

**Theories of Global Justice:  
Relational and Non-Relational  
Approaches**

**Megan Kime**

Department of Philosophy  
The University of Sheffield

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## Summary

This thesis evaluates two competing approaches to developing a theory of global justice. The relational approach grounds justice in features of relationships, associations, and common institutions. The non-relational approach, in contrast, grounds justice in universal features of human beings, considered apart from their relationships with others. Which of the two approaches we adopt will have implications for the resulting theory of justice (although the distinction between the two approaches does not map straightforwardly onto that between cosmopolitan and non-cosmopolitan theories of global justice). David Miller's liberal nationalist (and non-cosmopolitan) theory of justice is a prominent example of the relational approach. Miller supports a sufficiency based conception of justice at the global level, but restricts stronger egalitarian principles of justice to the domestic sphere. Brian Barry's cosmopolitan theory of justice is a prominent example of the non-relational approach. Barry supports egalitarian principles of justice at the global level. Given certain assumptions shared by parties to the current debate within political philosophy, we can expect any reasonable theory of global justice to be able to support some minimal conception of human rights. Miller's theory fails to do this, for reasons that stem from his adoption of the relational approach. The relational approach also suffers from many other problems, including a lack of objectivity and a tendency towards conservatism. The non-relational approach, as represented by Barry, does not suffer from equivalent problems, and should therefore be seen as preferable.

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## Introduction

The broad focus of this thesis is the current debate about global justice in mainstream Western political philosophy between cosmopolitanism and nationalist or statist non-cosmopolitanism. I am particularly concerned with the specific division between what I will term 'relational' and 'non-relational' approaches to justice. Theorists have only recently begun to pay this distinction serious attention, despite the fact that which approach we choose has a fundamental impact upon the shape of the theory of global justice that we will end up with. I intend to explore the division between these two different approaches in the context of the global justice debate. My aim is to establish the conclusion that a non-relational approach leads to a more satisfactory theory of global justice, assessed according to assumptions shared by all parties to current global justice debates. This conclusion lends support to cosmopolitanism since the non-relational approach leads naturally to cosmopolitan conclusions.

Global justice has become a hot topic in political philosophy in recent years. The explosion in writing on the issue has been motivated partly by the sheer magnitude of extreme poverty which exists at the global level. For instance, around 40% of the world's population currently live on less than \$2 per day, and an estimated 1200 children die worldwide every hour from poverty-related causes.<sup>1</sup> Awareness of the plight of the poorest people in the world has risen as information and communication technology has effectively shortened the distances between people living in separate nation-states. We in the developed Western world are no longer able to ignore the fact that millions of people worldwide are living in extreme poverty, and are as a consequence dying of easily preventable diseases and malnutrition. That anybody should die of a preventable disease or from lack of food or clean drinking water strikes many people as morally wrong, and perhaps also unjust. The fact that this extreme poverty exists in a world characterised by gross inequality has struck many people as particularly unfair. It is once we start to consider inequality and to raise questions of redistribution at the global level that we can say we are talking about global justice. One way to understand this is as an attempt to extend the discussion of social justice, which has traditionally assumed a bounded society, to the international level.

Despite the fairly straightforward intuitions that motivate people to talk about global justice, there is substantial debate about what global justice actually demands. Much of this, unsurprisingly, is debate about which particular principles of justice we should endorse, and

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<sup>1</sup> United Nations Development Programme, *Human Development Report 2005*, (New York: UNDP), pp. 2-4.

mirrors the same debate that has carried on at the social justice level throughout the history of political philosophy. This is a debate about the content of justice. But the attempted expansion of theories of justice to the global level, which involves separating them from their traditional grounding in bounded societies, also raises a host of questions about the foundations of justice – about the features of the world which make considerations of justice relevant (or not). Defenders of traditional social justice resist the attempt to expand its scope to the global level, arguing that to do so is to misunderstand the nature of justice itself. Much of the recent political philosophy literature about global justice has been focused on these foundational questions – on which conditions are necessary for considerations of justice to be relevant. It is this debate which I am concerned with in this thesis. I will characterise the main positions in this debate as the relational and non-relational approaches. My goal is to defend the non-relational perspective on these questions, and to criticise the alternative, relational perspective. In order to defend the non-relational approach I will argue that it leads to a more plausible theory of global justice than the relational approach does – that it is better able to account for our strongly held convictions about what justice requires at the global level. I'll also criticise the methodology that the relational approach employs.

In order to achieve the aims outlined above, and to establish the conclusion that the non-relational approach to justice leads to a more plausible theory of global justice, I will make two intermediate claims. The first, negative, claim is that the relational approach is unable to provide a satisfactory or plausible account of global justice. The second, positive, claim is that the non-relational approach is able to provide such an account. Taken together these two claims lead to the conclusion that the non-relational approach is preferable. My argument will rely on a conception of what an adequate or satisfactory account of global justice should look like which I will argue is shared by all parties to the debate. My critique of the relational approach and defence of the non-relational approach will both be on terms that are based upon assumptions internal to the particular global justice debate that I am focusing on. My argument will therefore not necessarily establish the stronger conclusion that a non-relational approach is preferable all things considered, but instead the more moderate conclusion (although still significant) that a non-relational approach is preferable given certain widely accepted assumptions.

The body of the thesis will be split into three parts, each of which will contain two chapters. In Part I. my main aim will be to provide an overview of the recent political philosophy literature on global justice, and of the distinction between relational and non-relational approaches in particular. In the first of the two chapters in this part (Chapter One) I will concentrate on outlining the current debate about global justice, and clarifying the key issues that are at state in this debate by mapping the range of positions that theorists have taken. In the second of the two chapters (Chapter Two) I will focus more specifically on the debate

between relational and non-relational approaches. I'll outline the key issues that separate the two approaches, and indicate the main problems that each approach (*prima facie*) faces. The discussion throughout Part I. will also highlight the matters upon which it seems there is consensus between all parties to the debate about global justice. I will argue that we draw from this consensus a set of criteria which any acceptable theory of justice should be able to meet.

In Part II. I will be focusing on the relational approach. I will critically examine David Miller's theory of justice as a prominent example of this approach to questions of global justice. Focusing on Miller's approach in detail will enable me to explore how the relational approach works in practice. In the first chapter in this part (Chapter Three) I will outline Miller's theory of justice and his relational approach in detail, and offer an objective interpretation of his view. In the second chapter in this part (Chapter Four) I will criticise Miller's approach, paying specific attention to the issues highlighted in Part I. My aim in Part II. is to establish that the relational approach suffers from several problems when used to develop a theory of global justice. This therefore constitutes the first, negative, half of my overall argument.

Part III. will have a similar structure to Part II. but will focus on the non-relational approach. I will take Brian Barry's theory of justice as my subject here. Focusing on Barry's approach in detail will enable me to demonstrate how a non-relational approach to global justice might work. In the first chapter of this part (Chapter Five) I will outline Barry's theory in detail, before defending it in the second chapter (Chapter Six). In this chapter I'll seek to demonstrate how Barry's theory can meet the criteria for an acceptable theory of global justice identified in Part I., and also defend it against criticism from the relational point of view. My goal in Part III. is to establish that the non-relational approach can support a plausible and coherent theory of global justice that doesn't suffer from the problems sometimes associated with the approach. This therefore constitutes the second, positive, half of my overall argument.

In the conclusion to the thesis I will draw together the themes from the preceding three parts. I'll compare the relational and non-relational approaches in light of the detailed discussion in Parts II. and III., and highlight the implications of choosing to take one or other of the approaches for the resulting theory of global justice. I'll conclude that the non-relational approach leads to a more plausible and coherent theory of global justice than the relational approach can support, and is therefore preferable.



## Part I.

### Setting the Scene

When considering questions of justice, modern political philosophy has traditionally focused on distributive justice in the domestic context – usually the nation-state. Theories of justice have traditionally been concerned with the just distribution of goods and resources within societies.<sup>1</sup> In the latter half of the twentieth century, however, political philosophers began to widen their scope from traditional questions about social justice, to look at issues of global justice. New theories of justice arose, concerned with our duties and obligations to those living beyond our borders. These theories were underpinned by a belief that moral concern should extend universally to all human beings, irrespective of their citizenship or nationality. Since the initial explosion of writing on global justice and global ethical issues, a certain level of consensus has been achieved. Most political philosophers now agree that we should extend moral concern to those beyond our borders, and that we have some moral duties which apply at the global level. So, for example, there is a general consensus amongst political philosophers in favour of some kind of basic human rights.<sup>2</sup> The contemporary philosophical debate about global justice, which is my focus in this thesis, is not therefore a debate about whether we owe any moral concern at all to those beyond our borders. It is rather a debate about how much we owe as a matter of justice, and most importantly, on what basis our duties of justice to those beyond our borders arise. My aim in Part I. is to analyse this contemporary debate and to explore the main issues at stake between the different theoretical positions.

In order to fully understand global justice debates within political philosophy, we need to understand the main theoretical positions involved. This can be difficult, because it is not always clear what each position stands for, partly because a wide range of views have come to be known under the same set of labels. ‘Cosmopolitanism’ is the label most often applied to the broad family of theories which argue in some way that justice should be global rather

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<sup>1</sup> Simon Caney, ‘International Distributive Justice’, *Political Studies*, 49 (2001): 974-997, at p. 974. The most influential examples of these traditional theories of justice include John Rawls’ egalitarianism: *A Theory of Justice*, (Cambridge, MA.: Harvard University Press, 1971); Robert Nozick’s libertarianism: *Anarchy, State and Utopia*, (New York: Basic Books, 1974); and Ronald Dworkin’s resource egalitarianism: ‘What is Equality? Part 1: Equality of Resources’, *Philosophy and Public Affairs*, 10 (1981): 185-246, and ‘What is Equality? Part 2: Equality of Welfare’, *Philosophy and Public Affairs*, 10 (1981): 283-345.

<sup>2</sup> Kok-Chor Tan, *Justice Without Borders*, (Cambridge: Cambridge University Press, 2004), at pp. 20-21, 46. How these rights are grounded, what they are rights to, and who (if anyone) has corresponding duties to uphold them are all contested issues. For more on this consensus see Chapter One.



than domestic.<sup>3</sup> However 'cosmopolitanism' is really an umbrella term that applies to a wide plurality of views, not just restricted to global justice, or even to political philosophy more generally.<sup>4</sup> And even once we restrict our attention to matters of global justice, it is still not easy to pin down the key commitments of cosmopolitanism.<sup>5</sup> Furthermore, one would be forgiven for thinking that the disputes between the various theoretical perspectives that make up this debate are a distraction from the real-world issue, since in fact they agree on a number of different points. For example, almost all parties to the debate (both cosmopolitans and their critics) agree that the current state of the world (characterised by appalling high levels of extreme poverty and inequality) is unjust.

This part of the thesis will be comprised of two chapters. In Chapter One I will illustrate the complexities of this debate in more detail, and separate out the various commitments usually taken to be characteristic of a cosmopolitan view. My reason for paying such close attention to the exact nature of the debate is to allow me to highlight the important, but often neglected, distinction between 'relational' and 'non-relational' approaches to justice. These two approaches tell different stories about a central issue relevant to global justice – the justificatory grounds of our various obligations to others, and how these obligations vary depending on the type of relationship we are in. The choice of which approach to take has important implications for the shape and content of the resulting theory of justice.

In Chapter Two I will discuss the distinction between relational and non-relational approaches in more detail. My main focus will be on the prima facie strengths and weaknesses of each of the two approaches and the main areas of tension between them in the context of global justice. This discussion will help me to identify the key issues and concerns that a theory of global justice adopting either of the two approaches will need to be able to address. I will then be able to use this list of criteria as a standard against which to evaluate each of the approaches in detail in the remainder of the thesis.

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<sup>3</sup> Prominent theories of global justice described as cosmopolitan include those developed by Charles Beitz, *Political Theory and International Relations*, (Princeton, NJ: Princeton University Press, 1979); Thomas Pogge, *World Poverty and Human Rights*, (Cambridge: Polity Press, 2002); Darrel Moellendorf, *Cosmopolitan Justice*, (Boulder, CO.: Westview Press, 2002); Kok-Chor Tan, *Justice Without Borders*, (Cambridge: Cambridge University Press, 2004); and Simon Caney, *Justice Beyond Borders*, (Oxford: Oxford University Press, 2005). This is just a small selection of the many cosmopolitan approaches to global justice.

<sup>4</sup> 'Cosmopolitan' positions can be identified in fields as diverse as politics, anthropology, sociology, legal theory, and education studies.

<sup>5</sup> Charles Beitz, 'Cosmopolitanism and Global Justice', *The Journal of Ethics*, 9 (2005): 11-27, at p. 18.

## Chapter One: Contemporary Debates in Global Justice

### 1.1. Introduction

In this chapter my aim is to provide an analysis of the recent discourse in the political philosophy literature about global justice, and to highlight an important distinction between relational and non-relational approaches. I will begin with a brief discussion of the development of the debate about global justice, before focusing more specifically on recent debate between cosmopolitans and their critics (composed mainly of nationalists and statist).<sup>1</sup> Given that cosmopolitanism is a broad theoretical camp encompassing many different views, I will try to outline an understanding of the theory which makes it clear how it differs from statist and nationalist approaches. In order to make the theoretical differences between these various views apparent, I will focus on the difference between claims about the scope, and claims about the grounds, of justice. I will draw a distinction between relational and non-relational views about the grounds of justice, and show that this distinction cuts across the division between cosmopolitan and non-cosmopolitan views. This debate between relational and non-relational views will then be the focus of Chapter Two.

### 1.2. Development of the Global Justice Debate<sup>2</sup>

I think we can identify four broad strands of debate that have emerged within the global justice literature that I am concerned with. There is plenty of overlap between these debates but it is helpful to separate them out. The key question in all of these four debates is how far we are right to restrict our moral concern to within nation-state borders – cosmopolitans argue that we should extend our concern beyond borders in significant ways, whilst non-cosmopolitans (both nationalists and statist) argue that we have legitimate reasons for at least partially restricting our concern.

When questions of global ethics were first raised within modern Western moral philosophy the aim was to argue for an extension of basic moral principles to those living beyond our nation-state borders, and the initial focus was on the possible duties of assistance that we

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<sup>1</sup> As I am focusing on the specific topic of global justice in this thesis, I am only concerned with the form of cosmopolitanism about justice which is relevant here. As indicated above, cosmopolitan thought is itself very broad, and 'moral cosmopolitanism', which is my focus here, can be distinguished from 'political' and 'cultural' forms of cosmopolitanism. For more on the distinction between moral and cultural cosmopolitanism see Simon Caney, *Justice Without Borders*, (Oxford: Oxford University Press, 2005), p. 6; Samuel Scheffler, 'Conceptions of Cosmopolitanism', in *Boundaries and Allegiances*, (Oxford: Oxford University Press, 2001), pp. 111-117; and Jeremy Waldron, 'What is Cosmopolitanism?', *Journal of Political Philosophy*, 8/2 (2000): 227-243, at pp. 230-236. I will have more to say about the distinction between political and moral cosmopolitanism below.

<sup>2</sup> This history is by necessity nothing more than a short summary – there are undoubtedly many areas of debate that relate to the main issues that I have not mentioned here.

might owe to distant strangers suffering from the effects of natural disasters. The primary example here is Peter Singer's seminal article, 'Famine, Affluence, and Morality' in which he put forward a utilitarian argument for extensive duties of assistance.<sup>3</sup> Singer, and others who follow him, argue that the reasons we might have to restrict our moral concern, such as distance, are morally arbitrary, and so cannot justify a refusal to assist those in need.<sup>4</sup> Singer's original article generated a huge amount of debate about the legitimacy of restricting moral concern to those within our borders, with much attention being paid to questions about the extent and scope of our duties of aid and beneficence.<sup>5</sup> Many of the responses centred on the issue of how demanding our obligations to those beyond our borders could reasonably be, with critics of Singer arguing that his proposals required too much of ordinary moral actors. The main focus of this debate was on rescue. The global poor were conceived of as victims who needed aid, and the discussion centred on the actions that could be taken by individual agents.<sup>6</sup> We might term this the 'world hunger debate'.

From the world hunger debate developed a further area of discussion about the importance of our national identity in determining our obligations to others. One controversial consequence of Singer's view is that it calls into question our traditional practice of highly favouring the interests of our co-nationals over foreigners. In response, liberal nationalists have argued that national identity is a morally significant fact which justifies our prioritising the needs of co-nationals.<sup>7</sup> A large amount of literature has been devoted to this debate between nationalists and cosmopolitans about the ethical significance of nationality, and the legitimacy of

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<sup>3</sup> Peter Singer, 'Famine, Affluence, and Morality', *Philosophy and Public Affairs*, 1/3 (1972): 229-243.

<sup>4</sup> See Peter Unger, *Living High and Letting Die*, (New York: Oxford University Press, 1996) for an extensive development and defence of Singer's view, and Singer, *One World: The Ethics of Globalization*, (New Haven and London: Yale University Press, 2002) for an updated version of his view.

<sup>5</sup> For example, see William Aiken and Hugh LaFollette (eds.), *World Hunger and Moral Obligation*, (Englewood Cliffs, NJ: Prentice Hall, 1977); Peter Brown and Henry Shue (eds.), *Food Policy: The Responsibility of the United States in Life and Death Choices*, (New York: Free Press, 1977); and George R. Lucas and Thomas Ogletree (eds.), *Lifeboat Ethics: The Moral Dilemmas of World Hunger*, (New York: Harper & Row, 1976). For more recent discussion see Garrett Cullity, 'International Aid and the Scope of Kindness', *Ethics*, 105 (1994): 99-127; Dale Jamieson (ed.), *Singer and his Critics*, (Oxford: Blackwell, 1999); and Dean K. Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy*, (Cambridge: Cambridge University Press, 2004).

<sup>6</sup> David Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007), p. 8.

<sup>7</sup> David Miller and Yael Tamir have been the most influential liberal nationalists here. See Miller, 'The Ethical Significance of Nationality', *Ethics*, 98/4 (1988): 647-662; *On Nationality* (Oxford: Clarendon Press, 1995); and 'In Defence of Nationality', in *Citizenship and National Identity*, (Cambridge: Polity, 2000); and Tamir, *Liberal Nationalism*, (Princeton, NJ.: Princeton University Press, 1993).

favouring the interests of compatriots and co-nationals.<sup>8</sup> This debate has also been concerned with the actions and duties of governments as well as individuals, and has more explicitly talked of duties of justice, rather than of personal ethics. We can term this the 'priority to co-nationals debate.'

A separate major strand of debate about global justice, which can be separated from the priority to co-nationals debate outlined above, arose (for the most part) in response to John Rawls' *A Theory of Justice*, which reinvigorated academic debate on the subject of distributive justice.<sup>9</sup> Rawls' arguments brought questions of political, rather than moral, philosophy to the fore, and respondents began to raise the possibility that the liberal egalitarian principles of social justice that Rawls was discussing might apply globally, rather than just within political societies. Rawls was criticised by cosmopolitans such as Charles Beitz and Thomas Pogge for limiting his principles of justice to within political societies.<sup>10</sup> In contrast with the world hunger debate about the extent of our duties of charity or aid, this debate concerns duties of justice. The focus of this 'institutional' debate is the question of whether Rawls' arguments for liberal egalitarian principles of social justice can be logically restricted to within the nation-state.<sup>11</sup> Those responding to Rawls have made what Simon Caney calls an 'analogy argument' – claiming that the national and global contexts are sufficiently alike to warrant us applying the same principles of justice to the world as we do to within states.<sup>12</sup> Those wishing to defend the restriction of principles of social justice to the domestic sphere have responded by denying the analogy between national or state context

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<sup>8</sup> See Charles Beitz, 'Cosmopolitan Ideals and National Sentiment', *Journal of Philosophy*, 80 (1983): 591–600; Robert Goodin, 'What is so Special about our Fellow Countrymen?', *Ethics*, 98/4 (1988): 663–686; Simon Caney, David George, and Peter Jones (eds.), *National Rights, International Obligations*, (Oxford: Westview Press, 1996); Andrew Mason, 'Special Obligations to Compatriots', *Ethics*, 107/3 (1997): 427–447; Robert McKim and Jeff McMahan (eds.), *The Morality of Nationalism*, (Oxford: Oxford University Press, 1997); Richard Miller, 'Cosmopolitan Respect and Patriotic Concern', *Philosophy and Public Affairs*, 27 (1998): 202–224; Jocelyne Couture, Kai Nielsen, and Michel Seymour (eds.), *Rethinking Nationalism*, (Calgary: The University of Calgary Press, 2000); Margaret Moore, *The Ethics of Nationalism*, (Oxford: Oxford University Press, 2001); Christopher Wellman, 'Friends, Compatriots, and Special Political Obligations', *Political Theory*, 29 (2001): 217–236; Kok-Chor Tan, *Justice Without Borders*, (Cambridge: Cambridge University Press, 2004); Veit Bader, 'Reasonable Impartiality and Priority for Compatriots: A Criticism of Liberal Nationalism's Main Flaws', *Ethical Theory and Moral Practice*, 8 (2005): 83–103; and David Miller, 'Reasonable Partiality Towards Compatriots', *Ethical Theory and Moral Practice*, 8/1–2 (2005): 63–81.

<sup>9</sup> John Rawls, *A Theory of Justice*, (Cambridge, MA.: Harvard University Press, 1971). These debates have to a certain extent been conducted simultaneously.

<sup>10</sup> Charles Beitz, *Political Theory and International Relations*; and 'Rawls's Law of Peoples', *Ethics*, 110/4 (2000): 669–96. Thomas Pogge, *Realizing Rawls*, (London and Ithaca: Cornell University Press, 1989); 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23/3 (1994): 195–224; and 'Rawls on International Justice', *The Philosophical Quarterly*, 51/203 (2001): 246–253. See John Rawls, *The Law of Peoples with 'The Idea of Public Reason Revisited'*, (Cambridge, MA.: Harvard University Press, 1999) for Rawls' statement of his views on international justice.

<sup>11</sup> See Tan, *Justice Without Borders*, pp. 55–61 for a summary of cosmopolitan attempts to 'globalise Rawls'.

<sup>12</sup> Simon Caney, 'Global Distributive Justice and the State', *Political Studies*, 56 (2008): 487–518, p. 491. Beitz and Pogge's arguments against Rawls are both forms of analogy argument, as is that of Darrell Moellendorf in *Cosmopolitan Justice*, (Boulder, CO.: Westview Press, 2002).

and the global context (making ‘disanalogy’ arguments) – by denying that the correct institutions or interactions currently obtain at the global level.<sup>13</sup>

More recently, some cosmopolitans have stepped out of the institutional debate and returned to the kinds of argument made by Singer. These cosmopolitans have rejected the premises of Rawls’ argument – that principles of justice apply primarily to institutional structures – and have instead argued for global egalitarianism on the basis of features of human beings, as opposed to features of social or political institutions.<sup>14</sup> This doesn’t require making any analogy between social and global political contexts, and therefore doesn’t rely on descriptive assertions about the existence (or not) of the relevant institutions or interactions at the global level. In response to these arguments, non-cosmopolitans have denied that the universal features of human beings that cosmopolitans appeal to are sufficient to support egalitarian duties of distributive justice, and have reasserted institutional premises similar to those of Rawls.<sup>15</sup> This last debate we might label as the ‘universalism debate.’

The general question at stake in both the institutional and the universalist debates is ‘should global justice be understood as requiring some kind of equality between people everywhere, or is there a better way of understanding it?’<sup>16</sup> This is the question which now dominates the global justice literature, and which I will therefore be focusing on. Cosmopolitans in both debates are arguing that, for the same reasons that we support principles of redistributive justice within states, we should support them at the global level as well. However they differ in terms of the reasons that they take to be most salient. I will discuss this difference in much greater detail in Section 1.5., when I will make the distinction between relational and non-relational approaches to justice.

I think that we can identify two common commitments that are shared by all parties to this current debate in the global justice literature. The first is a shared commitment to liberal egalitarianism, broadly construed.<sup>17</sup> All the theorists that I am concerned with here, when talking about distributive justice in its traditional sense (i.e. within the nation-state) would support liberal egalitarian principles of justice. In other words, they endorse liberal values, and agree that inequality is something that we should be concerned about at the nation-state level. There are undoubtedly proponents of rival theories of distributive justice such as

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<sup>13</sup> This type of argument is pursued by Thomas Nagel in ‘The Problem of Global Justice’, *Philosophy and Public Affairs*, 33/2 (2005): 113–47, and Michael Blake in ‘Distributive Justice, State Coercion, and Autonomy’, *Philosophy and Public Affairs*, 30/3 (2003): 257–96, amongst others.

<sup>14</sup> Examples of this type of approach include Kok-Chor Tan, *Justice Without Borders*; and Simon Caney, *Justice Beyond Borders*.

<sup>15</sup> David Miller makes an argument of this kind in *National Responsibility and Global Justice*.

<sup>16</sup> Miller, *National Responsibility and Global Justice*, p. 5.

<sup>17</sup> See Tan, *Justice Without Borders*, p. 9.

libertarianism who have something to say about global justice, and there is substantial disagreement between the liberal egalitarians themselves about which exact principles of justice and patterns of distribution justice requires. However, it is striking that the bulk of the current debate takes place between theorists who adopt broadly similar theories of distributive justice at the domestic level.<sup>18</sup> So when issues of global justice are being debated it is usually the question of whether liberal egalitarian principles (which are themselves not excessively contested) should apply beyond the nation-state, which is the primary focus.

The second assumption or commitment that I think is arguably shared by the bulk of the contributors to the dominant global justice debate is that we owe a certain level of moral concern to all human beings, regardless of nationality or citizenship. We have moved on from the beginning of the world hunger debate in which it was still an open question whether we owed any positive moral concern at all to people beyond our borders. That original question has now in the most part been answered affirmatively – theorists agree that we owe some kind of positive moral concern to all human beings, regardless of their nationality or citizenship.<sup>19</sup> This commitment to some kind of universal moral concern is often expressed as endorsement of a set of basic human rights and to correlative duties of assistance.<sup>20</sup> This consensus is backed up by the political enshrinement of human rights in legal documents such as the Universal Declaration for Human Rights.<sup>21</sup>

Once we recognise that these two commitments are widespread amongst all parties, both cosmopolitan and non-cosmopolitan, to the current global justice debate, it is clear that there are some questions which can be left to one side. The question of whether we owe any positive moral concern at all to people beyond our borders is no longer so urgent, since the bulk of people agree that we do owe some level of moral concern, they just disagree about how much. Equally, the question of whether we should be concerned with inequality at all is

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<sup>18</sup> See for example the non-cosmopolitan theories of justice of John Rawls, *A Theory of Justice*; David Miller, *Principles of Social Justice*, (Cambridge, MA.: Harvard University Press, 1999); and Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, (Oxford: Blackwell, 1983); and the cosmopolitan theories of Kok-Chor Tan, *Justice Without Borders*; Simon Caney, *Justice Beyond Borders*; and Darrel Moellendorf, *Cosmopolitan Justice*. See Charles Jones, *Global Justice: Defending Cosmopolitanism*, (Oxford: Oxford University Press, 1999), pp. 15-16 for discussion of the relationship between cosmopolitanism and liberalism.

<sup>19</sup> Gillian Brock and Harry Brighouse, 'Introduction', in Gillian Brock and Harry Brighouse (eds.), *The Political Philosophy of Cosmopolitanism*, (Cambridge: Cambridge University Press, 2005), pp. 3-4; Tan, *Justice Without Borders*, pp. 20-21, 46; David Miller, 'Justice and Boundaries', *Politics, Philosophy and Economics*, 8/3 (2009): 291-309, at p. 293. Miller cites Walzer's support for universal 'thin' principles of justice as evidence that non-cosmopolitans can endorse some level of universal moral concern; see Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, (Notre Dame, IN.: University of Notre Dame Press, 1994), especially Chapters 1 and 2. This commitment is shared by recent statist contributors to the debate, including Blake, 'Distributive Justice, State Coercion, and Autonomy', pp. 259-260, and Andrea Sangiovanni, 'Global Justice, Reciprocity, and the State', *Philosophy and Public Affairs*, 35/1 (2007): 3-39, at p. 4, n. 5.

<sup>20</sup> As Charles Beitz points out, non-cosmopolitans who share this commitment to universal human rights often argue that the primary duty for upholding and fulfilling such rights rests with national governments ('International Liberalism and Distributive Justice', *World Politics*, 51 (1999) 269-96, at pp. 272-273).

<sup>21</sup> UN, 'Universal Declaration for Human Rights', (<http://www.udhr.org/UDHR/default.htm>).

less important than the question of whether we should be aiming for some kind of equality at the global level or simply within nation-states. I am therefore not going to be concerned in this thesis with defending either a general commitment to liberal egalitarianism or a belief in the claim that positive moral concern should be universal. My focus is on the debate between cosmopolitans and non-cosmopolitans, who share a belief in basic rights of some kind, as well as a principled concern with inequality, about whether some form of equality is required at the global level or not.

Given these two points of agreement, it might be objected that the debate that I am focusing on is a false one – that cosmopolitans and non-cosmopolitans agree about more than they disagree. It is true that, in addition to the two theoretical commitments that I have identified above, there are further substantive points on which most parties to the debate agree. For example, most parties to the debate, both cosmopolitan and anti-cosmopolitan, would agree that the current global state of affairs is unjust, and that we should be talking substantive action to improve the standard of living of those living in extreme poverty throughout the world.<sup>22</sup> However I intend to argue that this agreement is a shallow one that masks much deeper ethical differences, and that these differences have strong implications for the resulting theory of global justice. In the rest of the chapter I will examine cosmopolitanism and the theories that oppose it in more detail, and will identify what I see as the two main areas of disagreement between parties to the global justice debate. These areas of disagreement concern the scope and grounds of comparative distributive justice.

### **1.3. Cosmopolitanism**

As I stated above, ‘cosmopolitan’ has been used as a label to describe a wide range of theoretical positions, and cosmopolitanism has been defined in a number of different ways. To start with, we need to be clear that the form of cosmopolitanism that I am seeking to support is cosmopolitanism about distributive justice. This kind of cosmopolitanism is typically referred to as ‘moral cosmopolitanism’, and is a view about the strength, scope, and justificatory grounds of our obligations of distributive justice. I should make it particularly clear that I am not seeking to support ‘political’ or ‘legal’ cosmopolitanism – the set of views that is concerned with global political and legal structures, and which is sometimes

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<sup>22</sup> Jones, *Global Justice*, p. 19

associated with an endorsement of a world state.<sup>23</sup> Moral cosmopolitanism, in contrast to political cosmopolitanism, makes no claims about the desirability of global political structures. Whether moral cosmopolitanism entails political cosmopolitanism or not is an open question, but one I will not be addressing here. Many moral cosmopolitans do, nevertheless, make descriptive claims about historical processes such as globalisation (for example that we have moved away from the traditional Westphalian nation-state system towards a system of global interdependence and reduced sovereignty) but these are not normative claims, i.e. they are not expressing either positive or negative normative assessment of the desirability of such historical processes.<sup>24</sup> I will now explain the substance of moral cosmopolitanism (hereafter 'cosmopolitanism') in more detail. I'll look first at the moral intuitions that underlie cosmopolitanism, and then at what I argue are the two main substantive commitments of a cosmopolitan theory of justice: (1) a belief in universal egalitarian duties of global justice; and (2) the claim that the scope of distributive justice is global. After having outlined the cosmopolitan view I will then examine the moral universalist background to these claims. My goal here is to flesh out the idea of cosmopolitanism, so that I can then clarify the debate between moral cosmopolitanism and its opposing positions, statism and nationalism.

One way that cosmopolitanism is commonly defined is with reference to moral universalism – briefly, the claim that all human beings are units of equal moral concern and should respect one another as such. According to this picture, cosmopolitanism begins with the intuition that there is something unfair about the current state of affairs in which an individual's nationality has a very significant effect on their life chances and material wellbeing. So, for example, there is something *prima facie* wrong with the fact that a child born in the UK in 2005 has a life expectancy of nearly 79 years, compared with a child born in Angola in the same year who has a life expectancy of just 40.<sup>25</sup> The wrongness of this state of affairs flows from the perceived arbitrary nature of nationality; as Martha Nussbaum puts it – 'the accident of where one is born is just that, an accident; any human being might have been

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<sup>23</sup> The distinction between political and moral cosmopolitanism is drawn by Thomas Pogge, who uses the term 'legal' to refer to political cosmopolitanism (*World Poverty and Human Rights*, (Cambridge: Polity Press, 2002), p. 169), and Charles Beitz, who uses the term 'institutional' to refer to political cosmopolitanism ('International Liberalism and Distributive Justice', pp. 286-287). Political cosmopolitans vary between those who argue for a fully integrated world government (see for example Luis Cabrera, *Political Theory of Global Justice: A Cosmopolitan Case for the World State*, (London: Routledge, 2004); and 'The Cosmopolitan Imperative: Global Justice Through Accountable Integration', *The Journal of Ethics*, 9/1-2 (2005): 171-199), and those who argue for the creation of various forms of political authority above the nation or state, up to but not necessarily including a fully functional world government (see for example David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus*. (Malden, MA.: Polity Press, 2004); and *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. (Stanford: Stanford University Press, 1995).

<sup>24</sup> Although for some they have normative conclusions, as I will explain below.

<sup>25</sup> World Health Organisation Life Tables 2005 ([http://www.who.int/whosis/database/life\\_tables/life\\_tables.cfm](http://www.who.int/whosis/database/life_tables/life_tables.cfm), retrieved 21/02/08).



born in any nation.’<sup>26</sup> The argument here is that nationality is as morally arbitrary a characteristic as race or gender, and since we do not think that it is morally acceptable for someone to be denied access to important goods just because they are female or have a certain colour of skin, it is equally unjust that one’s nationality can determine one’s wellbeing and life chances, and frequently does so to a large extent.<sup>27</sup> Simon Caney describes this idea as the ‘principle cosmopolitan claim’ – that ‘given the reasons we give to defend the distribution of resources and given our convictions about the irrelevance of people’s cultural identity to their entitlements, it follows that the scope of distributive justice should be global.’<sup>28</sup> This basic cosmopolitan intuition is coupled with a firm commitment to individualism, so that individual human beings, rather than collectives such as nations or states, are the ultimate units of moral concern.<sup>29</sup> So the basic moral claim underlying cosmopolitanism is that morally arbitrary factors should not be able to affect what we (as individuals) owe each other as a matter of justice. In other words, cosmopolitans affirm a ‘universalist moral personality’, according to which characteristics such as nationality, culture, ethnicity, race, or gender are not considered to be ethically relevant.<sup>30</sup> The problem with defining cosmopolitanism in terms of its commitment to moral universalism is that it is not clear that moral universalism cannot be equally endorsed by non-cosmopolitans. Obviously nationalists would dispute the claim that nationality is a morally arbitrary characteristic, but they can still affirm the idea that all human beings are units of equal moral concern.<sup>31</sup> Given this issue, it is preferable to define cosmopolitanism in terms of its main substantive claims, which I argue are: (1) that we have strong universal duties of justice, and (2) that the scope of distributive justice is global.

### 1.3.1. General Duties

The first substantive cosmopolitan claim is that we have strong general duties of justice to all persons, regardless of nationality or citizenship. As I’ve outlined above, most parties to the current debate about global justice affirm some kind of general duties of assistance which are correlative to basic human rights. However we can distinguish cosmopolitanism from other positions in the way that cosmopolitans claim that our general duties are more than just duties of assistance – they are positive duties of justice. Cosmopolitanism emphasises socio-

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<sup>26</sup> Martha C. Nussbaum, ‘Patriotism and Cosmopolitanism’, in Joshua Cohen (ed.), *For Love of Country: Debating the Limits of Patriotism*, (Boston: Beacon Press, 1994), p. 7.

<sup>27</sup> The moral arbitrariness of nationality has tended to be the main focus of attention for cosmopolitans, but the intuition applies equally to membership of political associations such as states, as well as ethnic and religious groups.

<sup>28</sup> Caney, ‘International Distributive Justice’, p. 977.

<sup>29</sup> Pogge, *World Poverty and Human Rights*, p. 169.

<sup>30</sup> Caney, ‘International Distributive Justice’, p. 977.

<sup>31</sup> I will explore this in more detail in Section 1.4.

economic rights and redistributive duties,<sup>32</sup> and seeks to focus our attention not so much on the absolute poverty found in much of the world but more on the material inequality that exists between the global rich and poor. For cosmopolitans, our global duties are not limited to aiding those in desperate need, but extend beyond this minimal concern to substantive effort to address the causes of poverty and in most cases to a substantive redistribution of wealth between rich and poor countries.<sup>33</sup> The universal duties that cosmopolitans support are the natural result of applying liberal egalitarian theories of justice at the global level.<sup>34</sup> Opponents of cosmopolitanism do not support such strong duties because they argue that we should restrict liberal egalitarianism to within nation-state borders.<sup>35</sup>

### 1.3.2. The Scope of Justice

The second substantive cosmopolitan claim is that the scope of justice is global. I'll elaborate on this 'globalist'<sup>36</sup> claim in more detail below, but first I want to distinguish it from a different claim with which it is often equated or confused. Cosmopolitans are sometimes described as holding that national or state borders are not ethically significant. It is important to see that these two claims are different to each other, and that not all cosmopolitans endorse the second claim. The claim that nation or state borders are not ethically significant can be used to challenge the 'proximity thesis' – the view that we owe more to those close to us, such as co-nationals, than to those far away. This claim, that national and state borders are not ethically significant, also challenges prevailing norms of state sovereignty and non-intervention. However not all cosmopolitans deny the ethical significance of national and state boundaries, and indeed many theorists who would define themselves as cosmopolitan have spent time trying to show how their theory can account for the significance of nation and state boundaries.<sup>37</sup> Confusion arises because one can understand the claim that borders are not ethically significant as an absolute or a relative claim – that borders have no ethical significance whatsoever, or that they have less

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<sup>32</sup> See for example Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Second edition, (Princeton, NJ: Princeton University Press, 1996).

<sup>33</sup> See for example, Caney, *Justice Beyond Borders*, in which he explicitly defends a global principle of equality of opportunity such that 'persons of different nations should enjoy equal opportunities; no one should face worse opportunities because of their nationality', pp. 122-123; and Tan, *Justice Without Borders*, in which he argues for globalising Rawls' principle of equality of opportunity, pp. 60-61.

<sup>34</sup> Tan argues that 'if one accepts egalitarian liberalism in its general form, one ought also to be a cosmopolitan liberal', *Justice Without Borders*, p. 7.

<sup>35</sup> Summaries of the recent arguments made by non-cosmopolitans against global egalitarianism can be found in Miller, 'Justice and Boundaries'; Christian Barry and Laura Valentini, 'Egalitarian Challenges to Global Egalitarianism: A Critique', *Review of International Studies*, 35 (2009): 485-512; and Chris Armstrong, 'Global Egalitarianism', *Philosophy Compass*, 4/1 (2009): 155-171.

<sup>36</sup> John Cottingham, 'Ethics and Impartiality', *Philosophical Studies*, 43 (1983) 83-99, p. 90; Tan, *Justice Without Borders*, pp. 21-24.

<sup>37</sup> For example, Kok-Chor Tan's *Justice Without Borders* is devoted to providing an account of cosmopolitanism that can coherently account for nationalism and patriotism.

significance than has traditionally been claimed. Most cosmopolitans would shy away from the first, absolute, claim, but some (although not all) would endorse the second, relative, claim.<sup>38</sup> Either way, the claim about the ethical insignificance of borders is one about which cosmopolitans disagree, and which therefore shouldn't be used as a distinguishing feature of cosmopolitanism. If we define cosmopolitanism as committed to the claim that national borders are not ethically significant then we will rule out many theories, such as Kok-Chor Tan's, which are commonly viewed as cosmopolitan.<sup>39</sup> The claim about the scope of justice doesn't suffer from this problem – all cosmopolitans, by definition, can be said to believe that the scope of justice is global.

It is important to be clear about exactly what we mean by the 'scope' of justice, since it can be confused with the 'site' or 'grounds' of justice.<sup>40</sup> The scope of justice refers to 'the *range of persons* who have claims upon and responsibilities to each other arising from considerations of justice.'<sup>41</sup> These are the range of people who are in 'justice relations' with each other – whose relationships with one another are 'justice-apt.'<sup>42</sup> The scope of justice picks out the set of persons of whom we can ask if their relationships with each other are just or unjust, and to whose relationships we apply principles of justice. In other words, it tells us how far to extend our attention when assessing patterns of distribution. Cosmopolitans hold that the scope of justice is global – that it includes all persons. This is in contrast to non-cosmopolitans who hold that the scope of justice is limited to within a certain less-than-global-context, variously conceived as the nation or state or similar bounded communities.

It is important to be clear at this point about the type of distributive justice to which these claims about scope refer. As we saw earlier in the chapter, the key contemporary debate between cosmopolitans and non-cosmopolitans is about equality and whether liberal egalitarian principles should be extended to the global sphere. It is generally accepted that there is an important difference between principles of justice that aim for equality of some kind, and those that aim for sufficiency of some kind. In the recent debate about global justice, questions about sufficiency and achieving a minimal standard for all have become

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<sup>38</sup> The difference between those who would endorse the absolute claim and those who would endorse the relative claim is similar to that between 'radical' and 'moderate' cosmopolitans identified by Caney ('International Distributive Justice', pp. 975-976). Radical cosmopolitans hold that we have no special obligations to co-nationals or co-citizens, because nation-state boundaries have no intrinsic significance. Moderate cosmopolitans refrain from making this strong claim.

<sup>39</sup> See note 37 above.

<sup>40</sup> '[T]he site of justice refers to the *kinds of objects* (individuals' actions, individuals' character, rules, or institutions, and so on) appropriately governed by principles of justice, that is, to which the principles of justice rightly apply,' Arash Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice', *Philosophy and Public Affairs*, 35/4 (2007): 318-358, at p. 323. See Section 1.5. below on the grounds of justice.

<sup>41</sup> Abizadeh, 'Cooperation, Pervasive Impact, and Coercion', p. 323.

<sup>42</sup> A. J. Julius, 'Nagel's Atlas', *Philosophy and Public Affairs*, 34/2 (2006): 176-192, p. 176.

less controversial, whilst global egalitarianism remains hotly disputed.<sup>43</sup> So these claims about scope refer to egalitarian justice in particular, not to distributive justice in general. Following David Miller I think we should adopt the terms ‘comparative’ and ‘non-comparative’ justice, rather than egalitarian and sufficientarian as is more commonly used.<sup>44</sup> ‘Egalitarian’ and ‘sufficientarian’ are terms used to describe specific theories of justice, and so carry considerable theoretical baggage. ‘Comparative’ and ‘non-comparative’ do not suffer from this problem, and so are preferable. Comparative justice is concerned with the relative level of resources that people have, whereas non-comparative justice is only concerned with the maintenance of an absolute minimal standard below which justice has not been met (some theorists see this as beneficence rather than a form of justice<sup>45</sup>). So to say that cosmopolitans argue that justice has global scope is vague, and will only worsen the confusion surrounding the label. It is much more accurate to say that cosmopolitans argue that comparative justice has global scope. This is why in the recent literature cosmopolitanism has become closely identified with, and sometimes defined as, global egalitarianism – the view that we should be aiming for equality of some kind at the global level.<sup>46</sup>

The opposing claims to globalism about the scope of justice are ‘statism’ and ‘nationalism.’<sup>47</sup> Statism is the view that the scope of comparative justice is restricted to within state boundaries, nationalism in this case is the view that the scope of comparative justice is restricted to within national boundaries.<sup>48</sup> Statists and nationalists deny that comparative justice has global scope – they seek to limit the scope of comparative justice to within the nation or state.<sup>49</sup> In practice this means that if comparative justice has global scope then relative differences in resource distribution are cause for concern, and may be unjust.

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<sup>43</sup> As Leif Wenar points out, a number of influential theorists now adopt the ‘sufficiency not equality’ view; ‘Human Rights and Equality in the work of David Miller’, *Critical Review of International Social and Political Philosophy*, 11/4 (2008): 401-411.

