—*in personam/in rem*—that focuses in the addressee of the claim, but in the more general statement of the relevance of the claim.

<sup>133</sup> These considerations are also a way of addressing critiques as those of Sen (2011) according to which mainstream theories (which he calls “transcendental institutionalism”) are not helpful in addressing the questions about justice given their necessary detachedness from real contexts.

<sup>134</sup> Which is a foundational liberal standard from Locke’s *A Letter Concerning Toleration* (2003, pp. 211–254) to more recent accounts like Rawls (1993). For comments on these matters see, for example Freeman (2001; 2010) and Walzer (1990, 2004).

<sup>135</sup> Here I am addressing three points that directly connect with the three reasons for liberal egalitarianism to defend a particularist line of argument, presented in the introduction.

discussion about the need or political justifiability and viability of them would still be open. In other words, the descriptive negation of the existence of politically legitimate means of claiming the protection of rights from others beyond borders, contrary to the particularist assumption, is compatible with a political statement about the injustice effected through that lack of institutional means of claiming the protection of rights.

The next step taken by the particularist critiques is asserting that no global rights—or alike—are morally justifiable because they would obliterate the existing political arrangements and means of representation. This line of argument is repeated along particularists lines by several authors—e.g. Miller (2007, 2013), who says that justice must remain confined to the state given the special bonds it creates and because of the way justice is built; Walzer, too, seems preoccupied given the absence of a political arena for global politics (2018, Chapters 2, 5) and the way he conceives the creation of rights (1983); Maus (2006, 2010) points at the risk of despotism; Waldron (2010) highlights the absence of an independent cosmopolitan theory (a completely new theory different from the traditional liberal ones).

The particularist perspective ignores the difference between what can be politically claimed now and what ought to be claimable as a reasonable political argument. On the side of particularists, it would seem an easy answer to say simply that their position is based on a sound moral and political argument about what can be claimed. However, the point here is that particularists put aside their stance when making a normative theory which refers to how things ought to be, what rights and duties ought to be put in place, and what framework political theory should rely on—not a descriptive one—in which, as a law practitioner, the author refers to the available possibility in an already settled system of positive norms. The moral theory available for the particularist misrepresents the object matter of its research. As stated in chapter 2, the particularist does not see the difference between the initial social contract argument—a moral and political argument aimed at justifying the coercive power of the state—and the distinctively particularist one, according to which the state becomes the only possible legitimate arrangement for the enactment, enforcement, and adjudication of justice. This change and the new claim introduced along with it by particularism (the exclusivity, conceptual and practical of the state and justice) make the bond between the state and the political community a necessary one, both in a practical and normative

sense, based only on the historical contingency of the consolidation of the state-based model of political arrangement and of ordering justice.

However, on the one hand, political organization depends on political action: in practice, there are different kinds of communities (neighbors, corporations, etc.) that exert both pressure and electoral politics to change the direction of the state-based available political domain and to take away some of its permissions and powers (for example the deregulation of trade for the consolidation of global markets, NGOs playing a role in consolidating—voluntarily, for now—adhesions to different kinds of standards—as the ethical standards for production and dissemination of data). The pressure for deregulation is a direct political action by aiming at defining what the public sphere should include and exclude. Other standards, external to the state, what could be seen as private and civil institutions, thus not concerned with public politics, show a pattern not acknowledged by particularism and deeply relevant for cosmopolitans: civic action (unavoidably connected to the idea of civil society) and private arrangements<sup>136</sup> are referred to the establishment of standards of justice in matters of public interest: trade, data collection, production, and dissemination, corporate ethical standards for production, etc.—that directly affect rights (human rights in particular) to, for example, political participation and social and economic welfare. These regulations are not standards for a closed practice (as football matches) but of one that directly concerns everyone’s political interests.

Having reviewed the initial mismatches between particularism’s theorization and the problem of consent, the following section turns to deal with the problems of the social contract and the relation between law and ethics.

#### 4.3.4 Consent and the moralization of politics

Here, the problem in the particularist perspective is based on it stating that political permissibility is independent of a moral argument. This statement derives from the descriptive/prescriptive divide, in the sense that particularists affirm that political actions cannot be validated or permitted based only on a moral argument. This is what

---

<sup>136</sup> Defining what is private necessarily related to the delimitation of the public sphere.

has been traditionally called the problem of the moralization of politics. This is what particularism argues. However, that is not the distinction at play here. The problem is that particularism immediately converts any normative claim and discussion that is not referring to the state-based politics into a “moral” one, ignoring its political dimension and, at the same time, following the underappreciation of morals in the debates about politics to keep a space where to set aside unwanted claims.

Looking at the particularist argument against the moralization of politics, it seems that its most evident layer is sound: you cannot politically force people, through a moral argument, to follow rules they do not have politically consented to. Abstract justification is not enough for the legitimation of political decisions and, therefore, something more substantively linked to moral acceptability is required: an appeal to agency. This is the argument of consent as the basis of political legitimacy: consent is an autonomous act and, since no wrong can result from an autonomous act, political power, and its decisions, which follow from consent, can be said to be a prolongation of an individual’s autonomous act. The negative corollary of this argument is that the absence of consent nullifies the legitimacy of ruling over, and in the name of, the individual. However, consent is too stringent as a criterion of political legitimacy. On the one hand, almost no one factually and explicitly consents to the power of the state. On the other, representation will create a mismatch between what people consented to and what representatives will do.<sup>137</sup>

Since the premise of consent is a difficult one to hold,<sup>138</sup> in the particularist discourse, it mutates into the maxim “you cannot force people to anything outside their

---

<sup>137</sup> An enlightening example of how the act of representation implies the change of programmatic lines and principles, can be found in “Dirtying One’s Hands by Sharing a Polity With Others” (Waldron, 2018).

<sup>138</sup> The moral argument for consent as the basis of political legitimacy is as conceptually sound as it is inconvenient for applied arguments. On one side, asking for consent, to consider a political decision legitimate, fits perfectly with the liberal premises of prioritizing the individual and protecting autonomy. On the other side, in large political entities, factual consent of all the involved is unlikely to happen, therefore being a difficult criterion for deciding the legitimacy of political systems and their decisions. That is the reason why the idea of tacit consent has been recurred to, with the problematic objection according to which consent is either explicit or it is not consent at all—see “Justification and Legitimacy” (Simmons, 1999)—. Consequently, some other arguments have taken its place—like the obligation of fair play when involved in a cooperative scheme—ending up in the restatement of the protection of autonomy through political participation. But consent is too close to the concept of autonomy as to forfeit it. That’s why it is common to hear both in political theory and in everyday life about “the will of the people”, the undesirability of judicial activism, and about the principles of sovereignty and self-determination being protected by making consent a legitimacy criterion in the international realm.

institutional arrangements.”<sup>139</sup> This simplification puts the moral criterion of legitimation not on individual consent but on the artificial agreement about social rules and principles that are public and enforced most of the time. However, social arrangements are no better than individual consent in the legitimation of political power because, in addition to the possible mismatch between individual consent and social arrangements, both individuals and collectives could agree upon immoral normativity.<sup>140</sup> Therefore, individual and collective autonomy do not preclude an individual or collective injustice and immorality. To address this issue, in the particularist discourse, the idea of human rights is put forward to protect individuals from inadequate social arrangements. It is proposed that these international human rights should be the solution to local injustices.

However, the problem resurfaces: you cannot force peoples beyond what they explicitly have agreed upon. Therefore, human rights are taken as a matter of international consent. When examining the situation regarding consent in the international sphere, we find that second and third-generation rights are those with less stringent bonds of obligation, once again, per the lexicographical ordering of rights. Also, the lesser force and protection of second and third-generation rights—and in some instances the first-generation ones—is expected because, beyond borders, the ultimate goal is usually not built around the ideal of justice but around the more modest one peace.<sup>141</sup> These two prioritizations—the lexicographical one and the statement of peace over justice as the leading international goal—seem to point at the need of establishing the political conditions for the negotiation of rights and then, having that institutional basis, proceed with the rest.

However, here it is shown that, independently of the instantiation of the necessary political—or otherwise—means for the factual establishment of global rights, we can show that the available justifications for a national system of social justice

---

<sup>139</sup> Which is, at the same time, a different way of portraying the idea of the “all the subjected principle,” but focused on the subjection to power in terms of state-based legislation.

<sup>140</sup> An important remark about this point is that, as stated by O’Neill (2020), the discussion about (legal) justice always remits to an ethical argument.

<sup>141</sup> An exposition and critique of the prioritization of peace over justice in the international domain can be found in the second chapter of *Justice, Legitimacy, and Self-Determination* (Buchanan, 2007).

backed by an international system of states leave behind what is needed, in terms of justification, for the protection of social and economic rights.

Some of the reflections of Chapter 2 become of use at this point. There it was pointed that the proceduralization of (social) justice, added to the lexicographical organization of principles of justice—explicitly made by Rawls, tacitly accepted by Walzer in *Spheres of Justice* (1983), and prevalent among particularist thinkers as Miller (2007) or Blake (2012)—, creates indeterminacy concerning the duties and obligations of social justice and the means towards its achievement.

In other words, it creates a set of conditions in which socioeconomic justice is not directly addressed by the traditional theories of particularist justice. Then, there is no direct way to address the related injustices but only the indirect way of first addressing political participation issues. Although theories such as Rawls' trace a relation of determination of socioeconomic rights by civil and political ones—according to which, if solving the latter, the former would be solved too—we can doubt such determination given it is proved you can fail to accomplish social justice even if consistently keeping an acceptable degree of fulfillment of political participation and civil rights. However, socioeconomic justice is subordinated to political participation, and the legitimacy of political power is measured by the availability of political participation. Since socioeconomic justice, it is assumed, follows from the protection of the right to political participation, self-determination (which amounts to a collective political decision through representative and participatory means) must be granted, via the guarantee of sovereignty, to keep the flow of political participation.

Although sovereignty and legitimacy are different concepts and are not factual correlates, they are conflated by introducing the right to self-determination as the right practically equating them. At that point, the particularist theory takes the right of peoples to self-determination as the basis for both sovereignty and legitimacy; sovereignty, understood as the peoples' right to decide for themselves, and legitimacy, in turn, would be measured by the exercise of self-determination which, even imperfectly, would sustain it. Thus, the Rawlsian subordination of socio-economic rights under the right to political participation is reinforced because the political ordering of the system ends up being the guarantee of social rights, having as the basis for legitimacy the realization of a basic degree of civil and political rights.

In the particularist line of argument, the solution to the patterns of distribution is left to the patterns of participation. But that dependency has the flaw of creating a mutual dependence between political and social rights, which is broken, in the Rawlsian perspective, by the lexicographical ordering of the principles. The lack of attention over distribution and social rights would most likely end up in the breach of the conditions for the exercise of the principle of equality of opportunity.

From Walzer's communitarian perspective, although there is no statement of the lexicographical order and there is a solid commitment to socio-economic justice, there is a strong affirmation of the embeddedness of social goods in the state. This leads Walzer, first, to claim that the primary distribution to be made to talk about justice is membership—political membership in particular—and second, that it is within the political community that distribution can be validated and legitimized. Put another way, goods emerge from a set of nationally shared meanings and, thus, there cannot be a unification of criteria for distributive justice since different polities have been shaped in history in ways that make different distributive arrangements possible and valid, according to internal legitimation. In terms of the problem addressed here, Walzer gets to a similar point with Rawls—and with particularism, more generally. The distribution of membership is put outside the realm of distributive justice—unless it is a matter of special cases as naturalization or immigration—and political participation becomes the procedural validation of any pattern of distributive justice.

Although perfect justice is not something that could be reasonably expected to be realized and therefore cannot constitute a necessary precondition of the acceptability of a political system, it must be considered if there are limitations in the safeguards provided by ideal theory. It is important to reflect on the consequences of those shortcomings and in the way they would add up to the factors to consider when thinking about justice in broader-than-local scenarios.

Even an ideal theory must acknowledge its limitations to be consistent and make room for contingencies. In the case of particularism, the solution to unjust socio-economic and distributive arrangements is leaving the problem in the hands of deliberative and participatory processes, expecting that exercising them will solve the rough edges in the social system of justice. However, those processes are problematic as the second-level solution to the first-level deficiencies of the theory. Suboptimal

representation and deliberation, plus suboptimal social distributive arrangements, create, at the first level, significant weaknesses that make representation and deliberation a meager solution to the indirect way of addressing social justice. The aim here is not to deny the importance of those processes and their constitution as rights but to contend the scope of their reach in terms of solving the problems they are immersed in.

When talking about ideal theory, it is still possible to think about suboptimal representation and deliberation since the *ideal* character of a theory is, in most cases, related to compliance with rules and not in the perfection of procedures.<sup>142</sup> In fact, part of the design of ideal theory is considering which presuppositions should we make about human nature, the world we inhabit, etc.<sup>143</sup> At this point in meta-reflection—ideal theory thinking about its making—particularist theory does not hold, if scrutinized in relation to the contemporary world's context. Particularism's flaw can be made evident because the imperfection in procedures is not an obstacle to talk about the need for rules and principles for those procedures. Assessing if procedures materialize the principles attached to the rules is, precisely, the overlooked problem. Moreover, the existence of procedures and their evaluations is not enough reason for stating that no other procedures could be put in place given the political recognition and insistence in a political ought.

Particularist theories understand that the ideal conditions for the legitimacy of political power cannot be so stringent that no state will be able to fulfill them.<sup>144</sup> That is why, in the making of criteria of legitimation, these theories usually make clear that representation is not perfect and that one of the unavoidable outcomes of social life is inequality. For example, Walzer states that egalitarianism is not a matter of all

---

<sup>142</sup> See Stemplowska (2017) and Valentini (2012). Although Valentini has other two definitions for the division between ideal and non-ideal theory—utopian vs. realistic, and end-state vs transitional theory—, none of them depend on the perfection of procedures.

<sup>143</sup> Although authors as Cohen claim that principles are independent from facts (G. A. Cohen, 2003), this presuppositions are necessary to build the principles. His objection is focused against the limitation of principles given factual contingencies. In any case, Cohen does not enter the particularist-cosmopolitan debate.

<sup>144</sup> A branch of the discussion in political philosophy goes into this point. While traditional theories of justice and of legitimacy defend their criteria for legitimacy as a way of legitimizing actual states, philosophical anarchism claims that political legitimacy is either a conceptual impossibility (Wolff, 1998) or a historically unrealized condition without strong prospects of realization (Simmons, 1999). I briefly summarize this debate in (Hernández-Zambrano, 2019).

inequalities but about some of them and about how to deal with them politically. Another example is Waldron's *Law and Disagreement* (1999), which is partly dedicated to explaining how the institutionalization of the unavoidable social conflict and the balancing of representation and misrepresentation through the periodical change of government officials are conditions of democracy. However, no such contingencies are accounted for by particularists in the global justice debate. As pointed in chapter 2, their answer is to emphasize political participation,<sup>145</sup> direct or through representation, as an indirect solution to socioeconomic justice.

The aforementioned problems of the particularist stance relate to keeping the emphases of the lines of argument that in Locke, Rousseau, or Kant, served the purpose of defending the by then novel ideas of the social contract, equality of individuals, and the rule of law. Those are still relevant issues for political philosophy, but now the problem is more complex and involves the local political embeddedness in international public and private agreements about commerce, immigration, and other topics over which the population can only participate, politically, in a very indirect manner, and, as claimants, in very scarce occasions.

Reflecting on the emergence of the arguments that stressed the state basis for justice both materially and according to the common sense of the seventeenth and eighteenth centuries, what was available for distribution was how law and lawmaking were managed and distributed in a political system. The question, by now, has changed. The current argument is not about the installment of individual liberty and participation against theocratic or caste-based regimes but about how to conduct ongoing politics and justice amid a general discourse in which autonomy and self-determination are commonplace. The market and the wealth it created were not available for Rousseau or Kant. Nowadays, the ideals of meritocracy, market-created wealth, local equality under the law, and equality in market contracts are notions created as a follow up to the

---

<sup>145</sup> I use the terms "representation" and "political participation" as being connected within the present debate since the latter is usually framed in terms of the former when talking about the establishment, demand or discussion of rights. The way in which participation is usually taken to be done is by the consolidation of groups with common interests (sometimes sharing more profound identity traits) that commit to pressure or electoral politics through "representatives," who could be part of the community or politicians who undertake the advancement of the group's cause. A useful analysis of how practical politics unfolds regarding this particular topic can be found in *Political Action* (Walzer, 2019, Chapters 2–7). However, the degree to which participation is properly exercised by means of representative politics is one of the axes of the discussion, as proposed in Nancy Fraser's *Scales of Justice* (2010).

struggle for equality under the law that was pursued in the 18<sup>th</sup> century, and are part of the debate about what to do about the creation of that wealth, what should the place of politics be, and how, accordingly, should justice be framed.