<sup>44</sup> David Miller, ‘The Limits of Cosmopolitan Justice’, in David R. Mapel and Terry Nardin (eds.) *International Society*, (Princeton: Princeton University Press, 1998), p. 171.

<sup>45</sup> See Beitz, ‘Cosmopolitanism and Global Justice’, p. 21, n. 22.

<sup>46</sup> See for instance Abizadeh, ‘Cooperation, Pervasive Impact, and Coercion’, in which he defines ‘cosmopolitanism’ as the view that the scope of distributive justice (by which he means comparative, egalitarian justice, see p. 320) is global, p. 318, n. 1. Of course there is still much diversity of views within the broad church of global egalitarianism.

<sup>47</sup> I use ‘statism’ and ‘nationalism’ in a narrow sense to refer to claims about the scope of justice. This is contrast to a broader usage which refers to comprehensive theories (see Brian Barry’s discussion of nationalism and statism in ‘Statism and Nationalism: A Cosmopolitan Critique’, in Ian Shapiro and Lea Brilmayer (eds.), *Global Justice*, (New York: New York University Press, 1999), pp. 15-25).

<sup>48</sup> Some authors use the term ‘internationalism’ as shorthand for nationalism and/or statism here (see Andrea Sangiovanni, ‘Global Justice, Reciprocity, and the State’, *Philosophy and Public Affairs*, 35/1 (2007): 3-39, p. 6).

<sup>49</sup> There are several sorts of arguments that are used by statists and nationalists to limit the scope of justice in this way. Many statist arguments focus on coercive nature of state institutions (see Michael Blake, ‘Distributive Justice, State Coercion, and Autonomy’); other arguments refer to reciprocity (see Sangiovanni, ‘Global Justice, Reciprocity, and the State’); and many nationalist arguments make use of the concept of solidarity (see David Miller, *On Nationality*). See Miller, ‘Justice and Boundaries’, for a thorough discussion of all three of these kinds of argument.

However if the only justice that has global scope is non-comparative, then relative differences in resource distribution are not important in and of themselves. For example, cosmopolitan globalists see the current unequal global distribution of resources as unjust, whereas statists and nationalists only see it as unjust if it means that some individuals fall beneath some predefined absolute level of wellbeing, or perhaps if it has arisen through some unjust interaction. For statists and nationalists, inequality at the global level is only a problem for the effects that it has on the absolute wellbeing of individuals – it is never a problem in itself. Cosmopolitan globalists dispute this, arguing that global inequality in itself can be unjust.

All parties to this debate about the scope of comparative justice can affirm that the scope of non-comparative justice is global. Statists and nationalists can therefore support a range of principles at the global level. Some might affirm basic positive rights to subsistence and claim that we have duties to make sure that everyone has their rights fulfilled. Others might hold back from this claim but affirm that there are certain prohibitions that restrict our actions, based on basic negative rights, such as freedom from harm. Some might go further and restrict the scope of non-comparative justice to within national or state boundaries as well. Cosmopolitan globalism itself can vary in strength. Caney makes a useful distinction between the modest positive claim that there are global principles of comparative justice, and the more ambitious negative claim that there are also no principles of comparative justice that operate solely at the domestic level.<sup>50</sup>

The purpose of this discussion has been to clarify the two main substantive claims of a moral cosmopolitan theory of global justice. Cosmopolitans endorse the globalist claim that the scope of justice is global, and hold that we have universal egalitarian duties of justice. This is in contrast to non-cosmopolitan theories of global justice which restrict a concern with egalitarianism to within nation or state borders, or which do not endorse universal egalitarian duties of justice. It is important to note that the claim that we have egalitarian duties of justice does not necessarily follow from the claim that the scope of justice is global – the two claims are not equivalent. Claims about the scope of justice do not tell us anything about the content of our theory or which principles to adopt – the scope of justice simply refers the range of people who we have to consider when justifying and applying principles of justice. Because of this we should recognise that the globalist claim that comparative justice has global scope does not necessarily lead to a commitment to a particular set of global egalitarian duties of justice. If I affirm the claim that the scope of justice is global I am committed to apply my particular theory of justice globally. Which particular set of global duties I will endorse will depend upon the specific content of my theory. If, for example, I

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<sup>50</sup> Caney, *Justice Beyond Borders*, p. 105.

endorse a strongly egalitarian theory of justice then I will endorse extensive duties of redistribution at the global level. If, on the other hand, I endorse a libertarian theory of justice, then I will endorse a fairly restrictive set of duties at the global level, consisting mainly of duties of non-interference. The globalist claim is simply that principles of distributive justice should apply globally, and so globalism and cosmopolitanism are not the same positions. In fact, cosmopolitanism is best understood as the combination of a commitment to globalism with a further claim about our substantive universal duties.

I've now outlined the two main substantive commitments of a cosmopolitan theory of global justice. I haven't however outlined the arguments for either of these commitments beyond the commitment to moral universalism which is often taken to characterise a cosmopolitan position. These substantive commitments can be held for different theoretical reasons, and it is important to consider the underlying moral claims that are being made by different theorists, in order to be able to properly understand their differing approaches. I'll now consider the moral universalist foundation for cosmopolitanism in more detail, before moving on to look at the range of different possible views about the grounds of justice.

#### **1.4. Moral Universalism**

I outlined above the moral universalism which is usually taken as characteristic of a cosmopolitan position. This is the claim that all human beings have equal moral status, and that morally arbitrary facts should therefore not be allowed to affect the wellbeing and life chances of individuals. It is from this moral starting point that cosmopolitans are understood to derive their substantive claims about the scope of justice and about our universal duties to others. Critics of cosmopolitanism have pointed out however, that moral universalism, understood as a demand for equal moral concern and respect, is not strong enough on its own to support the substantive conclusions that cosmopolitans wish to reach.<sup>51</sup> David Miller describes the claim that all human beings are units of equal moral concern as 'the weak cosmopolitan premise'<sup>52</sup> and argues that it cannot be used to derive the stronger principles that make up the core of moral cosmopolitanism. The moral universalist claim is, he argues, fairly uncontroversial, in that it is an idea that few philosophers would deny.<sup>53</sup> In that sense

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<sup>51</sup> Richard Miller, 'Moral Closeness and World Community', in Dean K. Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy*, (Cambridge: Cambridge University Press, 2004), p. 102.

<sup>52</sup> Miller, *National Responsibility and Global Justice*, p. 27.

<sup>53</sup> There are complications of course when we come to consider the moral status of fetuses or brain-dead adults, and it will be up for debate what capabilities or characteristics are required before an entity is seen as human in moral terms.

we might see moral universalism as an insignificant claim.<sup>54</sup> Moral universalism can be interpreted as uncontroversial in part because until we know how to understand 'equal moral concern' it is not really clear how much follows from it. Moral concern might involve nothing more than an acknowledgement of moral status. We might think that as long as I do not deny the moral status of any human being, then I am showing everyone equal moral concern. For example, whilst moral universalism rules out a practice like slavery, because slavery denies moral personhood to a section of the human population, it doesn't necessarily rule out much more than this. All that moral universalism might demand is a negative obligation to not violate the rights of individuals in certain ways, so as long as I refrain from such violations then I am respecting their moral status. Under this reading I can still treat different groups of people in very different ways, and possess different levels of obligation towards them, whilst still showing them equal moral concern. Critics of cosmopolitanism like Miller argue that the stronger readings of moral universalism which cosmopolitans need to support their substantive conclusions require further argumentative support.<sup>55</sup> Moral universalism, understood minimally as the claim that all individuals are equal units of moral concern, is on the surface equally compatible with a wide range of theories of justice, and wouldn't be denied by most parties to contemporary global justice debates. An affirmation of moral universalism, understood in this minimal sense, is therefore not necessarily enough to motivate a commitment to a substantive form of cosmopolitanism.

In order to respond to this claim cosmopolitans might like to appeal to a stronger version of moral universalism that is not as uncontroversial and toothless as the version addressed by Miller. I take this stronger version to be the view, as described by Alan Gewirth, that 'all persons ought to be treated with equal and impartial *positive* consideration for their respective goods or interests.'<sup>56</sup> This stronger form of universalism is not uncontroversial in the same way as the minimal interpretation because it makes more demands upon our theory of justice. According to Thomas Pogge: 'A moral conception, such as a conception of social justice, can be said to be universalistic if and only if (A) it subjects all persons to the same system of fundamental moral principles; (B) these principles assign the same fundamental moral benefits (e.g. claims, liberties, powers, and immunities) and burdens (e.g. duties and liabilities) to all; and (C) these fundamental moral benefits and burdens are formulated in

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<sup>54</sup> Although of course the general affirmation of moral universalism is not itself unimportant or insignificant. The fact that moral cosmopolitanism has come to be widely affirmed is beyond a doubt a good thing given that the denial of this position has been associated with ideologies which have supported racism, slavery, and genocide. In fact the way that these ideologies tend to work is to deny the humanity of the group they wish to oppress. The fact that they feel the need to make these denials points to the fact that humanity (however we define it) uncontroversially brings with it a certain moral status, and entails some kind of equal respect for, and impartial consideration of, that status.

<sup>55</sup> Miller, *National Responsibility and Global Justice*, p. 28.

<sup>56</sup> Alan Gewirth, 'Ethical Universalism and Particularism', *The Journal of Philosophy*, 85/6 (1988): 283-302, p. 283, my emphasis.

general terms so as not to privilege or disadvantage certain persons or groups arbitrarily.’<sup>57</sup> These conditions rule out theories of justice which allow different fundamental principles of justice to apply to different people, or which allow our basic duties and obligations to be derived from our membership of different political or social groupings.

Miller himself outlines a stronger form of universalism, which he contrasts with ‘particularism.’<sup>58</sup> Universalism as Miller describes it holds that at the fundamental level only basic facts about individuals are relevant to moral judgement, and so all individuals must be treated equally and must be subject to the same principles.<sup>59</sup> A substantive universalist conception of morality, according to Miller, cannot take particular facts about me, or my relationships with others, to have fundamental moral significance. It follows from this that fundamental moral rules must hold for everyone equally, and cannot be affected by or make reference to our relationships with others. So a universalist view of ethics will only allow basic facts to determine fundamental principles, whereas a particularist view of ethics will allow what Miller calls ‘relational facts’ to play this determining role.<sup>60</sup> ‘Relational facts’ are defined by Miller as facts about the relationships in which we stand to each other.<sup>61</sup> For particularists then, ‘the fact that you are my sister, my colleague, or my compatriot is of moral moment *independent of any more fundamental morally significant features of our relationship* (such as promises, intimacy, or mutual interdependence between us).’<sup>62</sup> The moral significance of these relational facts for a particularist is intrinsic and irreducible. Lawrence Blum sums up the particularist approach when he argues that:

‘At the psychologically deepest level of moral life, and of its philosophical expression, lie notions of virtue, particularistic moral response, and partialist moral concern. These notions provide irreducible constraints on the construction of any theories or accounts of the character of morality.’<sup>63</sup>

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<sup>57</sup> Pogge, *World Poverty and Human Rights*, p. 92.

<sup>58</sup> Miller, *On Nationality*, Chapter 3. Miller’s distinction between universalism and particularism has echoes of recent debates about the proper role of impartiality in ethics (see Susan Mendus, *Impartiality in Moral and Political Philosophy*, (Oxford: Oxford University Press, 2002) for a good overview here), as well as the debate between liberal individualism and communitarianism (see the collection *Communitarianism and Individualism*, edited by Shlomo Avineri and Avner De-Shalit, (Oxford: Oxford University Press, 1992) for the main contributions to this debate). These debates are both broadly concerned with neo-Aristotelian criticisms of the impartiality and individualism inherent in a liberal Kantian approach to justice and ethics.

<sup>59</sup> What is meant by ‘basic facts’ might be a subject for some debate. For the purposes of this discussion it will hopefully be enough to say that the basic facts about individuals do not include any information about their relationships to other people. Presumably information about their preferences and commitments will also be excluded, as will information such as their race, religion or gender.

<sup>60</sup> Miller, *On Nationality*, p. 50. Miller’s particularism should be distinguished from Jonathan Dancy’s ‘radical particularism’, which holds that there are no moral principles at all – see Jonathan Dancy, *Moral Reasons* (Oxford: Blackwell, 1993).

<sup>61</sup> Miller, *On Nationality*, p. 50.

<sup>62</sup> Christopher Wellman, ‘Relational Facts in Liberal Political Theory: Is There Magic in the Pronoun ‘My’?’, *Ethics*, 110 (2000): 537-562, p. 539. Wellman uses the terms ‘associativism’ and ‘reductionism’ to refer to particularism and universalism respectively.

<sup>63</sup> Lawrence A. Blum, ‘Against Deriving Particularity’, in Brad Hooker and Margaret Olivia Little (eds.), *Moral Particularism*, (Oxford: Clarendon Press, 2000), p. 206.



The stronger understanding of universalism, which can be contrasted with particularism, more clearly leads to cosmopolitan conclusions than the weaker version criticised above. Universalism under this reading demands that principles of justice have global scope, and that they aren't influenced by morally arbitrary relational facts.<sup>64</sup> It would be wrong, however, to conclude that it is only possible to reach cosmopolitan conclusions from moral universalist foundations. Universalism is a view about the proper justificatory grounds of moral principles. In the next section I will explore a range of possible views about the justificatory grounds of principles of *justice*, more specifically, in order to show that one can reach cosmopolitan conclusions from two very different theoretical starting points.

### 1.5. The Grounds of Justice

The debate surrounding universalism is wider than that about global justice – it is a debate about the proper grounds of moral principles. A more specific distinction can be drawn on the basis of differing views of the proper grounds of principles of justice – or the ‘grounds of justice.’ Earlier I drew a distinction between different views about the scope of justice. Before we can know what we think the scope of justice should be, we need to know what the grounds of justice are. The grounds of justice refer to the features of the situations of people who are in justice relations which account for the fact that they are in a justice relations. These are the features of their situations which make their relations justice-apt.<sup>65</sup> In other words, we need to know which sets of factors need to be in place for considerations of justice to be appropriate – for it to make sense for us to apply principles of justice. I'm now going to outline two broad opposing views about the grounds of justice, before explaining how these different views map onto the debate between cosmopolitans and non-cosmopolitans.

In the recent literature a distinction has been made between those who think that the grounds of comparative justice are ‘relational’ and those who think that the grounds of justice are ‘non-relational.’<sup>66</sup> This way of classifying positions turns on the question of whether considerations of comparative justice are seen to arise in the context of people's relationships

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<sup>64</sup> Indeed Miller asserts as the conclusion to his discussion of universalism and particularism that a supporter of universalism has no option than to be a cosmopolitan (*On Nationality*, p. 79).

<sup>65</sup> Julius, ‘Nagel's Atlas’, p. 176.

<sup>66</sup> See Julius, ‘Nagel's Atlas’. Andrea Sangiovanni uses the terms ‘associative’ and ‘allocative’ to refer to the relational and non-relational approaches (‘Global Justice, Reciprocity, and the State’). Thomas Pogge makes a distinction between ‘institutional’ and ‘interactional’ approaches to justice, which is similar to the distinction being made here (*World Poverty and Human Rights*, p. 170).

with other people, or whether they arise independently of these contexts.<sup>67</sup> One way to characterise the debate between these positions is as a debate about the necessary and sufficient conditions that are required for a conversation about what justice demands to be appropriate. In essence, this debate is about when and where this conversation about the content of justice should take place, and what should be in place before we can instigate the conversation. This obviously also relates to the question of who should be party to the conversation about the content of justice (in other words, whose interests should be taken into account). There may be theorists who agree about the correct outcome of the eventual conversation about the content of justice, but who disagree about the background conditions.

According to a relational approach, obligations of comparative justice arise through association and relationships.<sup>68</sup> Absent such interaction, considerations of comparative justice are inappropriate (considerations of non-comparative justice may still be appropriate, see below). In other words, it is certain features of particular relationships and associations which make them justice-apt (which features of which types of relationship are relevant will vary). Sangiovanni defines relational accounts as holding that ‘...the practice-mediated relations in which individuals stand condition the content, scope, and justification of those principles. The relational view can be summed up by the claim from John Charvet that ‘our obligation to interact with others on just terms is conditional on political association.’<sup>69</sup> Relational accounts vary regarding both which relations condition the content, scope, and justification of those principles as well as how they do so.’<sup>70</sup> Some relational theories ground justice in institutional and political relationships, whilst others ground justice in social relationships. Examples of former include Rawlsian theories of justice, in which principles of justice apply to the basic structure of society – the institutions within which people relate

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<sup>67</sup> There is some similarity between the distinction between non-relational and relational approaches to justice, and monism and dualism as defined by Liam Murphy in ‘Institutions and the Demands of Justice’, *Philosophy and Public Affairs*, 27/4 (1998): 251-291. On some readings there is very little difference between the two distinctions, and we can equate monism with the non-relational approach, and dualism with the relational approach (Joshua Cohen and Charles Sabel, ‘Extra Rempublicam Nulia Justitia?’, *Philosophy and Public Affairs*, 34/2 (2006): 147-175, p. 159; Nagel, ‘The Problem of Global Justice’). On other readings (including that of Murphy himself) the two distinctions do not map on to each other so exactly. Murphy defines monism as the claim that ‘any plausible overall political/moral view must, at the fundamental level, evaluate the justice of institutions with normative principles that apply also to people’s choices’ (p. 253), and dualism as the claim ‘that ‘the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle’ (p. 254). Monism in Murphy’s sense is not the claim that there is only one principle of justice that applies to all matters. It is rather the idea that there is a single (set of) principle(s) of justice that applies at all levels, to institutions as well as personal conduct. Dualism is the denial of this claim – it argues that there are two (sets of) principle(s) of justice – one of which applies to institutions, the other of which applies to personal conduct. Dualism can therefore be seen as a kind of relational approach, because it holds that institutions (which can be construed as a type of association) give rise to a separate principle of justice.

<sup>68</sup> ‘Relationship’ here is being understood in a broad sense, to encompass joint membership of institutions, social groups, and associations, as well as direct interpersonal relationships.

<sup>69</sup> John Charvet, ‘International Society from a Contractarian Perspective’, in David R. Mapel and Terry Nardin (eds.), *International Society: Diverse Ethical Perspectives*, (Princeton, NJ.: Princeton University Press, 1998), p. 114.

<sup>70</sup> Sangiovanni, ‘Global Justice, Reciprocity, and the State’, p. 5.

to each other.<sup>71</sup> Cosmopolitan Rawlsian accounts, such as that of Charles Beitz, also ground justice in this way.<sup>72</sup> David Miller's theory of social justice is an example of the second type of relational approach which grounds justice in social relationships.<sup>73</sup>

According to the non-relational<sup>74</sup> approach, by contrast, obligations of comparative justice are not linked to interaction and association, existing prior to them and independently of them. Considerations of comparative justice (as well as non-comparative justice) are therefore appropriate even when no interaction has taken place – relationships and associations are not needed to make a situation justice-apt. Sangiovanni states that non-relational accounts '...reject the idea that the content, scope, or justification of those principles [of justice] depend on the practice-mediated relations in which individuals stand.'<sup>75</sup> Peter Singer's utilitarian approach is non-relational, as are the contractarian approach of Brian Barry, and the luck-egalitarianism of Kok-Chor Tan.<sup>76</sup> These are so-called 'fully general moral theories' – all moral agents are subject to the principles of justice.<sup>77</sup>

Since the non-relational view would seem to lead naturally to the view that comparative justice is global in scope, whereas the relational view would lend itself to the idea that comparative justice is restricted in certain ways, we might expect that cosmopolitan theorists will tend take the non-relational view, and non-cosmopolitans the relational view. We therefore might be tempted to define cosmopolitanism as the view that the grounds of justice are non-relational, and non-cosmopolitanism as the view that the grounds of justice are relational. This is the way in which Thomas Nagel understands the debate. In 'The Problem of Global Justice', he distinguishes between 'political' and 'cosmopolitan' conceptions of justice. The political and cosmopolitan conceptions are broadly similar to the relational and

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<sup>71</sup> See Aaron James, 'Constructing Justice for Existing Practice: Rawls and the Status Quo', *Philosophy and Public Affairs*, 33/3 (2005): 281-316, and for the original statement from Rawls see *A Theory of Justice*. As Samuel Freeman makes clear, for Rawlsians, 'a principle or conception of distributive justice applies to all existing income and wealth within an *ongoing system* of production, exchange, and consumption.' ('The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice', *Social Philosophy and Policy*, 23/1 (2006): 29-68, pp. 29-30).

<sup>72</sup> Beitz, *Political Theory and International Relations*, esp. pp. 143-153. Beitz argues that 'The conclusion that principles of distributive justice apply globally follows from the premise that international economic interdependence constitutes a scheme of social cooperation', p. 154.

<sup>73</sup> Miller states that 'we can best understand which demands of justice someone can make of us by looking first at the particular nature of our relationship.' *Principles of Social Justice*, (Cambridge, MA.: Harvard University Press, 1999), p. 25.

<sup>74</sup> The term 'non-relational' shouldn't be taken to imply that persons are understood as having no relationship of any kind with one another. This kind of view can recognise the social nature of human beings and the fact that we are inevitably related to one another in some minimal way (leaving the case of Robinson Crusoe to one side), in the sense that our actions affect one another. 'Non-relational' refers instead to the idea that the crucial moral facts when it comes to the grounds of justice are not relational facts.

<sup>75</sup> Sangiovanni, 'Global Justice, Reciprocity, and the State', p. 6.

<sup>76</sup> Brian Barry, *Justice as Impartiality: A Treatise on Social Justice, Volume 2*, (Oxford: Clarendon Press, 1995); Singer, 'Famine, Affluence and Morality'; Tan, *Justice Without Borders*.

<sup>77</sup> Saladin Meckled-Garcia, 'On the Very Idea of Cosmopolitan Justice: Constructivism and International Agency', *The Journal of Political Philosophy*, (2007): 1-27, p. 3.

non-relational approaches respectively, as I've defined them. Under the political conception comparative justice is only relevant once the institutions of the state have been established – justice is a political virtue. Under the cosmopolitan conception on the other hand, comparative justice is pre-political – it is relevant prior to the existence of state institutions.<sup>78</sup> However the picture is not that simple. There are some prominent views, such as that of Darrel Moellendorf, which are usually seen as cosmopolitan, but which are best described as relational.<sup>79</sup> This type of view argues that justice is global in scope (i.e. affirms the globalist claim) but does so by claiming that the associations and interactions that are needed to give rise to justice concerns currently exist at the global level.<sup>80</sup> So it is possible to reach cosmopolitan conclusions from a relational starting-point. However, it does remain the case that if one adopts the non-relational approach, one is committed to the conclusion that justice has global scope, since justice is grounded in universal features of human beings.<sup>81</sup>

It is possible to hold different versions of the relational and non-relational views which vary in terms of their strength. The most extreme version of a non-relational view would not only hold that considerations of comparative justice arise prior to the existence of interactions and relationships, but also make the stronger claim that they never arise in any other way – so relationships and associations are completely irrelevant to comparative justice. A basic act-utilitarianism would be a possible example of this type of view, under which the just thing to do in each situation is the action that brings about the most utility, regardless of the relationships between the individuals involved. This is the type of position that William Godwin is often characterised as having held. Godwin famously argued that when choosing who to save from a burning building, one is morally required to save the individual who will bring about the most benefit to humankind. If the choice is between the Archbishop Fenelon and his chambermaid, then clearly one should save the Archbishop, *even if* the chambermaid is your mother or wife. Godwin's argument is that it makes no moral difference if the chambermaid is your mother; 'what magic is there, in the pronoun 'my' to overturn the decisions of everlasting truth?'<sup>82</sup>

Most utilitarians however, as well as other moral theorists, would not hold such a strong view. We can easily imagine a utilitarian position in which relationships and associations do have an effect on considerations of justice, in that they can give rise to additional obligations.

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<sup>78</sup> Nagel, 'The Problem of Global Justice', pp. 119-120.

<sup>79</sup> Moellendorf states that duties of justice 'arise if and only if... [p]ersons are in association with one another,' *Cosmopolitan Justice*, p. 33.

<sup>80</sup> Moellendorf, *Cosmopolitan Justice*, pp. 36-38.

<sup>81</sup> Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality', *The Journal of Political Philosophy*, 16/2 (2008): 137-164, at p. 140.

<sup>82</sup> William Godwin [1793] in Raymond Preston (ed.), *Enquiry Concerning Political Justice and its Influence on General Virtue and Happiness*, (New York, 1926) pp. 41-42.

A rule-utilitarian could hold that the rule ‘parents owe special attention to their children’ would, if universally followed, produce the most utility, and so the parent-child relationship would incur additional responsibilities. This moderate type of view is non-relational because the scope of justice is unaffected by associations and relationships at the fundamental level. However, at the level of action relationships and associations could be allowed to play a role.

There are a variety of non-utilitarian ways of filling out this type of two-level approach. Brian Barry’s theory of justice as impartiality is an example here. Barry distinguishes between two different ways in which the standard of impartiality can be invoked – first-order and second-order. His theory of justice as impartiality calls for second-order impartiality – ‘principles and rules that are capable of forming the basis of free agreement among people seeking agreement on reasonable terms’. This can be contrasted with first-order impartiality – ‘a requirement of impartial behaviour incorporated into a precept... not being motivated by private considerations’.<sup>83</sup> As Sangiovanni points out, it is not the case that relationships and associations can play no role within a non-relational view – ‘the point is rather that they do not play any role in the *justification* and *formulation* of a given set of principles. They may, however, condition the way in which the principles are *applied*.’<sup>84</sup>

The relational approach can vary in strength in a similar way. An extreme version of a relational view would hold not only that obligations of comparative justice arise through certain relationships and obligations, but also that absent the existence of the appropriate relationships, all kinds of justice are completely irrelevant. The scope of all types of justice (both comparative and non-comparative) would be restricted on this view to within certain associations such as the nation or state. A more moderate relational approach would allow that non-comparative justice concerns are non-relational, whilst holding that comparative justice concerns only arise through certain relationships and associations. In contrast to the non-relational view, this type of approach would hold that associations and relationships have a bearing on (at least comparative) justice at the fundamental level. Again, there are a variety of ways of filling out this type of approach. David Miller’s view is an example of this type of approach. His position is that non-comparative justice is relevant prior to associations but comparative justice is only relevant once certain associations and forms of relationship have come into being.<sup>85</sup>

The key difference, then, between the relational and non-relational approaches is that relational approaches hold that the grounds of comparative justice are the relationships and

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<sup>83</sup> Barry, *Justice as Impartiality*, p. 11.

<sup>84</sup> Sangiovanni, ‘Global Justice, Reciprocity, and the State’, p. 6.

<sup>85</sup> See Miller, *National Responsibility and Global Justice*, and ‘Justice and Boundaries’, for the two most recent statements of his view here.

interactions between individuals, whereas non-relational approaches hold that comparative justice is grounded in universal features of human beings. By grounding comparative justice in forms of relationship between people, relational approaches allow relational considerations to affect the scope of comparative justice at the fundamental level of reasoning, whereas the non-relational approach refuses to make this move. So the relational approach is underpinned by a commitment to a particularist view of ethics, whereas a non-relational approach is grounded in a universalist view of ethics. There is therefore, a foundational difference between the two approaches, in that they adopt fundamentally different understandings of the moral landscape.

### **1.6. Summary of Possible Positions**

I've now drawn two distinctions by which we can distinguish different theoretical approaches to global justice. The first is between globalism – the claim that the scope of justice is global – and statism/nationalism – the claim that the scope of justice is restricted to within states/nations. The second is between relational views, which hold that considerations of justice arise when certain associations and relationships are formed, and non-relational views, which hold that the grounds of justice are not relational – that justice considerations are relevant prior to the existence of associations and relationships. I now want to explain how these two sets of opposing positions map onto each other in order to clarify the position of cosmopolitanism within these debates. The distinction between the globalism and statism/nationalism cuts across the distinction between relational and non-relational views. The relational approach can lead to both globalist and statist/nationalist conclusions. These different conclusions are possible because theorists do not only make normative claims about the grounds of justice but also descriptive claims about which relationships actually obtain in the real world. Holding different beliefs about the actual relationships that exist in the world affects the conclusions that are drawn about the scope of justice. It is also, as I outlined above, possible to hold the relational and non-relational views in different strengths.

The table on the next page shows the possible permutations and combinations of these views. It shows that it is possible to support a cosmopolitan position from both a relational and a non-relational approach. Below the table I describe the possible positions in detail.

		<b>Globalist</b>	<b>Statist/Nationalist</b>
<b>Non-Relational</b>	<b>Strong</b>	(1) Cosmopolitan	(2) Not coherent
	<b>Moderate</b>	(3) Cosmopolitan	(4) Not coherent
<b>Relational</b>	<b>Strong</b>	(5) Non-cosmopolitan	(6) Non-cosmopolitan
	<b>Moderate</b>	(7) Cosmopolitan	(8) Non-cosmopolitan

(1) A strongly non-relational approach could quite clearly support globalism. In fact a commitment to a strong non-relational approach would necessarily entail the globalist conclusion. This is because, as we saw above, a strong non-relational view would hold that relationships and associations do not give rise to any further considerations of justice beyond those that exist prior to their existence. So principles of justice would be grounded in universal features of individuals, and any relationships that happened to exist between individuals would have no effect on the demands of justice. Justice would therefore necessarily have global scope, since it would be grounded only in universal features of human beings. This kind of approach would lead to cosmopolitanism if it was fleshed out with liberal egalitarian principles of justice.

(2) A strongly non-relational approach could, unsurprisingly given the above, not support nationalist or statist conclusions. This view would not be coherent. Strong non-relational approaches are committed to the claim that matters of justice, including its scope, are not allowed to be influenced by relational considerations in any way. It would therefore be incoherent to limit the scope of justice to within the nation or state, given that these, as forms of association, are not allowed to influence matters of justice in any way.

(3) A moderately non-relational view would also lead to globalism. Given its claim that justice arises prior to relationships, and is grounded in universal features of human beings, this view leads naturally to the conclusion that the scope of justice is global. But this moderate view would differ from the strong view outlined in (1) and (2) above in that it would allow relationships and associations to give rise to new principles of justice, as long as

those principles were justified at the fundamental level without reference to relationships and associations. An example of this type of view would be a two-level theory like that of Brian Barry in which some relationships and associations are allowed to affect what is owed as a matter of justice at the level of action. The theory of justice that would result from taking this approach would be cosmopolitan by virtue of its commitment to globalism.

(4) The moderate version of the non-relational approach leads necessarily to globalist conclusions, and so, to the extent that globalism rules out statism/nationalism, is incompatible with a statist or nationalist view. Although the moderate version can allow that relationships and associations can give rise to special obligations, it still maintains that justice at the fundamental level is grounded in universal features of human beings. So the moderate non-relational can support some statist/nationalist principles of justice, but not a full-scale restriction of the scope of justice to within states/nations. According to the non-relational approach, both moderate and strong, justice is necessarily global.

(5) Moving onto the relational approach, we can see that the strong version of this view can support both globalist and statist/nationalist conclusions. The strongly relational view holds that justice considerations, both comparative and non-comparative, arise only through certain types of association and relationship. This view would not therefore support duties of non-comparative justice or human rights outside of the relevant association or relationship. This position would be globalist if it held that there was a justice-apt relationship or association that existed at the global level. This relationship, perhaps one of solidarity, would be all that supported both comparative and non-comparative justice considerations, and so all of our obligations of justice would be contingent on the continued existence of this relationship. I think that we might be reluctant to describe this view as cosmopolitan, even though it affirms the globalist conclusion.

(6) The strongly relational view could equally support statist/nationalist conclusions simply by denying that there is a justice-apt relationship that exists at the global level. If the relevant relationship is one of co-citizenship, for example, then as long as we continue to think that citizenship remains restricted to within states, then so will the scope of both comparative and non-comparative justice. By making this empirical claim then, this view becomes non-cosmopolitan.

(7) The moderately relational view can also support both globalist and statist/nationalist conclusions, again varying with claims about the actual scope of the relationships that are picked out as relevant. The moderate relational view allows that non-comparative justice is grounded in pre-relational features of individuals, and so can support human rights outside of relationships such as co-citizenship. Principles of comparative justice remain grounded in



features of relationships. This kind of view can lead to globalism if we believe that there is a relevant relationship that exists at the global level to ground principles of comparative justice. A prominent example of this type of view is that held by Charles Beitz. Beitz argues there is sufficient similarity between the international context and the domestic context to make distributive justice just as relevant to the global sphere as it is within the nation-state.<sup>86</sup> In other words, the associations which make justice relevant within the nation-state also exist at the global level. Theories such as Beitz's are usually described as cosmopolitan.

(8) An alternative moderate relational view would be one that denies that a relevant relationship which can ground principles of comparative justice exists at the global level. This view would therefore deny globalism. David Miller's view is an example of this type of approach. Miller believes in duties of comparative justice between co-nationals, but only duties of non-comparative justice between human beings as such.<sup>87</sup> This view would not generally be seen as cosmopolitan (and Miller certainly wouldn't describe himself as such).

### 1.7. Implications for Cosmopolitanism

This discussion has shown that the distinctions between relational and non-relational approaches on the one hand, and globalist and statist/nationalist views on the other, do not map neatly onto one another. Two important conclusions should be drawn here. First, that the relational starting point can lead to both cosmopolitan and non-cosmopolitan conclusions, depending on one's view about the scope of certain relationships in the real world. So debates between cosmopolitans and non-cosmopolitans who share a commitment to the relational approach will turn primarily on empirical questions about the extent to which particular relationships extend across the globe. In fact, much of the very recent debate in the literature has been concerned with this issue.<sup>88</sup> The second conclusion is the non-relational approach leads necessarily to globalist (and therefore cosmopolitan if combined with liberal egalitarianism) conclusions. If we start with a non-relational understanding of justice then we will end up with cosmopolitan conclusions. What this means of course is that non-cosmopolitan theories of justice can only be defended from a relational point of view. If we can defend the non-relational view, then we are part of the way at least toward defending cosmopolitanism. The debate between cosmopolitans who take a non-relational perspective and non-cosmopolitans (who are necessarily relational) is a much deeper debate than the one

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<sup>86</sup> Beitz, *Political Theory and International Relations*, p. 8.

<sup>87</sup> Miller, *National Responsibility and Global Justice*.

<sup>88</sup> For example Michael Blake argues that the coercive impact of certain kinds of political relationship grounds principles of justice, and that these kinds of relationship exist at the state level ('Distributive Justice, State Coercion, and Autonomy'), whereas Ryan Pevnick argues that the coercive institutions picked out by Blake exist at the global level and so should support global principles of justice ('Political Coercion and the Scope of Distributive Justice', *Political Studies*, 56/2 (2007): 339-413). The debate between Blake and Pevnick is primarily over a descriptive, rather than normative, matter.

between relational cosmopolitans and relational non-cosmopolitans. Rather than an empirical debate about the extent of particular relationships in the world, it is a normative debate about the very foundations of justice. It is this debate that I think is the most interesting, and which will be the focus of the rest of the thesis. I will be arguing that which of the two approaches we adopt has important implications for our resulting theory of global justice.

## **1.8. Conclusion**

In this chapter I have analysed contemporary debates within political philosophy about global justice. The dominant position in this literature is cosmopolitanism, but, as I have shown, there is confusion about what counts as a cosmopolitan position. This is because 'cosmopolitan' has been used to describe a wide range of positions, and because cosmopolitan conclusions can be reached from different theoretical starting-points. I have argued that contemporary cosmopolitans are united by their belief in the claim that the scope of comparative justice is global, and their commitment to some actual egalitarian duties of justice.

In order to understand the theoretical terrain better, I made two distinctions. First, between two different views of the scope of comparative justice: globalism and statism/nationalism. Second, between two different views of the grounds of comparative justice: the relational approach and the non-relational approach. The non-relational approach is underpinned by a form of moral universalism which rules out certain kinds of facts as being relevant to moral consideration at the fundamental level. The relational approach, in contrast, is underpinned by a form of moral particularism which explicitly takes relational facts into consideration. I mapped these two distinctions onto each other to show that there are a wide variety of possible positions that can be held. The discussion of the different possible positions showed that the non-relational approach leads necessarily to globalist (and therefore with the right kind of substantive conception of justice, cosmopolitan) conclusions, whilst the relational approach can lead to both cosmopolitanism and non-cosmopolitanism.

My primary goal in this thesis is to defend the non-relational approach as a superior approach to formulating a theory of global justice. The aim of this chapter has been to make the place of the distinction between relational and non-relational approaches clear, and to begin to indicate some of the implications of taking either approach. In the next chapter I will focus on the debate between relational and non-relational approaches in much more detail in order to identify the main issues that are at stake between them. The discussion will highlight a set of criteria that are common within current global justice literature – criteria which any acceptable theory of global justice would arguably have to meet. I will then use

these criteria as tools to assess two competing theories of global justice – one relational, one non-relational, in the next two parts of the thesis.

## **Chapter Two: Relational and Non-Relational Approaches to Justice**

### **2.1. Introduction**

In the previous chapter I drew a distinction between relational and non-relational approaches to justice in the context of the global justice debate in contemporary political philosophy. I demonstrated that the non-relational and relational approaches rest upon two opposing understandings of ethics – universalism and particularism respectively. In this chapter my aim is to explore the differences between the two approaches to justice in more detail, in order to show how taking either of the two approaches shapes the resulting theory of justice. I will structure my discussion around the opposing views of these two approaches on several key issues. Given my focus on the global justice debate between cosmopolitans and their critics, I will focus mainly on the issues that have direct relevance for a theory of global justice. I will conclude by outlining the main problems that each approach has to overcome if it is to be able to provide a comprehensive theory of global justice. These sets of problems will then be used as a benchmark against which to assess the approaches of David Miller and Brian Barry in Parts II. and III. I'll begin my discussion with a more detailed exposition of the two approaches.

### **2.2. The Two Approaches**

To recap from the previous chapter, the relational and non-relational approaches to justice hold different views on the question of what the grounds of justice are. The grounds of justice are the features of a situation which make it relevant to ask whether it is just or unjust. More specifically, these are the features of the situations of people in justice relations which account for the fact that they are in justice relations – the features of their situations which make their relation justice-apt.<sup>1</sup> A relational approach to justice holds that the grounds of justice are certain features of particular social, political, or institutional relationships between people. A non-relational approach to justice, on the other hand, holds that the grounds of justice are certain features of human beings or moral agents, considered apart from their relationships with others.

#### **2.2.1. The Non-Relational Approach**

A non-relational approach to justice is one that holds that the grounds of comparative distributive justice are certain universal features of human beings – that our position relative to others is justice-apt prior to and absent any particular social, political, or institutional

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<sup>1</sup> A. J. Julius, 'Nagel's Atlas', *Philosophy and Public Affairs*, 34/2 (2006): 176-192, at p. 176.

relationships between us and them. Non-relationalists argue that obligations of justice can arise between people who do not stand in any particular kind of relationship with each other. This means that we can be subject to obligations of justice towards people with whom we have no relations or interactions whatsoever – that the grounds of justice are non-relational.

There are many different possible non-relational views (I discuss a few examples below), but they all share the belief that the grounds of justice are rooted solely in characteristics of human beings as moral agents. The fact that you are another moral person, just like me, is enough to ground potential obligations of justice between us. The characteristics used to ground justice could be our capacity for suffering, our rational agency, our autonomy, or our vulnerability to the actions of others, to name a few examples. Whatever the particular content of our theory of justice turns out to be, if we adopt the non-relational view then our positions relative to other agents are justice-apt. If our relative positions are unequal then we potentially have obligations to alter the distribution of resources to achieve a more equitable outcome – ‘individuals are entitled to some form of egalitarian justice simply in virtue of some feature of their nature as individuals, or the fact of their moral personhood.’<sup>2</sup> I argued briefly in the previous chapter that if we adopt the non-relational approach then we are committed to the cosmopolitan conclusion that the scope of justice is global. I’ll now show why this is the case with reference to examples of non-relational approaches.

Kok-Chor Tan’s luck egalitarian theory is a non-relational adaptation of Rawls’ theory of justice. Tan shares Rawls’ intuition that inequality must be justified wherever it occurs.<sup>3</sup> This liberal egalitarian type of view begins with the thought that facts about people that depend upon luck and circumstance should not be allowed to affect what they are owed as a matter of justice. The purpose of justice is to mitigate the unfortunate consequences of inequality between people’s circumstances, and especially to prevent institutional arrangements from perpetuating these bad consequences. Tan firmly believes that ‘as long as others are vulnerable to our actions (or omissions), they fall within the scope of our just concern,’ and that this is the case ‘whether or not our existing institutions facilitate such a concern.’<sup>4</sup>

Peter Singer’s consequentialist theory of justice is also non-relational. His famous utilitarian principle – ‘if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally speaking, to do it’<sup>5</sup>

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<sup>2</sup> Chris Armstrong, ‘Global Egalitarianism’, *Philosophy Compass*, 4/1 (2009): 155-171, p. 157.

<sup>3</sup> There is an interesting debate here about whether Rawls should himself be properly understood as relational or non-relational – his theory is usually understood as relational, given his assertion that justice applies to the basic structure, but Tan disputes this dominant understanding (See Kok-Chor Tan, *Justice Without Borders*, (Cambridge: Cambridge University Press, 2004), p. 76).

<sup>4</sup> Tan, *Justice Without Borders*, p. 59.

<sup>5</sup> Peter Singer, ‘Famine, Affluence, and Morality’, *Philosophy and Public Affairs*, 1/3 (1972): 229-243, at p. 231.

– is grounded in the capacity for suffering, and rests on the intuition that we should prevent suffering, or bad consequences, wherever possible. Singer stresses that the principle applies just the same whether the bad thing that is happening which you can prevent takes place to someone close to you or far away. Neither physical nor emotional distance are relevant factors here – we must be completely impartial.<sup>6</sup> For Singer, this principle is a principle of justice, not merely humanitarianism or charity. The duties that this principle entails are duties of justice. Singer emphasises several implications of this principle, one of which is that justice is not limited to national or political communities – ‘the moral point of view requires us to look beyond the interests of our own society.’<sup>7</sup>

In both Tan and Singer’s theories of justice, the move toward cosmopolitanism (specifically, towards the view that the scope of justice is global) is motivated by the realisation that the reasons that I have for recognising duties of justice to co-nationals or fellow citizens apply equally to people with whom I share no such relationship. If I have duties of justice to anyone, then I must have them to everyone, regardless of what my relationship is (or isn’t) with them. This is because these duties are grounded in features of moral agents – in the conception of a ‘universal moral personality.’<sup>8</sup> All non-relational views hold that justice is grounded in universal characteristics of human beings, and since these characteristics are universal, we cannot possibly justify restricting questions of justice to some subset of humanity. Principles of justice are therefore not only applicable within certain relationships or associations. To deny this move to the cosmopolitan conclusion that the scope of justice is global would be to commit what Samuel Black refers to as the ‘the fallacy of restricted universalism.’ Black rightly argues that a theory of justice ‘that ascribes rights and claims on the basis of certain universal attributes of persons, cannot at the same time restrict the grounds for those claims to a person’s membership or status within a given society.’<sup>9</sup> If the properties that ground distributive justice are universal ones, then distributive justice must apply universally.

The non-relational approach implies that justice (at the fundamental level) should be unaffected by non-universal properties. Non-universal properties include race, religion, gender, and so on, but also our relationships with others. The non-relational approach demands that at the fundamental level facts about my relationships with others do not restrict or affect the duties which I owe to other people. In this sense, relational facts are considered to be irrelevant to determining the scope of justice. As we saw in the previous chapter, this

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<sup>6</sup> Singer, ‘Famine, Affluence, and Morality’, p. 232.

<sup>7</sup> Singer, ‘Famine, Affluence, and Morality’, p. 237. He also extends justice to non-human animals on the basis of their capacity to suffer, but that extension is not relevant to the discussion here.