Politics and its place have expanded in the way in which communication and economics have expanded. Politics, as “discovered” by feminists since the 60s, is everywhere and, nowadays, is among many broader scopes than those of the closed nation where foreigners are perceived far away and are only aliens. As stated by Nancy Fraser, the discussion about justice does not stop in the entitlements created by rights, and an equally pressing question is becoming foundational: among who should justice be theorized? In her words: “disputes that used to focus exclusively on the question of what is owed as a matter of justice to community members now turn quickly into disputes about who should count as a member, and which is the relevant community. Not just the “what” but also the “who” is up for grabs” (Fraser, 2010, p. 15).

#### 4.3.5 Distribution of risk: structural injustice and limitations in adjudication

In addition to the problem mentioned above—the particularist framing of the question of justice within the paradigm of the 18<sup>th</sup>-century political philosophy—and taking into account the question about how to best realize the values defended by the theory (hence, talking about how theory is deployed in practical terms)—an important consideration is not only how procedures work but how the inherent risks of political association (like oppression, misrecognition, and inequality) are treated and distributed in the traditional theories of justice. In this section, the problems created by risk in the particularist stance are analyzed to further understand the issue of the enclosure proposed by particularism.

The way in which politics has broadened and how it confined social relations still make and create inequalities and different kinds of interactions. As has always been the case, the configuration of the implicit and explicit political spaces generates unequally distributed risks, especially when kept out of sight. Knowing that at the social level there is a worst-off class to be expected, we see that unless there is an imperative obligation for the provision of a safety net—for the sake of discussion, let us assume the obligation

is state-held or, more broadly, a social one—two relevant problems menace the worse-off social position.

First, the risks related to the functioning of the social scheme seldom put the better-off at higher risk because, conceptually, those in that position would have to be put alongside the worse-off before being harmed more than them. In other words, being better-off makes people less vulnerable to risking socioeconomic lacks, and, on the other hand, that the worst-off are predictably prone to high risk. What has to be highlighted here is that taking into account that when talking about rights, the liberal egalitarian theory is usually talking about moral minimums,<sup>146</sup> assuming the doctor is in the better-off layer, the way from there to an unfulfilled right to decent housing or adequate nutrition would imply having to endure first the circumstances of those in less well-off positions.

Furthermore, the availability of resources and improvement for the worst-off are also lower. To some extent, the issue at hand is that risk—in its traditional understanding as a relation between possibility and magnitude of undesired events—of having socioeconomic lacks, and the risk of not being able to overcome those lacks grows as the person descends in the social pyramid, creating an uneven and, according to the liberal principle of equality (of opportunity or even luck), unjust distribution within the same social system and among people under the same rights-bearing status: citizens. As explained by Fraser, theories of justice—regarding distribution and recognition—have been deployed within what she calls the Keynesian Westphalian frame: “typically played out within modern territorial states, arguments about justice were assumed to concern relations among fellow citizens, to be subject to debate within national publics, and to contemplate redress by national states” (Fraser, 2010, p. 12).

Second, at an empirical level, political power and representation are usually tied to those in the privileged positions of society. The reason, beyond the lack of a proper

---

<sup>146</sup> Related to the idea of institutionalizable justice, and broadly following the “ought-implies-can” requirement, rights have been established as minimal requirements for legitimacy. Put in terms of justice, what we owe to one another has to be set to me minimum sufficient to deliver justice to all (fulfilling the principle of equality) while at the same time respecting everyone’s liberty (respecting the principle of autonomy.) The tale of the good Samaritan can illustrate the point: although the just action could have been providing basic aid to the man in need (the minimum required by justice) the good Samaritan went all the way into supererogatory action which, being laudable, is located beyond duty and can only rightfully emerge out of a voluntary decision of the subject.

delimitation of what Walzer calls the spheres of justice, is that power tends to concentrate according to the stabilization of social organization, and it is unlikely that those with political power are or will remain the worse-off in the social scheme.<sup>147</sup> Social stability may well come at the cost of a lack of social movement. Furthermore, the problem is that the political and civil means for the protection and fulfillment of rights are available for those whose rights are already entitled by law and out of the reach of those in need of protection. Then, when considering the problem of global justice, the problem is that local courts and legislators have limited competencies in addressing injustice, and that limitation becomes heftier if the problems faced are globally dispersed in terms of causes and consequences.

There are two risks that I want to highlight—through examples provided by Young (2011, Chapter 2) and Saffon & García-Villegas (2011)— to illustrate the problems of risk distribution and rights adjudication in the particularist paradigm of justice.<sup>148</sup>

Young's example is about Sandy, a salesclerk, who is told, in advance and according to the legal obligations and moral duties, that she must move out of the apartment she is renting. She lives on a small budget, has two children, and lives close to public transportation. Moving to another neighborhood implies extra costs for housing or lowering her housing quality, and the apartment she finally settles for, given its location, pushes her to buy a car. Assuming she has a way of surmounting these circumstances, an additional problem appears: she has to pay three months of rent in advance to secure her apartment. Given her circumstances, she cannot afford to pay for it. Once her renting contract expires, she will be homeless.

Young points at the fact that no one in the example does something wrong (regarding law, morals, or justice in the traditional sense), yet Sandy is put in harm's way with no foreseeable ways of recovering her social position. That is what Young calls structural injustice: when the everyday workings of the social system create extremely vulnerable positions in which people can be harmed without any identifiable wrongdoer.

---

<sup>147</sup> The foundations of this thesis is explained in *Spheres of Justice* (Walzer, 1983, Chapter 1).

<sup>148</sup> The writings mentioned are not taken step-by-step, and the examples are modified to fit the explanatory purpose, nevertheless without misleads or unjust decontextualization.

Young's example, used to illustrate how the regular functioning of a social system in which everyone does her or his part—hence, fitting the full compliance requirement of ideal theory—makes it clear that within a functional system of justice, in which there is no clear violation of rights,<sup>149</sup> considerable portions of the population are exposed to overwhelming risk, which is structural since it is continued and associated with a particular segment of the population.<sup>150</sup> This risk is distributed in a way in which the better off are almost entirely out of danger while the ones bearing the risk are those in the lowest economic layers of the society, and, interestingly, by a significant part of the people considered as middle-class.<sup>151</sup>

The problem, in short, is that even though it is possible to think about conditions of near to full employment and of factual access, by most of the people, to health or housing, those conditions can be, for most people, a fragile equilibrium which, if lost, cannot be self-attained or claimed back. Two relevant things happen to those at risk: given their position, their jobs, and income are not secure enough as to give the expectation of stability, and thus their social rights depend on the luck they have regarding the series of events they face; they depend on nothing going wrong.

This kind of social distribution of risks is at odds with the traditional theorization about justice, since, in theories of justice as Rawls' or Walzer's, an idea of equilibrium in risks, burdens, and assets lies behind the acceptance of asymmetrical distributions.

In Walzer's case, the idea of separating spheres of justice makes unequal distribution acceptable by avoiding dominance across different spheres—so that more money would not imply more political power, for example—therefore avoiding too that the lack in one sphere affects people in other spheres. On the side of Rawls, it is the ideas of fairness and of the difference principle that take on the problem, making a

---

<sup>149</sup> At least negative rights, which might be most rights in a social system.

<sup>150</sup> If we take the problem into account from an intersectionality perspective, we find that Sandy not only represents a significant portion of the middle-low class but also the increased vulnerability she is in given the social neglect of women, on top of what is explicitly mentioned in Young's example, we find that women are more affected than men when having to relocate, or by their role as caregivers. A vivid example of these issues around the globe is presented in *Invisible Women* (Criado Perez, 2019), especially in part three, or in *The Care Crisis* (Dowling, 2021).

<sup>151</sup> One example is the case of adjunct professors. Paid by the hour, depending on the opening of courses on the next semester, and spending part of the year in unemployment, lots of them, around the world (if not belonging to a rich family or having wide social capital), are in the same kind of risk as Sandy, the salesclerk in Young's example. For the American case see "This Is How You Kill a Profession", from Herb Childress <https://www.chronicle.com/interactives/2019-03-27-childress#article>).

system of compensations within the social realm that, for example, enables inequality to benefit the worst-off. This line of argument, translated from theories of distribution into theories of risk ethics, could be described as follows:

*“We can then regard exposure of a person to a risk as acceptable if it is part of a social system of risk-taking that works to her advantage. [...] Presumably, some people take larger risks on some occasions and others on other occasions, and in the long run all this evens out” (Hermansson & Hansson, 2007, p. 135).*

However, as shown by Young’s example, and as remarked by Hermansson and Hansson: “this argument is based on empirical assumptions that may not be true. If some members of society are systematically exposed to more than their share of the risks from many technologies or practices, then the argument is not tenable” (2007, p. 135).

The next example, which exemplifies the second problem mentioned above, is a factual one pointed by Saffon & García-Villegas (2011). In the cited article, the authors address the topic of judicial activism regarding social rights in the Colombian Constitutional Court in the period 1996-2006. In Colombia, non-egalitarian opinions have criticized the court’s activism, while the left-wing has praised it, both departing from the assumption of widespread activism on the part of the Court. However, the authors state that the assumption is misleading. Although dividing between CPR (civil and political rights) and ESCR (economic, social, and cultural rights), 55% of the court’s rulings are about ESCR, and among that percentage, court rulings are favorable to the claimants in 66% of the rulings, the authors claim that actual juridical activism is far less than assumed. The reason adduced in favor of their claim is supported in a double distinction concerning kinds of rulings: first, between rulings about social rights in general, and social rights as a benefit. Second, regarding the latter (social rights as a benefit), between social rights as due payment and social rights as a benefit in a strict sense.<sup>152</sup>

---

<sup>152</sup> The distinctions are, in the article between rulings about “derechos sociales en general” (social rights in general) and about “derechos sociales prestacionales” (which I translate as social rights as a benefit) and, regarding “derechos sociales prestacionales” between “derechos sociales que implican un pago de lo debido” (social rights as due payment) and “derechos prestacionales en sentido estricto” (social rights as a benefit in a strict sense).

Rulings about social rights, in general, refer to cases involving a right classified as “social” in the Colombian constitution but with no specific economic decision involved, while rulings about social rights as a benefit, besides being constitutionally classified as social rights, involve “an economic decision about if a service or subsidy should or should not be given to an individual or a group of people” (Saffon & García-Villegas, 2011, p. 92).<sup>153</sup> The subsequent distinction lies in that “social rights as due payment” are those cases that can be decided by establishing if there is an obligation, in this case on the side of the state, to give the claimant what he demands. This includes all cases where the claimant clearly has a right derived from a contractual or administrative relation. “Social rights as a benefit in the strict sense” include only the cases in which the economic decision ruled by the judge is not decided by the verification of a preexistent obligation but from what the judge considers necessary to fulfill that obligation, usually involving a non-preexistent economic disbursement.<sup>154</sup> These are the ones that imply judicial activism because those are the only ones that involve the introduction, by the judge, of features not explicitly contained in subjective rights.<sup>155</sup>

The findings of the paper are that from all the favorable Court’s rulings about social rights, less than 40% are benefits in the strict sense, which in the end amounts to a modest number (Saffon & García-Villegas, 2011, p. 103). For our current purposes, what ought to be emphasized is that even in the case of a court considered to be activist, like the Colombian Constitutional Court, the protection of rights not restrained to explicitly recognized claims and obligations is very limited. In other words, the majority of the court’s decisions are protections for those who are already protected, thus preservation of the *status quo*, while the rulings that do create protections and social transformation, although being important, are marginal and usually refer to individual cases, being too limited in their impact as to push for structural change (2011, p. 103). There is an invisibilization of those in need of protection that would, according to some authors, be compensated through courts’ activism. However, as shown in this article,

---

<sup>153</sup> Own translation.

<sup>154</sup> Cf. Saffon & García-Villegas (2011, p. 93).

<sup>155</sup> The inquiry into if judicial activism is right/wrong or desirable/undesirable, and about this is (or not) related to particular social and political contexts, is left aside. At this point the focus is how much can people claim in cases of need.

that is not the case. The pervasiveness of invisibilization implies a lack of representation, which is related to a lack of recognition in the institutional sphere.<sup>156</sup>

The point of Saffon & García-Villegas' example is that it shows how a national court, which is considered to be activist—and to this extent overly generous in terms of the allocation of the means necessary for granting rights—is not really activist. In this sense, the “progressive and activist” courts do not push the fulfillment of Economic, Social, and Cultural Rights (ESCR) beyond the suggestion of doing what is at hand on the part of states. Thinking about the idea of structural injustice, the problem is that many of the shortcomings in the fulfillment of rights are related to the lax enforcement of rights—to that extent, the doubt over if ESCR are de facto rights seems reasonable—or to the proclamation of general duties or obligations without a clear account of what the obligation means beyond a general idea of “might” implying “right” or “can” implying “ought.” Even activist courts are relatively shy in regard to expanding protections or enforcing particular means for the fulfillment of broadly stated rights, which breaks the argument of courts as a backup for the risks created by shortcomings in representation.

Here, the point to emphasize is the following: high courts, and the Colombian Constitutional Court, in particular, are institutions intended to be the final guardian of the rights of people. The possibility of such a court to revise legislation or prescribe positive action in favor of the fulfillment of rights is supposed to be one of the balances and assurances against injustice. However, two things become salient following the analysis made until this point. First, that this design has limitations locally, like any institution. And second, those limitations become invisible when thinking about how global externalities affect people. If an “activist” court struggles to deal with the local indeterminacy of norms and obligations, the effects of international interactions are not only beyond its jurisdiction but also its epistemological boundaries.

Summarizing these considerations, we could see the problem in three steps. First, particularism (within egalitarian liberalism) trusts courts to locally address the issues that could be neglected by traditional means of participation. Second, like any other institutional arrangement, this consideration is subjected to acceptable flaws that are not prioritized for perfection given the local scope of the problem and the costs

---

<sup>156</sup> This is what Fraser calls “misrepresentation,” related to the problem of “misframing,” according to which the institutional framework of political institutions does not fit the different communities involved.

involved in addressing them. Third, and very importantly, the problem of people only being able to access justice through local courts creates a problem when considering those local courts' scope of action. The mentioned scope can only enable courts to protect people from things that happen within the state jurisdiction, thus forming actions and omissions coming from or within the state. However, there are many externalities non accounted for by local standards that are causal contributors to local injustice.

Thus, as seen in chapter 3, locally-based legislation cannot account for particular and structural injustices that arise given the various and different kinds of interactions that occur beyond borders. In addition, local courts do not, and cannot, do much more to favor the fulfillment of people's rights—even when in places like Colombia, the so-called “constitutional block” (all the principles and rules that even when included in the constitution, are parameters for the constitutional control of laws)<sup>157</sup> includes human rights.

By adding these examples, we see how a system that would seem just for a particularist theory puts people at risk of losing the goods, means, and opportunities needed for the exercise of effective rights, which, once lost, are almost impossible to recover. Beyond Young's analysis, the problem in the first example is not directly one of representation. It is about being entitled to a basic standard of living. Extrapolating this issue to the debate of global justice, it is possible to find a relevant insight. The structural outcomes of the Westphalian division make people locally vulnerable to shifts in politics and economies. In other words, the local functioning of state matters is largely affected by international externalities that create or make part of the risks people undertake. As seen in this section, this risk would have to be accounted for in terms of distribution and participation but, precisely because of the presupposition of the independence of states and their internal affairs, traditional theories cannot account for those changes, which makes the problem politically invisible. So, following the first prong of the argument, in which the local configuration of particularist theory is the focus of analysis, we find some relevant issues.

---

<sup>157</sup> See the Colombian Constitutional Court's ruling T-280A/16 (<https://bit.ly/3nFW878>).

Reasonable citizens could opt for a social system in which the increase of risk in the lower level is compensated by more opportunities more generally.<sup>158</sup> It is not about the acceptance of principles, either. We could have a social agreement over the difference principle and still opt for a model of economic growth in which wealth is expected to flow from top to bottom in the social-economic pyramid. It is a matter of securing rights. Moreover, it is a matter of securing rights for those whose rights are not secured. And at that point, Saffon & Garcia-Villegas's example shows how difficult it is for a system to expand or perfect its protection. Consequently, we could say that the protection of rights is best accomplished for those whose rights are not in dire need of protection. This amounts to the conclusion of the first prong of the first argument, stated in the introduction, namely, that the particularist position is insufficient, on its own terms, to ensure social justice in the state legal order because of how its limitations create issues in addressing externalities. Although these limitations, as we will see in the next section, do not necessarily defeat the traditional theories of justice within their local scope, the magnitude of those shortcomings leave the theory powerless to address the non-local problems of our times.