<sup>8</sup> Simon Caney, *Justice Beyond Borders*, (Oxford: Oxford University Press, 2005), pp. 115-122.

<sup>9</sup> Samuel Black, ‘Individualism at an Impasse’, *Canadian Journal of Philosophy*, 21/3 (1991): 347-377, p. 357.

view of relational facts as irrelevant depends on a universalist conception of ethics. This is a conception of moral personhood which excludes relational facts as being morally arbitrary, just like other characteristics such as race and gender are usually considered to be. The non-relational approach is therefore underpinned by a commitment to moral universalism. The premise that the arguments rely on is the claim that relational considerations are arbitrary and so they shouldn't restrict the scope of justice. This a more specific version of the general claim that relational considerations shouldn't determine moral principles, which is the central assertion of moral universalism as I defined it in the previous chapter.

### 2.2.2. The Relational Approach

A relational approach to justice holds that comparative justice is grounded in features of the social, political, or institutional relationships that exist between moral agents. The grounds of justice on this view are relational – our positions relative to other people are justice-apt in virtue of certain features of the relationships between us. It is only if such a relationship with such a feature obtains between us that our relative positions are justice-apt. Prior to the existence of such a relationship we do not have any, nor can we have any, obligations to justice to each other. According to the relational view:

'[T]he subjects of egalitarian justice are defined by the special kind of relation in which certain individuals find themselves. It is because given individuals share certain goods between themselves, or cooperate together to achieve a particular end, or stand in a common relation to a particular institutional structure, that some form of equality is appropriate between them.'<sup>10</sup>

There are two broad types of relational theories of justice in the global justice literature: institutional, and cultural. Institutional theories, of which statist views are the prime example, focus on institutional relationships between people. Institutional theorists claim that it is the 'nature of shared social and political institutions' that 'change the reasons that we have for endorsing or rejecting first principles of justice... social and political institutions fundamentally alter the relations in which people stand, and hence the first principles of justice that are appropriate for them.'<sup>11</sup> Both Thomas Nagel and Michael Blake's statist theories of justice are examples of such an institutional approach.<sup>12</sup>

Cultural relational theories of justice, of which nationalist views are a prime example, focus instead on social and cultural relationships between people. Cultural theorists 'claim that

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<sup>10</sup> Armstrong, 'Global Egalitarianism', p. 157.

<sup>11</sup> Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality', *The Journal of Political Philosophy*, 16/2 (2008): 137-164, at p. 138.

<sup>12</sup> Thomas Nagel, 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33/2 (2005): 113-47; Michael Blake, 'Distributive Justice, State Coercion, and Autonomy', *Philosophy and Public Affairs*, 30/3 (2003): 257-96.

social goods, such as health or leisure, acquire value and meaning from the culturally distinct practices through which they are distributed; they further claim that these culturally contingent values and meanings give content to and bound the scope of first principles of justice.<sup>13</sup> For these cultural relational views, it is the social relationships between us as fellow members of a single culture that provide the relevant practice to which principles of justice attach. Principles of justice are conditioned by the practice of distribution of goods between fellow members of a culture, and by the culturally distinct meanings and values which are attached to these goods. Michael Walzer's theory of justice is an example of such an approach, as is David Miller's nationalist view.<sup>14</sup>

Relational approaches to justice are by nature 'practice-dependent.'<sup>15</sup> Practice-dependent views hold that principles of justice are conditioned by the nature of the practice to which they are to apply – '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.'<sup>16</sup> This approach is illustrated by Rawls' claim that 'the correct regulative principle for anything depends on the nature of that thing.'<sup>17</sup> According to the relational approach, prior to the existence of the relevant practice, principles of justice are not relevant or appropriate. Relational views focus on certain social, political, or institutional relationships, which can be understood as practices, and ground principles of justice in the features of those relationships. This is in contrast to non-relational views, which are by nature practice-independent. Practice-independent views hold that 'in setting out and justifying first principles of justice, one should seek a normative point of view unfettered by the form or structure of existing institutions and practices.'<sup>18</sup>

Relational approaches to justice are also underpinned by a commitment to moral particularism – the view that relational facts have fundamental moral significance. For particularists, as we saw in the previous chapter, facts about our relationships with others are morally relevant considerations which we can (and should) take into account when acting. This is in contrast to a universalist conception of ethics, under which these facts are not relevant considerations at the fundamental level. Relationalists have to reject the universalist conception of morality endorsed by non-relationalists, because such a conception would rule

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<sup>13</sup> Sangiovanni, 'Justice and the Priority of Politics to Morality', p. 138.

<sup>14</sup> Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, (Oxford: Blackwell, 1983); David Miller, *Principles of Social Justice*, (Cambridge, MA.: Harvard University Press, 1999).

<sup>15</sup> Sangiovanni, 'Justice and the Priority of Politics to Morality', p. 140. I'll discuss the issue of practice-dependence further in the next section.

<sup>16</sup> Sangiovanni, 'Justice and the Priority of Politics to Morality', p. 138.

<sup>17</sup> Rawls, *A Theory of Justice*, p. 29.

<sup>18</sup> Sangiovanni, 'Justice and the Priority of Politics to Morality', p. 138.



out allowing relational facts and the practices formed by our relationships with others to play a basic role in the justification of principles of justice.

### 2.3. Issues

Having outlined the relational and non-relational approaches to justice I am now going to explore three major areas of disagreement between them: (1) practice-dependence; (2) partiality; and (3) the nature of justice. These are broad issues, and several points of disagreement occur within each. I'll now briefly outline each issue in turn before going on to discuss them in much greater detail below.

(1) Practice-dependence: As I briefly outlined above, relational theories of justice are by nature practice-dependent, whereas non-relational theories are by nature practice-independent. These opposing methodologies have each been criticised by the other side. Practice-dependent accounts are charged with being conservative and lacking critical force, whilst practice-independent accounts are charged with lacking practical force and being indeterminate.

(2) Partiality: The issue of partiality arises between cosmopolitans and their critics in the form of the debate about special obligations and interpersonal relationships – cosmopolitan theories are charged with being unable to account for this intuitively important aspect of our commonsense morality, whilst non-cosmopolitans are often criticised for ascribing too much weight to our sentiments at the expense of impartiality.<sup>19</sup> I'll argue that the special obligations objection is actually directed towards the non-relational approach adopted by many cosmopolitans, and is part of a wider debate between relational and non-relationalists about the proper place of partial and impartial obligations.

(3) The Nature of Justice: This foundational issue gets to the heart of what is at stake between the relational and non-relational approaches to justice. Both relational and non-relationalists charge that the other approach fundamentally misunderstands the

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<sup>19</sup> This takes place in the context of the debate between cosmopolitans and nationalists about the status of our obligations to co-nationals. Cosmopolitans criticise co-national partiality for being an example of unjust bias, whilst nationalists defend the intuitive value of relationships between co-nationals. Contributions to this debate include Richard Arneson, 'Do Patriotic Ties Limit Global Justice Duties?', *Journal of Ethics*, 9/1-2 (2005): 127-50; Charles Beitz, 'Cosmopolitan Ideals and National Sentiment', *Journal of Philosophy*, 80 (1983): 591-600; Robert Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, (Chicago: University of Chicago Press, 1985), and 'What Is So Special About Our Fellow Countrymen?', *Ethics*, 98 (1988): 663-87; Andrew Mason, 'Special Obligations to Compatriots', *Ethics*, 107 (1997): 427-47; David Miller, *On Nationality*, (Oxford: Clarendon Press, 1995); Kok-Chor Tan, 'Patriotic Obligations', *Monist*, 86/3 (2003): 434-453; and Jeremy Waldron, 'Special Ties and Natural Duties', *Philosophy and Public Affairs*, 22 (1993): 3-30.

nature of justice. This fundamental disagreement results from their opposing views about the types of fact which can legitimately play a basic role in moral reasoning.

I'll now discuss each of these issues in turn, outlining arguments from relational and non-relationalists in each case. This will allow me to identify the main problems faced by each of the approaches, and so will provide a set of criteria against which to assess specific examples of each approach in Parts II. and III. My discussion will aim to highlight some of the most common criticisms that are made of either approach, and to show in some cases why these criticisms are unfounded. This will enable me to identify the more significant issues that each approach needs to be able to deal with.

## **2.4. Practice-Dependence**

The relational and non-relational approaches to justice pursue different methods in order to arrive at principles of justice. Non-relationalists adopt a practice-independent view which seeks to rise above contingent social, political, and institutional relationships, and arrive at an objective standard of justice against which these relations can be assessed. Relationalists, on the other hand, adopt a practice-dependent view, which doesn't view current social, political, and institutional relationships as contingent or arbitrary factors to be ignored and overcome, but as the foundations upon which a theory of justice should be built. Practice-dependent theorists think that our current practices condition the principles of justice that apply to them. Those pursuing a practice-independent view have criticised the practice-dependent view for lacking critical force and being inherently conservative. Those pursuing a practice-dependent view have replied that the practice-independent view lacks practical force and results in impractical or indeterminate principles of justice. I will now explore these criticisms in turn.

### **2.4.1. Critical Force**

The practice-dependent nature of the relational approach, which justifies principles of justice with reference to already existing social, political, or institutional relationships, is criticised for failing to provide an independent standard by which we can assess the justness of situations – '[the relational approach] works upwards from institutions or relations that already exist, and does not tell us what institutions or relations *should* exist – or, alternatively... it does not possess the necessary critical resources to condemn institutions which *do* exist but should not.'<sup>20</sup> Non-relationalists have argued that relational theories of

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<sup>20</sup> Armstrong, 'Global Egalitarianism', pp. 158-159.

justice therefore lack critical force, and are biased towards the status quo. For example, Kok-Chor Tan has argued that:

‘Justice aims to guide and regulate our existing institutions, and can call on us to create new ones if necessary. That is, justice constrains and informs our institutional arrangements, not the other way around. To tie justice to existing institutional schemes would be to misconstrue and pervert the purpose of justice; it would be to treat justice as a mirror of society, when in fact we should want justice to be society’s critic.’<sup>21</sup> Furthermore, ‘[t]o say that we begin our theorising about justice from currently accepted institutional arrangements and practices *as if* these are given or inevitable, and that our conception of justice has to accommodate this existing reality, is to misconstrue the role and point of justice.’<sup>22</sup>

Simon Caney has argued that relational approaches make the mistake of moving from a premise about the practical efficacy of particular institutional arrangements to the conclusion that the scope of justice should be determined by these arrangements:

‘Would we not want first to determine who belongs to a scheme of distributive justice and who does not and then once having established the scope of justice examine which political actors can implement this scheme, calling for reform of these actors, or even the creation of new ones, where necessary... [to do otherwise] privileges the status quo and those advantaged by it over critical inquiry.’<sup>23</sup>

One problematic consequence of having a theory that fails to pay critical attention to the existing relationships and practices which it uses to ground justice is that it seems to assume that all relationships and practices of this kind are valuable and morally significant. The non-relationalist can argue that we cannot just accept without question that all interpersonal relationships are valuable. It is undisputable that there are many unjust interpersonal relationships, such as abusive marriages, which have detrimental effects on those involved, and so we might question whether political and institutional relationships are themselves unjust. Marilyn Friedman stresses that when we are thinking about the justness of relationships, we need to be careful to not place too much weight on their intuitive value:

‘[U]nreflective opinions about values and practices, however, even if very popular, are not authoritative for moral theory. Such opinions are, to be sure, among the helpful starting points for moral theory. They cannot, however, constitute conclusive defences of conventional practices because they simply exhibit (and confirm) its conventionality.’<sup>24</sup>

This problem is especially relevant in the context of the global justice debate. Some cosmopolitans would argue that current political and institutional practices (including partial relationships between co-nationals or fellow citizens) are obstacles to the achievement of

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<sup>21</sup> Tan, *Justice Without Borders*, p. 34.

<sup>22</sup> Tan, *Justice Without Borders*, p. 156.

<sup>23</sup> Simon Caney, ‘Global Distributive Justice and the State’, *Political Studies*, 56 (2008): 487-518, at p. 496.

<sup>24</sup> Marilyn Friedman, ‘The Practice of Partiality’, *Ethics*, 101 (1991): 818-835, at p. 825.

justice for all. Grounding justice in the social and political associations that already exist could bias us to these arrangements, and prevent us from seeing them as a barrier to justice, or to considering alternative arrangements that would be more conducive to justice. So for example, Brian Barry argues that pursuing a practice-dependent approach which does not look for universal justification of principles of justice will leave us unable to secure human rights in societies that don't have a tradition of respecting them.<sup>25</sup> A problematic implication of this conservatism is that it blocks us from examining the legitimacy of the current institutional arrangements. Ryan Pevnick argues that we should be wary of allowing existing institutional arrangements and practices to have the normative significance that relationalists ascribe to them. He points out that current institutional arrangements are not natural facts, 'but instead the result of distributive political conflict.'<sup>26</sup> Talking specifically about the statist argument which appeals to the uniquely coercive nature of state institutions, Pevnick argues that:

'The lack of a coercive and regularised system of law may (in places) be a result of strong actors taking unfair advantage of weaker actors. If so, then the discrepancy [between the level of coercion at the domestic and international levels] is not an appropriate point from which to reach normative conclusions. Instead, before we jump from the shape of coercive institutions immediately to normative conclusions, we need to step back and ask why the discrepancy exists in the first place.'<sup>27</sup>

He goes on to argue that this will result in a kind of 'double jeopardy: the weak may both be disadvantaged by the lack of a coercive structure and then further disadvantaged by the idea that without such coercion, worries about inequality are inapplicable.'<sup>28</sup>

So in summary, the practice-dependent nature of the relational approach is criticised for failing to provide an independent standard of justice which holds outside and apart from current social, political, and institutional relationships and practices. Relationalists have responded to these criticisms of their practice-dependent methodology by rejecting the charges as resulting from a misrepresentation of the practice-dependent approach. Practice-dependent theorists such as Andrea Sangiovanni, David Miller, and Michael Walzer have all defended the interpretive methodology as the best way to achieve legitimate critical force.<sup>29</sup> Sangiovanni argues that 'the critical stance, to be successful, must itself depend on the character of the institutional system as it actually is, and hence on a description *cum*

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<sup>25</sup> Brian Barry, *Justice as Impartiality*, (Oxford: Clarendon Press, 1995), p. 4.

<sup>26</sup> Ryan Pevnick, 'Political Coercion and the Scope of Distributive Justice', *Political Studies*, 56/2 (2007): 339-413, at p. 404.

<sup>27</sup> Pevnick, 'Political Coercion', p. 404.

<sup>28</sup> Pevnick, 'Political Coercion', p. 405.

<sup>29</sup> Sangiovanni, 'Justice and the Priority of Politics to Morality'; Walzer, *Spheres of Justice*, and Miller, *Principles of Social Justice*; and 'Two Ways to Think About Justice', *Politics, Philosophy and Economics*, 1 (2002): 5-28.

interpretation of it.<sup>30</sup> I will explore this defence of the interpretive method in greater detail in Part II., where I will consider whether a relational approach can resolve this problem of lacking critical force.

#### 2.4.2. Practical Force

Whilst the practice-dependent nature of the relational approach has been criticised for lacking *critical force*, the practice-independent nature of the non-relational approach is itself criticised for lacking *practical force*.

One form of this criticism is the charge that practice-independent theories of justice are not feasible. It seems reasonable to assume that we want a theory of justice to be not only normatively acceptable, but also practically possible. A theory of justice has an end – the achievement of justice – that seems to depend on adherence to the principles of justice being within the realms of possibility. Proponents of the relational approach argue that certain institutional or social structures are necessary for the achievement of justice. These arguments broadly claim that justice is only practically achievable given the existence of certain social, political, or institutional relationships between people through which we can manage the distribution of the goods and resources with which justice is concerned. A theory of justice should be practice-dependent because justice requires the existence of certain kinds of practice before it can be realised.

The argument about feasibility has been made from both statist and nationalist perspectives. The statist version of this argument appeals to the efficacy of the state as an institutional actor to explain why justice is only feasible within a state system. The claim is that justice is only practically achievable through the political institutions of the state.<sup>31</sup> It is only through the institutions of the state, and especially through the state's ability to coordinate effort, that we can take the steps necessary to achieve justice. This is because the demands of justice are too much for individuals to handle on their own – they need to cooperate with each other and coordinate their actions, and the state is the best way for this to happen. In short, the achievement of justice is seen as a collective action problem, and the sovereign power of the state is the only means to solve it.<sup>32</sup> The nationalist version of the argument appeals not to state institutions but instead to the national community. The claim here is that the nation is required for the realisation of justice. There are two broad strands of argument here:

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<sup>30</sup> Sangiovanni, 'Justice and the Priority of Politics to Morality', p. 144.

<sup>31</sup> For example, Nagel, echoing Hobbes, claims that: 'Without the enabling condition of sovereignty to confer stability on just institutions, individuals however morally motivated can only fall back on a pure aspiration for justice that has no practical expression, apart from the willingness to support just institutions should they become possible' ('The Problem of Global Justice', p. 116).

<sup>32</sup> Nagel, 'The Problem of Global Justice', p. 115.

epistemic, and motivational. First, the nation is said to be required for justice because without the shared language and culture that shared nationality brings, we cannot know what justice demands. What counts as a need which justice must fulfil varies depending on context, and so we can only know what justice demands from within that context. Also, without the shared understanding that co-nationality brings, we are ill-equipped to provide the things that justice demands without meanwhile causing unintentional harm. Justice is seen as a contextually specific good which can only be properly delivered from within that context.<sup>33</sup> Second, the nation is also said to be required for the achievement of justice for motivational reasons – without the solidarity that nationality brings, individuals are not motivated to come together to provide welfare for others. Solidarity is said to be necessary to support institutions such as the welfare state. Without such solidarity, the motivation to comply with these institutions fails – there simply isn't the political will necessary.<sup>34</sup>

One way to reply to these criticisms is to argue that relationalists have failed to consider other forms of association and relationship which can provide the epistemic and motivational power, and practical capability, through which the nation and state are said to enable the deliverance of justice. I showed in the previous chapter how it is possible to reach cosmopolitan conclusions from relational premises – one could argue that the conditions needed for the deliverance of justice are available at the global level, through other types of relationship (perhaps one of global solidarity, or economic interdependence) that transcend national or state borders.<sup>35</sup> Alternatively of course one might argue in the other direction – rather than claiming that the conditions for the realisation of justice are available at the global level, instead claiming that they only exist within relationships and associations more local than nation and state. This 'localist' position would, like the globalist position, dispute the statist and nationalist claims that the state and nation are the only associations that can provide the conditions necessary for the realisation of justice. However, what these arguments would not do is make any headway against the relational or practice-dependent approaches themselves. All are versions of the relational approach; they just take the relevant association to be instantiated in different ways. In order to argue against the relational view itself in this way, one needs to deny the premise – to dispute that *any* type of relationship or institution is necessary for the practical implementation of principles of justice.

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<sup>33</sup> Walzer, *Spheres of Justice*, pp. 6-10.

<sup>34</sup> Miller, *On Nationality*, p. 67. Miller doesn't make the strong claim that solidarity is *necessary* to support welfare institutions, but he does argue that feelings of solidarity help to 'soften the conflict' between agent's competing motivations.

<sup>35</sup> Simon Caney labels this kind of strategy an 'analogy argument', because it makes an analogy between the domestic and global realms, in contrast to the nationalist 'disanalogy argument' which denies that such an analogy holds ('Global Distributive Justice and the State', pp. 489-491).

An alternative way to dispel the worries about the feasibility of a practice-independent non-relational approach, which doesn't involve denying the relationalist's premise about the practical necessity of nations or states, is to question the normative weight that relationalists attach to feasibility. Non-relationalists can argue that whilst these nationalist and statist arguments might show that the achievement of justice is difficult without a nation or state, they do not show that considerations of justice don't arise before these associations are in place.<sup>36</sup> It would be a mistake to move straight from the premise that we need certain social or political institutions to implement principles of justice to the conclusion that these principles of justice should be grounded in the nature of the currently existing social and political institutions. As Caney argues, 'the applications of principles of distributive justice does need political actors but it does not follow from this that since states are sometimes reasonably effective political actors we should then define the scope of justice according to state boundaries. That surely gets the process the wrong way around.'<sup>37</sup> As long as one is prepared to admit that principles of justice can be practically difficult to implement, but still objectively acceptable, then one can dismiss these arguments. We can also point out that if a principle of justice proves practically difficult prior to the existence of certain political or institutional structures, then justice might demand that we take steps to bring about the existence of the relevant structures.<sup>38</sup> In other words, if the nation or state is needed for the fulfilment of justice, then until it is in place, we have an obligation of justice to bring it (or something similar) about so that justice can then be achieved.<sup>39</sup>

In summary, the issue of practice-dependence is one of the main areas of disagreement between relational and non-relational theories of justice. The choice between the two methodological approaches can be understood as something as a trade off between critical and practical force. Whilst, as we saw, we might think that one virtue of a theory of justice is its feasibility and closeness to reality, we also want a theory of justice to have critical power – to be able to condemn current arrangements as unjust if they are so. So whilst grounding principles of justice in current institutional and political arrangements might be justified by the necessity of such arrangements for the practical achievement of justice, on the other hand, such principles might be excessively reliant on the status quo and therefore lack the objective ability to criticise current arrangements. I will assess David Miller and Brian

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<sup>36</sup> Barry, *Justice as Impartiality*, p. 223; Tan, *Justice Without Borders*, pp. 80-82.

<sup>37</sup> Caney, 'Global Distributive Justice and the State', p. 496.

<sup>38</sup> David Held has provided a detailed outline of the kind of global democratic institutions that he argues we should be aiming to bring about, see *Global Covenant: The Social Democratic Alternative to the Washington Consensus*. (Malden, MA.: Polity Press, 2004); and *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. (Stanford: Stanford University Press, 1995). His proposals are explicitly underpinned by a commitment to moral cosmopolitan principles which are independent of current political and institutional structures, *Global Covenant*, pp. 170-178.

<sup>39</sup> Tan, *Justice Without Borders*, pp. 169-170. An argument along these lines can be found in Immanuel Kant's political philosophy, see Wolfgang Kersting, 'Politics, Freedom, and Order: Kant's Political Philosophy', in Paul Guyer (ed.), *The Cambridge Companion to Kant*, (Cambridge: Cambridge University Press, 1992), p. 364.

Barry's theories of justice against these seemingly opposing demands, working from this outline, in Parts II. and III.

## 2.5. Partiality

Relational and non-relational approaches to justice disagree about the proper role of partiality and impartiality in theories of justice. On the one hand, we commonly think of morality as an impartial perspective from which partial concerns should be excluded. On the other hand, partial sentiments are a seemingly irremovable part of human nature.<sup>40</sup> A good theory of justice should be able to tell us when justice requires impartiality and when it requires or allows partiality. Relationalists and non-relationalists have different answers to these questions. In brief, non-relationalists prioritise general duties, and see our particular attachments and personal projects as potential obstacles to the achievement of justice. Relationalists, on the other hand, prioritise the special treatment that we instinctively show to those close to us, and see our particular attachments as factors that must be included at the basic level of justification of principles of justice. Non-relational theories have been criticised for not being able to provide a full and proper account of our interpersonal relationships and the special treatment that is crucial to the maintenance of such relationships. Relational theories, on the other hand, have been criticised for paying insufficient attention to our general duties of justice. In this section I will outline the different stories that relationalists and non-relationalists tell about special treatment and general duties.

### 2.5.1. Special Treatment

The issue of special treatment has been a key one in the debate between cosmopolitans and their nationalist critics.<sup>41</sup> There is a general worry that cosmopolitanism is incompatible with a full account of the partiality that characterises our everyday lives.<sup>42</sup> The objection most commonly raised is that cosmopolitan theories of justice are unable to account for the type of obligations that we commonly think arise through our interpersonal relationships with others. The kind of relationship most often referred to here is the type of close personal connection

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<sup>40</sup> For more on the general conflict between moral equality and partiality see Thomas Nagel, *Equality and Partiality*, (Oxford: Oxford University Press, 1991).

<sup>41</sup> Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought*, (Oxford: Oxford University Press, 2001), p. 67; Andrew Vincent, *Nationalism and Particularity*, (Cambridge: Cambridge University Press, 2002), pp. 240-241; Miller, *On Nationality*, p. 49.

<sup>42</sup> See Scheffler's discussion of the conflict between the positions held by Martha Nussbaum in 'Patriotism and Cosmopolitanism', in Joshua Cohen (ed.), *For Love of Country: Debating the Limits of Patriotism*, (Boston: Beacon Press, 1994), and Alasdair MacIntyre in 'Is Patriotism a Virtue?', *Lindley Lecture*, (Lawrence: University of Kansas, 1984) (*Boundaries and Allegiances*, pp. 119-130). This debate has been revisited recently by Aresh Abizadeh and Paolo Gilabert in 'Is There a Genuine Tension between Cosmopolitan Egalitarianism and Special Responsibilities?', *Philosophical Studies*, 138/3 (2008): 349-65.



that exists between parents and children, or between close friends. We have strong commonsense intuitions that we have duties to act in special ways towards the people close to us.<sup>43</sup> So-called 'special obligations' are an important part of our morality, and a theory of justice that is unable to account for them is implausible. Beitz states that 'the philosophical weakness most characteristic of cosmopolitan theories... is a failure to take seriously enough the associative relationships that individuals do and almost certainly must develop to live successful and rewarding lives.'<sup>44</sup> This objection is commonly been made against cosmopolitanism, but I would argue that insofar as this is a potential problem for cosmopolitanism then it is a potential problem more specifically for non-relational versions of cosmopolitanism.<sup>45</sup>

A simple way to phrase the objection is to say that any theory of justice that focuses on universal duties to all human beings will pay insufficient attention to, and attach insufficient significance to, the special obligations owed by people to those close to them. Such a theory will therefore clash with our intuitive understanding of special obligations. We think it uncontroversially true, for example, that parents have special obligations to care for their children, to provide them with nourishment, shelter, and affection. Furthermore, we think it uncontroversially true that these obligations are very strong, and that they take priority over other obligations, so that if faced between a choice of feeding her own child and a stranger's child, a mother is not only perfectly justified, but also required, morally speaking, to feed her own child. Children owe similar special obligations to their parents – to care for them in old age, for example. Special obligations also exist between friends – I have a duty to look out for my friend's interests, and consider their feelings, in virtue of our relationship with each other. Married couples (as well as people in other forms of stable and committed romantic relationships) have special obligations to each other – to stay faithful, and to care for each other when ill. All of these obligations are intuitively important, and so a theory which cannot account for these obligations, or which renders them weaker than we are comfortable with, is therefore said to suffer from a serious flaw.<sup>46</sup>

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<sup>43</sup> See Goodin, *Protecting the Vulnerable*, pp. 2-14 for a detailed summary of evidence in support of this claim.

<sup>44</sup> Charles Beitz, 'International Liberalism and Distributive Justice', *World Politics*, 51 (1999) 269-96, at p. 291. See also Tan, *Justice Without Borders*, p. 135.

<sup>45</sup> As such, the criticism doesn't apply to relational cosmopolitan theories. I say 'potential' problem because I think it can be dealt with, see below.

<sup>46</sup> Thus Tan states that: 'Any conception of justice that does not provide conceptual space for the different special ties common to the lives of ordinary people, and the special commitments that these ties can generate, offends against our ordinary moral conception and experience. It would be radically out of touch with our commonsense morality that individuals do value and find meaning in certain special relationships and may legitimately pursue these special ends at the exclusion of more impartial ends.' (*Justice Without Borders*, p. 138).

Nationalists, when pressing their case against cosmopolitans, have been keen to defend national obligations (obligations between co-nationals) as a form of special obligation.<sup>47</sup> They have argued that for the same kind of reasons that we have to favour our family and friends, we also have reasons to favour our co-nationals over foreigners. Co-national priority, it is claimed, is intuitively valuable in the same way as familial priority. A cosmopolitan account that wants to assert that we have strong general duties to all human beings is contrasted with the nationalist picture in which we owe more to co-nationals than to foreigners. This perceived cosmopolitan weakening of national obligations is said to lead to the weakening of other special obligations (between family, friends, etc.) as well. Given the intuitive value of such obligations, it is charged that we should be wary of cosmopolitan accounts.

Nevertheless, cosmopolitans (who wish to defend strong general pan-human duties of justice) can respond to this kind of objection in one of three ways:

(1) Remain committed to general global duties that are prior to special obligations but deny that special obligations must be weakened under a cosmopolitan account by either:

(a) denying that national obligations are special obligations in the same way as familial or friendship obligations, and so remaining able to attack national obligations while leaving other special obligations intact;<sup>48</sup> or

(b) accepting the nationalist argument that national obligations share moral status with other special obligations, and trying to account for national obligations (and therefore the other types of special obligations) within their theory.

(2) Argue for general global duties by claiming that whatever it is that defines the relationship of co-nationality also defines a relationship between people in general, and so the national obligations which the nationalist defends are in fact global.

(3) Bite the bullet and deny that special obligations (either at the national or familial level) have the moral significance which we intuitively attach to them, and argue that global general duties are the only important duties of justice.

To pursue strategy (2) is to adopt a relational cosmopolitanism – to agree with the nationalist that justice is grounded in relationships between people, but to argue that such a relationship

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<sup>47</sup> Miller, *On Nationality*, p. 49.

<sup>48</sup> This strategy will most often involve denying that relationships of co-nationality have the same moral significance as familial and friendship relationships.

exists at the global level, and so justice is global in scope.<sup>49</sup> This kind of view doesn't suffer from the special obligations objection because it doesn't posit universal duties of comparative justice that arise independently of relationships, and so seems to avoid a clash between incommensurable duties (see below). Strategies (1a), (1b), and (3) do posit universal duties of justice that arise independently of relationships – in other words, they are all non-relational arguments. Cosmopolitanism appears to be subject to the special obligations objection because it posits general duties of justice which conflict with our special obligations, but it is only when these duties are grounded in universal human characteristics as opposed to characteristics of relationships between people that this conflict arises. This is because special obligations are of course relational themselves, and whilst there may be clashes between different relational obligations, at least they are grounded in the same way. General duties that are grounded in universal human characteristics, in contrast, seem incommensurable with relational special obligations. The non-relational approach holds that obligations of justice arise independently of relationships between people, and given that special obligations are relational in this way, we might worry that the non-relational approach cannot provide an account of how they arise.

To pursue strategy (3), and bite the bullet, is to adopt the extreme version of the non-relational view, as typified by William Godwin. Godwin's famous example of the Archbishop and the chambermaid (discussed in the previous chapter) illustrates his view that it is wrong to allow our sentiments and relationships to affect our reasoned conclusions about the right or just thing to do. This option is not an attractive one, and I will discount it here. Its usefulness is as a contrast to a more reasonable view that we should be careful to distinguish as different to it. Those wishing to push the special obligations objection might claim that all theories that advocate impartial moral concern in the way that Godwin does are incompatible with special obligations: 'since impartial moral concern requires equal consideration of everyone affected by an action or policy, special relationships that require unequal consideration – in regard to special concern for some people rather than others – are incompatible with [impartiality].'<sup>50</sup> If we think that the non-relational approach is committed to the view that we have identical obligations to all individuals, regardless of any relationship between us, then we might be forced towards the conclusion that it cannot account for special obligations.

However, the possibility of strategies (1a) and (1b) should provide us with reason for doubting this conclusion. We saw in Chapter One that there is a moderate version of the non-relational view that is not committed to the conclusion that we all have identical obligations

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<sup>49</sup> Again, this is a form of 'analogy argument' (Caney, 'Global Distributive Justice and the State', pp. 489–491).

<sup>50</sup> Charles Jones, 'Patriotism, Morality, and Global Justice', in Ian Shapiro and Lea Brilmayer (eds.), *Global Justice*, (New York: New York University Press, 1999), p. 133.

to all individuals. This is because there are two ways in which principles of justice can be non-relational. First they can be grounded in non-relational facts (i.e. universal human characteristics), and second they can be non-relational in their content. Both moderate and extreme non-relational approaches hold that principles of justice must be grounded in non-relational facts, but only extreme non-relational approaches hold also that the content of principles of justice must be non-relational as well. This confusion mirrors a common confusion about the concept of impartiality which is central to the problem with an account like Godwin's. As Charles Jones argues,

'Godwin's position exemplifies a confusion about the role of impartiality in moral thinking. He correctly recognises that the ultimate justification of moral principles must be carried out from a perspective that regards each person equally. Moral justification of basic principles must not allow a person's particular likes and dislikes any fundamental importance. However, Godwin mistakenly assumes that impartiality – understood as the lack of special concern for any identifiable individual – is the way of life required of persons endeavouring to be morally upstanding. In short, the proper response to Godwin is to say that impartiality as a necessary condition of legitimate reasoning about basic moral principles should be distinguished from impartiality as a way of life and that the latter sense of impartiality is unlikely to be defensible from the impartial deliberative point of view.'<sup>51</sup>

The moderate version of the non-relational approach provides a coherent alternative to this extreme non-relational approach. Moderate non-relational views do not exclude us from favouring our own relations in the way that extreme non-relational views appear to do. Strategies (1a) and (1b) leave conceptual room for a coherent account of special obligations. A common account that non-relationalists have provided relies on the idea that allocating special obligations is the most efficient way to parcel out our general duties, which are too onerous for us to fulfil individually. This 'useful convention' method follows the logic that in some cases where we have a general obligation of justice, this obligation might be more effectively realised by pursuing it in our particular relationships and groups than in the ethical universe as a whole.<sup>52</sup> There are various reasons for thinking that special obligations provide the most efficient distribution of general duties. For instance we could argue that parents have special obligations to provide for the needs of their children because they are the agents who are best equipped to do so, because of their intimate knowledge of the child's needs, their physical proximity to the child, and because of the particular vulnerability of the child to his or her own parents.<sup>53</sup>

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<sup>51</sup> Jones, 'Patriotism, Morality, and Global Justice', p. 137.

<sup>52</sup> Miller, *On Nationality*, p. 51-52. Miller cites Robert Goodin as an example of someone adopting this kind of argument (*Protecting the Vulnerable*, Chapters 4 and 5).

<sup>53</sup> Michael Freeman, 'Universalism, Particularism and Cosmopolitan Justice', in Terry Coates (ed.) *International Justice*, (Aldershot: Ashgate, 2000), p. 70. This is in an ideal case – it will of course not hold in all cases.

So a non-relational cosmopolitan account of special obligations can affirm principles of justice which apply universally, between all moral persons, but which when fully spelled out will demand different obligations within different relationships. On this type of view parents owe their children special treatment because there is a general principle of justice which applies to everyone which states that parents owe their children special treatment. In the useful convention method case this principle will be justified on the grounds that the best way to discharge general duties of justice towards children is to allocate them to their parents. The general principle which assigns special obligations is justified with reference to universal non-relational duties. Whether the account has room for national obligations or not (whether we end up pursuing strategy (1a) or (1b)) then depends on whether we think that duties between co-nationals can be defended in this way.<sup>54</sup>

These non-relational attempts at accounting for special obligations seem to be fairly successful, but whilst they can manage to provide an explanation of special obligations, there is a deeper criticism of this approach which comes from particularism. Non-relational accounts are still criticised for not taking special obligations seriously enough, or for misunderstanding the nature and importance of our partial concerns.<sup>55</sup> There are several slightly different criticisms that are made along these general lines. First, there is the worry that the non-relational account outlined above only has room for *derivative* special obligations, not what we might think of as *genuinely special* obligations. Such obligations only exist if the conditions are right, and so they are contingent on states of affairs. If we follow the useful convention method then parents, for example, only have special obligations to their children as long as the world is such that parents in general are the best people to take care of their own children. Because the special obligations are justified derivatively from universal duties, they are contingent on this derivation holding. Special obligations are such an intuitively fundamental aspects of our morality that it doesn't seem enough for them to be justified in this way.<sup>56</sup> This criticism arises because of the non-relationalist's commitment to moral universalism, which is at odds with the relationalist's commitment to moral particularism. For particularists, this explanation of special obligations is of the wrong sort – it seeks to find exemptions from impartiality that can allow us to have special obligations. Particularists don't think that we need any exemption of this kind, because for them, acting morally does not require the removal of all partial considerations from the reasoning process. Under this view of ethics, facts about our relationships with others are morally relevant considerations at the fundamental level.<sup>57</sup>

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<sup>54</sup> Miller argues that the useful convention method cannot be successfully used to defend national obligations.

<sup>55</sup> Tan, *Justice Without Borders*, p. 136.

<sup>56</sup> Tan describes such derivative justifications of special obligations as a 'serious misdescription of [their] moral worth' (*Justice Without Borders*, pp. 148-149).

<sup>57</sup> See Lawrence A. Blum, *Friendship, Altruism and Morality*, (London: Routledge, 1980), esp. pp. 50-55.

As we've seen, moral universalists refuse to let relational facts count at the basic level of moral reasoning. Particularists argue against this, claiming that leaving relational facts out of fundamental moral reasoning misrepresents a central feature of our lives – our interaction with others. Particularists argue that our interpersonal relationships are one of the most important, if not the most important, features of our ethical lives. Our social nature – our ability to interact with other individuals, to form groups and associations, and so on, are part of what makes us human. These interactions and associations and relationships are some of the most valuable aspects of our lives – they make life worth living. This is not just for the instrumental goods that such relationships can bring us, but also for their intrinsic value. Paradigm relationships such as family and loving partnership are the high end of human existence, they are one of our ultimate goals, and should be respected as such. Particularists argue that universalists are wrong to claim that in order to respect the equal moral status of human beings we should remove facts about their relationships with others from moral reasoning. To do so is to disrespect the capacity of individuals to form such relationships, and so to disrespect an essential part of their humanity. In fact, if we want to respect the equal moral status of human beings then we need to recognise their essentially social nature, and consider facts about their relationships into moral reasoning. An individual's relationships with others are not arbitrary facts like race or gender, but intrinsic parts of their identity that are inseparable from their position as moral agents.<sup>58</sup> When we make moral judgements we need to take this into account. So whilst (as we saw above) universalist theories can provide accounts that can include special obligations, these obligations are derived from general and impartial principles of justice, and this seems problematic. A satisfactory non-relational theory of justice will need to be able to overcome this problem.

A further implication of this worry about the derived nature of non-rationally-justified special obligations is that it has a negative impact on how we act. Particularists argue that the universalist demand that we always justify partiality with reference to impartial principles prevents us from pursuing interpersonal relationships in the way that we need to in order to maintain good psychological health. Michael Stocker argues that:

'it is essential to the very concept of love that one care for the beloved, that one be prepared to act for the sake of the beloved. More strongly, one must care for the beloved and act for the beloved as a final goal; the beloved, or the beloved's welfare or interest, must be a final goal of one's concern and action.'<sup>59</sup>

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<sup>58</sup> This view is characteristic of communitarian criticisms of liberal individualism. For example, Michael Sandel argues that our 'attachments and commitments... partly define the person I am. To imagine a person incapable of constitutive attachments such as these is... to imagine a person wholly without character, without moral depth.' 'The Procedural Republic and the Unencumbered Self', in Shlomo Avineri and Avner De-Shalit, (eds.), *Communitarianism and Individualism*, (Oxford: Oxford University Press, 1992), p. 23.

<sup>59</sup> Michael Stocker, 'The Schizophrenia of Modern Ethical Theories', *The Journal of Philosophy*, 73/14 (1976): 453-466, at p. 456. See also John Kekes, 'Morality and Impartiality', *American Philosophical Review*, 18/4 (1981): 295-303, at p. 296.

According to this criticism, in a universalist theory the final justification for action is not the 'beloved', or the beloved's welfare, but the achievement of justice, impartially speaking. Bernard Williams offers the most famous formulation of the particularist argument here. He argues that in an example situation where a husband has to choose between saving his wife and someone else in 'equal peril', it is wrong to think that he is allowed to save his wife because of some general moral principle that 'in situations of this kind it is at least alright (morally permissible) to save one's wife.'<sup>60</sup> Williams argues that 'this construction provides the agent with one thought too many: it might have been hoped by some (for instance, by his wife) that his motivating thought, fully spelled out, would be the thought that it was his wife, not that it was his wife and that in situations of this kind it is permissible to save one's wife.'<sup>61</sup> Williams' point is that we are wrong to think that each special obligation is an instance of a more general obligation, and it is the general obligation which justifies the special obligation. The justification for the agent in this case has nothing to do with impartial or universal standards, and cannot be explained in terms of them.

Some theorists have gone on to claim that because of the problem that Williams describes, acting according to moral universalism is psychologically damaging and unproductive. If Williams is right and agents' motivations are not generalisable, then forcing people to act according to general principles will be counterproductive. An agent attempting to act according to universalist principles will suffer psychological harm. The prescriptions of universalism are so general that they become uninformative, especially in the case of personal relationships; 'most people want to do what is right. But what that is depends precisely on those particular and idiosyncratic considerations that social moralists declare to be morally irrelevant.'<sup>62</sup> Michael Stocker argues that universalist theories force us to choose one of two unattractive options: either, we 'embody' in our motives the values of these theories, and so cannot attain the important goods of friendship, love etc., or, we still hold to our theory, but at the same time pursue these goods, and so we end up morally schizophrenic in that our reasons and motives are in conflict.<sup>63</sup> Universalist theories therefore fail in several ways; they make it impossible for us to 'achieve the good in an integrated way,' they put us 'in a position that is psychologically uncomfortable, difficult, or even untenable,' and they make 'us and our lives essentially fragmented and incoherent.'<sup>64</sup>

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<sup>60</sup> Bernard Williams, 'Persons, Character and Morality', in *Moral Luck*, (Cambridge: Cambridge University Press, 1981), p. 18.

<sup>61</sup> Williams, 'Persons, Character and Morality', p. 18.

<sup>62</sup> Kekes, 'Morality and Impartiality', p. 299.

<sup>63</sup> Stocker, 'The Schizophrenia of Modern Ethical Theories', p. 461.

<sup>64</sup> Stocker, 'The Schizophrenia of Modern Ethical Theories', pp. 455-456.

In summary, if we accept the particularist argument that a theory of justice should have space for an account of non-derivative special obligations then the non-relational approach has some work to do here. Given that partial sentiments and interpersonal relationships are such intuitively important parts of our lives, we need an account that doesn't reduce the value of them to the realisation of an abstract universal value. The accounts canvassed so far fail to do this satisfactorily. If this is a general symptom of non-relational theories then it counts against my defence of the non-relational approach as superior approach to justice. I will outline a non-relational account that I think can meet this challenge in Part III.

### 2.5.2. General Duties

Whilst relationalists have criticised non-relationalists for paying insufficient attention to our special obligations and partial sentiments, relationalists can arguably be criticised for the opposite problem. We might worry that relational accounts pay insufficient attention to our general and impartial duties of justice, and justify them in a way that makes them weak and excessively contingent upon states of affairs.

As we saw in the previous chapter, it is nowadays widely held, at least amongst political philosophers, that we have some kind of general duties (i.e. natural duties) to all humankind.<sup>65</sup> A theory of justice which doesn't provide an adequate account of these obligations would therefore be open to a charge of narrowness. This criticism is particularly relevant within the debate between relational and non-relational cosmopolitans. Non-relational cosmopolitans can argue that the global duties of justice that a relational theory can support are not as strong as those that can be supported from a non-relational perspective. The global duties that a non-relational theory supports are necessarily possessed by all human beings, since they are grounded in universal features of human beings. The global duties that relational cosmopolitanism can support are not necessarily possessed by all human beings in the same way. They are instead grounded in features of relationships that are posited to exist between people.<sup>66</sup> Whether the relevant kind of relationship includes (now and in the future) all individuals is a contingent matter.<sup>67</sup> A cosmopolitan theory that takes justice to be relational will have to revise its cosmopolitan conclusions should it be shown that the relationship in question is no longer global. If we have cosmopolitan

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<sup>65</sup> See Chapter One for evidence in support of this claim.

<sup>66</sup> Andrew Oldenquist raises the possibility of supporting universal duties in this relational manner. He argues that we might see our obligations to fellow human beings as coming from a 'species loyalty' – a thin kind of relationship between all human beings (Andrew Oldenquist, 'Loyalties', *The Journal of Philosophy*, 79/4 (1982): 173-193, at p. 177).

<sup>67</sup> Thomas Pogge recognises this issue (although he doesn't see it as too problematic). He recognises two related limitations of the relational approach: (1) 'its applicability is contingent, in that human rights are activated only through the emergence of social institutions'; and (2) 'the cosmopolitanism of the institutional approach is contingent as well, in that the *global* moral force of human rights is activated only through the emergence of a *global* institutional order.' *World Poverty and Human Rights*, p. 171.



intuitions, then we might find this consequence problematic.<sup>68</sup> One potential negative consequence of having our global duties be contingent on a certain relationship continuing to obtain is that if we are inclined to lessen our global duties then all we need to do is to remove ourselves from that particular global relationship. So for example, imagine that we adopt a relational cosmopolitan theory of justice that affirms a principle of redistribution from rich countries to poor ones, based on some kind of institutional relationship between states – perhaps fellow membership of a coercive trading scheme. It seems that all the rich countries have to do to relieve themselves of the obligation to redistribute some wealth to the poor countries is to remove themselves (or perhaps worse, engineer the removal of the poor states) from the scheme. If general duties are grounded in membership of political or institutional schemes then there is an incentive to leave such schemes in order to lessen ones obligations, or else to not join such schemes in order to avoid acquiring such obligations in the first place.<sup>69</sup>

The weakness described above only applies to comparative duties, since a relational approach can logically affirm non-comparative duties of justice as grounded in non-relational facts. For example, a relational nationalist like David Miller holds that comparative principles of justice are grounded in features of relationships, and so are restricted in scope to within those relational contexts, but also affirms non-comparative principles of justice that are not restricted in this way. One question that needs answering here is why comparative and non-comparative justice are to be treated so differently – why do questions about comparative justice only arise within the context of certain relationships, whilst questions about non-comparative justice arise outside of these contexts? If the relationalist has good reasons for restricting the scope of comparative justice to within certain relational contexts, then it might be the case that these reasons also apply to non-comparative justice, and so we should restrict the scope of that too. In Part II. of the thesis I will examine David Miller's reasons for the special restriction of comparative justice and argue that they are inconsistent with his views about non-comparative justice.

Apart from these issues about the contingency or not of general duties of justice, non-relationalists also criticise relational approaches for failing to adhere to the standards of impartiality that they prescribe. Non-relationalists argue that the very purpose of justice is to set impartial standards which aim to protect people from our naturally partial inclinations.

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<sup>68</sup> Simon Caney makes this point when criticising Charles Beitz's argument for cosmopolitanism on the basis of an extension of Rawls' theory of justice to the global sphere – he claims that Beitz's cosmopolitanism is 'built upon unsafe foundations' (Caney, 'Global Interdependence and Distributive Justice', *Review of International Studies*, 31 (2005): 389-399, at p. 399).

<sup>69</sup> Of course, a relationalist cosmopolitan could reject this picture, arguing that the process of globalisation has occurred in such a way to trap states into relationships with each other that they cannot remove themselves from. However, even if we accepted this alternative picture, there would still remain the potential for the dominant members of such relations to redefine the relationship such that their obligations were lessened. I will make this argument at greater length below.

The non-relational refusal to let relational considerations ground justice follows from an understanding of these considerations as partialities which justice is designed to override. So, for example, Simon Caney argues that if we accept the impartialist intuition that morally arbitrary factors should not be allowed to influence an individual's entitlements, as well as the view that someone's place of birth is an arbitrary factor, then we are committed to rejecting the relational approach.<sup>70</sup> This is because in most cases people are born into the associations and relationships which the relationalist wants to hang justice onto. People are born into states and nations, and in most cases do not leave them during their lifetime. The relational fact of my membership of a particular social, political, or institutional relationship is an arbitrary fact as far as justice is concerned. As Caney puts it 'institutional schemes do not track any properties that would generate entitlements and as such they treat people unfairly, denying them some of their entitlements.'<sup>71</sup> According to the non-relational approach, all duties must be justified with reference to universal principles of justice that do not take relational facts into account. Relational theories of justice will therefore fail to be impartial, because they place relational facts at the basic level of justification of principles of justice. In order to counter this criticism, the relationalist needs to argue that particular relational facts are not morally arbitrary – that they should count as salient considerations and be able to ground principles of justice.

This debate about the arbitrariness (or not) of relational facts has mainly taken place between non-relational cosmopolitans and relational nationalists with reference to the ethical significance of nationality in particular,<sup>72</sup> but it reflects a deeper debate between moral particularism and universalism. As we saw in the previous chapter, the debate between universalists and particularists concerns the question of whether relational facts are ever the type of thing that can be of fundamental moral significance. Universalists argue facts about individuals' gender, race, religion, culture, nationality and so on, including facts about how they are related to other individuals, are morally arbitrary, in the sense that they are not relevant to fundamental moral reasoning. Particularists deny this claim, arguing that relational facts in particular are morally significant and should not be excluded from basic moral reasoning.

The general worry here is that relational theories of justice seem to excessively prioritise special obligations and partial concerns above general duties and impartial concerns. This is of course the opposite of the relational worry that non-relational theories of justice seem to overly prioritise general duties and impartiality above special obligations and particularity. These opposing worries arise because relational and non-relational approaches tell

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<sup>70</sup> Caney, *Justice Beyond Borders*, pp. 111-112.

<sup>71</sup> Caney, *Justice Beyond Borders*, p. 111.

<sup>72</sup> See cosmopolitan strategy (1a) in Section 2.5.1. above.

fundamentally different stories about how we should understand the concept of justice. I'll explore these different understandings of the nature of justice in the next section.

## 2.6. The Nature of Justice

The relational and non-relational approaches to justice tell two different stories about how questions of justice arise. In one important sense the two approaches define the concept of justice in different ways. Relationalists assume that justice, by its very nature, is grounded in social, political, and institutional relationships and therefore only applies to these structures. Non-relationalists, on the other hand, understand justice as being grounded in universal features of human beings, and applying independently of social, political, and institutional structures.

Relationalists have appealed to the intuition that we can only have duties of justice towards people with whom we have interacted in some way in order to explain why justice should be understood as relational – i.e. as restricted to within certain relational contexts. This argument, which Caney labels as the 'impact argument',<sup>73</sup> is illustrated by Darrel Moellendorf with reference to a hypothetical example. Moellendorf claims that most people would agree that we are not bound by duties of justice to 'intervene into the affairs of intelligent beings with whom we have no intercourse but only an awareness of their existence – say, intelligent beings on the second planet orbiting some distant star.'<sup>74</sup> The intuition active in this case – that duties of justice can only apply between people who interact in some way – is supposed to also apply to the case of our position vis-à-vis other human beings with whom we have no interaction.<sup>75</sup> The impact argument asserts that the moral importance of relationships and associations and their relevance to justice stems directly from the extent to which they affect people's interests and options.<sup>76</sup> We can see how this works in Rawls' relational theory of justice in which justice applies to the basic structure of society because it is the basic structure that has the most impact on people's ability to further their interests and pursue their own conception of the good.<sup>77</sup>

We might think that the non-relational approach commits us to the conclusion that we do have duties of justice to the intelligent aliens in the example above. After all, if justice for a non-relationalist is grounded in a universal human characteristic such as rational agency, and

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<sup>73</sup> Caney, *Justice Beyond Borders*, p. 112.

<sup>74</sup> Darrel Moellendorf, *Cosmopolitan Justice*, (Boulder, CO: Westview Press, 2002), p. 31.

<sup>75</sup> Moellendorf actually goes on to argue that there are no such people – that there is an appropriate form of association which exists globally (*Cosmopolitan Justice*, pp. 36-38).

<sup>76</sup> Caney, *Justice Beyond Borders*, p. 112.

<sup>77</sup> Rawls, *A Theory of Justice*, p. 7.

it turns out that these aliens also possess rational agency, then we would be committing Black's fallacy of restricted universalism if we failed to extend the scope of justice to include them.<sup>78</sup> Whilst this second point is indeed correct – a non-relationalist would be committed to extending the scope of justice to include the aliens if they were shown to possess the relevant characteristic – the first claim, that we possess duties of justice towards the aliens, does not follow. Our situation relative to the aliens is justice-apt if they possess the same morally significant features as us. But it doesn't necessarily follow that we have concrete obligations towards the aliens, only that we have *potential* obligations towards them. Which actual obligations we have towards the aliens depends on the content of our particular non-relational theory of justice.

What this example shows is the different reasons that relational and non-relationalists can have for not extending duties of justice to the aliens in this case. For the non-relationalist, a reason not to extend duties to the aliens could be that we could not both fulfil these duties to the aliens and our general duties to human beings. Given this dilemma, we might conclude that we have good reasons for choosing to fulfil the duties closer to home first. Alternatively, a non-relationalist might hold a principle of justice which entails duties of redistribution between A and B when some relevant harm can be demonstrated to have been done by A to B. If this principle is grounded in the rational agency of all human beings, then the scope of it would be extended if we discovered aliens who were also rational aliens. But unless it could be demonstrated that we humans has done some relevant harm to the aliens, then we wouldn't necessarily possess duties of redistribution towards them. In both of these cases, the scope of the principle of justice is extended to include the aliens, but given the particular circumstances, concrete duties of justice do not arise. This does not, it should be made clear, rule out such duties arising in the future when circumstances change. For the relationalist, in contrast, the reason not to extend duties of justice to the aliens is more fundamental. Given the lack of relevant relationship between us and them, the question of comparative justice simply does not arise. The scope of justice is not extended to include them unless such a relevant relationship exists. Until the scope of justice does include them there is no possibility of us possessing duties of justice towards them.

This fundamental disagreement about the concept of comparative justice stems from the two approaches differing views of inequality. Non-relational approaches to justice view inequality between people anywhere as intrinsically objectionable, whereas relational approaches do not necessarily hold this view.<sup>79</sup> Relationalists argue that the scope of comparative justice should be limited to within certain relational contexts, because it is only

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<sup>78</sup> See Section 2.2.1.

<sup>79</sup> Armstrong, 'Global Egalitarianism', p. 158.

within those contexts that inequality needs justification. Inequality between human beings qua human beings is not necessarily an obstacle to justice on this view. Non-relationalists, on the other hand, view inequality as an obstacle to justice that needs justification even when there is no relational context within which the inequality occurs. It is facts about human beings (and/or intelligent aliens) that mean that inequality is something we should be worried about on the non-relational view, not facts about social, political, or institutional, relationships.

In summary, the very concept of justice in the debate between relational and non-relational approaches is highly contested, and given that fact, it isn't possible to argue for either the relational or non-relational understanding of justice as a simple conceptual truth. As Chris Brown argues with reference to a related debate, to a certain extent which of the two views we prefer may come down in the end to the 'gut feelings of individual authors'.<sup>80</sup> Arguments in favour of either the relational or non-relational views which simply assert that 'justice is x' will not help us here, because there will always be an alternative 'justice is y' claim available from the other side. Instead, we need good, independent, reasons for adopting either the relational or non-relational view.

## 2.7. Conclusion

My aim in this chapter has been to explicate the main issues that are at stake between relational and non-relational approaches to justice in order to be able to point towards the main criticisms that can be made of either approach. I've focused on three main issues – practice-dependence, partiality, and the nature of justice. I will now sum up what I think are the main problems that relational and non-relational theories of justice need to be able to address.

A satisfactory relational theory of justice must be able to defend itself against the criticism that it is inherently conservative, as well as the related criticism that a relational theory of justice necessarily lacks critical force. Such a defence will be a defence of the interpretive method for deriving principles of justice from already existing relationships. This will need to show that a relational theory does not have a problem with conservatism, and that a relational theory can discriminate between competing principles of justice supported by competing interpretations. In the context of the global justice debate, a coherent relational theory of justice must also be able to provide a satisfactory account of general global duties

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<sup>80</sup> Chris Brown, *International Relations Theory: New Normative Approaches*, (Hemel Hempstead: Harvester-Wheatsheaf, 1992), p. 75. Brown is talking about the debate between cosmopolitanism and communitarianism, rather than the debate between relational and non-relational approaches, but the basic thought is the same.

of justice, and explain how they are to be weighed up against our national or statist obligations.

An acceptable non-relational theory of justice will have to be able to defend itself against charges of impracticality and impossibility. This defence will need to show that a non-relational theory need not be divorced from reality, and that we can consistently derive principles of justice from universal features of human beings that have practical relevance. A non-relationalist will also have to provide a satisfactory account of our interpersonal relationships and special obligations – to explain why we must adhere to the demands of impartial justice even when this conflicts with some of our intuitively important personal projects. In the context of the global justice debate this account will have to explain either why co-national and co-citizen relationships do not support special treatment in this way, or how these relationships can be included in a cosmopolitan theory of justice.

## **Summary of Part I.**

In Part I. I have analysed the debate between relational and non-relational approaches to justice, and discussed the main issues that are at stake between them. My purpose was to uncover the key differences between the two approaches, and to come up with a list of problems that either approach needs to be able to solve if it is to be able to formulate a coherent and satisfactory theory of global justice. Having now done this, I am now in the position of being able to examine candidate theories in detail and assess them in the light of these problems. My aim in Part II. is to show that a promising example of a relational theory of justice, that of David Miller, does indeed suffer from the problems outlined above, and that the relational approach he relies on is unable to provide the resources necessary to escape these concerns. In Part III. I will then offer an interpretation of Brian Barry's non-relational theory of justice, and I will defend this theory against the kinds of criticism of non-relational approaches that I have outlined here. My overall aim is to show that the non-relational approach is better placed to offer a satisfactory theory of justice than the relational approach.

## Part II.

### The Relational Approach: David Miller

In Part I. I explored the debates within political philosophy surrounding the issue of global justice, paying particular attention to the debates between moral cosmopolitans and their nationalist and statist critics. I drew a distinction between relational and non-relational approaches to justice, and examined the main sources of disagreement between the two. I concluded Part I. with a set of criteria that each approach needs to be able to meet if it is to be able to be the basis for a successful theory of global justice. In Parts II. and III. I intend to discuss two examples of theories of global justice – one relational, one non-relational – and assess them in terms of how well they are able to meet this criteria. In this part I will look at the relational approach of David Miller, and in the next part I will look at the non-relational approach of Brian Barry.

I am focusing on David Miller as an example of a relational approach because of the comprehensiveness of his collected works on justice – whilst he is perhaps best known for his writings in defence of liberal nationalism,<sup>1</sup> he has also written extensively on social and global justice in general,<sup>2</sup> and in explicit defence of a relational approach to justice.<sup>3</sup> Miller's position is nationalist, anti-cosmopolitan, and relational. He provides both negative critiques of the cosmopolitan and non-relational positions, and positive defences of nationalism and the relational approach. His work is arguably the best example of a coherent non-cosmopolitan theory of global justice – he doesn't just deny that global justice is a relevant issue, or refuse to engage with cosmopolitan theories, but instead provides reasoned arguments as to why he thinks cosmopolitanism is flawed as an approach to justice. For these reasons I will be taking Miller as a representative of the relational approach to justice. In the first half of this part (Chapter Three) I will outline Miller's theory in as much detail as possible, covering his work on social justice, nationalism, global justice, and methodology, trying to give an objective reading of his work. In the second half (Chapter Four) I will

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<sup>1</sup> See 'The Ethical Significance of Nationality', *Ethics*, 98/4 (1988): 647-662; 'In Defence of Nationality', *Journal of Applied Philosophy*, 10 (1993): 3-16; *On Nationality*, (Oxford: Clarendon Press, 1995); and *Citizenship and National Identity*, (Cambridge: Polity, 2000).

<sup>2</sup> For Miller's theory of social justice see *Social Justice*, (Oxford: Clarendon Press, 1976); and *Principles of Social Justice*, (Cambridge, MA.: Harvard University Press, 1999). For his theory of global justice see primarily *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007); but also 'The Limits of Cosmopolitan Justice', in David R. Mapel and Terry Nardin (eds.) *International Society*, (Princeton: Princeton University Press, 1998); 'Justice and Global Inequality', in Andrew Hurrell and Ngaire Woods (eds.), *Inequality, Globalization and World Politics*, (Oxford: Oxford University Press, 1999); and 'Cosmopolitanism: A Critique', *Critical Review of International Social Philosophy and Policy*, 5 (2003): 80-5.

<sup>3</sup> For an explicit defence of Miller's methodology see 'Two Ways to Think About Justice', *Politics, Philosophy and Economics*, 1 (2002): 5-28, and *Principles of Social Justice*, pp 25-41.



critically evaluate his theory, focusing in the most part on the criticisms of relational approaches that I outlined in Chapter Two.

My aim in these two chapters is to demonstrate that there are problems with Miller's theory of justice, which mainly stem from his commitment to the relational approach. As such, these criticisms will go part of the way towards establishing my conclusion that a non-relational cosmopolitan approach provides a better account of global justice than a relational approach can. My arguments in Chapter Four will therefore in the most part be addressed to Miller's positive arguments: his defence of the ethical significance of nationality and the value of national self-determination; his non-egalitarian principles of global justice; and his use of a relational approach to justice (contextualism). Of course there will still remain the task of providing a positive account of a non-relational cosmopolitan theory of justice that can be defended against the criticisms of such approaches advanced by Miller and others. This is the task that I will take up in Part III.

## Chapter Three: Contextualist Non-Cosmopolitanism

### 3.1. Introduction

In this chapter my aim is to outline in as much detail as possible the main aspects of David Miller's theory of justice. My outline will contain some interpretation of Miller in places where I think his meaning may be unclear, and some suggestion of the possible criticisms and replies that a non-relational cosmopolitan might make to Miller. In the next chapter I will move on to the critical evaluation of Miller's theory as an example of the relational approach to justice.

David Miller has published widely on the subject of justice, and has proposed principles that apply at both the domestic and the global levels. His theory is based upon a 'contextualist' relational approach to justice. According to Miller principles of justice only apply within certain relational contexts, such as citizenship. The one exception to this is that we all, as human beings, possess basic rights to the resources that are necessary for a minimally decent life. These rights can impose general duties of justice on all of us, but only in certain circumstances which Miller details. For Miller, social justice and global justice are separate matters, requiring different principles. Miller's theory of social justice is broadly egalitarian, but his theory of global justice is avowedly non-egalitarian – our only duties of justice at the global level are duties to ensure that the basic rights of all people are met. And even these, as I've hinted above, only apply in certain circumstances, namely when we are what Miller terms 'outcome' responsible for the failure of these rights to be met.<sup>1</sup> Miller's theory of justice is therefore non-cosmopolitan – he thinks that the scope of comparative justice is restricted to within nation-states, and that we don't have remedial duties to the global poor unless we are in some sense causally responsible for their plight. His non-cosmopolitanism is strengthened by a commitment to a defence of the ethical significance of nationality. Nationality for Miller is a constitutive part of our identities that is relevant to considerations of justice.

The various aspects of Miller's theory of justice fit together to form a coherent whole that can be assessed as a paradigm example of a relational theory of global justice. Miller's primary aim throughout is to defend the right of individual nation-states to be self-determining – to be able to prioritise the interests of their citizens above those of foreigners. His main opponent therefore is the cosmopolitan who views this prioritisation as illegitimate.

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<sup>1</sup> 'Outcome' responsibility refers to 'the responsibility we bear for our own actions and decisions', as opposed to remedial responsibility which refers to 'the responsibility we may have to come to the aid of those who need help', David Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007), p. 81. See Section 3.4.2. below for more on Miller's distinction between outcome responsibility and remedial responsibility.

Miller doesn't deny that there are global ethical concerns – he doesn't claim that nation-states have no duties to those outside their borders. But he does argue that these duties are less stringent and of a different kind to those owed to people within their borders. Miller's implicit reason for resisting global egalitarianism is that he thinks that global egalitarian principles of justice would be an obstacle to the realisation of the value of national self-determination. He wants nation-states to be free to pursue their own projects and conceptions of the good without the burden or distraction of having to consider the relative wellbeing of members of other nation-states. This is, it should be stressed, a general principle – *all* nation-states should be equally free to pursue these goals under Miller's account. The theoretical approach (contextualism) that Miller adopts reflects his aim to provide an account that respects particularity and value pluralism, and avoids too much generalisation and abstraction.

In this chapter I will begin by outlining the three main aspects of Miller's theory of justice: social justice, nationalism, and global justice. I will then move on to outline Miller's contextualist approach to questions of justice. This approach, which is broadly the same as the practice-dependent approach outlined in Part I., underpins Miller's theory of justice and is central to it. Having outlined Miller's relational approach in detail in this chapter I will then be able to critically assess it in Chapter Four.

## **3.2. Social Justice**

In *Principles of Social Justice* (1999) Miller outlines his theory of social justice in detail. My discussion in this section will be of the content of the theory – the principles of justice that Miller outlines. Whilst the full details of Miller's theory of social justice might not seem directly relevant to his non-cosmopolitanism, in fact it is only by considering how he supports his principles of social justice that we can understand his methodological approach to justice in general (contextualism). I will discuss contextualism in greater detail in Section 3.5.

### **3.2.1. Circumstances of Justice**

Miller's theory of social justice is grounded in a relational, and practice-dependent, understanding of justice. We can see this in his description of the 'circumstances of justice' – the conditions which must be in place before principles of justice can apply. The necessary circumstances of social justice are: (a) bounded societies; (b) effective institutions; and (c) possibility of change. Miller argues that:

'if we do not inhabit bounded societies, or if people's shares of goods and bads do not depend in ways we can understand on a determinate set of social institutions, or if there is no agency capable of regulating that basic structure, then we no longer live in a world in which the idea of social justice has any purchase.'<sup>2</sup>

Social justice for Miller is about comparing the relative benefits and burdens that different people possess, and so it must be possible to make meaningful comparisons between them. Common membership of a bounded society provides a necessary commonality that makes such comparison possible, and is the first 'circumstance of justice' – 'we have to assume a bounded society with determinate membership, forming a universe of distribution whose present fairness or unfairness different theories of justice try to demonstrate.'<sup>3</sup> The second 'circumstance of justice' is that 'the principles we advance must apply to an identifiable set of institutions whose impact on the life chances of different individuals can also be traced.'<sup>4</sup> If we couldn't identify such a set of institutions, then we wouldn't be able to understand the causes of the current distribution of benefits and burdens, much less see how to change this distribution. The third 'circumstance of justice' is 'that there is some agency capable of changing the institutional structure on more or less the way our favoured theory demands'.<sup>5</sup> Once we have identified how we want the distribution to be changed, then we need to know how to do so. If there isn't an agency capable of implementing such changes then justice is not practically relevant. Here we can see that Miller holds the practice-dependent view that a theory of justice must contain the practical preconditions for its realisation.<sup>6</sup>

### 3.2.2. Principles of Social Justice

Miller's theory of social justice is pluralist in that he identifies three distinct principles of justice that apply within societies. These principles apply to the different 'modes of relationship' that exist between members of a society. For Miller, if I am to determine what I owe to fellow citizen then I need to first determine what type of relationship I share with them.<sup>7</sup> Having done so I will then be able to determine which principle of justice to use to find out what I owe to them. The three basic modes of relationship that he identifies are 'solidaristic community', 'instrumental association', and 'citizenship'.<sup>8</sup> Miller argues that each of these three basic modes of human relationship have a principle of social justice which determines the just distribution within that relationship. Solidaristic communities

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<sup>2</sup> David Miller, *Principles of Social Justice*, (Cambridge, MA.: Harvard University Press, 1999), p. 6.

<sup>3</sup> Miller, *Principles of Social Justice*, p. 4. See also Marc Stears, 'The Political Conditions of Social Justice', in Daniel A. Bell, and Avner De-Shalit (eds.), *Forms of Justice*, (Lanham: Rowman and Littlefield, 2003), p. 31.

<sup>4</sup> Miller, *Principles of Social Justice*, p. 5.

<sup>5</sup> Miller, *Principles of Social Justice*, p. 6.

<sup>6</sup> Stears, 'The Political Conditions of Social Justice', pp. 29-30.

<sup>7</sup> Miller, *Principles of Social Justice*, p. 25.

<sup>8</sup> Miller, *Principles of Social Justice*, p. 26.

follow a principle of need, instrumental associations follow a principle of desert, and relations between citizens are governed by the principle of equality.

The first mode of relationship is solidaristic community. People can be said to be in a solidaristic relationship when they 'share a common identity as members of a relatively stable group with a common ethos'. Solidaristic community 'begins from face-to-face relationships between people that engender mutual understanding and mutual trust, but it can extend beyond a directly interacting group to encompass a wider circle who see themselves as bound together by common beliefs or culture as well as by kinship or acquaintance.'<sup>9</sup> Miller claims that solidaristic communities exist primarily within the family, but also on a looser and wider scale in religious groups, clubs, professional associations, and nations. The traditional Western family unit is a primary, direct, and unmediated form of solidaristic community, but an Israeli Kibbutz or a religious community could also provide direct communal relations. Whilst groups such as nations seem far removed from the family, Miller claims that the communal relationship between co-nationals is mediated through common practices and common culture.<sup>10</sup> Within solidaristic communities the appropriate substantive principle of social justice is distribution according to need – 'each member is expected to contribute to relieving the needs of others in proportion to ability, the extent of liability depending upon how close the ties of community are in each case.'<sup>11</sup>

The second mode of relationship is instrumental association. These can be said to exist when 'people relate to one another in a utilitarian manner; each has aims and purposes that can best be realised by collaboration with others'.<sup>12</sup> The clearest case of instrumental association is the buyer and seller relationship, in which both parties are only concerned with each other insofar as being so will help them achieve their end of obtaining the good (in the case of the buyer), or obtaining financial reward for the good being sold (in the case of the seller). Miller claims that organisations more generally can also be seen as examples of instrumental association – as long as the participants view their participation, and that of their fellow participants, instrumentally. Under this model a family can also be seen to some extent to be an instrumental association, if it is a family in which the members view their continued membership as valuable for the ends that it brings, for example financial security. Within instrumental associations the relevant principle of justice is distribution according to desert. Simply speaking, each person should receive back in proportion to what he puts in; 'justice is done when he receives back by way of reward an equivalent to the contribution he puts

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<sup>9</sup> Miller, *Principles of Social Justice*, p. 26.

<sup>10</sup> Miller, *Principles of Social Justice*, p. 26.

<sup>11</sup> Miller, *Principles of Social Justice*, p. 27.

<sup>12</sup> Miller, *Principles of Social Justice*, p. 27.

in.<sup>13</sup> What this reward should consist in will also be determined by the aims and purposes of the instrumental association in question. In simple economic associations this will be easy to work out, but in more complex associations it will be more difficult.

The third mode of relationship is citizenship. Citizenship is membership of a political society, and it entails certain rights and obligations. Members of political societies are related to each other as citizens because they share a 'common social and political status'.<sup>14</sup> The citizenship relationship that Miller is referring to is not the formal legal relationship (not that he denies that this exists), but the underlying ethical and social relationship that underpins the legal relationship. For Miller, the legal relationship is merely a 'formal expression' of the underlying mode of relationship.<sup>15</sup> The distributive principle which applies to citizenship associations is equality; 'the status of citizen is an equal status: each person enjoys the same set of liberties and rights, rights to personal protection, political participation, and the various services that the political community provides for its members'.<sup>16</sup>

So, in summary, Miller's theory of social justice consists of three principles of distributive justice that apply within the three different modes of relationship that he identifies. These three modes of relationship are paradigmatically present, according to Miller, in modern nation-states, and so we should apply these three principles to nation-states as follows:

'[T]o achieve social justice we must have a political community in which citizens are treated as equals in an across-the-board way, in which public policy is geared toward meeting the intrinsic needs of every member, and in which the economy is framed and constrained in such a way that the income and other work-related benefits people receive correspond to their respective deserts'.<sup>17</sup>

### 3.3. Defence of Nationality

Miller is perhaps most widely known for his commitment to liberal nationalism. He outlines his nationalist theory in *On Nationality* (1995), and *Citizenship and National Identity* (2000).

Miller wants to defend 'three interconnected propositions' about nationality. First, that 'it may be properly part of someone's identity that they belong to this or that national grouping'. Second, that 'nations are ethical communities. They are contour lines in the

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<sup>13</sup> Miller, *Principles of Social Justice*, p. 28.

<sup>14</sup> Miller, *Principles of Social Justice*, p. 30.

<sup>15</sup> Miller, *Principles of Social Justice*, p. 40.

<sup>16</sup> Miller, *Principles of Social Justice*, p. 30. Miller stresses that the form of equality he advocates as the correct principle of justice for citizenship relations is what he calls 'distributive equality' (as opposed to 'social equality'). Distributive equality demands that 'benefits of a certain kind – rights, for instance – should be distributed equally, because justice requires this'. Social equality, in contrast, 'identifies a social ideal, the ideal of a society in which people regard and treat one another as equals' (p. 232).

<sup>17</sup> Miller, *Principles of Social Justice*, p. 250.

ethical landscape. The duties we owe to our fellow nationals are different from, and more extensive than, the duties we owe to human beings as such.' Third, that 'people who form a national community in a particular territory have a good claim to political self-determination.'<sup>18</sup> These three claims are interrelated and Miller provides arguments for them all, but the one which is most interesting for the debate between Miller, as a nationalist, and cosmopolitans is the second proposition – that nationality is an ethically significant identity which can alter the duties and obligations that we have towards others. It is this proposition that Miller uses to support his claim that co-nationals have special obligations to each other which can trump other duties of justice – that co-nationals owe more to each other, as a matter of justice, than they do to outsiders.<sup>19</sup> I'll therefore be focusing on the second proposition in my discussion.

Miller wants nationality to have intrinsic, or fundamental, moral significance.<sup>20</sup> This is why he adopts a particularist approach to ethics, which as we saw in Part I., allows relationships between people to play a fundamental role in moral reasoning. His argument for the ethical significance of nationality begins with the assumption of a particularist approach, according to which 'memberships and attachments in general have ethical significance.'<sup>21</sup> Miller argues that:

'Because I identify with my family, my college, or my local community, I properly acknowledge obligations to members of these groups that are distinct from the obligations I owe to people generally. Seeing myself as a member, I feel a loyalty to the group, and this expresses itself, among other things, in my giving special weight to the interests of fellow-members.'<sup>22</sup>

Miller claims that nations are powerful sources of personal identity, and as such, they fit this particularist model of group membership which can generate special obligations to fellow members.<sup>23</sup> Because of the strength with which people identify themselves with their nation, they feel the strength of an obligation to further the goals of the nation, even to the point of sacrificing themselves in service of the nation's continued existence. Miller argues that nations are historic communities of obligation – 'because our forebears have toiled and spilt their blood to build and defend the nation, we who are born into it inherit an obligation to continue their work, which we discharge partly towards our contemporaries and partly

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<sup>18</sup> Miller, *On Nationality*, (Oxford: Oxford University Press, 1995), pp. 10-11; *Citizenship and National Identity*, (Cambridge: Polity, 2000), p. 27.

<sup>19</sup> Miller, *On Nationality*, p. 49.

<sup>20</sup> Miller, *On Nationality*, p. 58.

<sup>21</sup> Miller, *On Nationality*, p. 65.

<sup>22</sup> Miller, *On Nationality*, p. 65.

<sup>23</sup> Miller, *On Nationality*, p. 68.

towards our descendants.<sup>24</sup> Miller stresses that the content of the obligations that are grounded in relationships and membership of groups will vary according to the 'general ethos' of that relationship or group.<sup>25</sup> In the case of nationality, the content of our obligations to co-nationals will vary according to the 'public culture' of the nation – 'a set of ideas about the character of the community which also helps to fix responsibilities.'<sup>26</sup> The content of our obligations to co-nationals is therefore in some sense defined by the character of the particular nation that we are part of.

Miller argues that this particularist understanding of the ethical significance of nationality is appealing because it has motivational strength – 'to the extent that I really do identify with the group or community in question, there need be no sharp conflict between fulfilling my obligations and pursuing my own goals and interests.'<sup>27</sup> This is because my goals will partially be constituted by the goals of my community, or nation. Acting justly, and fulfilling one's obligations, is, Miller argues, much easier under this particularist picture. He goes on to argue that this motivational strength is an advantage when national communities coincide with state boundaries. Our formal duties and responsibilities that are grounded in citizenship are backed up by the loyalty that we feel toward co-nationals, and we are therefore willing to support more extensive systems of social justice.<sup>28</sup>

In summary, Miller's argument for the ethical significance of nationality is therefore based on his understanding of nationality as a particular form of identity, and on his commitment to ethical particularism. Nationality is, he claims, a powerful source of identity for people, and most people feel a sense of responsibility and obligations towards co-nationals which flows from an identification of the goals of the nation as their own. According to the particularist picture, we should take such feelings of identification and responsibility as evidence in support of the claim that nationality is an ethically significant identity. In short, nationality is ethically significant because people feel that it is significant. Miller's defence of the ethical significance of nationality has clear implications for his theory of global justice, which I will explore below.

### **3.4. Global Justice**

Miller has most recently turned his attention to the issue of global justice. In *National Responsibility and Global Justice* (2007) he outlines a comprehensive non-cosmopolitan

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<sup>24</sup> Miller, *On Nationality*, p. 23.

<sup>25</sup> Miller, *On Nationality*, p. 66.

<sup>26</sup> Miller, *On Nationality*, p. 68.

<sup>27</sup> Miller, *On Nationality*, p. 66.

<sup>28</sup> Miller, *On Nationality*, pp. 71-72.



theory of global justice which reaffirms his commitment to liberal nationalism and the relational approach to justice. His theory of global justice is based on the claim that we should 'understand *global* justice in a way that takes account of large differences between domestic and international contexts, and does not, therefore, merely involve giving a wider scope to familiar principles of *social* justice.'<sup>29</sup> The conclusion to be drawn from this for Miller is that a theory of global justice should draw a line between social and global justice *at the outset*. This is obviously a controversial claim. As we saw in Part I., relational cosmopolitans base their global principles of justice on the claim that the global context is sufficiently similar to the domestic context to force us to expand the scope of our established principles of social justice. Non-relational cosmopolitans flat out deny Miller's conclusion that any plausible conception of justice must draw a line between social and global justice at the start. Miller therefore can't claim that *any* plausible conception of global justice would draw this line between social and global justice without begging the question against the non-relationalist. To assume that social and global justice should be understood in different ways is to assume the truth of the relational approach. We need further substantive argument before we can conclude that the relational approach is preferable. I will explore Miller's arguments for his commitment to relational contextualism in Section 3.5. For now, we can simply accept that Miller's theory is founded in a view which takes the domestic and global contexts to be significantly different, and this results in a set of principles of global justice that are different from the set of principles of social justice that I outlined above. There are three main strands to his theory of global justice – a defence of basic human rights, a defence of collective national responsibility, and an argument against global egalitarianism. I'll now discuss each of these in turn.

### 3.4.1. Basic Rights

In *National Responsibility and Global Justice* Miller seeks to defend a set of basic human rights. He aims to 'identify a list of rights that can specify a global minimum that people everywhere are entitled to as a matter of justice, and that therefore may impose obligations.'<sup>30</sup> Miller wants these rights to be 'justified in a way that has universal reach.'<sup>31</sup> This is important because we may need to appeal to this justification in defence of our intervention into societies where basic human rights are being systematically violated. If we cannot appeal to a justification 'that those in the society have reason to accept' then we fail to show 'respect for the people whose rights we attempting to protect.'<sup>32</sup> His argument for basic rights is therefore quite different to the rest of his theory of justice, in that it is not

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<sup>29</sup> Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007), p. 21.

<sup>30</sup> Miller, *National Responsibility and Global Justice*, p. 166.

<sup>31</sup> Miller, *National Responsibility and Global Justice*, p. 164.

<sup>32</sup> Miller, *National Responsibility and Global Justice*, p. 165.

practice-dependent, contextualist, or relational. As far as non-comparative justice goes, Miller is firmly committed to a non-relational, universalist approach which will support nonnegotiable and unassailable basic rights. In Chapter Four I will consider whether Miller can consistently hold this position whilst also making his relational and contextualist arguments for principles of comparative justice, but for now I will just outline his strategy for defending basic rights.

Miller considers three different methods that might provide the universal justification for rights that he desires. He rejects two potential strategies – the ‘practice-based strategy’ and the ‘overlapping consensus strategy’ – as unsatisfactory. The practice-based strategy seeks to locate a theory of basic human rights in the current practice of rights. International law, UN declarations, foreign policy, and NGOs are all relevant. Miller argues that there is no one single practice that we can appeal to, but rather competing practices, and that this strategy has no way of settling a dispute between rival practices.<sup>33</sup> It therefore cannot provide us with a list of rights which are universally justifiable. The overlapping consensus strategy seeks to locate a theory of basic human rights in the space shared by all the major religious and non-religious world views. The aim is to find a set of rights that can be supported from all of these different background positions. Miller argues that this strategy fails because, whilst we might be able to find a minimal list of rights that can be supported, there is no guarantee they will take a universal form – many world views will support rights for only a subset of persons, for example.<sup>34</sup>

Miller’s preferred method of justification is ‘humanitarian.’ This humanitarian strategy ‘identifies and justifies human rights by fixing on universal features of human beings that can serve as a ground of these rights.’<sup>35</sup> The universal feature that Miller fixes on is basic human needs. These are intrinsic needs – ‘those items or conditions it is necessary for a person to have if she is to avoid being harmed.’<sup>36</sup> Needs which are only instrumental, which are only needed for some other valuable end, do not count as basic needs. So water is an intrinsic need because without it human beings suffer the harms of dehydration and eventually death. Money, however, is generally an instrumental need – we need it for the things which it can help us acquire, it has no independent value.

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<sup>33</sup> Miller, *National Responsibility and Global Justice*, pp. 171-2.

<sup>34</sup> Miller, *National Responsibility and Global Justice*, p. 174.

<sup>35</sup> Miller, *National Responsibility and Global Justice*, p. 178. ‘Humanitarian’ here refers to the particular strategy of justification that Miller pursues – one which makes appeals to universal features of human beings. This is a separate usage to the term ‘humanitarianism’ which is often contrasted with justice, and can be in many senses equated to charity.

<sup>36</sup> Miller, *National Responsibility and Global Justice*, p. 179.

If basic human rights correspond to the things which people need to avoid harm, then we need to know what counts as harm in the relevant sense. Physical or biological harms, Miller thinks, will be fairly unproblematic. We can agree that a person is harmed when she is in pain, when she is malnourished, dehydrated, insufficiently sheltered, paralysed or suffering from any other physical condition which 'prevents her from engaging in the normal range of human activities.'<sup>37</sup> Also we can all agree that having one's life cut short in an easily preventable manner would constitute a considerable harm. We will all die eventually, but some deaths are premature and preventable, and these seem to constitute harm in an important sense.<sup>38</sup> The physical and biological needs that this conception supports will be things such as food and water, shelter, basic health care, and physical security.

Miller also wants to include a non-material aspect into his conception of harm. He argues that a person is harmed when 'she is unable to live a minimally decent life in the society to which she belongs.'<sup>39</sup> In a society like ours this conception of a minimally decent life will include such things as not having to beg to support oneself, and being able to move around without fear of assault. What it includes in other societies may vary. The baseline is supposed to be fairly low, in that someone living just above it would not have a very good life, but importantly, they would also not be degraded or socially excluded.<sup>40</sup> Miller argues that there are a set of 'core human activities' which reiterate across different cultures. These are things like working, having a family, playing, learning, and so on. A person is harmed if they are not able to participate in these activities without having to bear unreasonable costs, including giving up one of the other core activities.<sup>41</sup> Basic needs then, for Miller, 'are the conditions that must be met for a person to have a decent life given the environmental conditions he faces.' These conditions include the material (physical and biological) needs outlined above, as well as non-material (social and psychological) needs such as education, work, leisure, freedom of movement and expression.<sup>42</sup> Miller is therefore defending a set of basic rights that correspond to these basic needs – we have basic rights to the material and

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<sup>37</sup> Miller, *National Responsibility and Global Justice*, pp. 180-181.

<sup>38</sup> Miller, *National Responsibility and Global Justice*, p. 181. There are no doubt considerable controversies which attach to some of these types of harm. For example we might dispute when death counts as a harm and when it doesn't. Even when talking simply in terms of life span it is hard to find a determinate answer. Is 80 years an adequate life span? Or given that humans have been known to live to well over 100 years, does death anytime short of that constitute harm? Whilst I agree that these are definite controversies and don't think Miller addresses them adequately enough, I think he is right when he claims that we are sure enough about the central cases to provide us with a workable definition of harm. We can all agree that a life that ends before adolescence has been cut short, for example. Miller also addresses this question when he discusses the limits on what can count as a basic right, see pp. 186-190.

<sup>39</sup> Miller, *National Responsibility and Global Justice*, p. 181.

<sup>40</sup> Miller, *National Responsibility and Global Justice*, p. 181.

<sup>41</sup> Miller, *National Responsibility and Global Justice*, p. 184.

<sup>42</sup> Miller, *National Responsibility and Global Justice*, p. 184.

non-material conditions that must be met in order for us to be able to live a minimally decent life.

### 3.4.2. National Responsibility

Whilst Miller defends a set of universal basic rights, he also defends a fairly strong conception of national responsibility which entails that the primary responsibility for the fulfilment of these rights lies with national governments. There are two main premises in Miller's argument here: (1) that nations can count as collective agents when it comes to questions of responsibility; and (2) that nations are often 'outcome responsible' for their economic situations. Miller then argues that (3) the remedial responsibility to alleviate the results of bad economic policies falls upon those who are outcome responsible for those policies. Therefore, Miller argues, nations should be held 'remedially responsible' for any poverty that arises as a result of their bad economic choices – the duty to relieve poverty within their borders poverty falls upon them. He admits that in some special cases, such as natural disasters, there is a general remedial duty of justice to assist the victims. However, outside of these special cases, the only general duties possessed by members of other nations towards the global poor are humanitarian.<sup>43</sup> Unless it can be shown that we (in the affluent west) are outcome responsible for global poverty (and Miller argues against this claim, see below) then we do not have specific remedial duties of justice to alleviate that poverty.

Miller's discussion of national responsibility deals with several different senses of responsibility. 'Remedial responsibility' refers to 'the responsibility we may have to come to the aid of those who need help.'<sup>44</sup> It is this type of responsibility which is at stake in debates about global poverty and justice – who is responsible for the alleviation of poverty? Upon who do remedial duties fall? However Miller is keen to distinguish this sense of responsibility from another kind – 'outcome responsibility.' Outcome responsibility refers to 'the responsibility we bear for our own actions and decisions',<sup>45</sup> and should be distinguished from mere causal responsibility on the one hand, and from full moral responsibility on the other. Outcome responsibility refers to the cases when we are causally responsible in a special way, and not necessarily morally responsible. Outcome responsibility is different from causal responsibility because whilst causal responsibility covers all things that are brought about by our actions (whether intentional, accidental, lucky, unlucky, foreseeable, or unforeseeable), outcome responsibility only covers things for which we are causally responsible, that are reasonably foreseeable, and that are the result of some 'connection

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<sup>43</sup> The assumption here is that humanitarian duties are weaker and less stringent than duties of justice – they are more like duties of charity, and can perhaps be conceived as supererogatory.

<sup>44</sup> Miller, *National Responsibility and Global Justice*, p. 81.

<sup>45</sup> Miller, *National Responsibility and Global Justice*, p. 81.

between [our] capacities and the result.’<sup>46</sup> And outcome responsibility is different to moral responsibility, because one can be outcome responsible for states of affairs which are morally irrelevant – where neither praise or blame are appropriate. Miller’s initial aim is to establish that it is justifiable to hold nations collectively outcome responsible for their own economic situations, and from this he claims that nations are remedially responsible for the alleviation of any suffering which results from that economic situation.