#### *4.3.5.1 Local problems aggravated by global circumstances*

As a second prong of the argument hereby presented, now we have to add, to this local layer, the multiple ways in which external forces affect local social rights. Even if we were to assume that the amelioration of the democratic processes could address those problems in local justice, the problem of external sources for the unfulfillment of rights is not given a solution by the particularist framework. Here, we must come back to the idea of a “globalized context.” The dense web of cross-border economic interactions that take place in contemporary times, in which there is significant participation both of state and non-state actors, has deepened the political and economic interdependence of those involved.

---

<sup>158</sup> Cohen (2011, Chapter 12) makes this point by saying that there is no reason to assume that the contractors in the original position are necessarily risk-averse. A similar consideration is made in *Sovereign virtue* (Dworkin, 2002, Chapter 2,9).

As depicted by Sassen (1996, 2014), self-sufficiency and independence are not vital attributes of states, and those states are constantly involved in pushing and negotiating economic measures and strategies—like the adoption of austerity measures to counter the effects of an economic crisis—while at the same time having transnational non-state actors participating in the local and international political debates—where legal innovation and deregulation arise—either as members of a particular state, given the place of their headquarters, or as free entities bargaining with different political associations.<sup>159</sup> However, particularist theory keeps framing local justice as a matter of independent democratic deliberations among a somehow homogeneous citizenship tied together by political membership's rational and emotional bonds. Although the features emphasized by particularists are indeed a matter to consider, it is only a part of the conditions of emergence of the issues addressed by the debate about social rights.

Considering the two risks presented before, about the problematic distribution of risk and power, it is important to consider that, in dealing with them, careful attention has to be paid to the way they are generated and the way they are distributed. Young's example above shows that the origin of risks and harms is sometimes impossible to pin down to someone acting illegally or immorally. Moreover, as she proposes when talking about structural injustice at a global level (Young, 2007, Chapter 9, 2011, Chapter 5), even when harm can be identified (as in the case of inhumane working conditions in sweatshops), it might also be impossible to find a particular actor on whom to put the blame. That makes the problems of risks complex because finding the decision-maker or the directly responsible person might also be impossible. However, we could trace

---

<sup>159</sup> An insightful analysis of how phenomena as legal transplants, and the planned or spontaneous relations and coordination among national and transnational actors impact particular states (in this case Latin American ones) and the transformation of their legal systems can be consulted in Dezalay and Garth's *The Internationalization of Palace Wars* (2002). business lawyers, for example, became socially and professionally relevant in Latin American countries like Mexico because they became mediators between transnational corporations, and the local elites and governments. As depicted in the twelfth chapter of the book, these lawyers—given their place and role of mediators and their education influenced by the Chicago Boys—became key and were included in the public formation of institutions, legislation, etc. the democratic ideal of elections and decisions through bonds of political participation overlooks the sources of political and juridical change—one of which is the interaction with foreign private and political actors—by taking preferences as given, and not as a product of social and political interaction mediated by different reasons, actors, and public policies. Thus, avoiding the recognition of how politics is done—and unfolds in local decisions—outside of membership and jurisdiction, recognized and attributed to the sovereign state, creates an idealized idea of politics to meet the definition of the sovereign state.

the question about on whom the risk is imposed and under which kind of circumstances. Then we find identifiable—not local—representative subjects who cannot demand much of their governments because their governments cannot or will not do much.

This helps to clarify how the examples presented relate to the problem of global justice. On the one hand, Young's example, plus the concept of structural justice, shows that unlike what particularism presupposes, injustice cannot always be found through the verification of procedures or separated parts of a social system. A prominent example, put forward by her, is the sweatshops<sup>160</sup> created by the spread of chains of production and commercialization around the globe. Dispersed through different national territories and jurisdictions, responsibility also becomes disperse:

*“The structure of the global apparel industry diffuses responsibility for sweatshop conditions. Big-name retailers in North America and Europe rarely own and operate the factories in which clothes made to their orders are manufactured. Instead, there is a complex chain of production and distribution involving dozens or thousands of contractually distinct entities that bring the clothes manufactured in multiple places to the stores in which people buy them. In this system, each of the links in the chain believes itself to be operating close to the margin in a highly competitive environment, and usually is under heavy pressure to meet orders at low cost by firms higher up the chain. The firms higher up the chain, however, often have no legal responsibility for the policies and operations of the firms below with which they contract” (Young, 2011, p. 129).*

Following her line of argumentation, we find that justice and injustice arise under social processes and not through political association.<sup>161</sup> This is perfectly compatible with the conceptual construction of rights made by Locke and supports the same idea of obligations as the one held by Ronzoni (2009),<sup>162</sup> according to which politics must go where injustice is, and hence the former does not frame or contain the latter. Taking this into account, when considering Saffon & García-Villegas' example, we find two

---

<sup>160</sup> Defined in her own words: “So what am I referring to by the term “sweatshops”? Many garments, shoes, and other small consumer items whose production is labor-intensive are produced in relatively small manufacturing centers in less-developed countries. These small manufacturing centers usually operate at the bottom of a chain of specification, distribution, and marketing that often involves hundreds of distinct companies” (Young, 2011, p. 127).

<sup>161</sup> In Young's words “[...] obligations of justice arise between persons by virtue of the social processes that connect them; political institutions are the response to these obligations rather than their basis” (2007, p. 159).

<sup>162</sup> Ronzoni's idea of “background injustice” is generally coextensive with that of “structural injustice”.

things: first, that even a judicial system considered to be activist—as a compensation for an inegalitarian executive and legislative—has difficulties in dealing with local social justice; second, that a local court or legislator is very often powerless or unable to normatively notice patterns of injustice generated by transnational and global interactions as those depicted by Sassen or Young because, given our focus on blame, no responsibility is found in complex chains of causal relations.

These two examples, when read in terms of risks, show how the problem of injustice does not have to be traced through the idea of local identifiable causes and consequences—traditional theories of justice, partly because of their tight connection to the traditional interpretation of ethical theories, are ill-equipped to deal with uncertainty<sup>163</sup> and with the idea of depersonalized causes as something to consider when dealing with consequences<sup>164</sup>—but through the identification of risks, of who runs them, and the consideration of justice or fairness in the distribution of risks beyond the abstract contemplation of consent through a social contract (cf. Hansson, 2013, pp. 37–42). In other words, when the processes and causes of risks are globally spread and depend on the overlap of actions and decisions that appertain to different states, corporations, etc., the particularist local proposal for addressing justice necessarily falls short.

Summarizing, we see that the core of the problem presented in chapter 2, referred to as the indeterminacy problem, is that although the mainstream theories of justice care about social justice, the conceptual tools they provide as a solution for the protection of social rights is problematic because it does not address the issue directly. Generally, as can be seen in the work of authors as Miller or Rawls, there is an assumption about the need to protect civil and political rights, which seems like a good start, but then the presupposition is completed with two problematic statements. The first is that, as in Rawls, there are no moral facts outside the social agreements of the political community,<sup>165</sup> and the second one, endorsed by Walzer and Rawls, is that by

---

<sup>163</sup> See Hansson’s “Difficulties for Moral Theories” in *The Ethics of Risk: Ethical Analysis in an Uncertain World* (2013, Chapter 2).

<sup>164</sup> See “The Harmful Influence of Decision Theory on Ethics” (Hansson, 2010).

<sup>165</sup> The advantageous side here is that rules are public and clear to everyone even in the case of lack of unanimous agreement. In addition, it is supposed to prevent moral oppression by means of avoiding the imposition of private or partisan moral principles. The downside is that this precludes the possibility of

guaranteeing the right to political participation, the problems arising for social and economic rights will be solved. Both statements stress a common point: democratic arrangement and equal consideration in political matters will make social and distributive matters fall in order sooner or later in the nation-state context. However, that approach is too broad to address the current state of affairs.

#### 4.3.6 Considering motives and interests in the particularist justification

As a closing part of this section, where the first line of the argument is advanced, here I present the mismatch between the particularist framework for international law and the way in which collectives and individuals relate to it and motivate themselves to act within the system.

One of the problems of moral philosophy, and by proxy, political philosophy, is the failure to consider why people make wrong choices.<sup>166</sup> The usual assumption is that the reasonability of the social system will motivate people to act accordingly. But even at that ideal level, it ignores reasons to act otherwise as being irrational, unreasonable, or alike. Referring to our topic, the typical prescriptive model for international justice, put forward by particularist theorists and focused on providing a reasonable framework for a state-based model of social justice, leaves aside the problem of the available rationalizations and uses of the system of justice by the actors in it. Moreover, it leaves aside how the setting of the institutional principles and procedures comes into play with the general theory. In this case, the problem is that particularism leaves aside the moral consequences of the extrapolation of its local theory to the global realm.<sup>167</sup>

The point to be made here works in an analogous way to Cohen's critique of Rawls' perspective about the agreement on the difference principle (G. A. Cohen, 2008, Chapters 3–4, 7), according to which one of the problems of the Rawlsian perspective is

---

securing the unregulated details of the social arrangement that, although being part of the general moral agreement, are not positively enacted or enforced. This implies letting a society have a declaration of principles—both locally and internationally—and at the same time, not doing much about it, if anything at all.

<sup>166</sup> The problematic neglect of the features that make possible to act badly or in harmful ways is addressed, with respect to moral theory, by psychologists like Philip Zimbardo (2007) and Albert Bandura (2016).

<sup>167</sup> As seen in chapters two and three, the particularist rejection of cosmopolitan positions stem from the preservation of the particularist features of their political philosophy and not on any new possibilities open by the context about which they are theorizing.

not considering the possibility of someone, under the veil of ignorance, who is not as risk-averse as Rawls presupposes and who settles for a social arrangement more prone to inequality or failure than that the one supposed to be preferred from a maximin rationale. Similarly, the moral *indeterminacy* problem developed in chapter 2, and the *loophole* in the moral prescription of international justice fleshed out in chapter 3 point at the problem of understating the impact of what mainstream theories presuppose regarding the individual and collective moral motivation of the actors considered by the theories of justice.

Even at an ideal, abstract level, a sound moral theorization—which would include the topic of justice—has to account for how the prescriptive part of the theory defends human agency *given the way it works*. This relates to the problems of indeterminacy and the moral loophole precisely because it disregards the losses of representativeness along democratic channels and the problematic ideal of collective agency through public political institutions when stating self-determination, representation, and autonomy as the basis for the political legitimation of the international domain as a space to reinforce citizens' rights and the self-determination of sovereign states. By not considering its theoretical concessions, confronting the problem of global justice with the territorial and jurisdictional constraints of local theory neglects the very issue of the global domain: what to do with cross-borders influences and interactions from the perspective of a philosophical theorization about politics and justice. The point of the argument to reflect on is that philosophers tend to overlook the tools and mechanisms available for incurring harmful behavior when dealing with moral theory.

The problem I want to retrieve is how, occupied with making a normative system, it is easy to forget the relation between normative theory, motivation, and the way in which contraventions become possible. Although the analogy between moral disengagement and global injustice could initially appear farfetched, it becomes valuable when taking into account that what Bandura (2016) was thinking about agency and motives, although referred to the psychological nature of human beings, is parallel to the problem here discussed in two respects. First, because it connects the normative preoccupations of theory with the context in a way that it does not go from abstraction to idealization (O'Neill, 2016, p. 86) of the context to which theory is supposed to apply. In particular, Bandura talks about the process by which agency is exercised, and

motivation explains rationalizations that people and collectives do to avoid self-sanction—and to a great extent, social and legal sanctions too.<sup>168</sup> Even though Bandura does not pursue normative theory (he works on a psychological-descriptive perspective), his insights into the problem of disengaging moral requirements from actual behavior help understand how a normative system can create, unwillingly, spaces for a discrepancy between norms and actions. Second, because both are related problems since they refer to how are immoral actions related to ethical and legal rules and how they become more readily available to individual and collective motivation given the way in which the norms are presented, the context helps or prevents conformity and acceptance of those norms, and how norms and the context facilitate or block the attribution of responsibility.

Thus, a key issue to address is to make a moral system that not only prescribes but that frames those prescriptions in a way that aligns with the procedures and means of attribution of responsibility available within the generality of the normative system. Particularly, the issue to be emphasized here is that the Westphalian framing of justice makes bonds of global injustice invisible, making the connections between actors and harms either invisible or permissible, and misidentifying those who can adequately address the problem.

For example, at a local level, it was mistaken to assert that no regulation is needed for the management of debt in the access to housing because the economic and legal system's procedures make it reasonable for the actors in the sector (banks, debtors, etc.) to regulate themselves and that interfering with their autonomy is, at least prima facie, morally prohibited. As shown by the crisis of 2008 and in the mid-50s before that, it is not the case that self-regulation is to be presupposed.<sup>169</sup> Here it is important to take into account that although universal-ideal theory is useful, and it is necessary for conscious and consistent development of personal and institutional regulation (Estlund,

---

<sup>168</sup> Bandura (2016) dedicates significant efforts to analyze, from the standpoint of moral disengagement—the way in which we use our rational abilities to rationalize the actions that conflict with our moral principles, values, and rules—problems directly related to global justice: war on terrorism, environmental crime, and criminal activities in the corporate world.

<sup>169</sup> A good insight, regarding motivation, about moral misconduct in the corporate world can be found in Albert Bandura's (psychologist) "The Corporate World" (Bandura, 2016, Chapter 5). His perspective on the topic is relevant because it shows how normativity and regulation usually disregard the incentives and loopholes created by them, and thus the motivations and wrongful actions sometimes made permissible by the participants in the corporate world.

2008, 2017; Simmons, 2010), it needs to be aware of the kind of presuppositions it makes, and of how can it be related to a plausible depiction of the context in which it applies.

Related to this point, it is important to consider that in political philosophy, it is usual to acknowledge, mostly recently, the difference between ideal and non-ideal theory as a key feature for the theorization about justice (this distinction partly arises in the critique made by Amartya Sen<sup>170</sup> to John Rawls). However, that discussion neglects the crucial point of inquiring about the conditions of emergence of wrongful or unjust behavior (systemic, collective, or individual), focusing only on the external conditions of the distinction between ideal and non-ideal theory—as culture, history, scarcity of resources; or regarding the distinction based on compliance,<sup>171</sup> by only considering the question about if people and institutions behave according to the principles of justice established by the theory, and by the basic norms derived from those principles. Very little attention has been put in complementing the moral, political, and legal prescriptions with the dispositional, situational, and environmental conditions that make the emergence of the undesired –and desired—behavior possible.<sup>172</sup>

In other words, the problem lies in focusing on prescriptions without paying attention to the presuppositions about the conditions and contexts in which such prescriptions will operate. Too much weight is put on the reasons in favor of the desired courses of action and in the capability of the individual or collective will to opt for following those reasons and against competing reasons. These presuppositions are only marginally included, if at all, when talking about international justice. If good reasons and coherent arguments are all it takes for the design of a good theory or a normative system, barely anything beyond the categorical imperative would be necessary. But that is not the case, and the motivations for undesirable conduct must be considered.

---

<sup>170</sup> For a recent example, see “What Do We Want from a Theory of Justice?” (2006) or *The Idea of Justice* (2011, pp. 96–105).

<sup>171</sup> This is one of the most salient ways of delimiting the distinction between ideal and non-ideal theory, which stems from the Rawlsian delimitation: ideal theory is made for circumstances of full compliance with the principles of justice while non-ideal considers the context in which justice is analyzed as one of partial compliance.

<sup>172</sup> A notable exception is found in I.M. Young’s work, with the proposed changes in the model of responsibility and the idea of structural injustice.

Retrieving O'Neill's distinction between abstraction and idealization (2016, p. 86), we can say that eliding the problem of motivation from the consideration of a theory of justice makes the step from evaluative theory to prescriptive theory invalid. In other words, having the problem of global justice in mind, we cannot go from saying, as particularists do, that states must (evaluatively) take care of their people's socio-economic rights—meaning that states will be judged accordingly and that if all states undertake such task correctly, there will be an overall just global system—to saying that justice ought to be regarded locally (prescriptively) because our evaluative stance provides good reasons why states are endowed with the responsibility for granting social rights to their citizens. To take this into account, it is crucial to connect the problem of motivation with the problem of the interests at play in local and international justice domains.

If representation and self-determination are far from flawless and cannot play the part assigned to them by particularist theory, the alternative would be aiming for an independent justification of political authority, not based so much on representation or participation but the general benefits of a liberal kind of government. However, in that case, the whole debate would need to be remade since the basis of the particularist argument against justice across orders is, precisely, a matter of participation, representation, and self-determination. If, moreover, we take this representation to a further layer—the international realm—the represented values and interests cannot be those of the persons, but those of the state, and there are fewer reasons to take care of the local—sometimes considered as marginal—issues, where an important part of misrecognition, maldistribution, and misrepresentation take place. Even sticking to a representation-based model of justice, like the one defended by Fraser in *Scales of Justice* (2010), two things become apparent: the identification of whom should be included among the relevant members of a system of justice cannot depend on a Westphalian framework and, second, membership can not be statically presupposed since a continuous political process of framing produces it. With respect to the criterion for inclusion in considerations of justice—called the all-subjected principle by her—Fraser says:

*“let me recall the essential point: the all-subjected principle holds that what turns a collection of people into fellow members of a public is not*

*shared citizenship, or co-imbrication in a causal matrix, but rather their joint subjection to a structure of governance that set the ground rules for their interaction. For any given problem, accordingly, the relevant public should match the reach of the governance structure that regulates the relevant swath of social interaction. Where such structures transgress the borders of states, the corresponding public spheres must be transnational. Failing that, the opinion that they generate cannot be considered legitimate” (Fraser, 2010, p. 96).*

Thus, we must consider that the outcomes of a system of governance designed according to a theory of justice (or a general framework for theories of this kind) have to be taken into account. Knowing that implementation is always an imperfect action, it is important to acknowledge that the (moral) failures in practice are not always a failure to adjust to the theoretical design. Instead, many malfunctions can be coherent with the theoretical framework's voids, loose ends, or loopholes. In sum, the point to be stressed here is that outcomes matter—we cannot declare that they are “just” only because of being a result of a procedure without making the statement of their justice futile by making it a description of the result of a procedure, and not a normative statement about a state of affairs.<sup>173</sup> But the fallibility of people and the fallibility of normative and institutional design<sup>174</sup> is far from being thoroughly addressed in the mainstream theories of justice. Good examples of the theoretical problems are Cohen’s (2008) critiques of focusing justice only in institutional matters, Young’s critique (2006, 2011) of the mainstream theories’ blindness to structural injustice, and Ronzoni’s argument (2009) against those mainstream theories for not taking seriously enough the clause about not only supporting just institutions but creating them when needed to address problems of (background) injustice. Here, referring to global justice, we can find the specific problems of the *indeterminacy* and the *loophole*.

Until here, we have put forward the two initial lines of argument of the chapter, dealing with the problem about how the development of the arguments of the indeterminacy and the loophole are problematic because they make evident that particularist theories are not able to give a fitting account of local justice—given the forgetfulness of influences and relations beyond the limits of the state, or a solid

---

<sup>173</sup> See, for example, *Why Outcomes Matter* (Lindsay, 2018).

<sup>174</sup> The problem is not the way in which institutions can, in practice, go against their normative principles, but how they can go wrong because of the incentives created by the way they are designed.

solution for the local shortcomings through the proposal of an international system of justice.

#### 4.4 Local justice and international humanitarianism: particularism giving up on social justice

After concluding the first part of the chapter's argument, this second part proposes that by following the arguments stated in the first part and considering particularism's disregard of its limitations, the traditional stance about justice ends up following a line of argument akin to that of libertarianism and, thus, gives up on justice. Briefly, by keeping a statist description and prescription for global justice and, in the name of self-determination of peoples, making socioeconomic justice—at a global level—a matter of voluntary cooperation and agreement, the particularist stance ends up defending, normatively, a mainly formal account of global justice that isolates the individuals in need of protection from the institutional defense of their interests. Thus, as with Nozick and other libertarians focused on independence and voluntary agreements and transactions, the particularist stance gives up on providing a substantive normative framework for addressing the problems that—sometimes manifested locally—cannot be managed by the state and are not confined to it. By abstaining from addressing socioeconomic justice beyond borders, particularism is abstaining from addressing several of its local manifestations. Having nothing to say about these problems, it paradoxically gives up on *local* egalitarianism and *local* justice by giving up the global realm as a matter of justice. As shown in the previous sections, disregarding global externalities in the inner functioning of the state-based systems of justice trump the local fulfillment of the aims of the system.

To reach that conclusion, this section shows the problems created in defense of people's rights by the model of democratic representation when considering the difference between the interests discussed in the local political arena and the international one. Additionally, there is an analysis of the particularist prescription of internationalism as the only way of addressing international problems regarding social justice, and how it imposes a double burden on those in need given the separation it creates between them and the sources of injustice. The point in so doing is to show that

including the preoccupation of justice in the international sphere—also trying to avoid the realist prescription of the state’s interest as the source of political action in the international domain—is incompatible with addressing the international domain as a matter of humanitarianism or voluntary cooperation. And finally, that international law, as regulating relationships between states, is insufficient to account for transnational interdependency.

#### 4.4.1 The problems of representation

The normative relation of the individual with the international political order ends up mediated by the normative relation of the state with that international order. As mentioned before, this distribution seems *prima facie* adequate but, giving it a closer look, it shows a significant problem: considering that the individual legitimation of the state is given,<sup>175</sup> in contractualist theories, by the assurance of the right to participation or through the appeal to hypothetical consent, the legitimation of the international political order is done by the intermediation of the actual consent of the state in which the individual is located. Even supposing that the individual owes normative consent to a relatively decent state,<sup>176</sup> the legitimation of the international order would then depend on the representation of individuals’ interests by the state, which is in active relations with many other agents apart from its constituents. As we saw in the previous chapters, this means that the individual has no relation with the international political order unless given the possibility of participating in and making claims to that political order, which for now is not the case for matters regarding social justice at an international or global level. The particularist assumes that individuals participate in debates about international social justice via the medium of the state, which represents

---

<sup>175</sup> Meaning that political power is legitimated *to* the individual members of a polity. This perspective of legitimacy is key for the social contract and liberal traditions because although external legitimacy—facing other actors beside those of the polity—and other perspectives can be taken, within these traditions the most important feature of legitimation is the justification given to the individual that, by means of some version of the social contract, becomes a rights-bearing citizen.

<sup>176</sup> Put broadly, normative consent refers to the assumption of consent when it is morally required. Non-consent, thus, is invalid if it is morally wrong. For a full explanation of the idea of normative consent see *Democratic Authority* (Estlund, 2008), chapter 7: “Authority and Normative Consent”.

them in the international domain. That is not the case, and it is, precisely, the problem of the *particularist loophole* discussed in chapter 3.

The loophole problem refers to the relationship between the assigned external legitimacy<sup>177</sup> and justice from an international perspective. In the same way, in which libertarianism assumes that voluntary transactions and individual decisions serve social justice, particularism makes social justice a matter of local effort and decision. Additionally, unlike its local contractualist basis, when referred to the international sphere, particularism is mostly concerned about the historical existence and consolidation of democratic states, assuring the states' voluntary participation in any international pact, and granting them the privilege of non-intervention. These lines of argument, analog to those of libertarianism's attacks on local liberal egalitarianism, focus only on recent history and formal agreement, leaving aside the preoccupation about outcomes and the historical and structural injustices present in local and global history. States are granted independence and self-determination given they are portrayed as representatives of their people and as the constituents of the international realm.

Even Walzer, who does not radically discard the consideration of globalism and transnationalism, and who, following the communitarian line of argument, is less prone than Rawls to assigning a monolithic nature to political communities,<sup>178</sup> allowing for relative leniency towards cosmopolitanism and transnational arguments about social justice, states that the best course of action is perfecting and supporting the execution and expansion of international justice. In his words, "in the world as we know it, and as we are likely to know it for years to come, a decent state is the best agency for the protection of human rights" (Walzer, 2018, p. 119). This, as shown in the previous chapter, opens space for injustice by isolating the individual that would need to claim

---

<sup>177</sup> Legitimacy, considered as the ethical suitability of political authority has two sides: the internal one, which refers to the legitimacy that the state has, from the perspective of its participants; and the external one, which is the legitimacy of a state from the perspective of other states and international institutions. Although, ideally, both kinds of legitimacy should share the same set of criteria, in the particularist perspective they do not, based upon the ideal of respect for pluralism.

<sup>178</sup> Walzer renounces the ideas of cosmopolitanism and global justice for reasons different from that of the state-based nature of the political community. Mostly, he has empirical reservations given the historical development of communities. Additionally, as pointed by Andrew Vincent in "Liberal Nationalism and Communitarianism: An Ambiguous Association", communitarianism, in general is not permeated by the language of immanent statism (1997, p. 20).

the fulfillment of his rights from an agency that could press for such fulfillment against the agency that is falling short: the state.

The indeterminacy about the fulfillment of social rights is worsened by the moral loophole of the particularist theory, explained in chapter 3, regarding how to deal with the global, international, and transnational influence in the social conditions of the different local social arrangements. Partly, the problem is that particularism states that the state-based model is the best model available to pursue social justice and, as discussed in the previous chapter, that statement neglects the prescriptive character of their claim. The theory only lets us hope justice will be made locally—the risk here is the little local power, especially in the case of the countries where social rights have lesser protection over the form, structure, and nature of international forces. At the same time, there is a problem in that the force of the particularist justification, relying on the representational power of law-making processes and authoritative enforcement, will inevitably fade if more layers are added to this strand of representation while excluding other means of doing politics and enforcing justice.

The mismatch between the subjects of justice in the international sphere (states, according to the particularist framework) and those subjected to injustice (groups or individuals affected not only by states but by several non-state actors), and the relation between externalities and local (in)justice, which also implies an arbitrary selection of the parties involved, misframes the normativity of particularist theories of justice. Partly because of being framed in the traditional model of responsibility based upon guilt through causal relations in which the already available subjects (mostly states) must be “caught” causing harm to be liable to enforceable obligations, theories of justice miss the point of global injustices. Even Fraser, based on participation at a global scale as a proper way of dealing with injustice, misses the point of making responsibility an accountable responsibility beyond the mere bond of direct causation and guilt. The issue, following what has been called in psychology “theories of attribution,”<sup>179</sup> later developed by authors as Philip Zimbardo and philosophically used in theorizations as Iris Marion Young’s, is that injustice is not reduced to intentional agentic means,<sup>180</sup> but can

---

<sup>179</sup> Designed to trace bonds of causality and responsibility.

<sup>180</sup> Implying that no specific agent can be traced, by direct action or omission, as the cause

be causally attributed to situational or systemic forces, an emerging property<sup>181</sup> of, in this case, a system of justice which generally follows acceptable principles.

The problem of participation as the only means towards justice is that it leaves a diffuse responsibility to those in power (including states) to create space for participation—given that criteria for evaluating significant participation can be difficult to identify. That implies a modest commitment on their side (even when creating positive obligations as destining budget to make participatory spaces available) while putting most responsibility for justice in the representatives of those affected by injustice. Representation has many different complications as, for example, the relative number of representatives and advisors available for different countries in the international forums, which makes simple “representation” too broad a concept as to be consistent with the principles of equity and equality. Thus, the issue of structural justice could be better served by a system of justice that locates causal responsibility in the functioning of the structure of the system of justice [even when still to be created] and not just checking for the fulfillment of mostly negative obligations on the side of the best-off—not interfering with others’ participation—and positive ones on the side of the affected (or *subjected* in Fraser’s terms) parties.

To some extent, the problem lies in the way in which justice and injustice can be traced. When following the agentic features of the problem of justice, the procedural approach followed by theories of justice might be well suited for the task. As with the libertarian perspective, when agency fills the substance of justice, a basic procedure is left to guarantee the means toward its exercise. However, departing from the idea of structural injustice, where the substantive criteria can only be identified *in* factual conditions of living (work, health, housing, etc.) and not just in consent as leading to them, the *substance* of justice cannot be verified just utilizing procedural measures of participation, but through outcome-based rules of evaluation. Although it is a crucial feature of systemic justice and injustice, procedures cannot exhaust it. The faith in proceduralism makes this less noticeable because, following the indexical ordering of principles of justice of theories as Rawls’, these are seen as an obligatory result of the exercise of agency amid specific procedures. The traditional focus on procedures and

---

<sup>181</sup> As when Young describes Sandy’s impasse as traceable to the collective unjust outputs of individually just choices, without being the sum of every individual action.

the presupposition of agency should be compensated with some impersonal justice. Outcomes should matter. In an analogous way to that in which multidimensional poverty is measured (crowdedness of living spaces, access to health, wealth, and education, building materials, etc.), injustice should be measured not only concerning political agency but to political results. This gives us a more solid empirical and conceptual idea of what effecting justice means. While the sole idea of participation implies conjecturing about what agency means and how it can be evaluated, results can be measured and submitted for discussion.

Hence, the perspective of justice cannot be put in terms of other principles. Recognizing structural injustice means resisting its reduction to formal agency and making it more strongly a matter of results (which can be discussed and changed but not forgotten).

Summing up these considerations, to the extent to which particularism prescribes its representation system,<sup>182</sup> endorses an idea of autonomy and freedom which seems more suitable for the libertarian vote-with-your-feet expression of freedom at the international level (Nozick, 1974, p. 311) than with the egalitarian preoccupations forefronted by mainstream theorizations about justice. In other words, it seems that the mainstream body of theory endorses the inegalitarian consequences it is trying to prevent: that freedom becomes only assured for the better-off. The unwanted subjection to a particular political power—always highlighted in the right to emigrate—is made dependent on the persons' means to resist or negotiate with public authority, which is usually available if the person is already privileged within the system. For a privileged person in a system, a likely reason to exit is finding a less imposing system in terms of taxation, redistribution, or progressive distribution of the burdens of supporting a public system of authority, which can be taken as going against liberal egalitarianism.

Thus, we find good reasons for suspecting particularism as the basis for thinking about justice. The problem is that the generality of the particularist theory regards the different domestic political processes around the world not only as particular and distinct entities that help, in their variety, to make space and normative recognition of

---

<sup>182</sup> According to which the citizen has local-political means of representation and remains indirectly connected to human rights and broader prescriptions through the state.

pluralism, but as independent processes that decide about matters regarding independent sets of individuals, and independent sets of goods. However, the diversity of processes, people, and goods are not related as clearly as particularism assumes with the diversity depicted through jurisdictional lines. In brief, the particularist theorization of justice is well suited for the local justification of political power and enforcement only as long as the state is largely independent of its political surroundings. That is an empirical premise that cannot be taken for granted and that, with the day, becomes less suited to the object it is supposed to refer to.

#### 4.4.2 The double burden

As a result of the *indeterminacy* and *loophole* arguments, we find a significant related problem: When considering them together, we find that the particularist stance regarding global justice imposes a double burden on the worse-off, the people most in need of protection.

In the particularist account of global justice, the oppressed individual is left aside twice. The locally misrepresented are further left aside by the international acknowledgment of the state's legitimacy. That is partly possible because of the conflation of democracy with legitimacy. In cases of non-democratic regimes, sovereignty and its recognition are distinguished from legitimacy, but it does not seem to be the case for liberal or semi-liberal regimes.

Given that the justification of principles of justice, at least within the liberal theory, lies in the connection with the individual, the particularist position risks more in moral terms every time they move away from the individual, precisely because they keep the state as necessarily sovereign. The iteration and the superposition of decision-making procedures over rules of social justice create an increase if not in moral flaw, then certainly in moral and justificatory indeterminacy. As pointed out previously, the possibility of reliably assuming or predicting social outcomes is less, the more complex the structural machinery is, if it depends on the transitivity of representation. Therefore, the moral justification of the international decisions and procedures should be described

as being concessive twice<sup>183</sup> and, therefore, should be acknowledged to be very limited concerning the system's outcomes.

Locally, particularism concedes that some people suffer from structural injustice keeping the state, yet argue, at the same time, that the state is the only space for justice. This, in turn, delimits justice to the already available system (local system of justice), which, as seen before, is at least partially unjust. Then, regarding the international domain, it makes the recognition of states' legitimacy dependent mainly on the availability of democratic procedures—leaving aside social justice and the background of international politics and interactions which make sovereignty possible—ruling out the possibility of connecting the individual whose vital interests are not attended with the international system of justice.

Particularist accounts about international justice have a noticeable feature in their attempt to address (theoretically at least) international morality. The particularist theories usually confront, to some extent, the Hobbesian idea of the international sphere as a form of natural condition stabilized only by each state's pursuit of the national interest and mutual fear, by introducing standards of justice for the relations among states. However, this idea does not go far; the particularist stance defends current politics as a situation whose imperfection can be fixed within its own framework and, therefore, whose operation can be justified in terms of its fit into the possibility of becoming just through its appraisal as part of the particularist argument. This is stated even if its configuration is the one responsible for what Pogge (2005, 2008) calls loopholes in morality, what Young (2006, 2007, 2011) calls structural injustice, and what Ronzoni (2009, 2018) calls background injustice.

The optimistic take on the possibilities of improving the system depends mainly on the lexicographical organization of the principles of justice (which is, among egalitarian particularists, a common trend by prioritizing political freedom and participation as the key values and the only ones to be substantially defended) and the proceduralization of the "more difficult" decisions about justice, like distribution or the generality of social justice, usually through direct or indirect democratic participation.

---

<sup>183</sup> It concedes the limitations and problems of the particularist theory at the local level—knowing that there will be inequality and some people are going to be temporarily left behind—and then it neglects the concession it is making on the way in which, as shown in the exposition of the loophole, states act upon different interests in the local and in the global domains.