In support of his first claim – that nations can be treated as collective agents where responsibility is concerned – Miller argues that ‘national responsibility, as a species of collective responsibility, makes (ethical) sense, and therefore that the people who make up a nation may sometimes properly be held liable for what their nation has done.’<sup>47</sup> In order to support this claim he appeals to two models of collective responsibility: ‘the like-minded group model,’ and ‘the cooperative practice model’:

‘you can share in collective responsibility for an outcome because you form part of a like-minded group that has brought the outcome about, or because you are a participant in a cooperative practice that produces the outcome, or for both reasons at once.’<sup>48</sup>

Miller argues that nations can be understood as both like-minded groups and cooperative practices, and therefore concludes that insofar as nations fit with these models ‘where nations act in ways that impose burdens on themselves or on others, responsibility for such burdens falls on every member, even on those who opposed the decisions or policies in question.’<sup>49</sup> This argument is then coupled with premise (2) – that nations are often outcome responsible for their economic situations – to lead to the conclusion that it is right to ascribe outcome responsibility for that economic situation to all members of that nation. Miller argues that the current poor economic performance of many nations can be attributed to choices made by the members of those nations, and that therefore the members of those nations can be held collectively outcome responsible for their economic plight.<sup>50</sup> In support of this claim he points to the differing economic performance of various nation-states since decolonisation, and argues that the key factor which explains this differing performance is the different economic policies which were pursued by the national governments. Given this, we can say that the nations whose policy choices have led to poor performance are outcome responsible for that poor performance. In other words, Miller is claiming that the outcome

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<sup>46</sup> Miller, *National Responsibility and Global Justice*, p. 88.

<sup>47</sup> Miller, *National Responsibility and Global Justice*, p. 113.

<sup>48</sup> Miller, *National Responsibility and Global Justice*, p. 120.

<sup>49</sup> Miller, *National Responsibility and Global Justice*, p. 133. Miller stresses that he is talking about outcome responsibility here, rather than moral responsibility. So, you could be outcome responsible for the actions of your nation even if you disagreed with them, but you might not be morally responsible in this case.

<sup>50</sup> Miller, *National Responsibility and Global Justice*, pp. 238-247.

responsibility for much global poverty can be at least partially attributed to the poor nations themselves. This is in contrast to the view of cosmopolitans like Thomas Pogge, who argue that the coercive global institutional structure is the main cause of global poverty.<sup>51</sup>

Having argued that poor nations can be held at least partially outcome responsible for their poverty, Miller then goes on to argue for (3) – that remedial responsibility should track outcome responsibility. According to Miller, when trying to assign remedial responsibility for global poverty we need to consider who is outcome responsible for that poverty. The remedial duties demanded by justice will differ depending on which agent(s) (if any) is outcome responsible for the situation. When no agent or set of agents is outcome responsible, as in the case of a natural disaster, there is a general remedial duty of justice to assist the victims and to ensure that their basic rights are met – ‘if people are unable to lead decent lives as a result of events outside of their society for which they cannot be held responsible, this imposes a general responsibility to assist.’<sup>52</sup> However, when there is an identifiable agent (or set of agents) that is outcome responsible for the unfulfilment of basic rights, then a specific remedial duty of justice falls upon that agent (or set of agents).<sup>53</sup> When these duties of justice go unfulfilled, we can say that the agent(s) concerned is violating basic rights. When this happens a general remedial duty arises to assist the victims – to ensure that their basic rights are met. However, in this case, the duty is not, Miller argues, a duty of *justice*. Instead it is a *humanitarian* duty, and as such, is ‘less weighty.’<sup>54</sup>

Given how remedial duties vary according to outcome responsibility, Miller argues that if it is the case, as he claims, that poor nations are generally outcome responsible for their plight, then we do not generally have remedial duties of justice towards the global poor.<sup>55</sup> We do have a general humanitarian duty to alleviate poverty when those outcome responsible for it fail to fulfil their duties of justice, but this is less strong than a duty of justice. This humanitarian duty could, for example, presumably be easily outweighed by a conflicting duty of justice to our co-nationals.<sup>56</sup>

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<sup>51</sup> Thomas Pogge, *World Poverty and Human Rights*, (Cambridge: Polity Press, 2002).

<sup>52</sup> Miller, *National Responsibility and Global Justice*, p. 254.

<sup>53</sup> Miller, *National Responsibility and Global Justice*, p. 257.

<sup>54</sup> Miller, *National Responsibility and Global Justice*, pp. 248, 257-258. For Miller, the difference between humanitarian duties and duties of justice is that duties of justice are enforceable by third parties, whereas humanitarian duties are not.

<sup>55</sup> Miller does say that we have a duty to rectify the results of past injustice, and to offer fair terms of international cooperation. However, he doesn't think that most cases of global poverty are the result of past injustice or of a failure to impose fair terms of cooperation (*National Responsibility and Global Justice*, p. 251).

<sup>56</sup> Furthermore, presumably such outweighing could occur even when the co-nationals duty of justice in question regarded something less morally important than a conflicting humanitarian duty to foreigners. So, for example, a duty that I might have to pay taxes to support a system of non-essential healthcare (perhaps such things as fertility treatment and cosmetic dentistry) within my nation-state might outweigh a humanitarian duty to provide basic healthcare essentials (re-hydration salts for children suffering from diarrhoea as a result of drinking dirty water perhaps) on Miller's scheme.

### 3.4.3. Against Global Egalitarianism

Miller is strongly opposed to global egalitarianism (the claim that the scope of comparative justice is global). He argues that only non-comparative justice (in Miller's case fleshed out as basic rights, as outlined above) has global reach. Comparative, or egalitarian, justice is, according to Miller, only relevant within the context of nation states:

'In order for comparative judgements of justice to have force, they must apply to persons who are connected together in some way, for instance by belonging to the same community or association... In the absence of such common membership, on the other hand, only non-comparative questions of justice arise.'<sup>57</sup>

Miller makes several different arguments against global egalitarianism which I will summarise in turn. The foundations for two of these arguments have been outlined above. First, as we've seen, Miller defends nationality as an ethically significant identity, which gives rise to special obligations between co-nationals. These special obligations conflict with substantive global egalitarian principles of justice. Second, Miller argues that attempts to apply substantive egalitarian principles of justice globally suffer from several flaws. And finally, as we also have already seen, Miller argues that egalitarian principles of justice are appropriate within contexts of citizenship, and that there is no such global context in which global egalitarian principles could be grounded.

In order to make his case against global egalitarians, Miller draws a distinction between formal and substantive equality. He argues that global egalitarians wrongly apply substantive principles globally, where only a formal principle actually applies. According to Miller, global egalitarians assume that 'what justice requires is always and everywhere a certain kind of equality: since justice requires equality *within* societies, it must also require equality *between* them (or between people who live in different societies).' In contrast Miller argues that 'the only kind of equality that justice always requires is formal equality: equality between people who are in all relevant respects the same. If there is nothing of any significance to distinguish between two people, then they should be treated in the same way as a matter of justice.'<sup>58</sup> However, when there are relevant differences between people, then a principle of equality is no longer necessarily required by justice. One way to read Miller's argument is to say that he effectively claims that in order for global egalitarianism to be plausible it would have to be the case that there were no relevant differences between people

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<sup>57</sup> Miller, 'The Limits of Cosmopolitan Justice', in David R. Mapel and Terry Nardin (eds.), *International Society: Diverse Ethical Perspectives*, (Princeton, NJ: Princeton University Press, 1998), p. 171.

<sup>58</sup> Miller, *National Responsibility and Global Justice*, p. 53.

globally.<sup>59</sup> What this means is that all persons would have to be the same in all morally relevant respects (they could of course differ in many other respects that were not morally relevant). As Miller himself points out, ‘everything then turns on what should count as a relevant difference.’<sup>60</sup>

For Miller, as a particularist, the set of relevant differences between people can include the fact of membership of differing relational contexts. One’s membership of a particular relational context, such as a nation, is a relevant ethical fact. As such, it can act as justification for special treatment.<sup>61</sup> To reply to this first strand of Miller’s argument against global egalitarianism, one needs to deny his claim about the ethical significance of nationality. This can take two possible forms – we could either deny that nationality is ethically significant in any way, or allow that nationality is ethically significant, but deny that it counts as a relevant difference in the case of justice and equality. The first option is more extreme, and would have to be able to explain why we should give up one of our intuitively important values. The second option however is much more promising. We saw in Part I. of the thesis that it is possible to adopt a two-level view of justice, which allows one to remain committed to the ethical significance of identities like nationality, but only insofar as they can be justified with reference to principles that can be accepted by everyone. A global egalitarian can agree with Miller that nationality is ethically significant, and that it can be the source of special obligations, as long as these obligations can be justified to everyone considered equally, regardless of their national identity. Importantly, recognition of special obligations to co-nationals doesn’t conflict with a commitment to global egalitarianism. This is because global egalitarians are not necessarily committed to principles of justice that demand substantive equality at all times. I will defend this view in Part III.

Miller’s second line of argument against global egalitarianism is an attack on attempts to apply egalitarian principles globally. Miller argues that these attempts fail because they (a) fail to offer coherent, culturally neutral principles; and (b) fail to account for changes in distribution over time, and so fail to respect the principle of national self-determination and responsibility. The first criticism he labels the ‘metric’ problem, and the second criticism he labels the ‘dynamic’ problem.<sup>62</sup>

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<sup>59</sup> Another way to read Miller’s argument here is as claiming that at the global level there is no contextual background to tell us what counts as a relevant difference and what doesn’t. So applying egalitarian principles is problematic. Within nation-state contexts, however, we can agree about which differences are relevant and so we can apply a principle of equality. This line of thought is expressed in his second line of attack against global egalitarianism, outlined below.

<sup>60</sup> Miller, *National Responsibility and Global Justice*, p. 53.

<sup>61</sup> I outlined Miller’s defence of the ethical significance of nationality in Section 3.3 above, so I won’t go into it again here.

<sup>62</sup> Miller, *National Responsibility and Global Justice*, p. 56.



The metric problem is the problem of trying to establish what it is that we are trying to equalise globally. Candidate principles include equality of opportunity and equality of natural resources. Miller argues, using these two examples, that it is hard to determine what equality means 'in a culturally plural world in which different societies will construct goods in different ways and also rank them in different ways.'<sup>63</sup> Any attempt to establish a universal benchmark against which we can measure our success at achieving equality will inevitably prioritise one conception of the good over another. So, for example, if we seek to equalise people's access to various goods, then we will need to measure people's current access to these goods in order to be able to determine what redistribution needs to take place. But goods are highly variable, and one culture might value access to spiritual goods such as time and space to pray above liberal goods such as education. It is hard to see, Miller argues, how we can make such value judgements neutrally in the absence of a unified social context such as a nation.<sup>64</sup>

The dynamic problem is the problem of applying global egalitarian principles to a world that changes over time as a result of people's choices and actions. Even if we can achieve substantive equality at one particular point in time, then we are still faced with the problem of what to do when things inevitably become unequal after a period of time has elapsed. This problem is especially salient on Miller's point of view because of his commitment to national responsibility (see Section 3.4.2. above). Given that nations will collectively make choices and implement policies that will be different to those made by other nations, then even if all nations start from a position of equality they will not remain in an equal position over time.<sup>65</sup> Miller argues that it would be unfair to impose duties upon those nations that have made sensible choices to re-equalise their position relative to the nations that have made poor choices. Given that the nations making poor choices are outcome responsible for their situation, then no one else can be said to have remedial duties of justice towards them. The inequality in this case cannot therefore, Miller argues, be objectionable.<sup>66</sup> A global egalitarian principle which demanded that substantial equality be maintained over time would therefore conflict with the value of national self-determination.

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<sup>63</sup> Miller, *National Responsibility and Global Justice*, p. 67.

<sup>64</sup> Miller, *National Responsibility and Global Justice*, pp. 56-68.

<sup>65</sup> To illustrate this argument Miller uses the examples of the hypothetical societies Affluenza and Ecologia, which pursue policies of fast economic growth and sustainable development respectively, as well as Procreatia and Condomium, which pursue policies of unrestricted population growth and population control respectively. He argues that we can reasonably predict that, all other things being equal, the citizens of Ecologia and Condomium will be better off in the future, because of their sensible policies. Given that the citizens of Affluenza and Procreatia are outcome responsible for their less well-off position relative to the citizens of the other societies, they cannot claim a right against the citizens of Ecologia and Condomium to redistribute some of their wealth. *National Responsibility and Global Justice*, pp. 68-69. Miller first made use of these examples in 'Justice and Global Inequality', and as he recognises, a similar example is used by Rawls in *The Law of Peoples*, (Cambridge, MA.: Harvard University Press, 1999).

<sup>66</sup> Miller, *National Responsibility and Global Justice*, pp. 68-75.

There are several lines of response that an egalitarian could make to Miller here. The most promising in my view is to reject the assumption that because we lack the ability to determine exactly what equality requires, we must abandon the goal of equality altogether. We can still aim at equality even if we don't know exactly which distribution would count as fully equal.<sup>67</sup> Other routes of response would be to either dispute the importance that Miller places on national self-determination and responsibility,<sup>68</sup> or to argue that the problems Miller is pointing out apply equally to egalitarian theories of social justice, like Miller's own.

Miller's third argument against global egalitarianism is the positive claim, outlined in Section 3.2.2. above, that equality is only appropriate as a principle of justice within the relational context of citizenship. Outside of such a context, 'it makes no sense... to try to apply comparative principles.'<sup>69</sup> Miller characterises modern citizenship in nation-states as membership of a group that is 'constituted on the basis of equality.'<sup>70</sup> Nation-state communities are substantively different from any kind of international or global community because: (1) 'their members share an identity *as* citizens'; (2) members are 'bound together by a shared ethos made up of common understandings and common purposes'; and (3) 'an institutional structure exists that allocates rights and resources to members.'<sup>71</sup> All members of nation-states are entitled to equal treatment regarding the rights and opportunities that define their membership of the group, and any departure from this is unjust because it serves to create a set of second-class citizens, a result that is directly at odds with the underlying principles of modern citizenship. Within a modern state there is a presumption of equality, because modern states have been created, according to Miller, to uphold equal rights – 'to treat people unequally [within a state] would amount to a failure of recognition and respect; it would be to declare that those who receive a smaller quota of advantages are not members in full standing but mere adjuncts.'<sup>72</sup> Miller admits that if the scope of the relational context of citizenship was global, then the scope of egalitarian principles of justice would be too, and therefore there is a logical possibility of supporting global egalitarianism in this way. This is a version of the relational globalist position canvassed in Chapter One. However Miller doubts that citizenship could ever really make practical sense on a global scale, and so he

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<sup>67</sup> This reply is suggested by Leif Wenar in 'Human Rights and Equality in the work of David Miller', *Critical Review of International Social and Political Philosophy*, 11/4 (2008): 401-411, at p. 403.

<sup>68</sup> Miller points out this possible reply himself, *National Responsibility and Global Justice*, p. 74.

<sup>69</sup> Miller, 'The Limits of Cosmopolitan Justice', p. 171.

<sup>70</sup> Miller, *National Responsibility and Global Justice*, p. 54.

<sup>71</sup> Daniel M. Weinstock, 'Miller on Distributive Justice', in Daniel A. Bell, and Avner De-Shalit. (eds.), *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy*, (Lanham: Rowman and Littlefield, 2003), p. 274.

<sup>72</sup> Miller, 'Justice and Global Equality', in Andrew Hurrell and Ngaire Woods (eds.), *Inequality, Globalisation, and World Politics*, (Oxford: Oxford University Press, 1999), p. 189. See also Weinstock, 'Miller on Distributive Justice', p. 273.

disregards this option.<sup>73</sup> The nation-state is the right type of context for principles of equality, whereas the global sphere is not. Miller here is appealing to his contextualist understanding of justice (see Section 3.5. below), according to which ‘it is fruitless... to try to specify what justice requires without considering the context in which the distribution is taking place – who is distributing what to whom and under what circumstances.’<sup>74</sup> There are two ways to respond to his argument here – one can either argue that the features of the nation-state context that Miller highlights are also present at a global level, and so conclude that egalitarian principles of justice should have global scope; or one can dispute his contextualist understanding of justice and so render these differences irrelevant. I will be pursuing the second option in the next chapter.

### 3.5. Contextualism

Miller is explicitly ‘contextualist’ in his approach to justice. Contextualism is a form of practice-dependence, which as we saw in Part I., holds that principles of justice are conditioned by the nature of the practice to which they are to apply. In contextual theories of justice different principles of justice apply to different contexts of distribution, and those principles are conditioned by the contexts to which they apply. Miller’s contextualism is most apparent in *Principles of Social Justice* and in the article ‘Two Ways to Think About Justice’, but he remains committed to contextualism as an approach to justice up to the present day. He states in *National Responsibility and Global Justice* that contextualism ‘forms the essential background to the theory of global justice that I develop in this book.’<sup>75</sup>

Miller defines contextualist theories as taking the following form “In  $C_1$ ,  $P_1$ ; in  $C_2$ ,  $P_2$ ;...in  $C_n$ ,  $P_n$ ,” where the  $C$ ’s are the distributive contexts in which principles of justice [ $P$ ’s] may be applied.<sup>76</sup> This contextualist form is very clear in the case of his theory of social justice, in which the contexts of distribution are the three different modes of relationship: solidaristic community, instrumental association, and citizenship. The three different principles of social justice (need, desert, and equality) apply in the different contexts. To illustrate we can adapt Miller’s formulation from above as follows: In Solidaristic Community ( $C_1$ ), Need ( $P_1$ ); in Instrumental Association ( $C_2$ ), Desert ( $P_2$ ); in Citizenship ( $C_3$ ), Equality ( $P_3$ ). This form is also apparent in his theory of global justice, in which again the principle of equality applies only in the context of citizenship, and in which a principle of sufficiency applies to the global context. In both of these cases the principles of justice are conditioned by the contexts to which they apply. Miller’s contextualism is relational – the contexts of distribution are

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<sup>73</sup> Miller, *National Responsibility and Global Justice*, p. 55.

<sup>74</sup> Miller, *National Responsibility and Global Justice*, p. 53.

<sup>75</sup> Miller, *National Responsibility and Global Justice*, p. 14.

<sup>76</sup> Miller, ‘Two Ways to Think About Justice’, *Politics, Philosophy and Economics*, 1 (2002): 5-28, at p. 7.

'modes of association' or types of relationship between people. Principles of justice are grounded in features of these relationships, and these principles are conditioned by the relational contexts to which they apply.

Miller stresses that within contextual theories of justice (as opposed to within practice-independent, or universalist, theories) 'the principles in question are normatively independent of each other, that is to say, not applications of, or derivative from, some overarching, more fundamental principle.'<sup>77</sup> Each of the contextual principles of justice is solely justified with reference to the context to which it applies – there is no appeal to an overarching or universal principle which applies outside of all of the individual contexts.

'...the principles that tell us what counts as a just distribution of some good are specific to the context in which the distribution is taking place. There is no one master-principle (or connected set of principles) that defines justice in all times and all places.'<sup>78</sup>

Instead, Miller argues that principles of justice are *appropriate* to the contexts to which they apply. He argues that this relationship of appropriateness between context and principle 'is primitive in the sense that it cannot be explained by appeal to some more fundamental principle that applies universally.'<sup>79</sup> Miller claims that if someone does not grasp why  $P_1$  is the appropriate principle to apply in  $C_1$  then the explanation 'will involve setting out the features of  $C_1$  more fully, or explaining the character of  $P_1$  more explicitly, or perhaps relating  $C_1$  to other contexts in which the person in question has a firmer grasp of what justice requires'. He then goes on to state that 'if after all this has been done, the person in question still cannot understand why [ $P_1$ ] is the right principle to use in this case, there is nothing more that can be said.'<sup>80</sup> He appeals to what he identifies as the 'grammar' of justice and goes on to argue that without 'an implicit grasp' of the grammar of justice then we will inevitably fail to understand the norms of appropriateness that he is appealing to.<sup>81</sup>

In *Principles of Social Justice* Miller provides a two-part argument to establish 'more than a merely empirical connection' between the principles of justice and the contexts of distribution within his theory. This argument is meant to tell us why the principles of justice that Miller identifies are 'appropriate' for the distributive contexts that he describes. There are similarities between both parts of this argument and certain relational arguments that were outlined in Chapter Two. The first part, about feasibility, can be understood as a version

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<sup>77</sup> Miller, 'Two Ways', p. 10.

<sup>78</sup> Miller, *National Responsibility and Global Justice*, p. 13.

<sup>79</sup> Miller, 'Two Ways', p. 11.

<sup>80</sup> Miller, 'Two Ways', p. 11.

<sup>81</sup> Miller, *Principles of Social Justice*, p. 35.

of the argument about practical force outlined in Section 2.4.2. The second part, referring to 'fittingness', can be understood as an application of the interpretive method for justifying principles of justice raised in Section 2.4.1. I'll now outline these two arguments in turn.

First, Miller claims that a 'certain mode of relationship may be required to make a principle of justice *feasible* to use.'<sup>82</sup> Miller argues that each of the three principles of justice only make sense in any meaningful way when attached to their respective contexts. He claims that the principle of need only makes sense within a community that shares a conception of what constitutes need. Without this shared conception, he argues, 'need' is an 'amorphous' concept. We can't employ a principle of distribution according to need until we know what constitutes needs as opposed to mere wants or desires, and so we are dependent on the shared understandings within a solidaristic community which tell us what needs are. Miller argues that needs are all of those things required to avoid harm, where harm is defined as living a life below the community-defined idea of an adequate standard of living.<sup>83</sup> Without this community-defined standard, need makes no practical sense as a principle of distribution. Similarly, Miller argues that the principle of desert only makes sense within an instrumental association that has the specific aims and purposes needed to define the criteria for assessing contributions and determining rewards.<sup>84</sup> Finally, Miller argues that 'equality remains an empty notion until we have a more concrete conception of membership that specifies rights and duties'.<sup>85</sup> In each of these cases, the principle in question is empty until it is attached to a particular relational context which provides the relevant content. Miller's argument here is epistemic – we need our principles of justice to be contextually defined otherwise they will lack meaning. This is in contrast to the other variant of the practical force argument outlined in Section 2.4.2 in which principles must be applied to contexts in order for their actual realisation to be possible.<sup>86</sup> I do not think that on its own this argument is sufficient to explain the link that Miller postulates between context and principle, because all it tells us is that some principles make practical sense in some contexts, and so we should restrict the application of those principles to those contexts. It doesn't tell us why we should

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<sup>82</sup> Miller, *Principles of Social Justice*, p. 34.

<sup>83</sup> Miller, *Principles of Social Justice*, pp. 27, 207; Miller, *Social Justice*, (Oxford: Clarendon Press, 1976), p. 134.

<sup>84</sup> Miller, *Principles of Social Justice*, p. 28.

<sup>85</sup> Miller, *Principles of Social Justice*, p. 35.

<sup>86</sup> Although Miller does make this kind of claim as well elsewhere. He claims that the solidarity implicit in national communities is necessary to support welfare schemes (*On Nationality*, pp. 71-73).

support those principles themselves in the first place.<sup>87</sup> However this is only the first half of Miller's argument here, so this problem isn't immediately fatal, as the second argument may be more persuasive.

Miller's second argument for why the principles of justice he identifies are 'appropriate' to the contexts that he describes refers to the notion of 'fittingness'. Miller claims that 'a mode of association makes the use of one particular principle of justice *fitting* in a more direct sense.'<sup>88</sup> He gives the example of the solidaristic community in which people's solidarity with each other naturally gives rise to a sense of mutual obligation and therefore fits with a principle of need. He contrasts this with an instrumental association in which people's sole aim is mutual advantage, and so they make claims to each other on the basis of the contribution each has made; this corresponds to the principle of desert. This second part of the argument is harder to understand than the first. It isn't immediately clear how we would determine which principles 'fit' which contexts of distribution. Miller wants to avoid the situation in which we simply say '*If you see your relationship to B, C, and D as taking this form, then you should follow principle X in your dealings with them.*'<sup>89</sup> Presumably he wants to avoid this result because it would leave a contextualist theory indeterminate and open to abuse – people could define their relationships as they chose in order to manipulate their duties of justice. I think that the best way to flesh out Miller's argument here, so that it has a chance to avoid this result, is to consider the interpretive method for justifying principles of justice which is employed classically by Michael Walzer and Charles Taylor, and more recently by Andrea Sangiovanni in defence of the relational approach to justice.<sup>90</sup>

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<sup>87</sup> In other words, it is not clear why this feasibility condition means that a certain principle  $P_1$  is *the most appropriate* principle for a certain context  $C_1$ . The fact that a principle of justice according to need, for example, doesn't make sense without a solidaristic community (to determine what is meant by the concept of 'need') provides no weight in favour of applying the principle of need within solidaristic communities. There could be any number of other principles of justice that only make sense within one particular context, but we still lack a means to decide between these principles. Miller's argument here runs in a strange direction – rather than identifying the contexts of distribution that actually exist and then determining which principle(s) should be applied in each, contextualism here seems to begin with principles of justice that are somehow pre-selected, and which then are found to only make sense within certain contextual setting.

That contextualism works in this direction is problematic for Miller because it means that this epistemic argument on its own provides no support for any particular contextual principle or theory. The epistemic argument does not tell us why, for example, we should apply principle  $P_1$  to context  $C_1$ , when it might be the case that there is a second principle  $P_1^*$  that could also apply within  $C_1$ . We can accept that  $P_1$  only has epistemic content within  $C_1$ , but also think that  $P_1^*$  equally only has epistemic content within  $C_1$ . There is no reason provided why  $P_1$  is preferable to  $P_1^*$ . So even when working within Miller's theory, this argument is insufficient – it doesn't support any particular principle over another. Equally, it fails to support any particular contextual theory over another, because if Miller offers a set of contextual principles, then I can offer another set which also require contextual grounding, and we lack a way to distinguish between the two. To sum up this problem, unless we already have reason to endorse certain principles, the fact that a particular contextual background is needed to make sense of those principles is not relevant.

<sup>88</sup> Miller, *Principles of Social Justice*, p. 35.

<sup>89</sup> Miller, *Principles of Social Justice*, p. 39.

<sup>90</sup> See Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, (Oxford: Blackwell, 1983); and *Interpretation and Social Criticism*, (Cambridge, MA.: Harvard University Press, 1987); Charles Taylor, 'Interpretation and the Sciences of Man', in *Philosophy and the Human Sciences: Philosophical Papers 2*, (Cambridge: Cambridge University Press, 1985); and Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality', *The Journal of Political Philosophy*, 16/2 (2008): 137-164.

I'll now outline this interpretive method in more detail with particular reference to Walzer's approach, since Miller himself refers to it as an example of a contextualist theory. I'll then explain why I think that Miller should adopt the interpretive methodology if he wants his contextualist method to remain distinct from universalism.

### 3.5.1. Michael Walzer

Walzer pursues a similar form of contextualism, or practice-dependence, to Miller. The main difference between their two theories is that whereas, as we've seen, Miller uses modes of relationship as contexts of distribution, Walzer uses types of social good.<sup>91</sup> Like Miller, Walzer rejects the traditional universalist approach of making normative judgements from a distance, and instead seeks to offer an 'immanent critique.'<sup>92</sup> He is also, like Miller, explicitly pluralist in his approach to finding principles of justice, in that he argues that there are several different irreducible principles of justice, and also that principles of justice vary from society to society.<sup>93</sup> He argues that 'different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and ...all these differences derive from different understandings of the social goods themselves.'<sup>94</sup> For Walzer, the link between context (social good) and principle of distribution is to be determined internally, without reference to external or universal principles.<sup>95</sup> The search for general principles of justice (beyond a reiteration of some thin principles across societies) is a misguided one, for 'every substantive account of distributive justice is a local account.'<sup>96</sup> For Walzer, principles of distribution are 'inherent' and 'implicit' in the community-specific meanings of social goods.<sup>97</sup> Justice is rooted in these shared meanings, and so to override them 'is (always) to act unjustly.'<sup>98</sup>

Miller highlights that within Walzer's theory, 'the meaning of each social good determines its criterion of just distribution,'<sup>99</sup> So in other words, the meaning of the context determines the principle of justice we should apply in that context. Miller rejects the strongest interpretation of this claim, which would be that 'there is a conceptual link between the

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<sup>91</sup> Walzer, *Spheres of Justice*.

<sup>92</sup> Walzer, *Spheres of Justice*, p. xiv.

<sup>93</sup> Shane O'Neill, *Impartiality in Context: Grounding Justice in a Pluralist World*, (Albany, NY: State University of New York Press, 1997), p. 62; David Miller, 'Introduction' in David Miller and Michael Walzer (eds), *Pluralism, Justice, and Equality*, (New York: Oxford University Press, 1995), p. 2.

<sup>94</sup> Walzer, *Spheres of Justice*, p. 6.

<sup>95</sup> Walzer, *Spheres of Justice*, p. 314.

<sup>96</sup> Walzer, *Spheres of Justice*, p. 314.

<sup>97</sup> O'Neill, *Impartiality in Context*, p. 59.

<sup>98</sup> Walzer, *Spheres of Justice*, p. 314.

<sup>99</sup> Miller, 'Introduction', p. 5.

meaning of the good and its principle of distribution.<sup>100</sup> So the link between context and principle in contextualist theories of justice is not an analytical one. Instead, Miller argues that the link in these cases is one of suggestion rather than entailment – ‘once we see what kind of a good [X] is, this immediately *triggers* a particular distributive principle which we see as applying to all goods of that sort.’<sup>101</sup> Miller here is referring to what Walzer calls the ‘distributive logic’ of the social good, in a similar way in which Miller refers to the ‘grammar of justice’ within his own theory.<sup>102</sup> This is the relationship of appropriateness which I began to outline above. In order to get at the distributive logic of a particular social good, Walzer uses an interpretive method, which I will now explore in more detail.

### 3.5.2. The Interpretive Method

Walzer pursues an explicitly interpretive, or hermeneutic, approach.<sup>103</sup> This type of approach examines and critically reflects upon our current moral code, rather than seeking to discover or invent principles that are better or truer than our current ones.<sup>104</sup> The interpretive approach interprets common social meanings ‘to which no one individual has privileged access’.<sup>105</sup> In this sense there is no single right answer, but simply a few good interpretations within a range of bad or incomplete ones.<sup>106</sup> Authenticity is a key concept here; the interpretive approach aims at not the correct or true interpretation (because such a thing does not exist), but rather the most authentic understanding of our shared morality.<sup>107</sup> Joseph Carens compares Walzer’s interpretive approach to that of an impressionist painter; ‘the artist offers a reconstructive interpretation, drawing attention to colours, shadings, interconnections. Once we’ve seen the artist’s painting, the landscape actually looks different to us, though in important ways what the artist sees was always already there.’<sup>108</sup> For Walzer, the task of interpretation is necessarily a common one; it involves deliberation and dispute. This is why it is not enough for a philosopher to claim to have interpreted social meanings individually; they must refer to how people themselves interpret social meanings, through the use of empirical research. Miller stresses that for Walzer, this research includes both looking at the current institutions and practices and also at people’s beliefs about those institutions and

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<sup>100</sup> Miller, ‘Introduction’, p. 6.

<sup>101</sup> Miller, ‘Introduction’, p. 6

<sup>102</sup> Miller, ‘Introduction’, p. 6.

<sup>103</sup> O’Neill, *Impartiality in Context*, p. 60; Walzer, *Interpretation and Social Criticism*, p. 3.

<sup>104</sup> Walzer, *Interpretation and Social Criticism*, p. 17.

<sup>105</sup> O’Neill, *Impartiality in Context*, p. 59.

<sup>106</sup> Walzer, *Interpretation and Social Criticism*, p. 30.

<sup>107</sup> O’Neill, *Impartiality in Context*, p. 68.

<sup>108</sup> Joseph H. Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness*, (Oxford: Oxford University Press, 2000), p. 23.



practices.<sup>109</sup> Miller sees Walzer's interpretive approach as consisting of a search for consistency, coherence, and persuasiveness in the account of people's opinions.<sup>110</sup> Consistency is the simple requirement of the elimination of contradictory views so that the interpreter is sure that the views given are those that are held firmly by the subjects. Coherence is slightly more complex in that it requires 'that the set of beliefs someone holds should have a certain structure to it; in particular, opinions about specific issues should be derived from principles of a more general sort.'<sup>111</sup> The persuasiveness condition demands that people 'recognise themselves' in the picture that is presented to them, so that they are convinced that it is the best picture of their beliefs.

I think that this account is arguably very similar to the method that Miller is himself pursuing, although the data that he uses to support his interpretation is more empirical than Walzer's – Miller appeals to large-scale surveys of people's views about justice to support his contextual principles. If we read Miller as pursuing the interpretive method in this way then his principles of justice are offered simply as the best interpretation of our shared understandings, in terms of consistency, coherence, and persuasiveness, within particular distributive contexts. The pursuit of this type of interpretive approach is apparent in Miller's survey of the empirical social science literature on what people think about justice, which forms a large part of *Principles of Social Justice*. He uses this data to justify both his contextual method and the use of the three specific principles in their relative contexts. So when Miller claims that there is nothing to be said to someone who cannot grasp why principle  $P_1$  should apply in context  $C_1$ , what he means is that such a person obviously does not share the same set of meanings as the rest of us (as in our society). They cannot get a grasp on why  $P_1$  is appropriate for  $C_1$  until they have access to the set of meanings that the rest of us share. These shared meanings provide the criteria of appropriateness which explain why a particular principle of justice is applicable in a particular context of distribution.

### 3.5.3. Universalist Contextualism?

In the previous section I argued that the best way to flesh out Miller's contextualist methodology is to understand it as a version of the interpretive approach adopted by Michael Walzer. The interpretive approach, so claim its proponents, is a way of formulating principles of justice that are grounded in people's considered judgements about justice in various contexts, without reducing those principles to relativistic artefacts. Importantly, adopting the interpretive methodology protects Miller's contextualism from becoming indistinguishable from some sophisticated versions of more traditional, universalist approaches to justice.

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<sup>109</sup> Miller, 'Introduction', p. 7.

<sup>110</sup> Miller, 'Introduction', pp. 8-10.

<sup>111</sup> Miller, 'Introduction', p. 8.

However, in contrast to this interpretive reading, Miller sometimes defends contextualism from the charge of relativism in a way that seems to appeal to universal principles – something which he explicitly states that a contextualist theory cannot do.<sup>112</sup> The crucial difference between contextualism and universalism, is that whilst both can support a plurality of principles of justice, a universalist theory will always contain at least one universal principle of justice, in accordance with which all the other principles must be justified. A contextualist theory, by contrast, claims to contain no such universal principle(s). For Miller's contextualism to remain contextualist in character, this claim must be accurate – he must not be relying on a universal principle of justification to defend himself against relativism. If of course such a move turns out to be the only way that such a defence is possible then contextualism collapses into universalism and would no longer be understandable as a distinctive approach to justice. In the next chapter I will critically evaluate Miller's contextualism against the charge of relativism, and argue that in fact the only way in which his view can be defended against this charge is if we understand it as a form of universalism.

### **3.6. Conclusion**

In this chapter my aim has been to provide an exposition and interpretation of David Miller's theory of justice. I have outlined in turn his theory of social justice, his defence of nationality, his theory of global justice, and finally his contextualist approach to justice. My aims have been to provide a clear and impartial reading of Miller's theory, to show how the different aspects of his work fit together into a coherent whole, and to shed light on how the relational approach to justice works in practice. To conclude this chapter I would like to draw attention to two important themes of Miller's work – his anti-cosmopolitanism, and his firm commitment to a relational and practice-dependent approach to justice.

We've seen throughout the chapter that Miller is firmly non-cosmopolitan. This does not mean that he refuses to engage with questions or issue of global justice, or that he denies that we should show ethical concern to people beyond our national borders. As I argued in Part I. of the thesis, cosmopolitanism is no longer defined by these types of arguments. Miller agrees that we can talk about justice in the global sphere, and that we possess universal basic rights that can generate general duties of justice. However, he remains non-cosmopolitan because he will allow no more than this. He remains firmly opposed to global egalitarianism, despite endorsing egalitarian principles at the domestic level. For Miller, as for Rawls, social justice and global justice are two very different things, and different principles apply in each case.

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<sup>112</sup> I'll elaborate on this defence by Miller in the next chapter.

This leads nicely on to the second significant feature of Miller's work in the context of this thesis. Miller is firmly, and explicitly, contextualist about justice. His contextualism equates to a practice-dependent approach, which holds that what justice demands is fundamentally different in different contexts. For Miller, contexts of distribution are types of relationship between people, and so he is deeply committed to a relational approach to justice in which our relationships are the practices which condition principles of justice. When people are not related to each other in certain specified ways, then justice is not a relevant concern, and questions of what is just or unjust are irrelevant. Miller not only adopts this approach, but defends it at length, and with the addition of Michael Walzer's work on the interpretive method, we now have a clear picture of how a relational and practice-dependent theory of justice works.

These two features place Miller firmly in opposition to those theorists, like Kok-Chor Tan, Brian Barry, Simon Caney, and Peter Singer, who defend non-relational, practice-independent, cosmopolitan theories of justice, and his work provides the clearest challenge to their brand of cosmopolitanism. In the next chapter I will be critically evaluating Miller's theory of justice and his relational and practice-dependent approach, in order to assess how strong a challenge he really presents.

## Chapter Four: Critical Evaluation of Miller

### 4.1. Introduction

In the previous chapter I outlined David Miller's theory of justice, both social and global, and tried to provide an objective analysis of his methodological approach to questions of justice. In this chapter my aim is to critically evaluate Miller's theory, focusing especially on his relational approach to justice. Miller's arguments, surveyed in the last chapter, can be understood as made up of two halves. The first half is a positive defence of a contextualist, nationalist, and non-cosmopolitan theory of justice. This chapter will be devoted to critically evaluating this positive theory. The second half of Miller's arguments is a negative critique of non-relational, universalist, and cosmopolitan theories of justice. My response to this critique will be in Part III., where I defend a cosmopolitan approach to justice based on Brian Barry's contractualist theory.

We saw in the previous chapter that Miller is firmly committed to a relational (and therefore practice-dependent and contextualist) approach to justice. In Part I. I outlined the general debate between relational and non-relational approaches to justice, and explored the main areas of tension between them. I concluded there that a relational theory of justice, if it is to stand up, must show itself able to deal with a number of criticisms. There were two main strands of criticism: first, that relational approaches, because they are practice-dependent, lack objectivity, and are as a result inherently conservative, critically weak, and indeterministic; and second, relational approaches were shown to have a problem with providing an account of our general duties of justice – those that do not depend on any relationship between people. In this chapter I will discuss both of these broad strands of criticism in turn, and show why I think that they remain a problem for Miller. The chapter will therefore be broadly split into two: the first half will focus on the set of problems related to a lack of objectivity that practice-dependent approaches like Miller's contextualist theory face, and the second half will focus on an incoherence between Miller's arguments for contextualism and his defence of basic human rights.

My general argument in this chapter is that Miller is caught in a tension between two different ways of approaching questions of justice. The first option, which I will refer to as interpretive contextualism, allows Miller to remain true to his goal of providing an alternative to universalist cosmopolitanism, but suffers from several related problems to do with a lack of objectivity, and cannot support a coherent theory of human rights. The second option, which I will refer to as universalist contextualism, is not so vulnerable to the problems to do with a lack of objectivity, and can support a coherent theory of human rights,

but is not really distinct from a universalist cosmopolitan approach, and so cannot support the nationalist conclusions that Miller wants to be able to reach. I will conclude this chapter by arguing that these problems with Miller's theory are symptomatic of the relational approach, which should lead us to consider a non-relational approach preferable.

## 4.2. Objectivity

In Chapter Two (Section 2.4.) I outlined a key difference between relational and non-relational approaches to justice. Relational approaches are practice-dependent – they are grounded and embedded in the institutions and relationships to which their principles of justice apply. Non-relational approaches, in contrast are practice-independent – the principles of justice that they endorse are justified independently of the practices to which they apply. Relationalists argue that practice-dependence leads to greater practical force, as principles of justice are more feasible, realistic and motivationally powerful when they are conditioned by the current state of affairs. However, the flip-side of this embedded nature is that relational theories of justice appear to lack critical force – the principles of justice they support lack objectivity. Practice-independent non-relationalists argue that in order to critically assess principles and practices one needs to take a step back and achieve an objective standpoint, free of the assumptions associated with current practice. Practice-dependent approaches, which don't make this move, are therefore seen as 'irredeemably conservative', and as 'necessarily involv[ing] a relativistic endorsement of institutions and practices that characterise a particular culture.'<sup>1</sup> Miller recognises the need for a theory of global justice to possess both critical and practice force. He states that a plausible theory of global justice must: (a) 'provide a critical standpoint on existing practices'; and (b) 'be action-guiding, capable of orienting agents towards feasible and meaningful reform of existing practice.'<sup>2</sup> Miller admits, in accordance with how I argued in the previous chapter, that these two demands are in tension with each other:

'Justice is a virtue whose purpose is to regulate human behaviour and human institutions, and which must therefore reflect certain facts about that behaviour and those institutions... The problem is to know which of these facts to treat as parameters that our theory of justice must recognise, and which to regard as contingencies that the theory may seek to alter. If the theory abstracts too far from prevailing circumstances, it is liable to become a merely speculative exercise, of no practical use in guiding either our public policy or the individual decisions we make as citizens. If the theory assumes too much by the way of empirical constraints, on the other hand, it may become excessively conservative, in the sense of being too

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<sup>1</sup> Shane O'Neill, *Impartiality in Context*, (Albany, NY.: State University of New York Press, 1997), p. 64

<sup>2</sup> Christian Barry and Pablo Gilabert, 'Review Article: Does Global Egalitarianism Provide an Impractical and Unattractive Ideal of Justice?', *International Affairs*, 84/5 (2008): 1025-1039, at p. 1028. See David Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007), p. 18.

closely tied to contingent aspects of a particular society or group of societies, and therefore no longer able to function as a critical tool for social change.<sup>3</sup>

As a relationalist, Miller needs to be able show that his theory does not ‘assume too much’ and ‘become excessively conservative.’ Practice-dependent approaches, like Miller’s, are open to the charges of conservatism and subjectivity because they accept existing relational and institutional practices as they are, and ground principles of justice in these existing practices. Miller’s contextualism seems to take the way in which the people within current contexts of distribution understand and conceptualise their constitutive relationships as legitimate grounds for principles of justice. In other words, the ways in which people understand the relationships that they are a part of in some way condition the principles of justice that apply to those relationships. This leaves Miller’s theory open to the charges of relativism and conservatism that apply to practice-dependent approaches in general.

I’m now going to consider two alternative ways in which Miller might respond to the general charges of conservatism and relativism. The first involves moving closer to universalism and so conflicts with Miller’s desire to remain fully contextualist. The second, which utilises the interpretive approach developed by Walzer (outlined in the previous chapter), I will argue is ultimately unsuccessful.

#### **4.2.1. Universalist Contextualism**

One way in which Miller has responded to the general charge of conservatism and relativism is by arguing that contextualism can make objective claims about justice, and therefore isn’t subject to these problems. However, as I will now argue, his response here relies on an understanding of contextualism that essentially collapses into universalism. This understanding, which is different to the interpretive approach understanding that I have put forward in the previous chapter, does avoid these problems, but only by changing the character of contextualism to the point where it is no longer distinct from universalism. I’ll now outline Miller’s response here before showing why I think it relies on implicit universalism.