However, proceduralization, as it is, creates vacuums that make some political actions and structures, and other social phenomena and outcomes, invisible to the theory that is supposed to evaluate and prescribe over precisely those matters.

The problem is, in other words, that the mainstream discourse about justice assumes the automatic solution and arrangement of social justice issues, even for non-ideal scenarios (as said before, when acknowledging that the current international state of affairs, even if unjust, is justifiable given its capacity for change), in cases in which the inobservance of substantial requirements of justice is the cause of the injustice continually and systematically suffered by some sectors of the population.

As we saw in Saffon's and Young's examples presented previously in this chapter, the protection of rights for those in dire need become very problematic, since either the local theory of justice is incapable of fully grasping the origins and nature of the injustices suffered by people like Sandy, or the theory—and in practice, the system of justice—is unable to include them in the rights-bearing group of people the already positively and clearly acknowledges. The mainstream theories of justice, partly due to the prioritization of political rights and partly because of its inability to grasp the nature of some of the existing grievances and injustices, put those in dire need locally under the burden of being unlikely to be noticed under the normativity to address injustice. This shortcoming is then worsened by how particularism devices global justice. The problem for particularism is here related to the presupposition of the transitivity of representation which, as shown before, gradually fades starting from the most basic forms of representation. In addition to this issue in the insight into representative politics,<sup>184</sup> we also find the problem of how it has been common, both in theory and practice, to conceive the international domain as acceptably managed according to state interest, thus favoring the pacification of international affairs over its justice.

Allen Buchanan mentioned this problem and made an argument defending the need of prioritizing justice as the primary value in the international sphere and as a condition for the recognition of legitimacy (Buchanan, 2007, Chapter 2,6), making an argument in favor of the transnationalization of the obligations of justice in which there is a demand or the gradual standardization of the fulfillment of rights across borders,

---

<sup>184</sup> In which the need for agreement, and negotiation with diverse actors, forces representatives to adapt their moral position and the particular interests they defend (Cf. Waldron (2018)).

based upon state's consent. However, his proposal remains particularist and, essentially, keeps the lexicographical ordering of the principles of justice as its normative standard. That being the case, the loophole problem rises again. Buchanan's preoccupation makes evident that there is a strong need to create obligations of justice that bind international actors if liberal egalitarian principles are to be kept as part of the justification of the political domain at a global level. This need is due to the practical tendency of states, which does not frontally conflict with the particularist justification of international justice, to behave according to the principle of national interest, disregarding, or putting as secondary, the protection of the rights of individuals. In this respect, as Ronzoni (2009, 2013, 2018) claims, we must abandon the statist/cosmopolitan radical distinction and acknowledge that "the most pressing question regarding the current global order is not whether there is such a thing as a "global basic structure," but rather whether the relevant conditions that trigger the obligation to establish one actually obtain" (Ronzoni, 2009, p. 230).

#### 4.4.3 The impossibility of egalitarian particularism

The consequence of the main statement of the chapter, that is, that liberal egalitarianism needs to overcome particularism, is that if we care about (social) justice, the state must be thought of as a layer—probably a temporary one—among many others, in the pursuit of justice. Correlatively, the justification of a theory of justice would have to include a broader scope of groups, institutions, and actors than those of the courts, senate, traditional civil groups, and citizens within the territorial and jurisdictional borders of the state. Without eliminating the states' responsibility for justice, they cannot be the only and ultimate practical authority in the fulfillment of rights, which implies that claims for socioeconomic justice should be available beyond the figure of the states' representation of their individual constituents, and states, along with powerful global actors such as transnational corporations, should be more clearly accountable for injustices they create or perpetuate.

It is important to remember that establishing some criteria of justice needs not only to care for internal coherence but a general framework about what the world is like and to have a general perspective of the limitations of the theory, conceptually and in

practice. As stated before, particularist theories fall short in their presuppositions about human behavior, go beyond the acceptable limitations in their proposal for intra-state justice,<sup>185</sup> bound their principles, and restrict those principles to the national scope. Theories such as Rawls' or Miller's propose that *justice as a state matter* is a conceptual necessity, given the facts in the conformation of the modern state. However, although being a particularist, Walzer's source of defense for particularism is not principled; his rejection of a transnational or cosmopolitan model is based upon his skepticism about the factual political availability of the means for global justice. This difference among particularists is important because, in the Walzerian line of argument, there is no necessary restriction of justice to the state, but a likely one. In this way, he keeps an opening to noticing possibilities of injustice and how the available conceptual framework fails to account for them, which is an important philosophical step towards the solution.

A relevant source of the problem here discussed is that particularism introduces the idea of the state into its theories instead of more general ones as that of the polity. Although Rawls uses the term "peoples," this term is just the word he uses to refer to states that work properly in the general context of his theory.<sup>186</sup> This results problematic because if we do not depart from a broad concept—like the one of "polity"—the theory seems to be accepting too much of a contingency: enclosed territory, self-sufficient provision and production of goods, the belief of a shared fate among the members of the community, and, in sum, the idea of the state with all its historical meaning. Here it is important to include, in the discussion about justice, other ways of conceiving the concept of a political community (polity) that deals not only with the contemporary socio-political context but also, especially, with the possibility of the philosophical disenfranchisement of the idea of the political as a social contract among a people bound by the twofold bond of territory and jurisdiction within the context of the state.

---

<sup>185</sup> As stated before, perfect justice cannot be a reasonable expected factual outcome.

<sup>186</sup> In the case of Walzer, although he supports the advancement of the state and its improvement as the main way of addressing global injustices, his objection is more a matter of practical concern rather than a principled or conceptual prescription of the state: "Where might the workers of the world gather, if they were ever moved to act together? How will men and women scattered across the world's endangered environments ever find their way to a common geography and a common program? Still, global emancipation is a real politics, even if it isn't yet the work of the many" (Walzer, 2004, p. 134).

Even for milder particularists as Buchanan (2016), thinking about autonomy and self-determination as a matter of building states is a mistaken and regressive idea of emancipation. Although Buchanan addressed a thesis confronting the realist view that justice is a matter to be contained within the limits of the state while the international realm should be only governed by the aim of peace (the Westphalian goal), as explained in *Justice, Legitimacy and Self-Determination* (2007), his solution for taking justice seriously in the international realm ends up lying in the hope of international agreement upon the implementation of human rights. As in a Rawlsian perspective, this hope is put in the lexicographical order that leaves social justice as a subsidiary issue regarding the “stronger” civil and political rights. This perspective takes us back to the idea of having decent states but under the ideal of basic transnational enforceable obligations (which he takes as a dream to be accomplished by state consent to those rules). There we see the presupposition again: for the liberals, the state, for the communitarians, something closer to the meaning of the nation, but there is no thorough consideration of the concept behind those very particular social orders.

If we take the idea of the polity, which is still compatible with the liberal values endorsed by liberals and communitarians alike, we can be open to other ways of political organization that need not directly trump the way of the current state. Perhaps opening political philosophy to the general concept of the polity permits the opening to the idea of a new kind of political organization model to add to the plurality insistently emphasized by particularist theories.

Talking about the current conception of justice and its particularist framework, I propose that some revisions be made so that the way we frame justice and social justice is more compatible with the liberal-egalitarian nature of the classical theories of justice upon which the current debate is based. Particularly, something that should be considered is the possibility of stepping back from the particularist idea of *state-based justice* and moving towards a broader idea, that of a *polity-based justice*. Although the difference could look, at first sight, insignificant, it has the potential of keeping a foundational insight of classical theories—the necessity of delimitation for the functioning of justice—while building a way for these theories to think current politics, liberated from the misstep of prescribing the state as the primary and only actor of local, international, and global justice.

Any theorization about justice, to have any genuine purchase, has to account for some kind of special bond among the participants, some kind of membership that makes the identification and specification of duties, obligations, and right-claims available. The particularist tradition has brought significant consistency to moral and political thinking to this extent. However, this general idea has been traditionally concretized in the postulation of the need of the state for the existence of justice (and injustice), postulation which I have challenged in this and the previous chapters. To make the challenge hereby presented a viable way of thinking about justice, while at the same time being better suited to the globalized context we are living in, moral, legal, and political philosophy could benefit from reviving the idea of the polity as the basic concept and locus of justice. The reason is that it identifies relevant groups—beyond states and citizenship—and relations that can better capture the problems of justice, and therefore of social justice, that, as I have shown along the way in this thesis, are not adequately captured by traditional theories.

Traditionally, the idea of the polity has been tied to the idea of the state partly because, in the efforts of defining it in a philosophically sound way, it has been related to the concepts of governance and justice, which had been treated as part of the exclusive domain of the state. At the same time, following the particularist paradigm of international relations, the concept of law, its legitimacy, and its binding character have been tied to the state and the traditional concept of sovereignty. However, the link between law and state sovereignty can be contested. One example is Dworkin's article (2013) about the need to think about international law beyond the Westphalian paradigm, disconnecting the bindingness of international law from state consent. In that article, Dworkin opens the possibility of having international courts and even a global governance system without abdicating the general principles of liberal egalitarian theories of justice and legitimacy. The idea of the polity, based on the general idea of a political community and of political organization and influence, can foster the reform of traditional theories of justice so that the abandonment of the stringent normative prescription of the state as the basis for it can be revised. Examining the idea of the polity, being more abstract than that of the state, but concrete enough as to avoid the problems created by the very broad category of humanity, some salient features of the

core characteristics of justice can be revealed to depart from there towards an inclusion of the idea of the global within the theorization about justice.

Three things become important when trying to pin down the concept of polity in the realm of the debate about global justice: one, the idea of a community; two, the distinction between rights and duties; and three, the power and distributive abilities of the group.

Regarding the idea of “community,” we could approach it by postulating a group tied together by a special kind of bond, based upon internal or external dimensions, or a mixture of both. The external dimensions amount mostly to the recognition by others. This external recognition is usually the consequence of a claim on the part of the community, but it is not necessarily that way. It can also emerge from the identification of mistreatment or neglect of the group by social and institutional constituted ways of organization. The internal dimension<sup>187</sup> implies positive attitudes and dispositions of the members towards one another. However, these bonds and dispositions are very difficult to clearly measure or identify. In fact, as long as there is no apparent hostility toward the identification as a member of the community, especially for particularism, physical proximity and the existence of institutions seem to guarantee the existence of such bonds. The internal bonds are usually framed in the same way political philosophy frames the internal dimension of authority. The inner bonds of the community and the existence of internal authority are assumed to exist as long as enough<sup>188</sup> public officers are conforming to the legal system (cf. Raz, 2009) and some significant and effective institutional procedures being performed.

The problem of rights and duties is relevant to the analysis of the polity because it helps to understand how a conceptual framework or emphasis can change the normative considerations about what justice amounts to. After all, justice is largely based on the delimitation of what can be claimed or demanded from the actors involved. Through the emphasis on autonomy and individual capability of decision, particularism has advanced this point significantly. With an eye on the methodological prioritization of the individual, liberal-egalitarian theories have developed an account of

---

<sup>187</sup> Which goes beyond the existence of a common legal system or written constitution (both which can be determined externally without any actual internal involvement).

<sup>188</sup> There is no clear-cut measurement for this evaluative criterion.

rights, characterizing them both as the freedom to decide<sup>189</sup> and as the prerogative of claiming from others.<sup>190</sup> This makes the specification of rights and their correlative duties possible, hence making a template available for the legal and political delimitation of rights and obligations.

However, we must pay attention to the distinction between rights and duties. The relevance of the distinction between rights and duties becomes more apparent through the lens provided by O'Neill (2020). She says that the emphasis on rights, without considering duties independently, becomes problematic because it does not amount to the full spectrum of moral duties, nor does it let justice be complete without an infinite and impossible list of ever more specific rules.<sup>191</sup> Here, the contemporary perspective has tied rights and duties (or obligations) together as making an organic whole, privileging the former over the latter. Thus, we can see the rationales of the objection to human rights—especially third-generation ones—according to which these are only aspirations if there is no enforceable, individualized, and personalized duty attached to them. Additionally, this rationale also allows for an explanation of why, in the absence of an accountability and enforcement administrative body, no country or person could have a nonvoluntary obligation—or even duty<sup>192</sup>—towards someone outside their particular community (in the case of subjects) or their jurisdiction (in the case of enforcers); hence making everything else an aspiration. And indeed, it is an aspiration of practical realization, but it is different from plain desire since the basis for the proposition is a normative justification.

Third, if we take a general definition of polity, non-exchangeable with that of a constituted country, we will probably think of an organized structure of people that can be identified, which is capable of resource manipulation. Demanding distributive efficacy as a criterion for identifying a polity does a plausible job, for particularism, of

---

<sup>189</sup> As in accounts as Waldron's (1981), of rights as the moral right to decide.

<sup>190</sup> Cf. Feinberg (1970).

<sup>191</sup> The focus on positivized rights, when leaving ethical commitments and duties aside, would demand the constant specification of how rights operate in different contexts, which would mean, at the same time, the need of a continuous expansion of the rules of any positive system of rules. The point here is that the ethical consideration of the duties that could emerge in a nonsymmetrical relation to rights (duties that do not correspond to positivized and clearly delimited rights) plays a key role in the theorization about politics and justice.

<sup>192</sup> Authors as Valentini (2017b) say you could have a very diffuse moral duty but not an obligation of justice.

leaving aside still-to-be assemblies of people. However, it also denies, via effectiveness, the polity status of very weak countries (which keep the name in relation to previous recognition or legitimacy and not according to their actual powers). Although in neither case is the definition of the polity found, particularism recognizes the latter given symbolic effects, social disarray, and a precautionary principle.

After checking the three features that are usually involved in the definition of a polity, let us now turn to how they serve the construction of the ideas of polity and justice. The idea of justice arose by means of the conceptualization of a polity which, in terms of moral and political philosophy, implies having the power and community bonds that constitute a basic structure. The model of justice among members, according to particularists, implies a relationship of justice within the community and one of basic decency towards the outside. This is the moral extension of political obligation in an asymmetrical manner to those toward which we can only project force as a defense. In this case, the coherence toward the inside principles implies the obligation not to behave without normative limits towards the outside. To conform to the traditional idea of justice, obligations towards others are based upon reciprocity, pushed by necessity and force. Necessity builds the basis of a community, later gathered by enforcement. Enforcement is made available only by pooling resources (given that independence only allows for mutual threat), which, according to the particularist perspective, amounts to the distributive capacity of the state. However, this normative panorama is not as thorough as it intends. Within countries, some communities are mostly disconnected from the central sovereign power and build bonds of obligation locally, compensating for the absence of proper political institutions.

Thus, we find that a given group's degree of power(lessness) does not define what a polity necessarily is. In practice, the communal work of towns forms bonds that more appropriately account for the concept of polity than the weak bonds that tie them to the sovereign power—the institutional structure that is absent, probably being too weak or too corrupt to include them. However, following this path seems to point toward secession.<sup>193</sup> This leaves us with two questions: where should we start in the division of communities-polities? And according to which set of criteria?

---

<sup>193</sup> About this option of secession, and its related problem see Buchanan (1992, 2007, Chapter 7).

As morals, politics need to simplify to draw the line. While morals initially drew the line of moral consideration to include those in a closed community, later to humanity, and, more recently, to other species, politics drew it with an undetermined ideal of power: those with enough outside recognition, inner identification, and distributive capability would count as part of the political world. Anything beyond that is treated as private entities that would have to submit to the state division of the world. While moral argument leads toward universalization (prescribing different means toward the same value-realization purposes), politics pulls toward the inside-outside distinction to make practical power available for recognition and, ideally, accountability. But politics also divides itself beyond the practical and realistic definitions. The idea of the constitution that binds the polity and the idea of personhood behind the concept of sovereignty are abstractions, even idealizations, accepted mostly for practical solutions.

After considering the community bonds that are taken as polities by particularism and the bonds that could make a community a polity, there are two options open for political recognition. Recognizing institutionalized communities as the only possible sovereign entity and political actor or recognizing community bonds as power-enabling. Here I propose to follow the latter. It might sound utopian, but “utopia” is all that is left after theorization about the system declares itself to be complete and non-expandable. Consequently, politics has a moral agenda that ought not to be neglected in its practical deployment. Doing politics always implies doing ethics, and, therefore, it can only keep going about how it ought to be, beyond the power that now *is*. As is the case for morals, politics must mutate in the realization of its goals due to the circumstances.

It is essential to understand the relevance of this proposal. As announced in the introduction, my critique of the traditional particularist theories of justice offers an argument that serves the purpose of both abstracting and concretizing.

It abstracts in two ways. On the one hand, it takes the prescriptions and assumptions of traditional theories in an analysis that facilitates putting those features to the test, evaluating them through the lens of the general principles of justice that they endorse (autonomy, participation, distributive justice, etc.). On the other hand, it makes available what traditional theories have adequately identified as constitutive elements of justice while also finding the features in particularist theorization that

become problematic when closely examined. In other words, it depurates the discussion so that we can identify the elements of utmost importance for justice, positively picking the features—within particularism—that withstand critique and analyzing the misses of the theory (assumption of consent, lexicographical ordering, etc.).

Then, having the conceptual features that still stand in the particularist stance, the argument complements them with a characterization of the conditions that must be met. This step builds from a negative characterization through the critical analysis of the problematic features of the particularist perspective. After this characterization, the argument concretizes criteria that serve as the evaluative basis for a better understanding of global justice within the liberal egalitarian paradigm. These criteria are used to analyze Walzer and Held's proposals as an overview of the conceptual shift proposed in the thesis.

The concretization of criteria can be summed up in a list of features that characterizes the findings that emerged from the inquiries of the previous chapters. On the side of the negative characterization, which amounts to the features in the particularist theory that do not live up to its commitment to liberal egalitarianism, given conceptual difficulties or an anachronistic nature, we find among the most important, the following:

- An exaggerated reliance on the justificatory capability of consent.
- The concept of the state as the only actor of justice,<sup>194</sup> leaving no way of naming or recognizing those relations and excluding them, by definition, from the set of actors to be considered in the relations of justice.
- The anachronistic fixation in the initial questions of contractualist and egalitarian liberalism.
- The presupposition of the state as being largely independent of its political, economic, and social surroundings.
- The conflation of the ideas of polity, state, sovereignty, and legitimacy.
- The lexicographical ordering of normative and explanatory dimensions of rights.

Correspondingly, these should lead us towards a positive set of ideas to constitute the criteria for prescription, description, and evaluation of justice in the global domain:

- Consent must be compensated by paying attention to outcomes. Outcomes must be put to the test both from a concern of justice in its own right and as a test for

---

<sup>194</sup> Given it does not account for the relations that take place in the global realm and disincentivizes their political configuration. This disincentivizing is instantiated both by invisibilizing them.

the effectiveness of the measures devised for legitimizing consent (actual or hypothetical).

- The idea of the polity becomes central to the global justice problem since it broadens the spectrum of what we could include in the list of global actors and relations of justice.
- Letting the current questions—not the ones presupposed in the traditional formulation of theory—guide us in the conceptualization of justice. Thus, inquiring into a global sociology that envisions relations beyond those which traditionally are taken as the basis for justice.
- When paying attention to the factual web of relations, following ideas as those proposed by Young, theorists of the ethics of care as Virginia Held (2006), and O’Neill, we should consider all of those to whom we have a bond in the functioning of the global system. As O’Neill puts it, we should pay attention to those whom we must presuppose to advance our daily actions. This implies addressing, thoroughly, as Fraser (2010) considered, the problem of the *who* of justice.
- Separating the particularist perspective of the state from the concept of polity, and both of those from the concept of sovereignty (both as a right or as an effective control) and the substantive and procedural dimensions of legitimacy.
- Finally, in connection with the first point of this list, taking socioeconomic rights and duties (which can be independent) as related but separate from civil and political ones.

Beyond what can be traced directly to previous chapters of the thesis, these lists of features are connected to an ever-changing but foundational debate in political philosophy: the issue of how to account for politics. The conceptual, normative, and institutional dimensions of the debate about global justice are tightly connected to this discussion, especially since, as we have seen, one of the lines of defense of particularism lies in the necessary connection between politics and the state.

To a great extent, then, the problem behind the debate about global justice lies in the definition of what counts as politics and what is relevant for duties and obligations within it. As shown in the development of the argument here presented, the particularist emphasizes, in its delimitation of the matter, finding a juxtaposition of at least power, procedural and doctrinal means of legitimacy, some degree of effectiveness, and distributive justice capacities. This approach, following the particularist line of argument, points towards state-based politics. However, it falsely implies that the process follows a straight line from the identification of facts, to the conformation of definitions, to the establishment of moral and legal evaluations, and, finally, to operative

decisions.<sup>195</sup> When adopting an indexical point of view,<sup>196</sup> we find that facts, definitions, evaluations, and decisions are operating at once: power (fact),<sup>197</sup> means of legitimacy (which include definitions and recognized institutions and definitions), effectiveness, and distributive capacities (partly facts and partly imbued with the concepts of state and sovereignty), are taken together as the features that make something apt for politics and justice.

Nevertheless, we should start by acknowledging what the object of study can offer. Politics, and therefore the political, is not a stable set of facts or domains;<sup>198</sup> it shifts per our behavior, beliefs, and contexts. Thus, the definition of politics is elusive and subject to mutation. As noted by Carl Schmitt, in the general literature about the topic, “[o]ne seldom finds a clear definition of the political. The word is most frequently used negatively, in contrast to various other ideas, for example in such antitheses as politics and economy, politics and morality, politics and law” (2007, p. 20). And Schmitt himself refuses to provide such an encompassing definition. In his delimitation of the concept, he only goes as far as saying that “[t]he specific political distinction to which political actions and motives can be reduced is that between friend and enemy. *This provides a definition in the sense of a criterion and not as an exhaustive definition or one indicative of substantial content*”<sup>199</sup> (Schmitt, 2007, p. 26). Although time has passed since the publication of *The Concept of the Political*, this situation has not changed much.

Hence, even if subject to revisions, a step forward in the discussion is to find a set of criteria or a general conceptualization that better serves the discussion at hand. Considering the previous negative and positive characterizations of the features to be taken into account when thinking about global justice and the problem in the delimitation of the political as state-based pointed above, a more fruitful

---

<sup>195</sup> Implying that the items of the juxtaposition are facts that, once found together, are defined as politics, which then leads to an evaluation of who can and how to participate and be object of duties, rights, and obligations.

<sup>196</sup> Here understood as pointing to a set of features at a given time.

<sup>197</sup> Although we could go further and question the pure “factness” of power beyond the brute ability to influence the world—since, at a social level of analysis it implies representations, recognition, and predefined roles—for the present purposes it is presented as a fact.

<sup>198</sup> There are numerous discussions about the politization and depolitization of various activities and domains (sex, the private sphere, economics, etc.).

<sup>199</sup> Emphasis added.

conceptualization could build from the particularist ground a better-suited perspective of the problem.

In the task of defining politics, one usually finds references to the state, its decision powers, and the struggles for controlling its administration. But if, as done here, one questions the contingent actor embodied by the state in the definition of politics, the state should be referred to or attributable to something else for the concept to make sense. There, we could find another concept: that of the public sphere. If we abstract what the state is about in the traditional definition of politics, it could refer to the public sphere and its affairs, which would have to be defined independently of the concept of the state to avoid circular definitions. Then, the idea of the public sphere could be described in opposition to the private one, the latter understood as those matters outside of our common social bonds. Following this opposition, the public would amount to those things that affect our social relations, our being together in the world, while the private would be the rest of matters which, although affecting people and communities, would be kept from the common power of decision, to avoid the total dominion of social relationships over the lives and interests of persons and groups.

Departing from the features of power, procedural and doctrinal means of legitimacy, effectiveness, and distributive capacities, the idea of politics, state, and politics can be usefully reframed without presupposing a linear approach. When thought of in conjunction with the idea of the public sphere, we find that politics amounts to the relations and struggles concerning common, public issues and decisions, among which we can find distribution, coercion, mutual expectations, rules, roles, and justice. When making this abstraction, from the idea of the state into the idea of the public, we have defined a sphere for politics to take place outside of the traditional delimitation.

Moreover, we find five relevant features, inquiring further about how to frame politics concerning justice, liberated from the imbrication state/territory. When trying to identify a political phenomenon or context, we find that i) belonging and membership in a (political) community are seldom voluntary, ii) it includes structures that organize people's lives, iii) it involves some form of domination, iv) it has or aims at having distributive capacity, and v) it entails the availability of someone (pretending to be) speaking in the name of the community.

These features can accommodate both what particularism aims to include within the realm of the political (states are an adequate fit for the criteria proposed), new existent actors (as transnational corporations or NGOs), and would-be political communities—as in Fraser’s terms, *transnational public spheres*—. In addition to these inclusions, the proposed characterization of the political is also able to discern between a polity in the political sense and other communities or groups.

The features put into consideration here, although not being necessarily exhaustive, are a good start for developing an idea of the political which is not state-dependent but, at the same time, does not neglect it. This list helps us go beyond having common rules and some degree of observance to them, including the non-voluntary character of membership and the existence of the possibility of domination (which makes a difference with clubs or vocational associations, opening a space for thinking of it as a context of (in)justice in the public sphere), and includes the organization of life around a common set of values and the pretension, at least, of having distributive capacities.

The question that immediately arises regarding the proposition of the polity as the axis of analysis is: how would a polity-based system of global justice look like, or how could we move toward it? The answer can only be tentatively provided since there is no factual context pushing toward the materialization of these ends (transnational or cosmopolitan organization of justice), so the steps in the negotiation of different arrangements would still have to be framed by practical political means.

At the same time, the question about the factual features of a transnational or cosmopolitan project cannot be just dismissed, so, as a closing consideration for the present chapter, I briefly revise two proposals available which, suffices to mention, have not been done. The two proposals are, first, Walzer’s scheme in “Governing the World” (2010) and Held’s cosmopolitan basis for world governance, advanced in “Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective” (2004). Although there are accounts aiming at similar purposes, these two have the advantage of summarizing the spirit of other proposals and offering a clear institutional guide for the realization of an alternative framework for justice (unlike cases as Fraser’s (2010) in which the theoretical outline is proposed, but the institutional question is not addressed).

Although Walzer later published a skeptical perspective about anything beyond local justice, the doubt is cast in a pragmatical line of argument, probably concerned about immediate possibilities or realizations that, unfortunately, cosmopolitan projects are still not part of. On the other hand, Held's proposal shows how some constants can be traced among the cosmopolitan lines of argument so that a political-institutional proposal can be advanced. Among the most important, we find the equivalence principle,<sup>200</sup> that answers to the same preoccupation addressed with the “all-subjected principle” by Fraser;<sup>201</sup> the idea of global or transnational communities engaged in political action, and the possibility of transforming the social and political bases into concrete political distributive measures. According to Held,

*“This principle suggests that the span of a good’s benefits and costs should be matched with the span of the jurisdiction in which decisions are taken on that good. At its simplest, the principle suggests that those who are significantly affected by a global good or bad should have a say in its provision” (2004, p. 371).*

There are common points to the proposals hereby mentioned, among which a salient one is the creation and strengthening of transnational communities or polities. Then, let us now briefly check Walzer’s and Held’s suggestions.

After examining different possibilities that fit between the extremes of a world government and international anarchy guided only by national interest, Walzer arrives at an institutional arrangement that he calls the “third degree of global pluralism” (2010, p. 10). This arrangement amounts to having several authoritative regional governmental organizations and growth in cross-border civil associations. He outlines this arrangement as having the following features: an analogous institution to the UN with its own military force that can be used only by majoritarian approval of the General Assembly and the Security Council; an independent set of self-governed institutions as the World Bank, the IMF, and the WTO; large civic transnational organizations (including political parties that operate in different jurisdictions); and regional federations that

---

<sup>200</sup> Retaken by Held (2004) from “How to Improve the Provision of Public Goods” (Kaul et al., 2003, pp. 27–28).

<sup>201</sup> Although Fraser’s “all-subjected principle” specifically targets forms of governance that set the ground rules for interaction among subjects, which could be considered an improvement of the “all-affected principle”, the concern for global harms moves them both.

guarantee the global decentralization of power and therefore diminish the risks of tyrannical use of power.

However, these concessions on transnationalization come at the cost of leaving loose ends in minorities' protection; equality and distributive justice (because even if having possibilities of political organization in different locations and jurisdictions, there would not be centralized global enforcement of distributive justice or a "massed power of the globally dispossessed" against the powerful groups that militate against equality); and individual liberty since the guarantee of pluralism implies weaker individual protection even with a commitment to human rights.<sup>202</sup>

We see that Walzer's perspective can be taken as a plea for having a political sphere available to trigger distributive justice if it is to be coherently defended among egalitarian lines. This is stated looking at his focus in finding a model of political governance in the middle point between one in which there are only independent states whose relationships are based upon national self-interest, and one in which absolute centralization is materialized in an all-encompassing world state, while not totally departing from the current state of affairs.

Held's proposal departs from the assertion of political globalization that, in his words, "has been marked by the transformation of aspects of territorially based political decision-making, the development of regional and global organizations and, in many places, the increased importance of regional and international law" (D. Held, 2004, p. 366). However, two significant problems juxtapose with this context. The first is that "there is no clear division of labor among the myriad of international governmental agencies; functions often overlap, mandates frequently conflict, and aims and objectives too often get blurred" (2004, p. 368). The second problem "relates to the inertia found in the system of international agencies, or the inability of these agencies to mount collective problem-solving solutions when faced with disagreement over objectives, means, costs and so on" (2004, p. 369). To solve those problems, being loyal to the equivalence principle, he proposes reforms among which we find the constitution of an authoritative assembly of all states and agencies (either a reform or a complement to the General Assembly of the UN) to examine the most pressing global problems; the

---

<sup>202</sup> As it already happens in our contemporary system of human rights law.

creation of regional parliaments and governance structures—to avoid general centralization of power and sources of legitimacy; “the opening-up of functional IGOs (such as the WTO, IMF, and World Bank) to public examination and agenda-setting” (2004, p. 384); the creation of global governance structures where Intergovernmental Organizations (IGOs) are weak (regarding issues like environmental regulation); and the implementation of consultation procedures as referendums covering regional or global scopes for the implementation of cosmopolitan concerns. In sum,

*“[...] a cosmopolitan polity must involve the development of administrative capacity and independent political resources at regional and global levels. It would not call for the diminution per se of state power and capacity across the globe. Rather, it would seek to entrench and develop political institutions at regional and global levels as a necessary supplement to those at the level of the state.” (D. Held, 2004, p. 386)*

As we see in the two proposals just addressed, the consolidation of global and transnational polities is a key feature, as also is the institutionalization of means of participation for global democratic processes—which is the central feature proposed by Fraser as the political solution to problems of justice at a global level: participation through representation. I agree both with the need of strengthening transnational political communities and the institutionalization of global politics—which means the recognition of the exercise of power and calls for the accomplishment of legitimacy—but there is a point not stressed enough in those proposals, which becomes necessary for socioeconomic justice: the focus not only on structures and procedures, but on outcomes. By institutionalizing political relations, we have the opportunity not only of enhancing political debate but to demand particular and enforceable outcomes to be delivered legitimately. As stated by Lindsay,

*“Procedures can be justified only insofar as that they produce justifiable outcomes, and when they fail to do so, they have, ipso facto, failed. Moreover, if we acknowledge the epistemic limits of procedures (the fact that not all outcomes can be anticipated), we see that there can be no pure procedural justice – no system offering blanket legitimacy on all outcomes. At best, procedures are never more than provisionally just” (2018, p. 18)*

The institutionalization of power, making it legitimately coercive, creates availability for the introduction of clear standards of social justice to be accomplished. With regional and global structures of governance, the problems of the indeterminacy, the loophole, and the double burden, although not solved, can begin to be addressed.

As we have seen, particularists delineated a relevant point when asking about a special bond among people involved in relations of justice that could enable the delimitation of the contexts of justice (with the correspondent duties and obligations). However, when checking the features that characterize politics, in conjunction with the features to be taken into account for adequately understanding and evaluating global justice) we find that the bonds that tie people together in (political) communities and relations of membership are seldom voluntary. In a globalized context like the one we inhabit nowadays, our bonds to others in structural processes—parallel to the fortuitous nature of nationality—are not intended, yet are spaces for domination or justice.<sup>203</sup> Moreover, as also endorsed by Held and Walzer in the proposals just reviewed, the nowadays recognized political institutions and actors of justice (mainly states) should not be the only ones acknowledged, but also the potential constitution of new communities, polities, and institutions, based in the possibility of delivering the content of socioeconomic rights and not only on their structure in their current theorization—based on voluntary consent but also the progressive instantiation of those rights.

In their own way, the proposals for institutionalization sketched by Held and Walzer advance the conceptual and methodological features I endorse: putting the state among other actors in the global political sphere—thus separating the concept of state from that of the polity—institutionalizing cross borders practices, communities, and governance structures, and creating spaces for politics to take place and justice to be claimed. Some problems are left open, as the issue of considering outcomes or the balance between individual and collective protection, but, as we have seen, the solution to these problems partly depends on the proper framing of the theoretical problem, which is the endeavor of the present work.

---

<sup>203</sup> Examples can be found as in Young's depiction of structural injustice through the illustration of Sandy's situation—retrieved in section 4.3.5—or, more generally, in the consideration of how influences and sources of justice and injustice shape the national enclosures.