A critic could argue that because contextualism grounds principles of justice in their distributive contexts, it makes what justice is at a certain time or place depend solely upon which contexts are present there. Justice is then simply an indication of what the current social contexts demand. Miller’s response here is to argue that ‘the repertoire of social forms relevant to justice is constrained in various ways. Societies cannot shape these forms in any

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<sup>3</sup> Miller, *National Responsibility and Global Justice*, pp. 18-19.

way that they please if they are to qualify as just.’<sup>4</sup> This is to say that the specific ways in which contexts of distribution are understood in practice is restricted – that there are wrong ways of applying a principle of justice within a particular instance of a context of distribution. In this sense, Miller argues, ‘contextualism leaves room for the claim that people’s beliefs about justice may in certain respects be mistaken.’<sup>5</sup> It is this aspect of contextualism that distinguishes it from conventionalism or relativism. This claim, that people can be mistaken about justice, and about which context they are in, is coupled with the belief that contexts of distribution are found in multiple places, and that wherever (or whenever) a particular context is found, the same principle of justice will apply to it. This means that ‘the claims that contextualists make about the contextual validity of principles of justice are themselves objective and universal in character.’<sup>6</sup>

Nevertheless, this poses a question: how can Miller say that people can be wrong about justice and about the particular ways in which they apply a contextual principle of justice? He uses the example of a society that has a system of honours which is restricted to members of the society who have a certain colour skin. He argues that we can say that such a system would be unjust, because the possession of a certain colour skin cannot be a necessary condition for receiving honours: ‘that is something we cannot recognise as just, because there is no imaginable sense in which having a black (or brown or white) skin can make you deserving. We have reached the limits of our conceptual universe.’<sup>7</sup> The context of the distribution of honours is one in which desert is the appropriate principle, and the concept of desert is one that rules out certain criteria, such as colour of skin, as not relevant. A society that implements an honours system that discriminates on the basis of colour of skin is unjust, because they have either misunderstood the concept of desert, or, as is more likely in Miller’s opinion, their application of the concept of desert in this way rests on false empirical beliefs, such as that people with a certain colour skin are more likely to achieve the kinds of things that deserve honours.<sup>8</sup> It is unclear to me why it is not possible for a member of the society in question to either argue that the context they are dealing with is different to the context of honours distribution Miller is referring to, or to argue that they understand desert in a different way, and that Miller cannot legitimately tell them that their understanding is wrong. To rebuff such arguments, Miller seems to be appealing to a meta-principle of justification, such that skin colour does not count as a relevant consideration in any context of distribution. This seems to be a universalist principle of justification, at odds with his commitment to contextualism and practice-dependence.

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<sup>4</sup> David Miller, ‘Two Ways to Think About Justice’, *Politics, Philosophy and Economics*, 1 (2002): 5-28, at p. 22.

<sup>5</sup> Miller, ‘Two Ways’, p. 8.

<sup>6</sup> Miller, ‘Two Ways’, p. 12.

<sup>7</sup> Miller, ‘Two Ways’, pp. 22-23.

<sup>8</sup> Miller, ‘Two Ways’, pp. 23.

The picture of contextualism that Miller paints in the argument just recounted is one which I would argue collapses into universalism. By stating that contextualism can make objective claims that restrict the principles which can be endorsed by people's understandings of justice, he does go some way towards rebuffing the charge of conservatism. Justice is no longer just 'what the people think' if there are objective principles which constrain what they can *reasonably* think. But by making this claim Miller takes his contextualism too close to a universalist pluralism – a set of principles of justice that apply in different contexts, but do so universally across time and space, and which are underpinned by at least one universal principle according to which all the other principles must be justified. Thomas Pogge argues that by allowing that his contextualism can make universal critical claims, Miller implicitly recognises that 'morality is subject to an underlying transcontextual logic which may, on the one hand, provide a rationale for applying different moral principles in different contexts... and may also, on the other hand, serve as a basis for criticising prevailing moral conceptions.'<sup>9</sup> I am not claiming that Miller endorses an 'underlying transcontextual logic' which amounts to a substantive universal principle of justice, rather that he appeals to a principle which sets the terms by which we are justified in applying principle  $P_1$  in context  $C_1$  and so on. However, it remains the case that if Miller wants his contextualism to remain distinct from universalism as an approach to justice then he cannot make a defence that appeals to objective claims and categorically rules out certain types of justification.

#### 4.2.2. Interpretive Contextualism

Given the failure of the explicit defence offered by Miller, we need a defence that doesn't rely on any universal principles of justification. In the previous chapter I argued that Miller's contextualism is best understood as a version of the interpretive approach of Michael Walzer. The interpretive approach doesn't postulate any universal principles and so is truly contextualist. I'll now examine how far the interpretive approach suffers from the general problems of conservatism and the lack of critical force. I will eventually conclude that these problems are real and that the responses that have been offered so far by defenders of the interpretive approach are inadequate.

At first glance it seems that the interpretive approach is going to be just as much vulnerable to the charges of conservatism and a lack of critical force as practice-dependent approaches seem to be in general. The interpretive approach grounds contextually specific principles of justice in the internal shared meanings of that context. This immediately suggests several problems. Using the shared meanings of a societal context to formulate principles of justice seems likely to result in a tendency for those principles to reflect the status quo, and it seems

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<sup>9</sup> Thomas Pogge, *World Poverty and Human Rights*, (Cambridge: Polity Press, 2002), p. 103.



that these principles will be little more than conventions. Furthermore, given that the principles are entirely justified with reference to internal meanings of a societal context, there seems to be no room for criticism of the practices or institutions that define the context. Also, the interpretive approach seems totally unable to criticise the principles of justice that apply in other contexts in other societies, because it seems to accept that justice might just mean something completely different in different contexts. Finally, such an approach seems to lack the critical resources necessary to propose new principles of justice to replace those currently adopted. So we have at least four related problems that apply, *prima facie*, to the interpretive approach: (1) a lack of internal and external negative critical force (inability to condemn current practices as unjust); (2) a lack of positive critical force (inability to propose alternative practices more conducive to justice); (3) conservatism (legitimation and perpetuation of the status quo); and (4) relativism/conventionalism (principles of justice that are little more than conventions, rather than objective rules).

However, proponents of the interpretive approach argue that this contextual 'embeddedness' that is seen by others as a weakness, is in fact a strength. They argue that an authentic critical stance is only possible given a certain level of familiarity with what is being criticised, and that an appropriate level of familiarity cannot be achieved from the outside. Walzer claims that the justificatory force of the interpretive approach comes from the fact that it is giving an account of an already existing morality which 'is authoritative for us because it is only by virtue of its existence that we exist as the moral beings we are. Our categories, relationships, commitments, and aspirations are all shaped by, expressed in terms of, the existing morality'<sup>10</sup> Miller argues that the legitimacy of principles of justice depends on listening to what people think about it. He argues that reflective equilibrium within oneself is not enough – that we need to test our own judgements against those of others. Miller therefore claims that objectivity is not achieved by distancing oneself from society and other people and trying to find an impartial point of view, but rather that a certain level of immersion is necessary. The charge that those pursuing an interpretive method cannot criticise because they are too embedded within their own society is turned around and becomes the charge that criticism is illegitimate if done from a position of abstraction. This has echoes of charges of imperialism against those westerners who criticise practices that they view as unjust in other parts of the world, when they do not necessarily understand those practices enough to be able to make a sound judgement. So in response to (1) a defender of the interpretive approach would say that internal negative critical force (criticism of the current practices of one's own society) is only legitimate if it is grounded in interpretation of that current practice and people's beliefs about it. External negative critical force (criticism of the current practices of another society) is therefore not legitimate, because outsiders cannot gain access to the

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<sup>10</sup> Michael Walzer, *Interpretation and Social Criticism*, (Cambridge, MA.: Harvard University Press, 1987), p. 21.

shared meanings which constitute those practices. If negative critical force is possible in this way (through the interpretation of shared meanings) then positive critical force (2) will also be possible, because the process of interpretation may uncover alternative understandings of justice that might then be adopted. If negative and positive critical force are possible internally, then the interpretive approach is not inherently conservative (3), because current practices can be criticised, and new ones implemented. And finally, a defender of the interpretive approach would argue that the principles of justice that are derived from interpretation are not mere conventions (4) – they are instead the best interpretations out of a competing set of possible interpretations.

Are these interpretive arguments successful? I would argue that there are still at least three broad issues left unresolved for the interpretive contextualist approach here. First, the claims about legitimacy are under-supported, and we need further argument to explain how legitimacy leads to objectivity. Second, there are several problems with taking people's views as foundational for justice in the way that the interpretive approach does. Third, the interpretive approach relies upon an assumption of internal cohesion that may not turn out to be correct. I'll now outline these remaining problems in turn.

#### **4.2.2.1. Legitimacy**

There is a lack of argument from proponents of the interpretive approach to convince us why we should think that the legitimacy of principles of justice depends on them being grounded in what people think about justice. There is an assumption here, that in order for principles to be legitimate they must take into account how people understand justice, which can be questioned.<sup>11</sup> It is easy to imagine many different points of view which would conflict with this conception, for example any understanding of justice which conceived of principles of justice as handed down to humanity from God. There may of course be other problems with these alternative conceptions, but their existence rules out our simply accepting Miller's assumption without further argument. One response that we can imagine Miller making here is that the reason we should think that principles of justice are legitimate when they are grounded in what the people think about justice is that they then are imbued with much greater motivational and practical force. For example, people will find it much easier to follow principles of justice that reflect their own understanding of what justice requires. However such arguments is subject to a further problem – practical force doesn't equal moral objectivity. We can't assume that feasibility or motivational power can endow a principle of justice with normative force. Adam Swift argues that 'there is an important

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<sup>11</sup> Adam Swift, 'Social Justice: Why Does It Matter What the People Think?', in Daniel A. Bell and Avner De-Shalit (eds.), *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy*, (Lanham, Maryland: Rowman and Littlefield, 2003), p. 26.

difference between the truth about justice (what justice actually is) and what types of distribution are feasible or utopian.’<sup>12</sup> Unless we think that feasibility or motivational power tracks the objective truth about justice then these arguments tell us nothing about which principles of justice are correct.

There is a further question here: for whom are interpretive principles legitimate? It would be a mistake to assume that contexts of distribution are hermetically sealed units in a vacuum – to some extent the principles adopted within one context will have effects on people living in other contexts. To what extent is it legitimate that those people do not have any input in those principles? Furthermore, whilst principles that are grounded in the views of those people who are internal to certain contexts might be legitimate for those contexts, there is still the question of which principles of justice we should apply externally to those contexts. If we take the example of a nation-state context, then most of the people who are external to one particular nation-state will of course be internal to another nation-state. In this case there is not necessarily a problem, because everyone is being governed by principles of justice that are legitimate according to their own understanding of justice. However, it is not implausible to think that some people will be excluded from all such contexts – citizens of failed states and refugees are obvious examples here. In a sense these people are being excluded from justice altogether. An obvious reply to this might be to say that such people are not excluded from justice because they will be internal to a wider context – that of international law and institutions perhaps. Whilst this may be so, their position within this context is different to that of the majority of people whose membership of the broad international context is just one of many that they are part of. For a stateless person, the international context becomes more important. This points to a problem of internal pluralism which I will discuss below.

Finally, whether or not we think that the claims that proponents of the interpretive approach make about the legitimacy of principles of justice that are derived from interpretive social criticism are correct, there remains a problem in that legitimacy only takes us so far. Even if we do accept the assumption that the legitimacy of principles of justice depends on them being in some sense grounded in what people think about justice, we still need to remember that legitimacy is not the same as objectivity. Adam Swift argues that there is an important distinction between ‘principles being justified as legitimate principles to govern the just distribution of benefits and burdens in a society and their being justified as correct principles of justice’ – this can be clearly seen in the case of the minority accepting the majority decision as legitimate even though they disagree that it is correct.<sup>13</sup> If we want principles of

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<sup>12</sup> Swift, ‘Social Justice’, pp. 18-19.

<sup>13</sup> Swift, ‘Social Justice’, p. 25.

justice to have some level of objectivity then these arguments about legitimacy will not be sufficient.

#### **4.2.2.2. Shared Meanings**

The interpretive defence of the practice-dependent approach relies heavily on the supposed advantages of taking what people think about justice to be foundational. However there are several reasons why we should be wary of allowing people's beliefs about justice to play such a foundational role. There are several factors which can distort people's beliefs about justice. These include self interest, their feelings towards those close to them, and their knowledge of the principles of justice that are currently applied. It seems reasonable to assume that self interest will lead people to endorse those of their beliefs about justice that support principles which benefit themselves. Equally, people will tend to give more weight to those beliefs about justice which support principles that benefit their family, friends, and others who are close to them. Finally, those beliefs which cohere with the current system of justice will be more powerful than those which are at odds with current arrangements, since people tend to be fairly conservative. This will be especially true when people are not suffering from the current arrangement – the distorting effects of self-interest and conservatism will in this case be mutually reinforcing.

The problems of distortion by self interest, partial feelings, and conservatism give us reason to think that the greater motivational force of relational and contextual principles of justice is in fact evidence of a weakness. If we think that people are generally more motivated by self-interest, partiality, and ease than altruism (and it seems reasonable to think that this is the case), then when principles are highly motivating we have reason to suspect that they have been distorted in these ways. So, for example, one could argue that the only reason that people feel more motivated to follow principles they recognise as grounded in the shared understandings of their society is that those are the principles they are already following, and so minimal effort is needed in terms of adapting behaviour. It is intuitively plausible that people will find it hard to follow principles that differ vastly from their current behaviour, especially if doing so involves large sacrifices, but this doesn't mean that we should abandon those principles altogether, especially if they have been reached via a procedure we view as legitimate. Being able to motivate people to act is only worthwhile if they are acting on morally good principles, not if they are simply sticking to their past behavioural norms because that is the easiest thing to do, or if they are endorsing those principles because of self-interest or partiality.

A proponent of the interpretive approach could reply to these charges by disputing the extent to which these distortions occur (after all I have not offered concrete evidence for these

claims), but it is important to note that such a response is not available to Miller. This is because he himself points out the danger of such distortions in the context of social justice. As Daniel Weinstock has shown, Miller recognises these problems to do with taking people's beliefs about justice as foundational, but fails to see the full implications of them for his own arguments.<sup>14</sup> Miller writes the following about the problem of distortion by partial feelings:

'We are most directly aware of our family and other community relationships; next of our immersion in economic and other institutional relations; and finally of citizenship, which is, for most people, a remote and poorly understood mode of association. Because of these conceptual shortcomings, we are prone to give too much weight to the demands of justice stemming from our immediate communities, and too little to the demands stemming from citizenship.'<sup>15</sup>

Miller here is trying to support egalitarian principles of justice that apply at the nation-state level, and to defend them from people's tendency to place more weight on their obligations to friends and family. Weinstock argues, rightly in my opinion, that we should be able to apply this reasoning to the global context, and therefore conclude that people are likely to overestimate their obligations to their fellow citizens and underestimate their obligations to humanity in general. He draws a general conclusion from this problem – that 'we must be wary of assigning too much objective moral weight to our prima facie weightings of moral import, because these might be coloured in a morally dubious manner by our contingent attachments that lie close at hand.'<sup>16</sup> There is a problem here for Miller which he himself should recognise, given that he is aware of it in the case of social justice.

Miller also recognises the problem of distortion by self interest. He writes:

'Suppose... that on some issue better-off people tend to believe p and worse-off people tend to believe not-p; I am better off and I believe p. Suppose also that adherence to belief in p serves the sectional interests of the better-off – for instance it helps to justify economic institutions from which they benefit disproportionately. Taken together, these constitute good grounds for placing rather little confidence in the truth of p. Should I not then be similarly sceptical about my own belief in p?'<sup>17</sup>

Again, Weinstock argues that Miller fails to apply his own reasoning to the whole of his contextual theory.<sup>18</sup> If he did so then he would be forced to see that there is good reason to think that members of well-off states endorse principles of justice that allow them to keep their wealth at the expense of the less well-off states because of sectional self-interest. As

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<sup>14</sup> Daniel M. Weinstock, 'Miller on Distributive Justice', in Daniel A. Bell, and Avner De-Shalit. (eds.), *Forms of Justice: Critical Perspectives on David Miller's Political Philosophy*, (Lanham: Rowman and Littlefield, 2003), pp. 271-284.

<sup>15</sup> David Miller, *Principles of Social Justice*, (Cambridge, MA.: Harvard University Press, 1999), p. 40.

<sup>16</sup> Weinstock, 'Miller on Distributive Justice', p. 271. See also pp. 274-275, and 283-284.

<sup>17</sup> Miller, *Principles of Social Justice*, p. 55.

<sup>18</sup> Weinstock, 'Miller on Distributive Justice', pp. 272, 283.

long as we agree that sectional self-interest is not a legitimate moral reason then this raises significant problems for Miller's account.

A further problem is that not only will people's beliefs about justice be distorted in these ways, but also their beliefs about the kinds and extent of the relationships that they are in with each other. This is important in the case of a theory like Miller's in which the correct identification of distributive contexts is often the key to establishing which principle of justice should be applied. It isn't the case that we are always sure about which context we are in, and trying to decide which principle to apply to it. Often, according to Miller, we know which principles apply in which contexts but are mistaken or confused about which context we are in.<sup>19</sup> So if people's beliefs about which context they are in are also distorted by self-interest, partial feelings, and current arrangements, then this process is also corrupted. Take two people: Anna, who is relatively wealthy, and Bob, who is relatively poor. If how much Anna owes to Bob depends on what relationship exists between Anna and Bob, and it is a matter of debate whether Anna and Bob are in relationship X (which entails positive redistributive duties) or relationship Y (which entails minimal negative duties to not cause harm), then Anna has a natural incentive to consider herself and Bob to be in relationship Y rather than relationship X. Again, Miller himself recognises that this problem occurs. He claims that we are prone to play down the strength of our relationships when they give rise to a demanding duty, or when the duties that they entail conflict with other duties which we feel strongly about (such as those towards close friends).<sup>20</sup> If this is a problem in the case of social justice, it must also be a problem in the case of global justice.

This problem is compounded when we consider a further issue – that taking people's beliefs about justice to be foundational makes it crucially important which set of people are included in the process. There is reason to worry about how we determine the set of people whose thoughts about justice should be taken into account within an interpretive contextualism. The first issue here is that we may not be sure about the extent of a particular distributive context. Given that which contexts one is in will determine which duties one possesses (and to whom), this matter is highly important. And given that, as noted above, people's beliefs about which context they are in will be distorted by self interest, partial feelings, and current arrangements, then we should be wary of taking people's beliefs about contexts at face value. Going back to the example discussed above, it isn't obvious what happens if Anna and Bob disagree about which type of relationship they are in. If Anna thinks that Bob is external to a particular distributive context which she is in, but Bob disputes that fact, then Anna's duties to Bob (and indeed, Bob's to Anna) are unclear. Both Anna and Bob's beliefs on this matter

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<sup>19</sup> Miller, *Principles of Social Justice*, p. 36.

<sup>20</sup> Miller, *Principles of Social Justice*, p. 39.

are subject to distortion, because Anna has reason to exclude Bob, whilst Bob has reason to want to be included. So people's beliefs about which contexts they are in are not going to necessarily help us here. Furthermore, the extent of a particular context matters not just because it affects who is subject to a particular principle and who isn't, but also because it arguably affects which principle will be applied in the first place. It seems reasonable to think that the set of people whose beliefs are taken into account will potentially alter the distributive principle which is taken to apply to that context (again, because of the distorting effects discussed above). And if we don't know who should be included within a particular context then we don't know whose beliefs should be taken into account, and whose shouldn't. What makes these issues more worrying is that they are mutually reinforcing – the scope of a particular context has implications for which principle will be applied to it, and for who is subject to which duties, but the scope itself, as well as which principles are applied, depend on people's beliefs which are in turn distorted by self interest, partial feelings, and the current arrangements.

#### 4.2.2.3. Internal Pluralism

Whilst interpretive contextualist approaches address the pluralism between different cultures, it can be said that they fail to recognise a second type of pluralism: that within cultures.<sup>21</sup> To a certain extent both Miller and Walzer's theories assume a certain level of shared understanding within societies, and so assume that each society will have a holistic account of justice. If the level of shared understanding is lowered, which is likely to occur in multicultural societies, then there is little left to ground their principles of justice. So while they both are pluralistic in the sense that they recognise several different independent principles of justice, these plural principles apply universally within their respective contexts, and the contexts are generally assumed to map onto societies. It seems that Miller is more guilty of this than Walzer for he seems to be arguing that wherever each type of relationship is found, distribution within that relationship should be governed by one specific principle. Walzer on the other hand recognises that in different societies, social goods are understood in different ways, and so the principle of distribution that applies varies.<sup>22</sup> Miller thinks that each context has its own principle and that this doesn't vary, whereas Walzer argues that individual contexts themselves can have different principles attached to them depending on how they are understood. Nevertheless, they both rely on understandings being shared within contexts, and this is a claim that could be disputed. Miller himself admits that 'contextualism has to rely on there being sufficient agreement between people about the way in which different contexts bring different principles of justice into play... If this assumption

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<sup>21</sup> O'Neill, *Impartiality in Context*, p. 71; Joseph H. Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness*, (Oxford: Oxford University Press, 2000), p. 6.

<sup>22</sup> Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, (Oxford: Blackwell, 1983), pp. 6-7.

were to prove false, contextualism would collapse.<sup>23</sup> The interpretive approach is therefore open to a charge of assuming a level of consensus within society that is not in fact present. Daniel Weinstock argues that ‘Miller (and Walzer) clearly overestimate the extent to which modern nation-states are characterised by the kind of “shared understandings” upon which [contextualism] depends.’<sup>24</sup> The process of interpretation neglects this internal pluralism by assuming that shared meanings can be found. The immediate worry that this raises is that the process of interpretation is indeterminate. If there is no one ‘best’ interpretation of a set of shared meanings then how are we to decide which we should follow and use to ground our principles of justice? As Chris Armstrong points out ‘how, in the absence of practice-independent principles, can we adjudicate between competing interpretations?’<sup>25</sup>

There are two further problematic implications of the fact of internal pluralism for the interpretive approach. First, we might worry that the supposed motivational power of the approach is weakened by internal disagreement. If a majority of people internal to a context or practice understand justice and the purpose of the practice in a particular way then they will endorse a particular set ( $S_1$ ) of principles of justice. However a minority of people within the context might understand justice and the purpose of the practice differently and therefore endorse a different set ( $S_2$ ) of principles. Presumably  $S_1$  will count as the best set from an interpretive approach, because it fits with how the majority of people understand justice. The majority of people will be strongly motivated to act in accordance with  $S_1$ , but the minority, who supported  $S_2$ , will not feel the same.

The second implication of the fact of internal pluralism is perhaps more troubling, and relates to the question, which I raised above, of the set of people who are being consulted when we adopt an interpretive stance to determine principles of justice. Internal pluralism means that a minority of people who do not share the dominant conception of justice will not play a part in forming the set of principles of justice that will govern the context they find themselves in. We might think that this is problematic in and of itself, but we are likely to find it even more worrying when we consider that this minority might suffer from this imbalance systematically over time. As we saw above, it is reasonable to assume that the majority will endorse principles of justice that are beneficial to themselves in certain ways (and Miller himself admits this). It is also plausible that the reason that the minority don’t endorse that conception is that it doesn’t benefit them in the same way, and perhaps because it actively puts them at a disadvantage. They suffer then the double blow of not playing an equal role in the formation of principles of justice and also being forced to adhere to principles which put them at a disadvantage. This problem is magnified when we introduce

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<sup>23</sup> Miller, ‘Two Ways’, p. 11.

<sup>24</sup> Weinstock, ‘Miller on Distributive Justice’, p. 277.

<sup>25</sup> Chris Armstrong, ‘Global Egalitarianism’, *Philosophy Compass*, 4/1 (2009): 155-171, at p. 158.



the issue of power. So far I've been assuming that a minority could suffer in this way but that they all begin on an equal footing. We need to remember that in fact some groups with cultures, societies, nation-states, and indeed the global institutional context, are at a disadvantage when it comes to power. In this case, it can be a large majority whose voices are not heard, if in fact they lack the power to shape public discourse and influence public debate. It is often a small minority of people who control the media, the political establishment, the dominant religion and so on, within societies. These people will be the ones whose conception and understanding of justice will shape contextual principles of justice, not the vast majority of people who will then have to live according to those principles. So, even when we consider a possible global context of international law and institutions, we should worry that a large number of people will be excluded from justice under the interpretive approach. Coupled with the problems of distortion discussed above, this raises serious worries for an interpretive contextualist approach to global justice.

To sum up, in this section of the chapter I have discussed the general criticism of conservatism and critical impotence that was raised against relational approaches to justice in Chapter Two. Miller's theory of justice is *prima facie* subject to this strand of criticism because he is committed to a contextualist form of practice-dependence based on relational contexts of distribution. I have argued that Miller can respond to the general charge of conservatism, but only by changing the character of contextualism so that it collapses into universalism. The alternative option for Miller which remains truly contextualist is to pursue an interpretive approach. However, interpretive contextualism, despite claiming to possess greater legitimacy, is subject to several problems which I do not think have been adequately addressed. In the next section I will discuss a different problem – that of accounting for general obligations. I will argue that a similar problem occurs – that Miller is only able to resolve the problem if he moves his contextualism closer to universalism, and that if he refuses to do so then his account of basic human rights becomes unstable.

### **4.3. General Duties and Basic Rights**

The second of the two broad strands of criticism levelled against relational approaches in Chapter Two was that the account of our general duties that could be provided by such an approach would be weaker than that which could be provided by a non-relational approach, because those duties would be contingent on the existence of a particular relationship at the global level. This criticism was really directed toward cosmopolitan relational accounts which ground general duties of justice in features of certain relationships that they claim have global scope. Miller's theory, as a non-cosmopolitan account, is therefore not really vulnerable to this criticism in this particular form. For Miller, our general duties are correlative to basic rights, which are not grounded in any relationship between people. In

fact, Miller's account of basic rights is itself non-relational – he grounds them in universal features of human beings: needs. The criticism that general duties grounded in contingent relationships are weak is therefore not relevant. We could perhaps argue that Miller's account doesn't provide a good account of our general duties to others in that his account proposes smaller set of general duties (no egalitarian general duties, for instance) than a cosmopolitan non-relational account does, but to do so would be begging the question. The criticism here would be assuming the cosmopolitan conclusion that it was seeking to defend.

So Miller's relational approach is not subject to the general duties objection as it stands. However it is possible to criticise his account of basic rights using arguments he himself employs against non-relational accounts. I am going to argue that once we begin to assess Miller's account of basic rights according to his own arguments, then we will see that there is a fundamental inconsistency in his theory. This again suggests that Miller is caught between two alternative contextualist approaches – universalist contextualism, and interpretive contextualism. My conclusion here will be that in order to avoid inconsistency, Miller must either abandon his attempt to provide a practice-independent account of basic rights, or retract some of the arguments he provides in support of contextualism. To argue for this conclusion I am going to contrast his humanitarian justification for basic rights with his account of the contextually specific principle of distribution according to need.<sup>26</sup>

As we saw in Chapter Three, Miller argues that the principle of distribution according to need applies within the relational context of a solidaristic community. Miller's argument for this claim relies upon a contextual understanding of justice, which views certain principles of justice as being 'appropriate' to particular contexts of distribution. In Chapter Three I outlined two arguments that Miller provides to explain this link between context and principle. The first was an epistemic argument to the effect that certain contexts are necessary to make particular principles of justice feasible to use. The second was a normative argument to the effect that certain principles and particular contexts 'fit' together in an important way. I'll now recap these arguments with regard to the specific case of the principle of need and the context of solidaristic community and show why they raise problems for Miller's account of basic rights.

Miller first claims that without the context of a solidaristic community, the concept of need makes little sense. He states that:

'the notion of need becomes problematic in the absence of a community with shared standards of an adequate human life. Wherever a community exists, we can say with

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<sup>26</sup> Leif Wenar has recently made a brief argument along these lines. In what follows I develop this argument in greater detail. 'Human Rights and Equality in the work of David Miller', *Critical Review of International Social and Political Philosophy*, 11/4 (2008): 401-411, at pp. 405-406.

some precision which needs justice requires us to meet; in the absence of such a community the concept becomes amorphous.’<sup>27</sup>

This is because the context of a solidaristic community provides the epistemic content necessary for distribution according to need to be possible. For Miller, needs are defined in terms of harm – the things we intrinsically need are those things that will prevent us from being harmed. We count as having been harmed when we fall below a certain minimal standard, and this standard is defined within the solidaristic community:

‘needs will be understood in terms of the general ethos of the community. Each community embodies, implicitly or explicitly, a sense of the standards that an adequate human life must meet, and it is in terms of this benchmark that the much contested distinction between needs, which are a matter of justice, and mere wants is drawn.’<sup>28</sup>

This argument from Miller suggests that he thinks that without the context of a solidaristic community, the concept of need has very little content. To know what is to count as needs, as opposed to wants, we need access to the shared meanings and standards of the community. However, a problem arises for Miller when we consider his humanitarian justification for basic human rights that he outlines in *National Responsibility and Global Justice*.

To recap from the previous chapter, Miller grounds his conception of basic rights in universal features of human beings – their intrinsic needs. Miller defines intrinsic needs as ‘those items or conditions it is necessary for a person to have if she is to avoid being harmed.’<sup>29</sup> This definition of needs is very similar to that provided in his discussion of the contextually specific principle of distribution according to need outlined above, and if anything, it is more demanding. It seems that now Miller is concerned with not just a *minimal* standard, but a *decent* standard – ‘[needs] are the conditions that must be met for a person to have a decent life given the environmental conditions he faces.’<sup>30</sup> Given that Miller appears to be talking about the same set of basic human needs in both cases, it seems reasonable to assume that the same arguments apply. However I think that if we apply his epistemic argument to his theory of basic rights, then we are forced to conclude that those rights only hold if we can say that there is some form of solidaristic community that has global scope. This conclusion is problematic for Miller, as I will explain in Section 4.3.1.

If we accept the contextual argument which claims that for the concept of need to have any epistemic content there must be a solidaristic community which can provide a definition of a

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<sup>27</sup> Miller, *Principles of Social Justice*, p. 34.

<sup>28</sup> Miller, *Principles of Social Justice*, p. 27.

<sup>29</sup> Miller, *National Responsibility and Global Justice*, p. 179.

<sup>30</sup> Miller, *National Responsibility and Global Justice*, p. 184.

minimal standard of wellbeing, then we must assume that in order for there to be universal rights which are based on such a standard there must be a fairly thoroughgoing solidaristic community to provide the standard at the global level. In other words, according to Miller's own argument we would not be able to get a set of rights with determinate content without having access to a community-defined standard. If rights are to be universal this community must be global in scope. A global solidaristic community would provide the shared standards that define for us what counts as need as opposed to mere want, and so would support needs-based basic human rights. This of course involves a substantial modification of the needs-based strategy that Miller publicly adopts. For one thing, the rights in question would now be relationally grounded, as opposed to being grounded in a universal feature of human rights.

If instead we accept the humanitarian justification of rights at face value, then we have to call into question the contextual arguments that Miller makes about the principle of distribution according to need. The humanitarian justification implies that the concept of needs can make sense, and have determinate content, without the context of a solidaristic community. This however removes one of the reasons that we have for thinking that a principle of distribution according to need is only appropriate within the context of a solidaristic community. Distribution according to need is now a non-contextual principle with global scope. Human rights would remain universal and non-relational, but there would be less reason to think that we have obligations (apart from those springing from human rights) based upon need within solidaristic communities. I will explore the consequences for Miller of choosing either of these paths in more detail below, but first I will revisit the second argument that Miller makes to explain the relationship of appropriateness between the principle of distribution according to need, and the context of a solidaristic community, to show that the same problem arises here as well.

Miller's second argument is that the context of solidaristic community makes the principle of distribution according to need 'fitting' in some sense. His argument here is as follows –

'when people share a common identity as members of a community, they see their lives and destinies and interwoven, and their sense of themselves as free-floating individuals is correspondingly weakened; their solidarity gives rise to a more or less powerful sense of mutual obligation, and this naturally expresses itself in a conception of justice as distribution according to need.'<sup>31</sup>

This is why the principle of distribution according to need is appropriate to the context of solidaristic community, as opposed to being appropriate to some other context, like instrumental associations, or co-citizen relations. In the previous chapter I used Michael Walzer's explanation of the interpretive method to flesh out this argument in Miller's theory.

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<sup>31</sup> Miller, *Principles of Social Justice*, p. 35.

When Miller says that a particular principle is appropriate to a certain context, I argued, he is appealing to shared meanings within that context which entail that a particular principle of justice is the right one. So within the context of a solidaristic community, people understand themselves as fellow members of a group with a shared identity and goals. Their wellbeing becomes tied up with that of the group, and they feel solidarity with fellow members. This solidarity leads them to feel obligations to relieve the needs of fellow members. This sense of obligation is shared by the group, and so it becomes a mutual obligation between all members. If we take Miller to be committed to this interpretive brand of contextualism then he is committed to the claim that outside of particular contexts, the principles that are appropriate to that context don't apply. It then follows that he is committed to the claim that outside of the context of a solidaristic community, which provides the shared meanings that give rise to mutual obligations to relieve need, the principle of distribution according to need doesn't apply.

If this reading is correct then when we again try to apply this argument to Miller's conception of basic human rights we see that his theory seems inconsistent. If mutual obligations to relieve needs arise when people form solidaristic communities and understand themselves as possessing these obligations, then without such a community, we cannot say that a principle of distribution according to need applies. For Miller's humanitarian justification of basic rights to be successful and consistent, then again he needs to endorse the claim that there is a solidaristic community that has global scope. The other option for Miller is again to abandon his argument for contextualism, although in this case it is the normative argument at stake. It seems to me that Miller will not want to admit that there is a solidaristic community with global scope, and that this is what really grounds his conception of basic rights. But equally, it seems, that he will not want to abandon either his epistemic or normative arguments for contextualism. We can now see that in both cases Miller has three options: he can (1) admit the inconsistency between his two accounts; (2) remain committed to the interpretive contextual arguments and ground rights in a global solidaristic community; or (3) remain committed to a non-relational account of rights and abandon the interpretive contextual arguments. As stated above, the first option is not a viable choice if we take Miller's work to form a coherent theoretical account, as I do. I'll now explore the second and third options, and show why both are problematic for Miller.

#### **4.3.1. Option 2: Keep Contextualist Arguments**

In the case of both the epistemic and the normative arguments for contextualism it seems that if we apply them to Miller's justification for basic rights then his account can only support universal rights within a solidaristic community with global scope. Why would Miller not want to ground his rights on the existence of such a community? The first simple reason here

is that Miller has said that he doesn't think such a community is plausible.<sup>32</sup> However, even if Miller didn't hold this view I think that it would be problematic for him to be committed to the existence of a solidaristic community with global scope. There are two broad reasons here. The first is that such an admission would weaken Miller's defence of nationality as an ethically significant identity and therefore his defence of special obligations between compatriots. The second problem is that his conception of basic rights then becomes subject to the general duties objection that I outlined in Chapter Two, and which above it appeared that he had avoided.

We saw in the previous chapter that Miller defends special obligations to compatriots on the grounds that nations are ethically significant groups that give rise to mutual obligations between members. His defence appeals to a view of nations as solidaristic communities. If there is also a solidaristic community that is larger than the nation then the argument that the nation is special in some way seems weakened. This opens up a space for the cosmopolitan to argue that nations are less significant or special than Miller claims them to be. Whilst I do think that this weakening of the significance of nationality would be something Miller would want to avoid, I can see a way in which he could reply to this problem, which appeals to the 'concentric circles' picture of moral obligation. Miller thinks that there are several different solidaristic communities, which all have different scope. The family, for example, is a paradigm case of a solidaristic community, as is the nation. The strength of our obligation within the family will in many cases outweigh our obligations to co-nationals, and this is consistent, even though both sets of obligation are grounded in solidarity. The existence of another community with larger scope doesn't necessarily challenge the significance of the nation, just as the existence of the nation doesn't challenge the significance of the family.

The second problem is more difficult to respond to. In Chapter Two I outlined a non-relational objection to the account of general duties that relational approaches can provide. In brief, this criticism was that a relational justification and grounding of general duties is necessarily weak and unstable in comparison to a non-relational account, because it makes those duties contingent on the continued existence of certain relationships at the global level. Earlier in this chapter I argued that Miller's theory isn't subject to this criticism, because his set of general duties, which correspond to basic rights, are grounded in universal features of human beings. However, if Miller's rights are grounded in a solidaristic community that has global scope, then he is in fact subject to this criticism. This is problematic for relationalists in general, as I will outline below, but also for Miller particularly because he explicitly wants an account of human rights that makes them non-contingent and objective.<sup>33</sup> As I outlined in

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<sup>32</sup> David Miller, 'The Idea of Global Citizenship', Warrender Lecture, (The University of Sheffield: Centre for Political Theory and Ideologies, 26<sup>th</sup> November 2006).

<sup>33</sup> Miller, *National Responsibility and Global Justice*, p. 164.

the previous chapter, it is on these grounds that he rules out the practice-based and overlapping-consensus strategies for justifying human rights.

If Miller's humanitarian justification for basic rights is in fact relational, rather than non-relational, then he makes universal basic rights contingent on the continued existence of a particular relationship (solidaristic community) that has global scope. It is still an open question whether such a solidaristic community actually exists. I would argue that this isn't an adequate justification of basic rights for several reasons. First, it seems very important for any adequate account of rights that those rights should be universal – that the scope of those rights includes all persons. If the scope of rights is directly dependent on the scope of a group defined by solidarity, then it will not necessarily be the case that all persons are included. An example should make this problem clearer. Imagine a situation in which we do believe that there is a solidaristic community which includes all persons in the world, and we ascribe basic rights on this basis. We then discover a tribe that has had no previous contact with the rest of the world. The members of this tribe would not plausibly be part of our global solidaristic community, certainly not immediately, but we would not want to say that they do not possess basic human rights until they manage to become part of our community. Second, it is important that basic human rights are universally definable. If a notion of needs only makes sense if we have access to a community-defined concept of harm, then a theory of basic rights based on needs will itself only make sense if we have access to this community-defined standard. Basic rights are not usually conceived in this way – they are supposed to be independent of community-defined standards. If they aren't independent in this way then it becomes difficult to use them as critical tools, for example, it becomes harder to criticise a cultural practice such as female genital mutilation as being contrary to human rights. A relational justification for rights therefore produces rights that lack critical force.

What these problems highlight is that a relational account of basic rights just doesn't cohere with our intuitive understanding of the character of basic human rights. We understand basic rights as objective and universal, otherwise they become a different kind of right, like a citizenship right, or a legal right, which depend on legal instruments or state institutions. Basic human rights, as Miller himself argues, are best understood as grounded in universal features of human beings. But given Miller's interpretive arguments for contextualism it is impossible for him to hang on to this understanding. So if Miller wants to be able to retain his non-relational justification for basic rights, then he needs to abandon those interpretive arguments. I'll now explore how much damage this would do to his contextualism in general.

#### 4.3.2. Option 3: Abandon Interpretive Arguments for Contextualism

If Miller wants to keep his humanitarian justification for basic rights, and deny that he is committed to the existence of a global solidaristic community, he needs to abandon the interpretive arguments for contextualism. Now of course these arguments only need to be thrown out in the case of the context of a solidaristic community and the principle of distribution according to need. It is the fact that Miller appeals to needs in both his justification of rights and the specific context of solidaristic community that causes him the problems I have outlined above. So whilst getting rid of these arguments in this case would be problematic for Miller's theory of social justice, and perhaps also for his defence of co-national obligation, it is not fatal to his contextualist approach as a whole.

However, as I argued in the first half of this chapter, there is reason to think that Miller is caught between two different brands of contextualism – interpretive and universalist. His arguments for contextual principles of social justice point to the interpretive approach, but clash with his universalist account of basic rights. Miller wants most of his theory of justice to be contextualist and relational, but still wants to be able to reserve one element of justice and keep it separate from the rest of his theory. This is a problem, it seems to me, that is shared by many other relationalists. As we saw in Chapter One, a belief in a minimal level of moral universalism and in a set of minimal universal duties has become widespread amongst political philosophers and theorists of global justice. However I would argue that relationalists are less entitled to this belief than non-relationalists are. They want to be able to include such things in their theories of justice, because of widespread agreement amongst fellow theorists on these issues. However if we take their arguments for the relational and practice-dependent approaches seriously then I think they should be forced to accept that their theories will look this way.

We might think that there is a third option for Miller here, which sidesteps the two I have outlined above. He could simply respond by saying that the basic rights that he is talking about are not a matter of justice, but of humanitarianism.<sup>34</sup> As such, the contextualist arguments about justice do not apply to them, and so they are not in fact dependent on the existence of global solidaristic community. If Miller took this line then he could keep his universalist and non-relational account of human rights without abandoning his arguments for contextualism. However I do not think that this would be a good option for Miller to take. First, Miller himself states that the set of basic rights that he supports entail duties of justice. He argues against a merely humanitarian understanding of rights that does make

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<sup>34</sup> 'Humanitarianism' here is used to describe a moral terrain different and less demanding to that of justice, which is in contrast to the previous way in which 'humanitarian' is used to describe Miller's justification of rights which appeals to universal features of human beings.



them matters of justice. Remember that Miller's general goal is to provide a theory of global justice that is a viable alternative to cosmopolitanism in that it does account for human rights and general duties of justice. If basic rights were not matters of justice, but mere humanitarianism, or charity, then they would be significantly weaker than Miller envisages. Second, even if Miller himself did not explicitly oppose this move, I would argue that it would weaken his stance against the non-relational cosmopolitan in the same way that having a set of rights that are contingent upon the continued existence of a certain global relationship does. We've seen that there is broad agreement within current parties to the global justice debates that there are basic duties of justice which correspond to some set of rights at the global level. If the non-relational cosmopolitan can defend a conception of rights that are not contingent on any relationship between people, and are matters of justice, rather than mere humanitarianism, then they will have the advantage over Miller here. We'll see in Part III. whether such an account can be provided.

#### 4.4. Conclusion

My aim in this chapter has been to critically evaluate David Miller's theory of justice and the relational approach that underpins it. I have focused on two broad strands of criticism: (1) that the relational approach, expressed by Miller as contextualism, suffers from a lack of objectivity which brings about several related problems; and (2) that Miller's commitment to interpretive contextualism means that he is unable to provide a coherent account of universal basic human rights. What this amounts to is that Miller, and perhaps other relationalists, have two choices. The first is to pursue a relational approach all the way down, which in effect is to conceptualise all forms of justice as relational and contextual. This is the interpretive contextualist option. It will however result in an inability to provide an account of universal human rights that can give rise to duties of justice, and so will restrict the potential of the theory to bring about global redistribution. If we accept the worries about critical force then this option is less desirable, but a relationalist who was contextual all the way down might give up the demand for critical force as less important than legitimacy. The second option, which should be pursued if the account of human rights turns out to be crucial, is to weaken the commitment to the relational approach – to admit that non-relational approaches can be successful, and that we can derive coherent and content-full principles via practice-independent means. This is the universalist contextualist option. However, this option isn't desirable for Miller because it brings him much closer to the kind of cosmopolitan positions that he sets himself against, and would also potentially weaken his arguments for nationalism, since they tend to be framed in interpretive contextualist terms.

In the next part of the thesis I will be outlining Brian Barry's theory of justice, which in contrast to Miller's, is non-relational. I will be arguing that Barry's approach is an example

of a non-relational approach that can meet the criticisms that have been made by relationalists such as Miller, and that therefore it is a more attractive approach than one like Miller's.

## **Summary of Part II.**

My aim in Part II. has been to provide a detailed critical examination of David Miller's relational and non-cosmopolitan theory of justice. In summary, Miller holds that egalitarian principles of justice are not applicable at the global level – that they apply only within the context of citizenship, which does not currently (nor foreseeably) have global scope. He asserts that nationality is an ethically significant identity, and that nations have a legitimate interest in self-determination. The paradigm community of justice for Miller is therefore the modern nation-state. Miller does however endorse a set of basic rights which are grounded in universal features of human beings, and so justice does apply globally, but only in a non-comparative sense. His denial of global egalitarianism is grounded in a commitment to a relational understanding of justice. His theory of justice is therefore contextualist and practice-dependent – he holds that principles of justice only apply within certain relational contexts, and are constituted by the practices of those contexts.