In conclusion, it is pertinent to remind the general structure of the chapter. I defended the thesis according to which liberal egalitarianism must endorse the idea of duties of justice beyond borders to remain consistent with its concern for equality and distributive justice. To support this main thesis, the chapter advanced three sub-theses that jointly serve as a critique of the traditional particularist model of justice for the global realm and as a new argument in favor of transnationalization and cosmopolitanism.

The first sub-thesis is that the particularist justification for confining justice within the state should be challenged because it does not deliver what it promises (locally) because of ignoring how factors external to the state affect its justice-delivering capabilities.

The second sub-thesis was that the particularist solution to the international sphere—an international system of states—is not enough for addressing the problems of justice that arise due to international interdependency.

Finally, the third sub-thesis, considering the implications of sub-theses 1 and 2, is that unless it abandons the traditional Westphalian model and moves towards a more global or at least transnational framework for justice, particularism ends up giving up on justice. First, because it is blind to its own theoretical shortcomings in the local and international spheres, and particularly in how those issues add up. Second, because given the strong defense of sovereignty, membership in a state does not help in accessing justice. Instead, citizenship isolates the individual, preventing him from accessing international justice to address state injustices.



## Conclusion

The impact of this thesis is not only about considering the need to take justice across borders as a pressing issue for soundly addressing the problem but also the justification of the need to rethinking the prescriptive and evaluative endeavors provided by mainstream political philosophy.<sup>204</sup> Given the analysis and arguments presented, particularism is not a suitable theoretical basis for thinking about justice beyond the state, even with identifiable injustices in that broad sphere. A general revision of the framework used for the theorization of justice must be made to keep coherence and consistency in liberal egalitarian theories.

As a result of the considerations made during the thesis—and the correlated problems they create for particularism—can only be solved, if at all, if the *de facto* context of politics is kept, factually, local. In other words, the reach of the mainstream theories of justice is limited by the questions, times, and spaces they are inquiring about; political philosophy refers to particular contexts and circumstances. Thus, particularism is, given the way it is framed, ill-equipped for providing guidance to deal with structural or background injustices not confined to the local system of rules; it is not able to assess a deeply intertwined world in which actors are not only states but different kinds of public, private and mixed institutions.

Making this point does not imply stating the expiration of the contributions of such a body of theory but the need to address how it relates to the political scenarios it is intendedly about. It is worth noting that it is not only about the sociological facts related to globalization processes that matter here—although they play an important role. The issue at hand is a matter of revisiting and revising the presuppositions of the egalitarian project of justice to clearly see the necessary and contingent conditions of possibility for theorizing about justice.

Even for ideal theory, in political philosophy, there is a pressing need to establish valid and accurate presuppositions about the context, which raises normative questions

---

<sup>204</sup> Onora O’Neill (2016), especially chapters 8-13, is a good example of the recognition of the need of considering new actors, circumstances and conceptual frameworks in the theorization about justice. Dworkin (2013) postulates the same point in regard to the theorization of international law, by proposing an alternative to what he considers a failed Westphalian model of international relations and international law based on the positivist ideal of consent as the basis of the international law’s binding character.

about justice. As it has been noted in the thesis, particularism is still anchored in the idea of the states playing the role of basic constitutive units of the global domain, as being units of moral value (especially if being organized around democratic procedures), and of socioeconomic justice as a problem restricted to local deliberation and local political addressing, given the presupposition of the state as a unit of production and allocation. These assumptions must be revised at least in three ways.

First, when inquiring into the global domain, it becomes evident that there are plenty of relevant actors beyond the states. Some non-state-actors include NGOs as UNICEF or Doctors Without Borders; transnational corporations that manage all kinds of goods and services—gas and oil companies, machinery, fast fashion, etc.—and that, through mechanisms of finances, securitize and deal with pension funds, debt, stocks, insurance—creating new goods and dynamics of creation of capital; civil movements that are starting to move beyond borders; and some political transnational collaborations, given ideological affinities, among others. Moreover, problems related to, for example, environmental matters are not local—deforestation of the Amazon has repercussions in other continents, Australia’s fires in 2020 affected some countries in South America—and socioeconomic conditions of the citizens of a given state are significantly influenced by the political and economic conditions and agreements of the state—which, itself, enacts and enforces the regulation and deregulation of socioeconomic matters influenced by external economic competition and international pressure, among other reasons.

Second, given its abilities and limitations—some of which are exemplified by arguments in this thesis—there is a need to rethink how the relationship between justice, political legitimacy, and rights is organized within the framework of the modern (liberal-democratic) state. Knowing there is a constant balancing and counterbalancing in the relation between liberalism and communitarianism,<sup>205</sup> global relations must be thought to normatively define what states are entitled to, in the light of liberal egalitarian principles. As mentioned before in the thesis, its principles have individuals as the ultimate unit of moral value and equality as a very relevant feature of justice. Arguments as Young’s questioning self-determination because of being thought of in

---

<sup>205</sup> See Walzer (1990).

terms of independence from intervention but thus of being free from helping others (Young, 2004, 2006), or Waldron's debate against the states entitlement to the rule of law—this right, he says, can only make sense from the perspective of the protection of the individual, not the state as such (Waldron, 2011)—have to be pursued more deeply and consistently to make the national and global justifications of justice coherent again, within a liberal egalitarian paradigm.

Third, related to the previous two points, the prescription of the local nature of justice has to be challenged, rethinking it in the light of the problematic mixture between description—of a world divided into states<sup>206</sup>—and the prescription of the state-based division that makes the globe intelligible in particularist theory. As seen in this thesis, mainstream theories do portray not only the justification of the particularist distribution of responsibility for justice and its administration but also the prescription of this distribution as the only acceptable one.

As stated by the end of the fourth chapter, there is an opportunity in reframing the context of justice by abstracting the particularist idea of the state to retake the idea of the polity. Taken broadly, a polity can be understood as a politically organized community, which is conceptually different from the idea of the state because, in this general sense, it can be taken as organizations pursuing political activities pursuing political interests. This could include NGOs, lobbying groups, labor associations, and other actors that are not constrained to the political boundaries of territory or nationality.

In the general particularist debate about global justice, its resistance lies in the consideration that, if membership—needed for politics and polities—is taken as universal, then membership would become vacuous, irrelevant. Making the distinction of inside-outside a matter of humanity—the universal membership available in this way of framing the problem—would mean that exclusion would necessarily be exclusion from humanity in a way comparable to the *Bare Life* depicted by Giorgio Agamben (1998). According to the particularist line of argument, it would eliminate the core of politics, which is based upon different nations living with each other in the full tenancy of their sovereign power.

---

<sup>206</sup> Which is itself problematic given the previous two points.

However, in the present context, that is not the case. Polities, understood in the general sense depicted above, survive and live together, differing only in degree of recognition and of power of decision. Polities can easily overlap, even with other polities as stringent as states themselves. A model of interpreting the classical circumstances of justice could use the recognition of several stakeholders in the global arena to create regulations and even normative consent. The reframing of the liberal egalitarian stance regarding global justice does not need to abolish the totality or even the majority of traditional theory. It creates openings for inserting justice in spheres where the traditional framework has not been able to do. Dworkin (2013), for example, without endorsing an obligation for creating a world system of governance, proposes the possibility of creating transnational obligations based on salience—the possibility of general international endorsement<sup>207</sup>—without the need of individual consent of every state. One of the concerns presented in that paper is that especially powerful nations, who say they defer to international law and misinterpret it in their favor, create the need for a persuasive account of international law to show them wrong. Even without a substantial change in the actors considered by traditional theories of justice, as in Dworkin’s case, a relevant matter to reconsider is the voluntary nature of adhesions to measures for the protection of rights in international relations. The first step towards doing it is to work on the philosophical and doctrinal possibilities for a change. Dworkin says that “it would be a shame if lawyers and philosophers had not improved the jurisprudential discussion of international law before [the day for effective international law becomes more obvious to more politicians in different nations arrived] [...]. If the standing theories of international law are radically defective, as I have suggested they are, we have at least an intellectual responsibility to propose a better one” (Cf. Dworkin, 2013, p. 15).

Relatedly, inquiring into the possibility of constituting a polity in a different manner than the one devised by the Westphalian model currently available within particularism is important because, as proposed by Dworkin, both philosophy and

---

<sup>207</sup> “If a significant number of states, encompassing a significant population, has developed an agreed code of practice, either by treaty or by other form of coordination, then other states have at least a prima facie duty to sub-scribe to that practice as well, with the important proviso that this duty holds only if a more general practice to that effect, expanded in that way, would improve the legitimacy of the subscribing state and the international order as a whole” (Dworkin, 2013, p. 19).

jurisprudence must think ahead, and because the idea of transnationality, world government, international legislation and alike are not conceptually void, they are actually compatible with the ideas of the system we currently have, and because even if factually there are few chances of a sooner change, it is something that is already happening, independently of the will of the states to address it. As stated by Dworkin:

*“If law is understood as a special part of political morality, and if it serves its community well, its doctrines will crystallize over time. Its roots in political morality will grow less prominent—though will be available when needed—in ordinary legal argument. That progress from principle to doctrine will signal its success. But a rigid separation between legal and moral argument in the development of international law would be premature now and would accelerate its practical irrelevance” (Dworkin, 2013, p. 30).*

Although widely debated, practical attempts toward this direction have been made, as is the case of the 1997 Ottawa Treaty,<sup>208</sup> in which, from the initiative of nongovernmental organizations, political and legal effects were created in an exercise of a kind of transnational civil society, towards the prohibition and elimination of anti-personnel mines. In this case, the joint forces of non-state actors to face transnational harm politically pushed towards the mobilization of private and public efforts, outside of the traditional framework of the theories of justice.

However, the particularist stance could insist on the idea that this kind of phenomenon and considerations are particularism by other means. That international politics may generate changes through the acceptance of states, and their creation of actual law, a specific domain of the state. The concept and practical existence of polity, after all, would remain naturally concomitant to states, which would be the main actors of creation, enactment, and enforcement of principles of justice.

If that overlap between the concepts of state and polity eventually proved to be logically and practically necessary, some other options could be available to transform our conceptual framework of justice. In that case, there is even the possibility of abandoning the idea of polity so that politics, global or transnational, would still find a

---

<sup>208</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. Available in <https://bit.ly/2XX0wmM>.

place to be included in the philosophical concept of justice and its legal materialization.

As put by George Letsas:

*“[...] political action has a normative impact on people’s moral rights, duties, liabilities, and so on. Legality marks out a subdomain of that impact, those rights and duties that are institutionally enforceable. And globalization has shown that the normative effects of political action are wider than the moral obligations members of a polity have toward one another. There is international politics, transnational politics, the politics of multinational corporations, international organizations, and so forth. When courts or other actors ponder over the extent to which these politics result in legally enforceable rights, they are seeking to assess the moral impact of such action. They are carving up conceptual space for law as a domain of the morality of international relations. We could, of course, resist the temptation to occupy this conceptual space, label it as mere ‘politics,’ and hold on to the necessary connection between law and polity. But I see no philosophical motivation for this resistance and many practical benefits if we let go of it. Globalization and transnational politics will still take place and treating them as legality-apt is surely a better strategy for assessing and mitigating its moral arbitrariness. The case for this kind of disembedding law from polity is plausible, both conceptually and morally” (Letsas, 2018, p. 1250).*

Until this point, the thesis has shown reasons for questioning particularist justificatory capabilities regarding a consistent defense of liberal egalitarian principles and has shown the availability of conceptual alternatives to the state-based perspective of justice. However, even not proposing the dissolution of sovereignty, the oblivion of pluralism, and the dismount of self-determination—consequences foretold by particularists to a cosmopolitan system of justice—there could be an accusation of idealization to the proposal hereby presented. Where would global politics be debated? Under which specific rules?

On the one hand, to the specific accusation of idealization, we could answer, following O’Neill’s definition,<sup>209</sup> that this proposal has abstracted dubious premises in the particularist argument without introducing false presuppositions about where or how global politics take place. On the other hand, regarding the skepticism shown by

---

<sup>209</sup> “An idealized account or theory not merely omits certain predicates that are true of the matter to be considered but also adds predicates that are false of the matters to be considered” (2016, p. 86).

particularist authors, especially those who endorse particularism based mostly given the doubt over the factual possibility of global or well developed transnational politics and justice, maybe we should follow what Walzer himself stated in *Political Action*: “Political movements are begun by throwing together a façade behind which activists rush about trying to raise a building” (2019, p. 9). The philosophical endeavor in moral, legal, and political philosophy can and should be concerned with paving the way of political possibilities by revising the current conceptual frameworks—and modifying or correcting them—even if not being able to build these possibilities all by itself.



## Bibliography

- Agamben, G. (1998). *Sovereign power and bare life*. Stanford University Press.
- Anderson, E. (1999). What Is the Point of Equality? *Ethics*, 109, 287–337.
- Anderson, E. (2017). *Private government: How employers rule our lives (and why we don't talk about it)*. Princeton University Press.
- Aron, R. (2003). *Peace & war: A theory of international relations*. Transaction Publishers.
- Bandura, A. (2016). *Moral disengagement: How people do harm and live with themselves*. Worth Publishers, Macmillan Learning.
- Barry, B. (2005). *Why social justice matters*. Polity.
- Bauman, Z. (2005). *Work, Consumerism, and the New Poor*. Open University Press.
- Bauman, Z. (2011). *Wasted lives: Modernity and its outcasts* (Reprint). Polity.
- Beitz, C. (2009). *The Idea of Human Rights*. Oxford.
- Beitz, C. R. (1999). *Political theory and international relations*. Princeton Univ. Press.
- Beitz, C. R. (2004). Human rights and the law of peoples. In D. K. Chatterjee (Ed.), *The Ethics of Assistance* (pp. 193–214). Cambridge University Press.
- Blake, M. (2012). Global Distributive Justice: Why Political Philosophy Needs Political Science. *Annual Review of Political Science*, 15(1), 121–136. <https://doi.org/10.1146/annurev-polisci-070209-162922>
- Brennan, G., & Buchanan, J. M. (1986). *The reason of rules: Constitutional political economy*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511895937>
- Brennan, J., & Schmidtz, D. (2010, March). *The Big Myth About Liberty*. Cato Unbound. A Journal of Debate. <https://www.cato-unbound.org/2010/03/10/david-schmidtz-jason-brennan/conceptions-freedom>
- Brennan, J., & Tomasi, J. (2012). Classical Liberalism. In D. Estlund (Ed.), *The Oxford Handbook of Political Philosophy* (pp. 115–132). Oxford University Press.
- Brock, G. (Ed.). (2013a). *Cosmopolitanism versus non-cosmopolitanism: Critiques, defenses, reconceptualizations*. Oxford University Press.
- Brock, G. (2013b). Contemporary Cosmopolitanism: Some Current Issues: Cosmopolitanism. *Philosophy Compass*, 8(8), 689–698. <https://doi.org/10.1111/phc3.12054>
- Buchanan, A. (1992). Self-Determination and the Right to Secede. *Journal of International Affairs*, 45(2), 347–365. JSTOR.

- Buchanan, A. (2007). *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford University Press.
- Buchanan, A. (2016). Self-Determination, Revolution, and Intervention. *Ethics*, 447–473.
- Cárdenas, J. C., Fergusson, L., & García-Villegas, M. (Eds.). (2021). *La quinta puerta*. Editorial Planeta Colombiana S.A.
- Chernilo, D. (2012). Cosmopolitanism and the Question of Universalism. In G. Delanty (Ed.), *Routledge Handbook of Cosmopolitan Studies* (pp. 47–59). Routledge.
- Cohen, G. A. (2003). Facts and Principles. *Philosophy & Public Affairs*, 31(3), 211–245. JSTOR.
- Cohen, G. A. (2008). *Rescuing justice and equality*. Harvard University Press.
- Cohen, G. A. (2011). *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy* (M. Otsuka, Ed.; 1st ed.). Princeton University Press. <https://doi.org/10.23943/princeton/9780691148700.001.0001>
- Cohen, J. L. (2010). Sovereignty in the Context of Globalization. In S. Besson & J. Tasioulas (Eds.), *The Philosophy of International Law* (pp. 261–280). Oxford University Press.
- Cotterrell, R. (2008). Transnational Communities and the Concept of Law. *Ratio Juris*, 21, 1–18.
- Criado Perez, C. (2019). *Invisible women. Data bias in a world designed for men*. Abrams Inc.
- Dezalay, Y., & Garth, B. G. (2002). *The internationalization of palace wars: Lawyers, economists, and the contest to transform Latin American states*. University of Chicago Press.
- Dowling, E. (2021). *The care crisis: What caused it and how can we end it?* (First edition paperback). Verso.
- Dworkin, R. (2002). *Sovereign virtue: The theory and practice of equality* (4. print). Harvard Univ. Press.
- Dworkin, R. (2013). A New Philosophy for International Law. *Philosophy & Public Affairs*, 41(1), 2–30. JSTOR.
- Estlund, D. (2008). *Democratic authority: A philosophical framework*. Princeton University Press.
- Estlund, D. (2017). Prime Justice. In M. Weber & K. Vallier (Eds.), *Political Utopias* (pp. 35–55). Oxford University Press.
- Feinberg, J. (1970). The Nature and Value of Rights. *The Journal of Value Inquiry*, 4, 243–257.

- Feinberg, J. (1973). *Social Philosophy*. Prentice-Hall.
- Feinberg, J. (1994). Not with My Tax Money the Problem of Justifying Government Subsidies for the Arts. *Public Affairs Quarterly*, 8(2), 101–123. JSTOR.
- Feinberg, J. (2003). *Problems at the Roots of Law*. Oxford University Press. <https://doi.org/10.1093/0195155262.001.0001>
- Fleischacker, S. (2004). *A short history of distributive justice*. Harvard University Press.
- Forst, R. (2001). Towards a Critical Theory of Transnational Justice. *Metaphilosophy*, 32, 160–179.
- Fraser, N. (2010). *Scales of Justice*. Columbia University Press.
- Freeman, S. (2001). Illiberal Libertarians: Why Libertarianism Is Not a Liberal View. *Philosophy & Public Affairs*, 30(2), 105–151.
- Freeman, S. R. (2010). *Rawls* (Reprinted). Routledge.
- Friedman, R. B. (1990). On the Concept of Authority in Political Philosophy. In J. Raz (Ed.), *Authority* (pp. 56–91). New York University Press.
- Gauthier, D. P. (1992). *Morals by agreement*. Clarendon Pr.
- Gewirth, A. (1996). *The Community of Rights*. The University of Chicago Press.
- Hansson, S. O. (2010). The Harmful Influence of Decision Theory on Ethics. *Ethical Theory and Moral Practice*, 13(5), 585–593. <https://doi.org/10.1007/s10677-010-9232-0>
- Hansson, S. O. (2013). *The ethics of risk: Ethical analysis in an uncertain world*. Palgrave Macmillan.
- Hart, H. L. A. (1955). Are There Any Natural Rights? *The Philosophical Review*, 64(2), 175. <https://doi.org/10.2307/2182586>
- Hayek, F. A. (1997). *The constitution of liberty* (Paperback ed., [Nachdr.]). Univ. of Chicago Press.
- Hayek, F. A. von. (2001). *The road to serfdom*. Routledge.
- Held, D. (2004). Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective. *Government and Opposition*, 39(2), 364–391. <https://doi.org/10.1111/j.1477-7053.2004.00127.x>
- Held, D. (2005). Principles of cosmopolitan order. In G. Brock & H. Brighouse (Eds.), *The Political Philosophy of Cosmopolitanism* (pp. 10–27). Cambridge University Press.
- Held, V. (2006). *The ethics of care: Personal, political, and global*. Oxford University Press.

- Hermansson, H., & Hansson, S. O. (2007). A Three-Party Model Tool for Ethical Risk Analysis. *Risk Management*, 9(3), 129–144. <https://doi.org/10.1057/palgrave.rm.8250028>
- Hernández-Zambrano, D. (2019). Autoridad y legitimación: De vuelta al anarquismo. *Areté*, 31(1), 26.
- Hohfeld, W. N. (1917). Fundamental Legal Conceptions as Applied in Judicial Reasoning. *The Yale Law Journal*, 26(8), 710. <https://doi.org/10.2307/786270>
- Holmes, S., & Sunstein, C. R. (1999). *The cost of rights: Why liberty depends on taxes* (1. ed). Norton.
- Kant, I. (1996). *The Metaphysics of Morals* (M. Gregor, Trans.). Cambridge University Press.
- Kant, I. (2006). *Toward perpetual peace and other writings on politics, peace, and history* (P. Kleingeld, Ed.; Colclasure, David L., Trans.). Yale University Press.
- Kant, I., Gregor, M. J., & Timmermann, J. (2011). *Groundwork of the metaphysics of morals: A German-English edition*. Cambridge University Press.
- Kant, I., Kleingeld, P., Waldron, J., Doyle, M. W., & Wood, A. W. (2006). *Toward perpetual peace and other writings on politics, peace, and history*. Yale University Press.
- Kaul, I., Conceição, P., Le Goulven, K., & Mendoza, R. U. (2003). How to Improve the Provision of Public Goods. In *Providing Global Public Goods* (pp. 23–81). Oxford University Press. <http://www.oxfordscholarship.com/view/10.1093/0195157400.001.0001/acprof-9780195157406>
- Ladenson, R. (1979). Two Kinds of Rights. *The Journal of Value Inquiry*, 13, 161–172.
- Ladenson, R. (1990). In a Defense of a Hobbesian Conception of Law. In J. Raz (Ed.), *Authority* (pp. 32–55). New York University Press.
- Letsas, G. (2018). Law and polity: Some philosophical preliminaries. *International Journal of Constitutional Law*, 16(4), 1242–1250. <https://doi.org/10.1093/icon/moy094>
- Lindsay, P. (2018). Why outcomes matter: Reclaiming distributive justice. *Critical Review of International Social and Political Philosophy*, 1–23. <https://doi.org/10.1080/13698230.2018.1479815>
- Locke, J. (1980). *Second treatise of government* (1st ed). Hackett Pub. Co.
- Locke, J. (2003). *Two treatises of government: And a letter concerning toleration* (I. Shapiro, Ed.). Yale University Press.
- Margalit, A. (1996). *The decent society*. Harvard University Press.

- Maus, I. (2006). From Nation-State to Global State, or the Decline of Democracy. *Constellations*, 13, 465–484.
- Maus, I. (2010). Kant's Reasons Against a Global State: Popular Sovereignty as a Principle of international Law. In J. Babić & P. Bojanić (Eds.), & J. Farrel (Trans.), *World Governance: Do We Need It, Is It Possible, What Could It (All) Mean?* (pp. 150–167). Cambridge Scholars Publishing.
- Midgley, M. (2011). *The myths we live by*. Routledge.
- Miller, D. (1999). *Principles of Social Justice*. Harvard University Press.
- Miller, D. (2007). *National Responsibility and Global Justice*. Oxford University Press.
- Miller, D. (2008). National Responsibility and International Justice. *Critical Review of International Social and Political Philosophy*, 11, 383–399.
- Miller, D. (2013). *Justice for Earthlings: Essays in political philosophy*. Cambridge Univ. Press.
- Moyn, S. (2018). *Not enough: Human rights in an unequal world*. The Belknap Press of Harvard University Press.
- Murphy, L. B., & Nagel, T. (2002). *The myth of ownership: Taxes and justice*. Oxford University Press.
- Nagel, T. (2005). The Problem of Global Justice. *Philosophy & Public Affairs*, 33(2), 113–147. <https://doi.org/10.1111/j.1088-4963.2005.00027.x>
- Nozick, R. (1974). *Anarchy, State, and Utopia*. Blackwell.
- O'Neill, O. (2016). *Justice Across Boundaries: Whose Obligations?* Cambridge University Press.
- O'Neill, O. (2020). Justice without Ethics: A Twentieth-Century Innovation? In J. Tasioulas (Ed.), *The Cambridge Companion to the Philosophy of Law* (1st ed., pp. 135–151). Cambridge University Press. <https://doi.org/10.1017/9781316104439.008>
- Pettit, P. (1997). *Republicanism: A theory of freedom and government*. Clarendon Press ; Oxford University Press.
- Pisarello, G. (2007). *Los derechos sociales y sus garantías: Elementos para una reconstrucción*. Editorial Trotta.
- Pogge, T. (2005). A cosmopolitan perspective on the global economic order. In G. Brock & H. Brighouse (Eds.), *The political Philosophy of Cosmopolitanism* (pp. 92–109). Cambridge University Press.
- Pogge, T. (2008). *World Poverty and Human Rights*. Polity.
- Pogge, T. (2009). Health Care Reform that Works for the U.S. and for the World's Poor. *GLOBAL HEALTH GOVERNANCE*, II.

- Pogge, T. W. (1992). Cosmopolitanism and Sovereignty. *Ethics*, 103(1), 48–75. <https://doi.org/10.1086/293470>
- Rawls, J. (1971). *A Theory of Justice*. The Belknap Press of Harvard University Press.
- Rawls, J. (1980). Kantian Constructivism in Moral Theory. *The Journal of Philosophy*, 77(9), 515. <https://doi.org/10.2307/2025790>
- Rawls, J. (1993). *Political Liberalism*. Columbia University Press.
- Rawls, J. (1997). The Idea of Public Reason Revisited. *The University of Chicago Law Review*, 64(3), 765–807.
- Rawls, J. (2001). *Justice as Fairness: A Restatement*. The Belknap Press of Harvard University Press.
- Rawls, J. (2002). *The Law of Peoples*. Harvard University Press.
- Raz, J. (2009). *Authority of Law*. Oxford University Press.
- Ronzoni, M. (2009). The Global Order: A Case of Background Injustice? A Practice-Dependent Account. *Philosophy & Public Affairs*, 37, 229–256.
- Ronzoni, M. (2013). For (Some) Political and Institutional Cosmopolitanism, (even if) Against Moral Cosmopolitanism. In G. Brock (Ed.), *Cosmopolitanism versus Non-Cosmopolitanism* (pp. 156–171). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199678426.003.0008>
- Ronzoni, M. (2018). Justice, Injustice, and Critical Potential Beyond Borders: A Multi-Dimensional Affair. *Journal of Applied Philosophy*, 35, 90–111.
- Rousseau, J.-J., Dunn, S., & May, G. (2002). *The social contract: And, The first and second discourses*. Yale University Press.
- Saffon, M. P., & García-Villegas, M. (2011). Derechos sociales y activismo judicial. La dimensión fáctica del activismo judicial en derechos sociales en Colombia. *Estudios Socio-Jurídicos*, 75–107.
- Sandel, M. (1982). *Liberalism and the Limits of Justice*. Cambridge University Press.
- Sandel, M. J. (2012). *What money can't buy: The moral limits of markets* (1st ed). Farrar, Straus and Giroux.
- Sandel, M. J. (2020). *Tyranny of merit: What's become of the common good?* Penguin Books.
- Sangiovanni, A. (2007). Global Justice, Reciprocity, and the State. *Philosophy & Public Affairs*, 35(1), 3–39. <https://doi.org/10.1111/j.1088-4963.2007.00097.x>
- Sangiovanni, A. (2008). Justice and the Priority of Politics to Morality. *The Journal of Political Philosophy*, 16, 137–164.

- Sangiovanni, A. (2013). On the Relation Between Moral and Distributive Equality. In G. Brock (Ed.), *Cosmopolitanism Versus Non-Cosmopolitanism* (pp. 55–74). Oxford University Press.
- Sassen, S. (1996). *Losing Control?* Columbia University Press.
- Sassen, S. (2014). *Expulsions*. The Belknap Press of Harvard University Press.
- Sassen, S., & Esping-Andersen, G. (2006). *Towards a New Welfare State*. Scientific Council For Government Policy.
- Scanlon, T. (2018). *Why does inequality matter?* (First edition). Oxford University Press.
- Schmitt, C. (2007). *The Concept of the Political*. Chicago University Press.
- Sen, A. (2006). What Do We Want from a Theory of Justice? *The Journal of Philosophy*, 103(5), 215–238. JSTOR.
- Sen, A. (2011). *The idea of justice* (1. Harvard Univ. Press pbk. ed). Belknap Press of Harvard Univ. Press.
- Shapiro, S. J. (2002). Authority. In S. J. Shapiro & J. Coleman (Eds.), *The Oxford Handbook of Jurisprudence & Philosophy of Law* (pp. 382–439). Oxford University Press.
- Simmons, J. (1981). *Moral Principles and Political Obligations*. Princeton University Press.
- Simmons, J. (1999). Justification and Legitimacy. *Ethics*, 109, 739–771.
- Simmons, J. (2001). *Justification and Legitimacy*. Cambridge University Press.
- Simmons, J. (2010). Ideal and Nonideal Theory. *Philosophy and Public Affairs*, 38, 5–36.
- Ssenyonjo, M. (2009). *Economic, Social and Cultural Rights in International Law*. Hart Publishing.
- Stemplowska, Z. (2017). Non-ideal Theory. In K. Lipper-Rasmussen, K. Brownlee, & D. Coady (Eds.), *A Companion o Applied Philosophy* (pp. 284–296). John Wiley & Sons, Ltd.
- Tomasi, J. (2012). *Free market fairness*. Princeton University Press.
- Valentini, L. (2012). Ideal vs. Non-ideal Theory: A Conceptual Map: Ideal vs Non-ideal Theory. *Philosophy Compass*, 7(9), 654–664. <https://doi.org/10.1111/j.1747-9991.2012.00500.x>
- Valentini, L. (2013). Cosmopolitan Justice and Rightful Enforceability. In G. Brock (Ed.), *Cosmopolitanism versus Non-Cosmopolitanism* (pp. 92–107). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199678426.003.0005>
- Valentini, L. (2017a). On the Messy “Utopophobia vs. Factophobia” Controversy. In M. Weber & K. Vallier (Eds.), *Political Utopias* (pp. 11–34). Oxford University Press.

- Valentini, L. (2017b). The natural duty of justice in non-ideal circumstances: On the moral demands of institution building and reform. *European Journal of Political Theory*, 1–22.
- Vincent, A. (1997). Liberal Nationalism and Communitarianism: An Ambiguous Association. *Australian Journal of Politics and History*, 43, 14–27. <https://doi.org/10.1111/j.1467-8497.1997.tb01375.x>
- Waldron, J. (1981). A Right to do Wrong. *Ethics*, 92, 21–39.
- Waldron, J. (1999). *Law and Disagreement*. Oxford University Press.
- Waldron, J. (2010). Socioeconomic Rights and Theories of Justice. In T. Pogge (Ed.), *Freedom from Poverty as a Human Right* (Vol. 2, pp. 21–50). UNESCO Publishing.
- Waldron, J. (2011). Are Sovereigns Entitled to the Benefit of the International Rule of Law? *The European Journal of International Law*, 22, 315–343.
- Waldron, J. (2018). Dirtying One’s Hands by Sharing a Polity with Others. *The Monist*, 101(2), 216–234. <https://doi.org/10.1093/monist/onx044>
- Walzer, M. (1981). Philosophy and Democracy. *Political Theory*, 9(3), 379–399. <https://doi.org/10.1177/009059178100900307>
- Walzer, M. (1983). *Spheres of Justice. A Defense of Justice and Equality*. Basic Books, Inc., Publishers.
- Walzer, M. (1990). The Communitarian Critique of Liberalism. *Political Theory*, 18(1), 6–23.
- Walzer, M. (1994). *Thick and Thin: Moral argument at home and abroad*. University of Notre Dame Press.
- Walzer, M. (2004). *Politics and passion: Toward a more egalitarian liberalism*. Yale University.
- Walzer, M. (2010). Governing the Globe: What is the best we can do? In J. Babić & P. Bojanić (Eds.), *World Governance: Do We Need It, Is It Possible, What Could It (All) Mean?* (pp. 47–60). Cambridge Scholars Publishing.
- Walzer, M. (2018). *A foreign policy for the left*. Yale University Press.
- Walzer, M. (2019). *Political action: A practical guide to movement politics*. New York Review Books.
- Wellman, C. H. (2005). Samaritanism and the Duty to Obey the Law. In C. H. Wellman & A. J. Simmons (Eds.), *Is There a Duty to Obey the Law* (pp. 3–92). Cambridge University Press.
- Wolff, R. P. (1998). *In Defense of Anarchism*. University of California Press.
- Young, I. M. (2000). *Inclusion and Democracy*. Oxford University Press.

- Young, I. M. (2004). Two concepts of self-determination. In S. May, T. Modood, & J. Squires (Eds.), *Ethnicity, Nationalism, and Minority Rights* (pp. 176–196). Cambridge University Press. <https://doi.org/10.1017/CBO9780511489235.009>
- Young, I. M. (2006). Responsibility and Global Justice: A Social Connection Model. *Social Philosophy and Policy*, 23(01), 102. <https://doi.org/10.1017/S0265052506060043>
- Young, I. M. (2007). *Global Challenges*. Polity Press.
- Young, I. M. (2011). *Responsibility for Justice*. Oxford University Press.
- Ypi, L. (2008). Political Membership in the Contractarian Defense of Cosmopolitanism. *The Review of Politics*, 70(03), 442–472. <https://doi.org/10.1017/S0034670508000569>
- Ypi, L. (2013). Cosmopolitanism Without If and Without But. In G. Brock (Ed.), *Cosmopolitanism versus Non-Cosmopolitanism* (pp. 75–88). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199678426.003.0004>
- Zimbardo, P. G. (2007). *The Lucifer effect: Understanding how good people turn evil* (1st ed). Random House.