I have criticised Miller's position, and his relational approach in particular, for failing to provide a critical standpoint from which we can judge practices to be just or unjust. His commitment to contextualism and practice-dependence makes objective justification of principles of justice impossible. I have also argued that Miller's commitment to this approach to justice conflicts with his desire to provide an account of basic human rights, and cast doubt on the ability more generally for relational approaches to justice to be able to justify universal principles of justice of any kind. My general conclusion is that Miller is caught between two alternative versions of a contextualist approach – one which is based on the interpretive method adopted by Walzer, and one which is much closer to universalism. On first reading, Miller seems committed to an interpretive contextualism which is firmly relational and practice-dependent. However, this approach lacks objectivity and critical force. These problems seem to lead Miller to defend his theory in a way which makes it seem universalist and practice-independent rather than interpretive. And his account of basic human rights is itself practice-independent and non-relational. This second, alternative, reading of Miller avoids the problematic lack of objectivity, but conflicts with arguments he himself makes against non-relational and universalist approaches.

My aim has been to provide reasons for thinking that a relational approach like Miller's does not provide a satisfactory account of global justice. However in order to make this conclusion stand up I need to show that not only does Miller's account have problems, but that there is an alternative account which is better. After all, Miller might respond to my criticisms by admitting the limitations of his theory, but arguing that there is no better alternative – that a non-relational cosmopolitanism is at least as flawed. My task in Part III.

is therefore to provide a positive account of a non-relational cosmopolitan theory of justice which can be defended against the general criticisms of non-relational approaches canvassed in Chapter Two, as well as against Miller's criticisms outlined in Chapter Three. In order to provide such an account I will draw heavily on Brian Barry's theory of justice.



### Part III.

#### The Non-Relational Approach: Brian Barry

In Part II. I critically evaluated David Miller's theory of global justice as an example of the relational approach, and argued that there are several problems with his theory. In this part of the thesis my aim is to describe and defend a firmly non-relational theory of global justice. This theory will be cosmopolitan and practice-independent, and will lead to global egalitarian principles of justice. I will defend this type of approach against the criticisms made of it that I outlined in Part I., and I will respond to arguments against global egalitarianism made by Miller as outlined in Part II.

The theory of global justice that I will outline will be based upon Brian Barry's contractualist theory of justice as impartiality. My aim in this part of the thesis is to demonstrate that Barry's theory of 'justice as impartiality' is an example of a non-relational approach to justice which can deal with the criticisms canvassed in Part I., and is preferable to a relational approach. The Scanlonian contractualist approach adopted by Barry offers a way of justifying principles of justice in an impartialist manner, whilst still leaving room for individuals to pursue their own conceptions of the good. Barry has written extensively on issues of justice, both social and global, and at both a practical and normative level.<sup>1</sup> Like Miller, Barry not only argues for particular principles of justice, but also for a specific approach to justice – he explicitly defends his theoretical commitments. Barry's theory of justice is contractualist, egalitarian, non-relational, and cosmopolitan. He argues explicitly against communitarian or particularist approaches to justice, and defends the impartialist (non-relational) approach against recurring criticism. He criticises non-cosmopolitan accounts as failing to recognise gross injustice on the global level, and has also criticised relational cosmopolitan approaches for failing to provide a truly cosmopolitan account.

This part of the thesis will be made up of two chapters, following a similar structure to Part II. In the first of the two chapters (Chapter Five) I will outline Barry's theory of justice as impartiality and its cosmopolitan implications in detail. I will focus on his non-relational understanding of justice, his theory of human rights, and his account of special treatment. In

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<sup>1</sup> Barry's approach to justice is outlined in most detail in *Theories of Justice: A Treatise on Social Justice, Volume 1*, (Hemel Hempstead: Harvester-Wheatsheaf, 1989); and *Justice as Impartiality: A Treatise on Social Justice, Volume 2*, (Oxford: Clarendon Press, 1995). His cosmopolitanism is spelt out in 'Statism and Nationalism: A Cosmopolitan Critique', in Ian Shapiro and Lea Brilmayer (eds.), *Global Justice*, (New York: New York University Press, 1999); 'International Society from a Cosmopolitan Perspective', in David Mapel and Terry Nardin (eds.), *International Society: Diverse Ethical Perspectives*, (Princeton, NJ: Princeton University Press, 1998); and 'Humanity and Justice in Global Perspective', in J. Roland Pennock and John W. Chapman (eds.), *Ethics, Economics and the Law*, (New York: New York University Press, 1982). Reprinted in Brian Barry, *Liberty and Justice: Essays in Political Theory Volume 2*, (Oxford: Clarendon Press, 1991).

the second of the two chapters (Chapter Six) I will then critically evaluate Barry's theory in light of the criticisms of non-relational approaches raised in Parts I. and II. I will defend Barry's theory against these criticisms, especially against the charge of being unable to provide a full account of special treatment and partiality. This defence will develop arguments already raised in Part II.

My overall aim in this part of the thesis is to complete the second half of my general argument. In Part II. I argued that Miller's relational approach suffers from several problems, stemming from a lack of objectivity. Here I will argue that a non-relational approach based on justice as impartiality doesn't suffer from an equivalent set of problems, and so should be considered preferable. My aim is not to defend justice as impartiality as the best possible theory of justice, but instead to use the example of Barry's theory to demonstrate that a fully non-relational account is feasible. In the conclusion to the thesis I will compare Miller and Barry's approaches further, and, drawing on my arguments here and in the previous chapters, demonstrate why the non-relational approach is preferable. I will also draw out some of the implications for global justice debates in general.

## Chapter Five: Justice as Impartiality

### 5.1. Introduction

In this chapter my aim is provide a clear and concise explanation of Brian Barry's theory of justice, covering both his theoretical approach, and his substantive principles of justice. In the next chapter I will critically evaluate Barry's theory, defending it against the main criticisms that have been made against it.

Barry's theory of 'justice as impartiality' follows the contractualist model espoused in particular by T. M. Scanlon.<sup>1</sup> Justice for Barry consists in what cannot be reasonably rejected by people who are motivated, at least in part, by a concern for fairness. This understanding of justice does not ground it in any particular relationship between people – considerations of justice arise in virtue of our shared humanity, rather than any particular relationship between us. As such, Barry's theory is an example of the non-relational approach. This approach leads Barry to cosmopolitan conclusions – he holds that we should apply our principles of justice globally, and that inequality between people is *prima facie* unjust regardless of their nationality or citizenship. Barry is motivated by a strong sense of reciprocity and impartiality – he argues that we must take all reasonable views into account, and not impose unfair burdens on others that we would not be prepared to accept ourselves. In practice this approach leads to liberal principles of toleration – equal freedom of religious worship being one key example. But Barry also recognises that our ability to pursue such freedoms depends on a certain basic level of material wellbeing, and so he insists on a minimal standard of human rights (both negative political rights and positive social rights) which must be protected for everybody as a matter of priority.

Barry's defence of justice as impartiality is contained mainly in his two volume *Treatise on Social Justice*.<sup>2</sup> He originally intended to publish a third volume containing the more substantive set of principles needed to flesh out his theory, however this was abandoned and instead Barry published two further monographs which together express his positive approach – *Culture and Equality*, an egalitarian critique of multiculturalism, and *Why Social Justice Matters*, an attempt to apply egalitarian principles to public policy making.<sup>3</sup> He also

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<sup>1</sup> Brian Barry, *Justice as Impartiality: A Treatise on Social Justice, Volume 2*, (Oxford: Clarendon Press, 1995); T. M. Scanlon, *What We Owe To Each Other*, (Cambridge, MA.: Harvard University Press, 1998).

<sup>2</sup> Brian Barry, *Theories of Justice*, (Hemel Hempstead: Harvester-Wheatsheaf, 1989); *Justice as Impartiality*, (Oxford: Clarendon Press, 1995).

<sup>3</sup> Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, (Cambridge: Polity, 2001); *Why Social Justice Matters*, (Cambridge: Polity, 2005).



published a series of articles that focused on the issue of global justice and expressed his firm commitment to cosmopolitanism.<sup>4</sup>

I will begin by outlining Barry's universalist and practice-independent approach to questions of justice as a whole, before going on to explore justice as impartiality in some detail. I'll attempt to flesh out the types of principles that justice as impartiality can support, before going on to discuss Barry's cosmopolitan and non-relational approach to global justice.

## 5.2. Universalism / Practice-Independence

Barry firmly rejects the practice-dependent, interpretive approach to justice espoused by Miller. He explicitly states that he wants to avoid any justifications of principles of justice that are grounded in convention, tradition, or the shared beliefs of societies or cultures, and instead aims to offer a practice-independent justification. In rejecting the practice-dependent approach Barry makes many of the same criticisms of it that I put forward in the previous chapter. First, he argues that practice-dependent theories of justice will fail to protect human rights – he claims that if it is true that all we can hope to do is articulate the shared meanings of society then we will be unable to secure human rights in societies that don't have a tradition of respecting them.<sup>5</sup> Second, he disputes the particularist assumptions that societies have homogenous belief systems and that these belief systems are mutually incomprehensible.<sup>6</sup> He argues that 'there is no such thing as a set of underlying values waiting to be discovered...no contemporary society is really homogeneous'.<sup>7</sup> So societies and contexts are not as internally coherent as the interpretive approach needs them to be. Barry concludes that the interpretive approach is flawed because:

'claims to derive conclusions from the allegedly shared values of one's own society are always tendentious. If they were not, it would have to be regarded as a remarkable coincidence that the shared values a political philosopher says he has detected always happen to lead to conclusions that he already supports'.<sup>8</sup>

Barry then goes on to argue that when practice-dependent theorists seek to justify their selection or interpretation of societal values, in order to rebuff the charge of conservatism

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<sup>4</sup> Brian Barry, 'Statism and Nationalism: A Cosmopolitan Critique', in Ian Shapiro and Lea Brilmayer (eds.), *Global Justice*, (New York: New York University Press, 1999); 'International Society from a Cosmopolitan Perspective', in David Mapel and Terry Nardin (eds.), *International Society: Diverse Ethical Perspectives*, (Princeton, NJ.: Princeton University Press, 1998); 'Humanity and Justice in Global Perspective', in *Ethics, Economics and the Law*, J. Roland Pennock and John W. Chapman (eds.), (New York: New York University Press, 1982).

<sup>5</sup> Barry, *Justice as Impartiality*, p. 4.

<sup>6</sup> Barry, *Justice as Impartiality*, p. 5.

<sup>7</sup> Barry, *Justice as Impartiality*, p. 5.

<sup>8</sup> Barry, *Justice as Impartiality*, p. 5.

and relativism, then they inevitably end up resorting to universalist, practice-independent arguments. Barry claims that:

‘any attempt to explain why you start from here rather than there – once you abandon the idea that you start from the shared presuppositions of your society – must get you into making general statements about what makes for a good starting point. Thus, a theory of justice cannot simply be a theory about what justice demands in this particular society but must be a theory about what justice is in any society.’<sup>9</sup>

This a version of the argument that I made against Miller in the previous chapter – there I claimed that Miller’s defence of contextualism against the charge of conventionalism relies on universalist arguments. Barry shares this worry, and this is partly why he rejects practice-dependent justifications of theories of justice.

Barry wants a theory of justice grounded in practice-independent justification. However, he doesn’t want to necessarily exclude all ordinary moral beliefs from his theory. Where he differs from the interpretive approach is in the role that these beliefs are allowed to play. Barry is selective about which beliefs to admit:

‘the crucial difference between [my] method and the ‘interpretive’ one is that I draw upon ordinary moral beliefs critically and selectively, employing a general theory of justice as a touchstone. Since everyday practices and beliefs reflect unequal power relationships, the theory tells us to be especially wary of the deliverances of common sense morality where we may most expect them to express a bias arising from an inequality of power.’<sup>10</sup>

So for Barry, there is an important extra level of justification. We should pay attention to people’s beliefs about justice and worry when our theory of justice conflicts with them to a large degree, but we also need to be open to the inevitable biases that can distort people’s beliefs. Practice-dependent approaches derive principles of justice from existing practices and those principles are ultimately justified with reference to those practices. Barry, in contrast, wants a practice-independent theory which pays attention to existing practices only when they can be independently judged to be just.

In this regard, Barry’s approach to justice is universalist and practice-independent.<sup>11</sup> For Barry, principles of justice must *apply* equally and impartially to all persons, and furthermore, principles must be *justified* in such a way as to show equal and impartial consideration to all persons. Barry seeks to ‘capture a certain kind of equality’, in that ‘all those affected have to be able to feel that they have done as well as they could reasonably

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<sup>9</sup> Barry, *Justice as Impartiality*, p. 6.

<sup>10</sup> Barry, *Justice as Impartiality*, p. 10.

<sup>11</sup> Barry, *Justice as Impartiality*, p. 1.

hope to. Thus, principles of justice are inconsistent with any claims to special privilege based on grounds that cannot be made freely acceptable to others'.<sup>12</sup> This desire for an impartial and neutral justification for principles of justice underpins Barry's substantive theory of justice – 'justice as impartiality.'

Justice as impartiality is a moral cosmopolitan theory in the sense defined by Caney and Pogge (see Chapter One). It embodies 'a moral stance consisting of three elements: individualism, equality, and universality. Its unit of value is individual human beings; it does not recognise any categories of human beings as having less or more weight; and it includes all human beings'.<sup>13</sup> For Barry, each of these three elements has strong implications. First, principles of justice must be justified with reference to individual interests (broadly conceived), as opposed to the interests of groups or communities.<sup>14</sup> Second, all principles must be justified in such a way that accords the interests of each individual equal weight. Taken together, the demands for individualism and equality entail that membership (or non-membership) of a particular group or society cannot serve as a reason for your interests to carry unequal weight in the justification of principles of justice. Finally, principles of justice must be universal standards. Principles of justice are universally valid, and therefore 'morality is socially constituted only to a limited extent.'<sup>15</sup>

These three moral cosmopolitan commitments (to individualism, equality, and universality) are expressed, Barry claims, in justice as impartiality. I'll now outline that theory in more detail, focusing especially on the concepts of neutrality, reasonableness, and impartiality.

### 5.3. Justice as Impartiality

Barry's theory of justice is contractualist, following the model adopted by John Rawls and T. M. Scanlon, amongst others.<sup>16</sup> He adopts the contractualist approach because he shares with Rawls and Scanlon the aim of trying to find a theory of justice which can account for the fact of reasonable pluralism – a theory which can provide 'some mutually acceptable basis for the accommodation of different conceptions of the good.'<sup>17</sup> Barry argues that 'the essence of a contract is that each of the contracting parties voluntarily accepts constraints on the pursuit

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<sup>12</sup> Barry, *Justice as Impartiality*, pp. 7-8.

<sup>13</sup> Barry, 'Statism and Nationalism', pp. 35-36.

<sup>14</sup> Barry stresses that whilst '...this does not mean that [the theory] slights the importance of families, communities, and countries... it treats their value as derivative: they are of value to exactly the extent that they contribute to the welfare of individuals (both those within the group and those outside it, weighting their interests equally)', 'International Society from a Cosmopolitan Perspective', p. 153.

<sup>15</sup> Barry, 'International Society from a Cosmopolitan Perspective', pp. 156-157.

<sup>16</sup> See John Rawls, *A Theory of Justice*, (Cambridge, MA.: Harvard University Press, 1971); and Scanlon, *What We Owe to Each Other*.

<sup>17</sup> Barry, *Justice as Impartiality*, p. 31.

of his own ends. And that is precisely what we are looking for: a mutually acceptable basis for restraint in the pursuit of one's conception of the good.<sup>18</sup> Justice as impartiality is defined by a conception of fairness as 'what can be freely agreed on by equally well-placed parties.'<sup>19</sup> Principles of justice are fair when they are based on reasoned argument from 'premises which reasonable people, seeking to reach free, uncoerced agreement with others, would accept.'<sup>20</sup> According to justice as impartiality, just principles are those that can be agreed on by reasonable people, who are motivated in part by a desire to reach agreement with others, when they are free, uncoerced, and each have an equal say. The principles that will be agreed on in this situation will provide fair constraints on each persons' pursuit of their own conception of the good.

A conception of the good is a set of beliefs, values, and aims, which makes up a picture of a good life for a particular person. For Barry, a conception of the good is made up of 'an individual's judgments concerning which activities or ideals are valuable and rewarding: it denotes his or her views about what makes life worthwhile and important.'<sup>21</sup> Conceptions of the good can be religious or secular, or a mixture of both. The beliefs and values that make up a conception of the good should be firmly held and reflectively endorsed – in other words they should be long-standing beliefs, not subject to quick change according to whim or impulse. Your conception of the good therefore acts as a stable set of aims and values according to which you can make choices about how to live your life. Conceptions of the good, whilst stable, are not static – they are subject to reflective change over time.

Barry follows Scanlon's contractual model rather than Rawls'.<sup>22</sup> He endorses the Scanlonian picture under which 'an act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behaviour which no one could reasonably reject as a basis for informed, unforced general agreement.'<sup>23</sup> Whereas in Rawls' theory parties to the contract are behind a veil of ignorance and are unaware of their own conceptions of the good, in the Scanlonian original position the parties are aware of their identities and conceptions of the good. They are motivated both by the desire to realise this conception of the good, but also partly by the desire to reach agreement and find principles that other people can accept. This 'agreement motive' is crucial to justice as

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<sup>18</sup> Barry, *Justice as Impartiality*, p. 31.

<sup>19</sup> Barry, *Justice as Impartiality*, p. 51.

<sup>20</sup> Barry, *Justice as Impartiality*, p. 7.

<sup>21</sup> Simon Caney, 'Impartiality and Liberal Neutrality', in Paul Kelly (ed.), *Impartiality, Neutrality and Justice: Re-Reading Brian Barry's Justice as Impartiality*, (Edinburgh: Edinburgh University Press, 1998), p. 88.

<sup>22</sup> Barry rejects Rawls's version because the hypothetical contract for Rawls is based upon mutual interest rather than a desire to find fair rules of co-operation. Barry argues that this form of contractualism is unstable (see *Justice as Impartiality*, pp. 28-51).

<sup>23</sup> T. M. Scanlon, 'Contractualism and Utilitarianism', in Amartya Sen and Bernard Williams (eds.), *Utilitarianism and Beyond*, (Cambridge: Cambridge University Press, 1982), p. 110.

impartiality – it is what distinguishes it from justice as mutual advantage, the traditional form of social contract theory.<sup>24</sup> The Scanlonian negotiating situation that Barry draws upon is ‘marked by equality (since everybody stands on an equal footing and is equipped with a veto to protect interests that cannot be reasonably denied) and freedom (since nobody can coerce anybody else into accepting an agreement by the exercise of superior power).’<sup>25</sup> Justice as impartiality endorses principles of justice that are agreed upon under such circumstances. The principles of justice that will be agreed on under such circumstances will be neutral between competing conceptions of the good, because it is assumed that there is no particular conception of the good that can provide the basis for free and reasonable agreement. Neutrality, then, is the first central feature of justice as impartiality.

### 5.3.1. Neutrality

As we’ve seen, justice as impartiality demands principles of justice that are neutral between competing conceptions of the good. This implies that principles must be able to be reasonably agreed upon without reference to any specific conception of the good. Barry’s argument for the demand for neutrality is premised on the assumption that there is no one conception of the good that can be the subject of free and reasonable agreement.<sup>26</sup>

Barry argues that agreement on a single conception of the good will always require some people to be coerced into agreement, or to have their views ignored. This is because there is no single conception of the good that all reasonable people can agree on – Barry agrees with Rawls that there is inevitable reasonable pluralism. Barry supports this claim with a sceptical thesis – that ‘no conception of the good can justifiably be held with a degree of certainty that warrants its imposition on those who reject it.’<sup>27</sup> We should recognise that we cannot assert the truth of our own conception of the good over other peoples’ conceptions, and equally, that they cannot assert the truth of their own conceptions over ours. Given this epistemological fact, Barry claims, it would be unreasonable to ground principles of justice in any particular conception of the good. To do so would be to assume the truth of one’s conception of the good when one isn’t warranted to do so.

The scepticism that Barry argues for is moderate – he is not denying that there are good and bad conceptions of the good, or that we can argue about which conceptions to accept, but instead arguing that we must always accept that there is some level of doubt as to whether

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<sup>24</sup> See Martha Nussbaum, *Frontiers of Justice*, (Cambridge, MA.: Harvard University Press, 2006), pp. 9-69 for extended critical discussion of the various forms of social contract theory.

<sup>25</sup> Barry, ‘International Society from a Cosmopolitan Perspective’, p. 146.

<sup>26</sup> Barry states that ‘no conception of the good provides a basis for agreement on terms that nobody could reasonably reject’, (*Justice as Impartiality*, p. 168).

<sup>27</sup> Barry, *Justice as Impartiality*, p. 169.

any one particular conception of the good is the right one. He supports his sceptical thesis with an appeal to historical evidence:

‘the sheer weight of the evidence in favour of scepticism seems overwhelming. It is hard not to be impressed by the fact that so many people have devoted so much effort over so many centuries to a matter of the greatest moment with so little success in the way of securing rational conviction among those not initially predisposed in favour of their conclusions.’<sup>28</sup>

Having claimed that there is no single conception of the good which can be the source of reasonable and free agreement, Barry argues that we must, if we are to be reasonable, endorse neutrality.<sup>29</sup> Barry states that ‘there is no single end that can be taken as authoritative... Rather, there are conflicting conceptions of the good and the object of justice as impartiality is to find some way of adjudicating between them that can be generally accepted as fair.’<sup>30</sup> Given that we want to reach a free and reasonable agreement, and that no single conception of the good can be agreed on by everybody under conditions of freedom and reasonableness, we should remain neutral between all conceptions of the good. Neutrality is the only solution if we remain committed to the project of finding principles of justice that cannot be reasonably rejected. So justice as impartiality holds that:

‘at the point where basic principles and rules are being drawn up, no conception of the good should be given a privileged position... nobody is to be allowed to assert the superiority of his own conception of the good over those of other people as a reason for building into the framework for social cooperation special advantages for it.’<sup>31</sup>

Justice as impartiality is therefore a ‘free-standing notion of justice: one that is not subordinate to any one conception of the good.’<sup>32</sup> To achieve neutrality, we must be impartial between competing conceptions of the good. Impartiality, then, is the second central feature of Barry’s theory of justice.

### 5.3.2. Impartiality

As we’ve seen above, Barry demands that we remain neutral between competing conceptions of the good. This implies that we treat all competing conceptions of the good impartially:

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<sup>28</sup> Barry, *Justice as Impartiality*, p. 171. Barry makes this argument with specific reference to religious conceptions of the good – he points to the inability of either Protestantism or Catholicism to win out during the religious wars of the sixteenth and seventeenth centuries. He claims, however, that if the case for scepticism can be made out for religiously based conceptions of the good, ‘it will *a fortiori* hold for other conceptions.’

<sup>29</sup> Barry, *Justice as Impartiality*, p. 168.

<sup>30</sup> Barry, *Justice as Impartiality*, pp. 81-82.

<sup>31</sup> Barry, *Justice as Impartiality*, p. 160.

<sup>32</sup> Barry, *Justice as Impartiality*, p. 76.

'because we cannot say now that the value of justice is that it tends to the achievement of some good, justice must stand or fall on its intrinsic merits. Its claim to be respected must lie in its impartial adjudication of conflicting claims arising from differing interests, perspectives, and conceptions of the good.'<sup>33</sup>

According to Barry, impartial principles of justice refrain from favouring the interests of any one group of people, or any particular world view, or conception of the good. This is *prima facie* unproblematic, however, as we saw in Part I. that there is a common general worry that impartial principles of justice are demanding and impractical. Barry argues that these worries about impartialist morality are based on a misunderstanding of the concept of impartiality, which fails to recognise the two distinct levels at which impartiality can be applied.

Barry argues that our commonsense thinking about the role that impartiality should play in morality is extremely confused. He defines the commonsense understanding of partiality as the 'introduction of private considerations into a judgement that should be made on public grounds'.<sup>34</sup> In public situations such as criminal courts we all agree that partiality has no place, but in other situations, often private ones, we think that partiality is the appropriate attitude. Barry stresses however that it isn't as simple as a public/private distinction; we think that in families parents should be impartial between their children as much as they can, but that they should also be partial towards their own children over those of strangers. Barry also stresses that impartial treatment doesn't necessarily mean identical treatment. He concludes that, as far as commonsense moral thinking goes:

'the notion of impartiality is certainly not foreign... But it does not play a central role, and it is indeed dispensable in that there is always some concept available that would carry the moral burden equally well if not better... it would be possible for anyone to satisfy all the requirements of impartiality, as they are understood in common-sense morality, and still be left with a lot of discretion. Some matters are not covered by impartiality at all. For the rest, impartiality operates most of the time to set the limits on acceptable behaviour.'<sup>35</sup>

Having examined the commonsense understanding of the role of impartiality, Barry then seeks to clarify the concept for his purposes by making a distinction between 'first-order' and 'second-order' applications. Second-order impartiality refers to impartiality at the level of principle, whereas first-order impartiality refers to impartiality at the level of action.

First-order impartiality is 'a requirement of impartial behaviour incorporated into a precept... not being motivated by private considerations'.<sup>36</sup> To be in accordance with first-order impartiality one would have to act impartially all the time – to make decisions based

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<sup>33</sup> Barry, *Justice as Impartiality*, pp. 76-77.

<sup>34</sup> Barry, *Justice as Impartiality*, p. 13.

<sup>35</sup> Barry, *Justice as Impartiality*, p. 19.

<sup>36</sup> Barry, *Justice as Impartiality*, p. 11.

on impartial criteria, which rules out giving special weight to one's own interests, or to the interests of certain other people. This type of impartiality corresponds with the Godwinian form of the non-relational approach to justice outlined in Chapter One. However, just as this extreme non-relational approach is not ever seriously endorsed, first-order impartiality is not a serious proposition for most moral theorists. Barry makes it clear that first-order impartiality is in conflict with commonsense morality and that it should be rejected – 'There is, Barry insists, a 'natural inclination' to make special efforts on one's own behalf and on behalf of those about whom one cares. Universal first-order impartiality would, therefore, impose insupportable burdens. It is the role of rules of justice to set bounds to the working of particularistic inclinations by ruling out actions that injure others and prohibiting unfair partiality.'<sup>37</sup>

Barry's theory of justice as impartiality instead calls for second-order impartiality – 'principles and rules that are capable of forming the basis of free agreement among people seeking agreement on reasonable terms'.<sup>38</sup> This is impartiality at the level of justification. We saw above that justice as impartiality doesn't allow principles of justice to be justified with reference to any particular conception of the good. When justifying principles of justice we must be impartial between all conceptions of the good, and not privilege any particular one over all the others.

Barry argues that first and second-order impartiality are often wrongly conflated, and so it can seem as if impartialists like himself are claiming something that they are not:

'the effect is to assume without argument that any principles which can be impartially justified must of necessity be principles that mandate universal impartiality. However the relationship between impartiality at the second-order level and impartiality at the first-order level has to be established within the theory of second-order impartiality itself. Thus, the question to be asked is: what would the rules and principles capable of attracting general agreement require in the way of impartial behaviour?'<sup>39</sup>

Barry claims that the supposed battle between 'impartialists' and 'partialists' is therefore a false one, because 'what the opponents are attacking is not what the supporters are defending.'<sup>40</sup> Barry claims that there are two things that unite impartialists like himself – 'a quest for a set of rules for living together that are capable of attaining the free assent of all', and the lack of an aim to be 'a complete guide to the art of living.'<sup>41</sup> Partialists on the other

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<sup>37</sup> Michael Freeman, 'Universalism, Particularism and Cosmopolitan Justice', in T. Coates (ed.), *International Justice*, (Aldershot: Ashgate, 2000), p. 77.

<sup>38</sup> Barry, *Justice as Impartiality*, p. 11.

<sup>39</sup> Barry, *Justice as Impartiality*, p. 11.

<sup>40</sup> Barry, *Justice as Impartiality*, p. 191.

<sup>41</sup> Barry, *Justice as Impartiality*, pp. 191-192.



hand are united by the claim that 'there would be something crazy about a world in which people acted on an injunction to treat everybody with complete impartiality.' They argue that there is 'something fundamentally at fault with any moral system which has the implication that, for example, children should not be regarded as having any special claims against their parents, or that a fully conscientious man would toss a coin to determine whether he should rescue from a burning building his wife or a total stranger.'<sup>42</sup> However these two views are not incompatible, because impartialists like Barry accept the commonsense view that full impartiality at the level of action is inappropriate. Barry argues that a commitment to second-order impartiality does not prevent a theory from being able to account for the special claims of children against their parents, or the duty of a husband to rescue his wife over a stranger. The question for impartialists, once we have recognised the distinction between the two levels at which impartiality can be applied, becomes 'how much partiality is impartially justifiable?'. In other words, what kinds of partiality will a system of second-order impartiality rule out, and what kinds will be allowed? The answer to that question for Barry depends on the outcome of the Scanlonian decision procedure. This procedure, as was alluded to above, rests on the idea of reasonable rejection. This concept of reasonableness is the third central feature of justice as impartiality.

### 5.3.3. Reasonableness

We've seen that justice as impartiality is based on reasoned argument from 'premises which reasonable people, seeking to reach free, uncoerced agreement with others, would accept.'<sup>43</sup> But what does this mean in practice? For a principle of justice to be fair, it must be acceptable to all reasonable people – in other words, it must be the case that no one can reasonably reject the principle. On what grounds might a principle be reasonably rejected and on what grounds is rejection unreasonable? Two initial conditions are made quite explicit: any rejection of a principle that is either based on false beliefs, or which gives special weight to values internal to a particular conception of the good, is unreasonable. Rejection on the basis of false beliefs is ruled out by the stipulation that reasonable agreement must be 'informed.' Rejection which gives special weight to values internal to a particular conception of the good is ruled out by the demand for neutrality between competing conceptions discussed in Section 5.4 above.

Beyond these initial conditions the idea of reasonable rejection as Barry develops it can seem fairly vague. However, given that he explicitly endorses T. M. Scanlon's development of the

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<sup>42</sup> Barry, *Justice as Impartiality*, p. 194.

<sup>43</sup> Barry, *Justice as Impartiality*, p. 7.

concept, we can look directly to Scanlon for illumination.<sup>44</sup> According to Scanlon, in order to decide whether a principle permitting action X in circumstances C is reasonably rejectable, we have to consider the set of relevant reasons for rejection or acceptance – the ‘objections to permission’ and the ‘objections to prohibition.’ The objections to permission are the burdens that would be imposed on some people if others were allowed to do X in circumstances C. The objections to prohibition are the burdens that would be imposed on those others if they were not allowed to do X in circumstances C. If the objections to prohibition are not significant in comparison to the objections to permission, then any principle allowing X in circumstances C is reasonably rejectable.<sup>45</sup>

It is clear that in actual cases of trying to apply this procedure, much is going to hang on how we understand the objections to permission and prohibition, and their relative significance. Scanlon claims that the types of things that can be taken as objections, or reasons, must be ‘generic’, rather than specific to particular individuals. Generic reasons consist of ‘commonly available information about what people have reason to want... reasons that we can see that people have in virtue of their situation, characterized in general terms, and such things as their aims and capabilities and the conditions in which they are placed.’<sup>46</sup> Generic reasons are not necessarily universal reasons, because not everyone will be affected by a particular principle in the same way, but they must arise from general characteristics rather than particular features of specific individuals.<sup>47</sup> So, for example, people generally have a strong interest in maintaining bodily integrity. A principle allowing people to physically assault others in the street would endanger my bodily integrity, and so I have a reason to reject that principle – an objection to permission. My reason is shared by everyone else who would have their bodily integrity threatened by this principle, and in this case that is most people. However, a slightly different principle might only threaten the bodily integrity of a small minority of people – for example, a principle which allowed people to physically assault members of a small religious sect on the street. Even though in this case not everyone would share the reason that the members of the religious sect would have to reject the principle, since not everyone’s bodily integrity would be threatened, the reason is still generic, since the interest in maintaining bodily integrity is general. The principle is still reasonably rejectable. It is rejectable because the objections to permission outweigh the objections to prohibition. The objections to prohibition in this case are the burdens that are imposed on those wishing to be able to physically assault members of a particular religious

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<sup>44</sup> It should be noted that *Justice as Impartiality* (1995) was published before *What We Owe to Each Other* (2000), and so Barry was basing his endorsement on Scanlon’s original statement of his view, in ‘Contractualism and Utilitarianism’. However, Scanlon’s views are spelled out at much greater length in *What We Owe*, and so it is primarily to this that I will refer.

<sup>45</sup> Scanlon, *What We Owe*, p. 195.

<sup>46</sup> Scanlon, *What We Owe*, p. 204.

<sup>47</sup> Scanlon, *What We Owe*, pp. 204-205.

group. There is no general interest in being able to physically assault the people that you want to assault, only a particular interest, presumably generated by an individual dislike for this religious group, in doing so. This does not therefore count as a relevant objection. We might nevertheless think that there is a general interest in expressing one's likes and dislikes and that those who would be prevented from physically assaulting the particular group they dislike are therefore burdened in a way that we can take as relevant. However, we still conclude in this case that the burden imposed upon the would-be-assailants is not as significant as the burden imposed on the assault victims, because bodily integrity is arguably more important than being able to express one's likes and dislikes.

What kind of things will count as generic reasons? The most obvious example of a burden that constitutes an objection to permission or prohibition is a threat to one's wellbeing. However Scanlon stresses that his version of contractualism is not welfarist – it does not view all reasons for rejection of principles as reducible to claims about welfare.<sup>48</sup> Generic reasons can also concern other considerations and values separate from welfare. It can be good grounds for rejecting a principle 'that accepting it would make it impossible to recognize other values that one has good reason to recognize.'<sup>49</sup> Scanlon also makes it clear that '[w]e have reason to object to principles simply because they arbitrarily favour the claims of some over the identical claims of others: that is to say, because they are unfair.'<sup>50</sup> In both of these cases (conflict with values and unfairness) we have reason to object to such principles even when they have no effect whatsoever on our wellbeing. So, as I interpret Scanlon, there are three main kinds of prima facie reason for rejecting a principle of justice. We can say that you have a prima facie reason to reject a principle when (a) it impacts negatively on your wellbeing; (b) when accepting it would conflict with a value that you have good reason to recognise; and (c) when it arbitrarily favours the interests of someone else over your own.

These three considerations give us a good indication of how the types of reason that people can appeal to when rejecting principles of justice in Barry's theory. As we've seen, the goal of justice as impartiality is to find principles of justice that reasonable people, motivated by a concern for justice, can agree on regardless of their particular conception of the good. This demand for neutrality between competing conceptions of the good is stronger in Barry's theory than in Scanlon's. Barry is concerned with finding principles of justice that are acceptable to all despite the fact that there is a pluralism of conceptions of the good, none of

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<sup>48</sup> Scanlon, *What We Owe*, pp. 213-219.

<sup>49</sup> Scanlon, *What We Owe*, pp. 218-219. It should be noted here that for Barry at least, such values will have to be neutral between competing conceptions of the good. This doesn't however mean that the one cannot value one's own conception of the good – in fact, we might think that there is a generic reason to value the pursuit of one's own conception of the good which is in a sense constitutive of having a conception of the good. See discussion in next paragraph.

<sup>50</sup> Scanlon, *What We Owe*, p. 216.

which can uncontroversially provide the basis for principles of justice. Given this aim, he assumes that the Scanlonian constructive procedure will ‘rule out any attempt to privilege one conception of the good at the ground-floor level.’<sup>51</sup> So reasons for rejection must be, as Scanlon states, generic, but also, as Barry makes clear, accessible to people regardless of their conception of the good.

In *Justice as Impartiality* Barry doesn’t add much to Scanlon’s specification of reasonableness. However in a later paper he spells out in some more detail a set of guiding principles concerning the construction of substantive principles of justice.<sup>52</sup> We should be clear that these are not substantive principles of justice as such, but rather their purpose is to constrain the more specific principles of justice that we can impose. Barry stresses that these principles of justice are ‘guides to debate’ – their role is to rule out some forms of argument whilst specifying the types of argument that can be accepted as valid.<sup>53</sup> We can therefore understand these principles as specifying further the types of reason that justice as impartiality takes as relevant to determining specific principles of justice. They provide us in effect with an indication of the kind of reason that we should take as relevant, and the type of substantive principles that will follow from them. The guiding principles are as follows:

‘1: The presumption of equality: All inequalities of rights, opportunities, and resources have to be justifiable in ways that cannot reasonably be rejected by those who get least.

2: Personal responsibility and compensation: It is prima facie acceptable for people to fare differently if the difference arises from a voluntary choice on their part; conversely, victims of misfortunes that they could not have prevented have a prima facie valid claim for compensation or redress.

3: Priority of vital interests: In the absence of some compelling consideration to the contrary, the vital interests of each person should be protected in preference to the nonvital interests of anyone. Vital interests include security from physical harm, nutrition adequate for the maintenance of health, clean drinking water and sanitary arrangements, clothing and shelter appropriate to the climate, medical care, and education to a level sufficient to function effectively within one’s society.

4: Mutual advantage: Whenever it would be to the prospective advantage of everyone to depart from the application of the above principles (compared with the results of applying them), it is permissible to do so.’<sup>54</sup>

From these four principles, and from other parts of Barry’s work, I think we can specify five further types of reason that justice as impartiality views as relevant to the justification of

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<sup>51</sup> Barry, *Justice as Impartiality*, p. 120.

<sup>52</sup> Barry, ‘International Society from a Cosmopolitan Perspective’

<sup>53</sup> Barry, ‘International Society from a Cosmopolitan Perspective’, p. 149.

<sup>54</sup> Barry, ‘International Society from a Cosmopolitan Perspective’, pp. 147-149.

principles of justice, which we can add to the three identified by Scanlon. So we can now say that you have a prima facie reason to reject a principle when, in addition to (a), (b), and (c) above, (d) it would leave you worse off than someone else;<sup>55</sup> (e) when it restricts your ability to pursue your own conception of the good;<sup>56</sup> (f) when it conflicts with your basic interests;<sup>57</sup> (g) when it fails to respect your personal agency;<sup>58</sup> and (h) when the situation is such that you and everybody else would be better off under an alternative principle.<sup>59</sup> Each of these reasons constitutes only a prima facie objection to permission. Justice as impartiality demands that we consider the possible reasons that *all* individuals may have to object to either permission or prohibition. If someone else has more significant objections to prohibition than my objections to permission, then I cannot reasonably reject the principle. These other objections may be reasons of the same, or a different, sort. Furthermore, given that justice as impartiality takes the interests of individuals to be paramount, 'aggregate gains by "winners" do not constitute a justification to "losers"'.<sup>60</sup>

#### 5.4. Principles of Justice

Whilst the above discussion provides us with an idea of how we are to go about deciding whether a principle is reasonably rejectable or not, so far we know little about what kinds of principles will be endorsed by this process. Are there any substantive principles that we can derive from this set of relevant reasons? I'm now going to outline an argument that Barry makes for a principle of freedom of religious worship, before showing that the basic structure of the argument can be used to derive egalitarian principles of distributive justice. My aim here is to gesture toward the type of principles that justice as impartiality will support, but also to demonstrate how we would begin to go about deriving substantive principles of justice.

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<sup>55</sup> Barry, *Justice as Impartiality*, pp. 212-213; 'International Society from a Cosmopolitan Perspective', p. 147.

<sup>56</sup> Barry states that principles of justice can be rejected if they don't leave room for 'the kind of discretion in shaping one's life that is an essential constituent in every conception of the good', *Justice as Impartiality*, p. 207.

<sup>57</sup> Barry claims that 'there are certain minimum requirements of living a good life that can be acknowledged to be such by almost everyone, whatever his or her own particular conception of the good may be', 'International Society from a Cosmopolitan Perspective', pp. 148-149. These basic interests arguably include a level of sociality: Barry argues that our personal relationships are based upon 'sentiments whose long-term survival value no doubt means that they have a basis in human biology', (*Justice as Impartiality*, p. 205).

<sup>58</sup> This 'has the implication that those who do worst from an inequality may under certain conditions accept reasonably that those who do better deserve to do better', 'International Society from a Cosmopolitan Perspective', p. 147. It 'embodies the basic idea that human agency must be respected', p. 148.

<sup>59</sup> Once we have taken into account all other considerations, if the situation is such that a different principle would leave everybody better off, then as a matter of collective rationality, such a departure is justified. Furthermore, if there are multiple options available which meet this criteria, then the option which maximises the gain of those who will gain least from the departure is to be preferred, 'International Society from a Cosmopolitan Perspective', p. 149.

<sup>60</sup> Barry, 'International Society from a Cosmopolitan Perspective', p. 147.

Barry argues that justice as impartiality will endorse a principle of equal freedom of religious worship for all. His argument for this claim proceeds in several stages.<sup>61</sup> First, he claims that the ability to practice one's choice of religion (or to choose to not practice religion at all) is a general human interest – it is valuable regardless of your particular conception of the good.<sup>62</sup> This entails that we all have a prima facie reason to reject a principle that denies us freedom of religious worship (derived from the general reason to reject principles that restrict our ability to pursue our own conception of the good). We all might, on the grounds of self-interest, prefer a principle that allowed us total freedom of religious worship whilst restricting the freedom of everybody else (this would allow us maximum freedom since it would remove the possibility of someone else's worship conflicting with our own). However, given that we want to reach agreement with others on terms that they can reasonably accept, we can't reasonably impose a principle on others that would restrict their freedom of religious worship. On the grounds of fairness then, each of us individually can reasonably reject a principle that allows freedom of religious worship to others but not to us (derived from the general reason that we all have to reject principles which arbitrarily favour someone else's interests over our own).<sup>63</sup> Equally, each other person can reasonably reject a principle that allows freedom of religious worship to us but not to them. Since a principle that denied everyone freedom of religious worship would make everybody worse off (and this is rejectable because we have a general reason to reject principles that make everybody worse off than reasonable alternatives), the only principle that is reasonably acceptable to all is equal freedom of religious worship.<sup>64</sup> This principle is not reasonably rejectable on the grounds that it restricts my total amount of religious freedom below the maximum possible, because it only does so in order to take each person's interests into equal account.

So, as Barry summarises:

'The argument from justice as impartiality is one that urges the fairness of moving from your own particular conception of the good to a higher level of generality. If freedom to worship in the way that you think is right is of great importance to your own ability to live what you regard as the good life, then you are asked to accept that it is important to others to.'<sup>65</sup>

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<sup>61</sup> Here I provide a reconstruction of the argument from *Justice as Impartiality*, pp. 82-84 which makes explicit some premises which are merely implicit in Barry's discussion.

<sup>62</sup> Barry states that 'from the point of view of virtually any conception of the good, the possibility of practising the form of religious worship in which one believes (or practising none if one's beliefs lead in that direction) will be regarded as an important component of the good life', *Justice as Impartiality*, p. 82.

<sup>63</sup> 'Freedom of religious worship for only some members of a society cannot plausibly be put forward as a proposal to elicit general agreement, since those excluded can reasonably reject the proposal', *Justice as Impartiality*, p. 82.

<sup>64</sup> *Justice as Impartiality*, p. 83.

<sup>65</sup> Barry, *Justice as Impartiality*, p. 84.

Each person individually, if they were purely self-interested, would want principles that allowed them to pursue their own conception of the good as far as possible. However, the aim of justice as impartiality is to find principles of justice that no one can reasonably reject, regardless of their conception of the good. Once we recognise this aim, we can't expect to be able to pursue our own conceptions of the good at the expense of other people's ability to pursue theirs. The fact that a principle restricts my ability to pursue my own conception of the good is a good reason for me to reject that principle. But it is an equally good reason for someone else to reject a principle that it restricts their ability to pursue their own conception of the good.

The structure of the argument to support equal freedom of religious worship can be applied to support egalitarian principles of distributive justice. Barry is a clear supporter of strong equality of opportunity, arguing that justice as impartiality rules out principles that don't 'provide everyone with a fair opportunity of living a good life,'<sup>66</sup> and that entrench 'systematic and cumulative disadvantage to those with low social status, poor economic standing, and little power.'<sup>67</sup> However he doesn't explicitly demonstrate how justice as impartiality supports equality of opportunity, because he thinks that it should be fairly obvious.<sup>68</sup> In case it is not obvious, I'm now going to demonstrate how one could argue for equality of opportunity using the same argument structure as the case of freedom of religious worship above.

We start by claiming that human beings have a general interest in opportunity for social and economic success. This is because these kinds of success bring access to the material goods and resources, social respect, and self-respect that we need to maintain a good standard of living. These goods and resources also provide us with the means that we need to pursue our own conceptions of the good. We therefore all have a prima facie reason to reject any principle that restricts our opportunities for social and economic success (which is derived from the general reasons that we have to reject principles that impact negatively on our wellbeing, and which restrict our ability to pursue our own conceptions of the good). We then move on to recognise that if we were purely self-interested then we would want a principle of justice that allowed maximum opportunity for us and minimum opportunity for others (since opportunity in to some extent a competitive good). However, given the aim of justice as impartiality, to reach reasonable agreement with others based on premises that they can accept, we cannot reasonably impose principles limiting others' opportunities in order to

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<sup>66</sup> Barry, *Justice as Impartiality*, p. 206.

<sup>67</sup> Barry, *Justice as Impartiality*, p. 204.

<sup>68</sup> Barry's firm support for the ideal of equality of opportunity is expressed at length in *Why Social Justice Matters*. He states that 'I do not think that any very elaborate chain of argument is called for to show that the principles appealed to in this book satisfy the 'reasonable rejectability' test put forward in *Justice as Impartiality*', (p. ix). See also Richard Arneson, 'Does Social Justice Matter? Brian Barry's Applied Political Philosophy', *Ethics*, 117 (2007): 391-412, at p. 392.

increase our own. Equally, other people cannot reasonably impose principles limiting our opportunity in order to increase theirs. Finally, we recognise that since a principle that denied opportunity for everybody would make everybody worse off (and this is rejectable because we have a general reason to reject principles that make everybody worse off than reasonable alternatives), the only reasonably acceptable principle is equal opportunity for all. This principle is not rejectable on the grounds that it restricts my opportunity below what it could potentially be, because it does so in order to take equal account of the interests of everybody.

From this we can see that justice as impartiality can support a principle of equal opportunity for all. However in the argument above I considered only the reasons that people might have to principles governing the distribution of opportunity which refer to their interest in that opportunity. But as we've seen, we can reject principles for other reasons – justice as impartiality recognises a multitude of interests and values. So for example, arguments for egalitarian principles of distributive justice are often countered by claims about the importance of personal responsibility, and so we need to be able to take into account possible reasons that people might have to object to egalitarian principles which take this form. Equality of opportunity as Barry defines it doesn't conflict with personal responsibility because he believes that inequality of outcome is justified if it results from personal choice – 'people who made different choices from the same set of opportunities can be held responsible for different outcomes.'<sup>69</sup> This is why it is equality of opportunity that is endorsed, as opposed to equality of outcome. However, there is another set of reasons that justice as impartiality recognises which might conflict with egalitarian principles such as equal opportunity – our reasons to reject principles of justice that conflict with the value that we place upon certain kinds of interpersonal relationships.<sup>70</sup> Barry is confident that he can make room for this value and for the special treatment that can attach to such relationships.<sup>71</sup> But as we saw in Part I., opponents to non-relational views such as Barry's remain unconvinced by non-relational accounts of special treatment in general. The problem of special treatment and partiality is one of the key issues that I will address in the next chapter when defending Barry's approach.

In this last section my aim has been to demonstrate how justice as impartiality goes about the process of justifying principles of justice, and to indicate the general kinds of reasons that are taken to be reasonable grounds for rejecting a principle. One major issue that I have not so

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<sup>69</sup> Barry, *Why Social Justice Matters*, p. 136.

<sup>70</sup> There are two separate ways in which egalitarian principles like equality of opportunity can conflict with the value of interpersonal relationships. The first, raised by Scheffler as the 'distributive objection', concerns a conflict at the level of distribution – can we consistently meet the demand of equality of distribution whilst expressing our partiality to those close to us? The second concerns a conflict at the level of valuation – can we consistently value all people's interests equally as justice as impartiality demands, whilst at the same time properly valuing our interpersonal relationships? I will deal with both of these objections in the next chapter.

<sup>71</sup> Barry, *Justice as Impartiality*, Chapter 8.



far raised is whether Barry assumes too much when he talks about the reasonableness of certain types of objection. We might worry that his and Scanlon's account of reasonableness relies on a particular conception of the good, rather than remaining neutral as they claim. I will defend the theory against this objection in the next chapter. For now however I am going to leave the discussion of the mechanisms of justice as impartiality behind and move on to discussing the application of Barry's theory to the global sphere.

### 5.5. Non-Relational Theory of Global Justice

So far I have outlined Barry's general theoretical approach to justice – justice as impartiality. I'm now going to summarise his theory in terms of how it applies to the question of global justice. We've seen that Barry adopts a practice-independent and universalist understanding of justice, so it should be no surprise that he is committed to a firmly non-relational and cosmopolitan theory of global justice. In fact, cosmopolitan conclusions flow directly from justice as impartiality, as I'll now demonstrate with reference to the contrasting relational accounts of Rawls and Beitz.

Rawls (in)famously restricts the scope of the principles of justice as fairness to within societies or 'peoples'.<sup>72</sup> Cosmopolitan Rawlsians, such as Charles Beitz, have argued that Rawls is wrong, and that his theory of justice should instead have global scope. They argue that that the 'basic structure', to which principles of justice apply, exists at the global level, and so the principles of justice as fairness should apply at this level as well.<sup>73</sup> This argument for cosmopolitan principles relies on the existence of global political and economic infrastructure and international institutions to work. Rawlsian cosmopolitans are clearly pursuing a relational approach to justice – they accept Rawls's commitment to the idea that principles of justice only apply when certain relationships obtain between people. Their cosmopolitanism therefore depends on whether the state of the world is such that these relationships obtain at the global level. Barry, on the other hand, pursues a non-relational approach to justice. For him, principles of justice do not require the existence of some kind of relationship or association.<sup>74</sup> Instead, we should be concerned with 'human beings living in a world of human beings and only incidentally as members of polities'.<sup>75</sup> Barry argues that 'the value of any political structure (including a world state) is entirely derivative from whatever it contributes to the advancement of human rights, human well-being, and the

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<sup>72</sup> John Rawls, *The Law of Peoples*, (Cambridge, MA.: Harvard University Press, 1999).

<sup>73</sup> Beitz, *Political Theory and International Relations*, esp. pp. 143-153.

<sup>74</sup> Barry denies 'that membership of a society is of deep moral significance when the claims that people can legitimately make on one another are assessed', 'International Society from a Cosmopolitan Perspective', p. 145. He does believe that to a certain extent the global order is now interrelated, but explicitly doesn't view this as a necessary empirical condition for global justice.

<sup>75</sup> Barry, 'Statism and Nationalism', p. 35.

like.<sup>76</sup> Principles of justice apply because of the inherent equality of human beings, and must have global scope, since this equality is universal. So Beitz differs from Barry in that the reason for extending principles of justice to the global sphere for him are that the basic structure to which principles apply now exists (in his view at least) at the global level.<sup>77</sup> In contrast, Barry's reason for extending principles of justice to the global sphere is intrinsic to the theory of justice as impartiality itself. The very idea of impartiality demands that all individuals be subject to the principles and that the principles can be reasonably agreed upon by all individuals.

Barry has explicitly criticised Beitz's early attempts to extend Rawls' theory of justice to the global sphere. He denies Beitz's claim that the world resembles the type of cooperative scheme needed to support Rawlsian principles of justice.<sup>78</sup> But this denial doesn't mean (as some have interpreted it) that Barry is not in favour of global redistributive principles. Rather, it means that he doesn't think that they can be supported by a theory of justice as mutual advantage or justice as reciprocity.<sup>79</sup> As Tan points out, 'Barry is not rejecting the idea of global justice; to the contrary, Barry himself holds that it is a test point for a liberal theory of justice that it has global application – a liberal theory of justice that has no global scope is, on the face of it, unacceptable.'<sup>80</sup> Barry doesn't agree with the Rawlsian cosmopolitans that justice as fairness can support global principles of justice, even of a minimal kind. Barry's criticism of Beitz stems from that fact that Beitz pursues a theory of justice as reciprocity, whereas Barry favours (as we have seen above) justice as impartiality. If the criterion for just rules is that they are to the mutual advantage of all then until the world does constitute a cooperative scheme with concrete international institutions, this criterion will not support global redistributive principles.<sup>81</sup> If instead, as Barry favours, the criterion for just rules is fairness, then neither the level of global cooperation nor the existence of international institutions will affect the feasibility of global redistributive principles. So, as Chris Brown makes clear,

'Barry argues that the poor of the world are for the most part not engaged in a cooperative venture with the rich, and that it is clearly not to the advantage of the rich nations to assist the poor. Any view of justice as reciprocity or mutual advantage must exclude international distributive justice; in this respect Rawls was right to think in terms of two original positions, the second, for states, producing purely procedural justice, and Beitz was wrong to regard this as inconsistent with Rawls'

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<sup>76</sup> Barry, 'Statism and Nationalism', p. 37.

<sup>77</sup> Beitz argues that 'The conclusion that principles of distributive justice apply globally follows from the premise that international economic interdependence constitutes a scheme of social cooperation', *Political Theory and International Relations*, p. 154.

<sup>78</sup> Barry, 'Humanity and Justice in Global Perspective', p. 232.

<sup>79</sup> Barry, 'Humanity and Justice in Global Perspective', pp. 232-233.

<sup>80</sup> Kok-Chor Tan, *Justice Without Borders*, (Cambridge: Cambridge University Press, 2004), p. 58.

<sup>81</sup> Barry, 'Humanity and Justice in Global Perspective', pp. 232-233.

general approach. However, Barry argues that this objection tells against Rawls' original approach rather than against international distributive justice. The greatest inequalities are international, international arrangements are those most in need of reflective justification – a theory of justice that excludes them is inadequate.<sup>82</sup>

This contrast between the Rawlsian cosmopolitans and Barry's non-relational cosmopolitanism shows how the same kinds of principles (global egalitarian) can be arrived at via very different theoretical routes. This can lead to confusion and misinterpretation, as people assume that all of those who share a commitment to cosmopolitan conclusions must have arrived at them in the same way. I now want to briefly clarify why Barry's theory of justice is unequivocally non-relational, despite some claims otherwise.

Darrel Moellendorf has read Barry as a relationalist – he claims that, for Barry '...duties of distributive justice, conceived of as requirements of fairness at least, arise only within an already existing institutional framework of redistribution... Barry seems to conceive of the duties of fairness as associative duties and to take the requisite association to be a legal-political framework.'<sup>83</sup> Support for Moellendorf's interpretation can be found in a note in *Justice as Impartiality* – Barry states that '...until he came across Man Friday, Robinson Crusoe would have no reason with concerning himself with justice as impartiality.'<sup>84</sup> The example of Robinson Crusoe illustrates the idea that '...justice as impartiality is not designed to tell us how to live. It addresses itself to a different but equally important question: how are we to live *together*, given that we have different ideas about how to live?'<sup>85</sup> For Barry, then, justice as impartiality only applies when we are in contact with people – if there is no one else around then justice simply is not relevant. This might lead us to think that his theory is in fact relational, because it requires interaction between people before principles of justice become salient. However 'contact' in Barry's sense is very loose, and as long as our actions have potential implications for the ability of others to pursue their own conception of the good, then we are not free to pursue our own conception without restrictions. Principles of justice therefore apply non-relationally, because we can never assume that our pursuit of our conception of the good will have no implications for other people. For Barry, as for all non-relationalists of justice 'if considerations of justice apply, they apply regardless of the existing global cooperative arrangement... so long as others are vulnerable to our actions (or omissions), they fall within the scope of our just concern, whether or not our existing institutions facilitate such a concern.'<sup>86</sup>

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<sup>82</sup> Chris Brown, *International Relations Theory: New Normative Approaches*, (Hemel Hempstead: Harvester-Wheatsheaf, 1992), p. 180.

<sup>83</sup> Darrell Moellendorf, *Cosmopolitan Justice*, (Boulder, CO.: Westview Press, 2002), p. 38.

<sup>84</sup> Barry, *Justice as Impartiality*, p. 77, n. h.

<sup>85</sup> Barry, *Justice as Impartiality*, p. 77.

<sup>86</sup> Tan, *Justice Without Borders*, p. 59.

Part of the reason that Barry adopts justice as impartiality instead of justice as mutual advantage is that he thinks that the latter cannot support principles of global justice (as we saw above). Moellendorf mistakenly reads Barry's criticism of early Beitz as constituting his own view – that global justice requires the existence of a mutually advantageous scheme of social cooperation at the global level, a scheme which does not yet exist. It is only if we adopt justice as reciprocity or justice as mutual advantage that we will be forced to adopt a relational approach. Barry's own view is actually that if we adopt justice as impartiality then global principles of justice are supported, and that this counts as a reason in favour of the theory.

### **5.6. Implications for Global Justice**

As we've seen, the cosmopolitan conclusion that principles of justice have global scope follows from justice as impartiality. I now want to spell out in greater detail what kinds of global principles a cosmopolitanism based on justice as impartiality would support.

First, justice as impartiality supports a comprehensive set of human rights.<sup>87</sup> As we saw above, Barry claims that we have a prima facie reason to reject any principle of justice that does not protect our vital interests. The protection of vital interests provides support for a set of socio-economic rights such as the right to adequate food, water, shelter, and basic medical care. These are justified with reference to the shared universal needs of human beings. As such, Barry's account of human rights here is 'humanitarian' in the same way as Miller claims to be – it grounds rights in universal needs of human beings. Given that we have reason to reject any principle that doesn't protect our vital interests, as well as reason to reject any principle that arbitrarily favours the interests of others over our own, we can rule out any principle of justice that favours the non-vital interests of some people over the vital interests of others. As we saw, Barry explicitly states that the vital interests of everybody take priority over the non-vital interests of anyone else. So there is clear support for basic socio-economic rights which are inviolable and which take priority over other demands.

As well as these basic socio-economic rights, justice as impartiality can also provide support for liberal or civil rights. We saw above how justice as impartiality entails a liberal principle of equal freedom of worship. The same kind of argument can be used to justify liberal principles of equal freedom of expression, equal freedom of association, and so on. We all have a general interest in such freedoms because they are means by which we pursue our own conceptions of the good. Any attempt to impose restrictions upon such freedoms based

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<sup>87</sup> Barry states that his 'hypothetical contractarian approach... will underwrite the familiar list of basic human rights. Anybody whose human rights are violated – say, by being denied freedom of speech or freedom of religious worship – has a legitimate complaint', 'International Society from a Cosmopolitan Perspective', p. 157.

on reasons grounded in a particular conception of the good can be reasonably rejected by all those who do not share that conception. As Barry argues, 'anybody whose human rights are violated – say, by being denied freedom of speech or freedom of religious worship – has a legitimate complaint... regardless of the opinion of others in the society. Even if there is something approaching a consensus on the legitimacy of executing religious deviants, that is still a proposition that the nonbeliever in the society's orthodoxy can reasonably reject.'<sup>88</sup> So justice as impartiality entails a set of human rights covering both vital needs and the freedoms necessary to pursue one's own conception of the good.

Apart from protection of basic human rights, justice as impartiality also implies global egalitarian principles of justice.<sup>89</sup> Equality is the starting point for justice as impartiality, with all departures from it needing justification that is acceptable to those who will lose out. I showed above how we could derive a principle of equality of opportunity in the same way that Barry derives a principle of equal freedom of religious worship. It should be obvious that, barring any reasonable objections, this principle will apply globally, to all individuals. What could count as reasonable objections? Some things that cannot count as reasonable objections are fairly straightforward. We cannot simply limit the scope of a principle of equality of opportunity to within the nation or the state, for example, in a way that arbitrarily favours the interests of a members of particular nations or citizens of particular states. Restricting the scope of egalitarian principles to within states implies that we condone inequality between states. Citizens of wealthy states might object to egalitarian principles on the grounds that they would be too demanding, requiring them to redistribute large amounts of their wealth to poorer states. But the citizens of poorer states can reject the restriction of egalitarian principles to within the domestic sphere on the grounds that restricted principles would leave them in an unequal position. The wealthy states cannot reasonably expect the poorer states to accept a position of inequality that they themselves would not accept. Rejecting an egalitarian principle on the grounds that the burdens imposed upon you by such a principle are too great involves taking your interests as having more weight.

A more promising objection to a global egalitarian principle will be one that draws our attention to another value. So for example, returning to the example of a principle that favoured wealthy states over poor states, Miller argues (as we saw in Part II.) that any such principle could be justified if the reason for the inequality is that the wealthy states have voluntarily adopted some beneficial practice that the poor states have voluntarily chosen to not adopt. In that case the poor states can reasonably be expected to recognise that the

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<sup>88</sup> Barry states that justice as impartiality leads to a set of principles which 'rules out practices and institutions involving social relations within and between societies with an unequal impact that cannot be defended against reasonable rejection on the part of those who lose from the inequality', 'International Society from a Cosmopolitan Perspective', p. 157.

<sup>89</sup> Freeman, 'Universalism, Particularism and Cosmopolitan Justice', pp. 77-78.

unequal impact is the result of their own voluntary choices, and so can be justified. If however the poor states were not given a fair opportunity to adopt the beneficial practice, or were prevented from doing so by the wealthy states, then the principle would no longer be acceptable. International institutional bodies such as the World Trade Organisation or the International Monetary Fund must therefore ensure fair terms of cooperation between nation-states. All negotiations must take place with the interests of all individuals having equal weight – not just the interests of the citizens of the states who are present at the negotiating table, or those who have the most power at the negotiating table due to having larger economic or military clout. There may well be other reasonable objections to straightforwardly egalitarian principles at the global level, but in all cases justice as impartiality demands that any departure from equality must be justifiable to those who will lose out.

What would the world look like if we applied the principles of global justice that follow from justice as impartiality? It is clear that large-scale redistribution would have to take place from the wealthy countries of the world to the poorer ones. This would be initially to ensure the protection of the vital interests of the citizens of those states, which are currently not being met on a massive scale.<sup>90</sup> It should be pointed out that even though the proportion of people whose vital interests are not being met is huge, given the extreme inequality that characterises the world, redistribution to meet vital interests wouldn't bring us anywhere near to an equal situation.<sup>91</sup> So once everyone's vital interests had been met, further redistribution would be required to bring us closer to equality of opportunity. In *Why Social Justice Matters* Barry makes it clear that he thinks equality of opportunity can only be achieved through substantial redistribution of resources.<sup>92</sup> He accepts the normative importance of holding people accountable for their own decisions (and so agrees with Miller here), but doubts the factual claims made by Miller and others that current global inequality is largely due to bad decision-making at the national level.<sup>93</sup> He argues that the distribution of natural resources which has so much to do with current wealth distribution is a matter of luck, and that where human agency has played a part it is usually a prior generation who should be held accountable, not their descendants.<sup>94</sup> Barry here clearly disagrees with Miller's claims about responsibility for global poverty. We saw in Part II. that Miller holds that in many cases poor nations (or their governments) are outcome responsible for their

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<sup>90</sup> As we saw in the introduction to this thesis, around 40% of the world's population currently live on less than \$2 per day. United Nations Development Programme, *Human Development Report 2005*, (New York: UNDP), p. 4.

<sup>91</sup> According to the UNDP, 'The world's richest 500 individuals have a combined income greater than that of the poorest 416 million', and 40% of the world's population account for 5% of global income, whilst the richest 10% of the world's population account for 54% of global income. United Nations Development Programme, *Human Development Report 2005*, p. 4.

<sup>92</sup> Barry, *Why Social Justice Matters*, p. 46.

<sup>93</sup> Barry, *Why Social Justice Matters*, p. 216

<sup>94</sup> Barry, 'International Society from a Cosmopolitan Perspective', p. 150.

economic situations, and that the primary remedial responsibility for the relief of their plight therefore lies with themselves (or their government). In the concluding chapter of the thesis I will have much more to say about the implications for global justice of Miller and Barry's contrasting approaches, so I will leave this issue for now.

## **5.7. Conclusion**

In this chapter my aim has been to provide a clear outline of Brian Barry's theory of justice as impartiality, as well as to demonstrate how this theory leads to firm cosmopolitan conclusions. I've shown that Barry takes a non-relational and practice-independent approach to justice, which places impartial justification of principles of justice in terms that all people can reasonably accept at the foundation of the theory. This impartial justification has global scope, which leads to cosmopolitan principles of justice – including global egalitarian principles. This commitment to true impartialism at the global level marks Barry out as a firm non-relational cosmopolitan – his cosmopolitan conclusions flow from his deep commitment to the basic equality of all human beings. Inequality must be justified, according to Barry, because we are all fundamentally equal, and so departure from this must be for reasons that we can reasonably accept. This in contrast to relational cosmopolitans, who affirm global egalitarian principles only on the basis of global relationships of certain kinds.

Another key feature of Barry's theory of justice is the emphasis on limits, rather than prescriptions. He recognises that people have different, incompatible, conceptions of the good, and that in order for us all to be able to pursue them equally we need a set of principles that limit the extent to which we can prevent others from pursuing their own conceptions. But beyond the limits set by these principles we are free to pursue our own conceptions of the good as we please. Justice as impartiality doesn't tell us how to live in every area of life, it merely tells us what we cannot do to others in the pursuit of our own conceptions of the good. These limits are designed to be neutral – to impose equal burdens on all. In the next chapter I'll assess whether the limits really are neutral in the way that Barry claims.

Having provided an outline of Barry's non-relational theory of justice, I'll now go on, in the next chapter, to critically assessing his theory. I will be especially focusing on the criticisms of non-relational approaches outlined in Chapter Two, and on the arguments put forward by Miller against cosmopolitanism outlined in Chapter Three. I will seek to defend Barry against these criticisms in order to show that his theory provides an example of a non-relational theory of justice which is preferable to relational theories. In the final chapter of the thesis I will compare Miller and Barry's theories more explicitly to argue for this conclusion.

## **Chapter Six: A Defence of Barry's Non-Relational Approach to Justice**

### **6.1. Introduction**

In the previous chapter I outlined Brian Barry's non-relational theory of justice as impartiality. In this chapter I want to defend the approach against three major potential criticisms: (1) that it cannot provide a full account of partiality; (2) that it collapses into contextualism or relies on a particular conception of the good; and (3) that it employs an implausible account of motivation. My aim is to argue that justice as impartiality is an example of a non-relational approach that can provide a coherent and comprehensive theory of global justice. Having criticised Miller's relational approach in Part II., I am attempting to show that a non-relational approach based upon justice as impartiality is preferable. I will therefore be focusing on criticisms that are made from the relationalist point of view.

The first major criticism of non-relational, universalist, theories such as Barry's is that they cannot deal with or provide a proper, non-derivative, account of special treatment and interpersonal relationships. In the first section of this chapter I will outline Barry's justification for special treatment and partiality, which rests upon the distinction between first and second-order impartiality, and explain why I don't think it suffers from the same problems as some other universalist accounts. I'll also respond to the objection that whilst justice as impartiality might be able to conceptually account for special treatment, it cannot deal with an inevitable practical conflict between the demands of egalitarian principles of justice and freedom to express partiality.

The second problem arises out of the apparent indeterminacy of the test of reasonable rejection. The suspicion here is that in order to get answers out of justice as impartiality we have to smuggle various assumptions into the definition of what is reasonable – assumptions which themselves reflect the theorist's own convictions. Justice as impartiality needs to be able to answer the question 'how are we to know what is reasonable?' without appealing to fully contextualist justification or to a particular conception of the good. In response to this worry I'll argue that justice as impartiality can employ some level of contextualist justification without collapsing completely into a fully contextualist account, and that although the theory does rest on some moral assumptions, these are not thick enough to constitute a full conception of the good.

Finally I'll defend justice as impartiality against the claim that it rests upon an implausible account of motivation. As we saw in Part II., contextualist theories which employ interpretive methods have the advantage that they adhere with our commonsense intuitions



about justice, and are therefore motivationally powerful. In contrast, universalist theories are said to lack motivational force – the principles of justice they advance are demanding and seem to be illegitimately imposed from above. I shall argue that an account which takes Barry's approach can have motivational force, at least to the extent that it can match Miller's approach. I'll also claim that depending on how we interpret Miller's theory, his account of motivation is either very similar to Barry's, or instead it comes with unpalatable implications.

By the end of this chapter I hope to have defended Barry's non-relational approach against these main strands of criticism. This will then leave me in a good position to make a final comparison between Miller's relational approach and Barry's non-relational alternative in the final part of the thesis. Given the problems with the relational approach, if I can successfully show that the non-relational alternative doesn't suffer from equally significant problems, then I will be able to conclude that the non-relational approach is preferable.

## **6.2. Partiality and Special Treatment**

We saw in the previous chapter that Barry is confident about being able to provide a satisfactory account of the special treatment that arises within interpersonal relationships. However, as I demonstrated in Chapter Two, there remains a strong perception of a tension between non-relational cosmopolitan accounts such as Barry's, and the demands of these relationships. Specifically, it has often seemed as if the only way in which such theories can account for the special obligations which attach to such relationships is to view them as derived from our general obligations. The problem with derivative accounts of special obligations is that they don't cohere with our commonsense understanding of such obligations – they fail to ascribe to them the right kind of value. So a satisfactory account of special obligations must be a non-derivative account. In this section I will argue that justice as impartiality can provide a full account of the special treatment that takes place inside interpersonal relationships, including a non-derivative account of special obligations.

### **6.2.1. Barry's Account of Partiality**

Barry's account of partiality and special treatment appeals to the distinction that he draws between first and second order impartiality. To recap, first order impartiality is impartiality at the level of action, whereas second order impartiality is impartiality at the level of principle. Universal first-order impartiality would demand that we always consider everyone equally before acting, choosing the course of action that would produce the best outcome for all (however this is spelled out, i.e. in terms of utility or want-satisfaction, etc.). Barry's theory of justice as impartiality rejects first order impartiality but endorses second order

impartiality. Second-order impartiality does demand that we treat all people equally, regardless of their relationships with us, but at the level of principle formation, not at the level of action. In order to comply with second-order impartiality principles must be formulated impartially – which means that they must not be justified with reference to one particular group of people. Person-specific reasons therefore cannot be used to justify principle formation. The demand for equal treatment within second-order impartiality is met by principles of justice that are justifiable to everyone, in the sense that no-one can reasonably reject them. Universal first-order impartiality would rule out all partial action, and is therefore incompatible with special obligations. Barry unequivocally rejects it on these grounds. He states that the demands of universal first-order impartiality ‘constantly run counter to sentiments whose long-term survival value no doubt means that they have a basis in human biology.’<sup>1</sup> However second-order impartiality does not rule out partiality in the same way, because partiality at the level of action is allowable as long as it can be impartially justified at the level of principle. So justice as impartiality, which endorses second-order impartiality, has room for partiality and special treatment as long as it cannot be reasonably rejected.

The obvious question that now arises is: are there any forms of partiality and special treatment that are reasonably acceptable to people regardless of their conception of the good?<sup>2</sup> Barry claims that there are, appealing to a generic reason that we all have to pursue interpersonal relationships.<sup>3</sup> His argument here takes the same general form as the arguments for equality of freedom of religious worship, and equality of opportunity, that were outlined in the previous chapter. Barry states that:

‘All of us have only a finite amount of time, attention, care, and affection to devote to other people (or to ourselves for that matter), and life would scarcely be worth living if we could not decide for ourselves – once we had met our general social obligations – on whom these should be bestowed.’<sup>4</sup>

Common to all of us, regardless of our conception of the good, is the desire to treat the people close to us in special ways. We therefore have a *prima facie* reason to reject any principle of justice that doesn’t leave some room for this kind of partiality. If we were solely

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<sup>1</sup> Brian Barry, *Justice as Impartiality: A Treatise on Social Justice, Volume 2*, (Oxford: Clarendon Press, 1995), p. 205.

<sup>2</sup> I am remaining deliberately ambiguous at this point about the kinds of partiality and special obligation that I think justice as impartiality can support. I take it that a successful defence of justice as impartiality here only requires it to be able to non-derivatively account for the partiality central to our most intuitively valuable interpersonal relationships – i.e. to our family and close friends. The issue of special obligations to co-nationals and co-citizens is obviously highly contentious within global justice debates, and I will defer discussion of this until the conclusion.

<sup>3</sup> Both my argument and Barry’s rely on the assumption that interpersonal relationships require a certain amount of partiality and special obligation. I have provided support for this claim in Chapter Two. I will have more to say about the kinds of partiality and special obligations required for the maintenance of such relationships below.

<sup>4</sup> Barry, *Justice as Impartiality*, p. 201.

self-interested then we might have reason to reject any principle that restricted our ability to express our partiality at all. However, according to justice as impartiality we are motivated in part by a desire to reach agreement on principles of justice that are acceptable to reasonable people who share that goal. Given this, we cannot expect other people's ability to express their partiality to be restricted for the sake of us being able to express our own. In other words, we can only justify having the freedom to express partiality if we allow this freedom equally to others.<sup>5</sup> So justice as impartiality (initially at least) suggests a principle of justice that allows for equal freedom to express partiality through special treatment.

So far we've seen that room is made within justice as impartiality for special treatment by allowing that interpersonal relationships provide us with a generic reason to express partiality within those relationships. This gives us a prima facie reason to reject any principle of justice that restricts our ability to express such partiality. However, we saw in the previous chapter that there are a multitude of prima facie reasons for rejecting principles of justice, and it is clear that in this case our reasons might conflict. Imagine that we are choosing between a principle that allows me to express unrestricted partiality and one that demands that I redistribute my wealth to those less well off than me. On the one hand I have a prima facie reason to reject a principle of justice that restricts my ability to express the partiality inherent in my interpersonal relationships, but on the other hand those people who are less well off have a prima facie reason to reject any principle that leaves them in that unequal position. Unless by some coincidence the people whom I care about are the very same people who are less well off then these two reasons will conflict. We need to know how justice as impartiality deals with cases like these in which we have to balance competing concerns.

In this kind of case it is natural to think of the demands of one group of people as conflicting with the freedoms of another group. So the freedom of the members of a particular social group to express partiality to fellow members seems to conflict with the demand for equal treatment that can be made by non-members. However Barry stresses that in this kind of situation we must be careful not to assume that the freedoms of one group are being balanced against the demands of another, but to remember instead the interest in having these freedoms or demands met is shared by all. All individuals have reason to want the freedom to express partiality, and all individuals also have reason to want this freedom for others to be limited so that they aren't left in a position of inequality. Justice as impartiality forces us to recognise that if we want to place certain limits upon the freedom of others then we must also be willing to place the same limits upon ourselves, and that we must be willing to extend to others the same freedoms that we allow ourselves. In the case of partiality between

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<sup>5</sup> Barry, *Justice as Impartiality*, p. 200.

members of social groups, for example, we need to recognise the conflicting values of freedom of association and equality of opportunity as far as possible for everybody. Unlimited freedom of association allows systematic discrimination against excluded groups, denying them equality of opportunity (a simple example is a private members club in which business deals are conducted). The further we move towards universal first-order impartiality, and therefore the more limits we place on freedom of association, the less disadvantaged these excluded groups will become (because the discrimination which leads to their disadvantage will decrease). But this does not mean, Barry argues, that members of the excluded disadvantaged groups would reasonably reject any principle that allows some freedom of association, because freedom of association has value for them just as much as it does for the advantaged groups in society.

So whilst some people have a *prima facie* reason to reject principles that allow for partiality (because they would be better off under a fully impartial and egalitarian distributive principle), those very same people also have a *prima facie* reason to reject principles that do not allow for any partiality at all (because they have a general interest in pursuing interpersonal relationships). Rather than a conflict between the interests of one group and the demands of another, then, we are actually dealing with a conflict between reasons that each individual agent has. We still have to decide how exactly to balance these reasons, but it should be clear that we can reasonably reject both a principle that rules out all forms of partiality, and a principle that allows for unlimited partiality. The right balance will be somewhere in between. Barry doesn't provide much guidance here, except to appeal to the 'Goldilocks' solution, which 'calls for neither too much first-order impartiality nor too little, but just the right amount, or, more precisely, an amount within a range whose limits would be established by the parties to a Scanlonian original position... This requires a set of rules of justice that provides everyone with a fair opportunity of living a good life, while leaving room for the kind of freedom in shaping one's life that is an essential constituent in every conception of the good life.'<sup>6</sup> Whilst Barry's argument here doesn't tell us exactly which forms partiality will be allowed and which will not (I will address this issue of indeterminacy below), it does enough to make it clear that there is a least conceptual space within justice as impartiality for non-derivative special obligations. However much partiality we eventually decide is reasonable, we will not be basing our decision solely on the instrumental value of that partiality. The generic interest that people have in the maintenance of interpersonal relationships is a non-derivative interest flowing directly from the intrinsic value of such relationships in general. As Samuel Scheffler argues '[t]he fact that a particular relationship is mine is not only a legitimate reason for departing from equal treatment, it is the basic

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<sup>6</sup> Barry, *Justice as Impartiality*, pp. 206-207. See also Michael Freeman, 'Universalism, Particularism and Cosmopolitan Justice', in T. Coates (ed.), *International Justice*, (Aldershot: Ashgate, 2000), p. 79.

reason.<sup>7</sup> So the special obligations that justice as impartiality makes room for are non-derivative – they are not derived from general obligations in any way.

However, even though justice as impartiality can conceptually account for non-derivative special obligations there are two remaining objections that need to be dealt with before we can declare it a fully successful account. First, there is the objection that justice as impartiality demands too much (or the wrong kind of) justification of special treatment. Second, there is the objection that even if justice as impartiality can make conceptual room for special treatment, in practice the demand for equality will always conflict with the demands of interpersonal relationships. I shall now respond to both of these objections in turn.

### 6.2.2. 'One Thought Too Many'

As we saw in Chapter Two, Bernard Williams famously objects that impartialist theories of morality demand too much justification of partial actions. So, in the situation where a man is faced between making the choice between saving his wife and saving a stranger, it would be 'one thought too many' if his reason for saving his wife was something like 'because she's my wife, and in situations like this it is permissible to save one's wife.'<sup>8</sup> The fact that she is his wife should be sufficient. Williams' objection is that impartialist moral theories demand an extra level of justification that isn't, and shouldn't, be available to the agent in this situation. In order to respond to this objection I'm going to elaborate upon a response made by Barry.

Barry denies Williams' claim that we should resist the thought that there is a two-level justification for saving one's wife in this type of situation. Whilst he agrees with Williams that second-order justification should not necessarily be consciously available to the agent at the time of acting, he denies that justice as impartiality demands that it should be. Barry argues that even if it is not consciously available at the time, nevertheless the second level of justification must be available at some point, otherwise we will have to accept 'it was his wife' as justification for any act of favouring his wife in any circumstances. There are reasons why in such situations one is allowed to save one's wife over a stranger but not one's coat over a stranger, for example. Barry argues of Williams that:

'surely even he must admit that at some point the legitimate priority of a personal attachment runs out. If this is conceded, Williams is faced with the embarrassment

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<sup>7</sup> Samuel Scheffler, 'Conceptions of Cosmopolitanism', in *Boundaries and Allegiances*, (Oxford: Oxford University Press, 2001): 111-130, at p. 121.

<sup>8</sup> Bernard Williams, 'Persons, Character and Morality', in *Moral Luck*, (Cambridge: Cambridge University Press, 1981), p. 18.

that we apparently need a general theory to tell us where this point comes. If the 'one thought too many' objection is really an objection, it now simply crops up at a different point. For we must now presumably say that, before saving his wife, the man now has to think: 'It's my wife and this is the sort of case where that thought is sufficient.'<sup>9</sup>

I think that Barry's line of response here is right – we shouldn't resist the need for justification of partiality, and it is wrong to assume that demanding justification will be damaging or inappropriate within personal relationships. To see why this is so I wish to make a distinction between two different aspects of partial behaviour or special treatment which we might think need justifying. First, we might think that we need to justify who we are partial towards – i.e. we might need to justify our choice of friends and loved ones. If this was the case then we would need to consider the possible people that we could be friends with, and choose on some impartial basis, whether that be desert, neediness, etc. This could be thought crudely as justifying how we distribute our love and affection. Second, we might think that we need to justify how we let our relationships with others affect how we treat them in relation to other people. For example, we would need to justify paying thousands to send our children to private school when that money could be spent on providing state education for several other children. The question here is, does the relationship of parent allow us to favour our children in this way – can we justify this to other people? Again crudely, this can be thought of as justifying how we let our love and affection affect our distribution of time, care, and resources amongst everyone.

The first option is clearly undesirable – we don't want to have to justify why we choose to be friends with some people over others, and a demand for such justification would be inappropriate.<sup>10</sup> Whilst there may well be reasons why we choose to be friends with some people over others, such as common interests or similar backgrounds, we tend not to subject these reasons to critical scrutiny, and neither do we think that we should. However the second option is not problematic in the same way. We recognise that in some situations favouring our friends and loved ones is acceptable and desirable, but equally we recognise that in some situations this favouring is unacceptable and not permissible. So for the most part parents should favour their own children over other children, but if responsible for judging a talent competition they should be impartial between all the children entered, and awarding the prize to their own child without reference to talent would be wrong. We can list at length examples such as these in which common sense morality gives us the answer needed. What is clear is that our personal relationships do not give us free reign to act as we choose. Just as in other areas of life, we are limited by the demands of justice. Justice as

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<sup>9</sup> Barry, *Justice as Impartiality*, p. 232.

<sup>10</sup> Barry makes a claim along these lines when he writes 'We become friends with people not because they score higher on some list of objective characteristics than other people we meet but because for some reason or other we like their company and want to be associated with them', *Justice as Impartiality*, p. 15.

impartiality is able to explain and account for this picture. We formulate principles of justice that no one can reasonably reject, and then as long as we abide by these principles we are then free to pursue our conception of the good and sustain personal relationships however we please. Justice as impartiality doesn't demand that we justify our choice of relationships, it rather demands that we justify the extent to which we treat the people with whom we have relationships differently to those with whom we are in no relationship. We can conceive of impartialist theories that would demand the first type of justification which is rightly seen as objectionable. Any derivative account of special treatment has this problem. However justice as impartiality has room for non-derivative special obligations which follow from the way in which agents themselves value relationships.

### 6.2.3. Practical Conflict

I've now shown that justice as impartiality can conceptually account for non-derivative special obligations, and that it does so in a way that doesn't demand too much or the wrong kind of justification. However, we might still worry that there will be an inevitable practical conflict between the expression of partiality through special treatment and egalitarian principles of justice which will mean that we have to choose between one or the other. As Freeman argues, '[t]he problem unresolved by Barry is that the provision of a fair opportunity for everyone in the world to live a good life, starting with the actual status quo as a baseline, would require a redistribution of resources on such a large scale that the freedom essential to every conception of the good life would be impossible.'<sup>11</sup> There are two main responses which I think can be made here.

First, I think that Barry would be the first to admit that the demands of egalitarian principles of justice do in practice conflict with our unfettered practice of partiality within interpersonal relationships and pursuit of our own conceptions of the good. To a certain extent I think Barry would like to say so much the worse for relationships and personal freedom; removing injustice takes priority and, especially in a vastly unequal world like ours, this will require sacrifices. To a certain extent we have to accept that, given the current level of global inequality, our current levels of partiality in the wealthier parts of the world are highly unjust. As Barry argues, 'It is an unavoidable implication of any set of moral norms that can be squared with second-order impartiality in any of its forms that people may be unlucky enough to find themselves in situations where doing the right thing entails great sacrifice.'<sup>12</sup> I would argue that straightforward demandingness is not a knock-down objection to a theory of justice, because the claim that a particular action is demanding does not straightforwardly

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<sup>11</sup> Freeman, 'Universalism, Particularism and Cosmopolitan Justice', p. 79.

<sup>12</sup> Barry, *Justice as Impartiality*, p. 223.

entail the conclusion that such an action is wrong. So the fact that justice as impartiality would require large-scale redistribution which would be burdensome to the well-off peoples of the world does not give us a reason to reject the theory without further argument as to why demanding actions are morally suspect. Furthermore, the objection from demandingness fails to consider all relevant points of view. Whilst global egalitarian principles makes substantial demands on the rich, we should not forget that the rejection of such principles would be far more burdensome to the poor peoples of the world. Assuming that demandingness constitutes a good reason to reject a theory in this case involves taking the interests of the well-off to matter more than the interests of the poor, or claiming that practicality should outweigh the requirements of justice.

Second, I think the extent to which the maintenance of personal relationships (which is the specific issue at stake here) requires a high level of economic resources is often exaggerated. In Barry's view equality of opportunity requires a large amount of redistribution of resources. This might cause a conflict with the maintenance of personal relationships *if* those relationships can only be sustained by the use of the same resources. So for example, if justice as impartiality requires that I pay 90% of my income to the state in taxes for redistributive purposes, but the remaining 10% is not enough for me to fulfil my special obligations to my children, then we have a clear conflict. But this is an implausible picture. I arguably have a special responsibility to make sure that the needs of my children are met, and this does require a certain level of resources. However justice as impartiality demands that the basic material and social needs of everyone are met by the state (or equivalent institution in the global arena) so I will have help with this. The needs which the state cannot meet (for affection, love, attention and so on) do not require material resources.<sup>13</sup> As long as I can meet my own basic needs without spending all my time working (which I will be able to under justice as impartiality) then I will have the time to fulfil these emotional obligations. It is therefore mistaken to assume that material redistribution will conflict with our ability to sustain a special relationship to our children, for example, or to fulfil our special obligations towards them. We should also recognise that there is a difference between our special obligations towards our children, which we might characterise as role obligations, and the desire which we have to be able to express partiality towards them through special treatment and attention. On the one hand there is a demand upon us, a set of obligations of justice, which may themselves sometimes clash with our other duties of justice. On the other hand there is a license granted to us to act in contradiction of the general demand for impartiality. As I've argued, justice as impartiality supports a set of special obligations that cohere with our general picture of important social roles such as parent. The amount of special treatment which is licensed by justice as impartiality will to some extent depend upon the level of

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<sup>13</sup> Harry Brighouse and Adam Swift have argued along these lines in 'Legitimate Parental Partiality', *Philosophy and Public Affairs*, 37/1 (2009): 43-80.



scarcity and inequality present in the world (see next section for more on this), but as long as we recognise a generic interest in this license then justice as impartiality can support it also.

So, in summary, justice as impartiality does have room for non-derivative special obligations as well as some license for the expression of partiality through special treatment. This is essentially because we can reasonably reject principles of justice that do not make room for these forms of partiality. However, one way in which a relationalist might respond to my argument here is to question how exactly we know that these forms of partiality are reasonable – that we can reject principles of justice that don't allow for them. Barry's account is premised on the claim that we all have an interest, stemming from the naturalness of partial sentiments, in the maintenance of interpersonal relationships, and that such relationships require a certain amount of partiality. This interest is independent of any particular conception of the good, and so can be cited as a reason for reasonable rejection. But a critic might continue to object here that it is not clear how we would distinguish between particular cases of partiality – how we would decide which are reasonable and which are not. I'll consider this question – how do we know what is reasonable? – in the next section.

### **6.3. How Do We Know What is Reasonable?**

I've argued above that justice as impartiality can provide an adequate account of partiality. However a serious question remains about the ability of such an account to provide a determinate answer to the question of how much partiality is allowed according to justice as impartiality, or to explain why partiality is allowed in some situations but not in others. As we've seen, Barry claims that justice as impartiality 'calls for neither too much first-order impartiality nor too little, but just the right amount.' But as Freeman points out, this is a 'rather indeterminate' answer.<sup>14</sup> The actual answer is going to depend on what counts as a reasonable partiality and what doesn't. But how do we know what is reasonable? In this section I'm going to consider how Barry might be able to answer this question. I'm going to argue that he can appeal to a certain level of contextualist justification, but that this doesn't mean that the account collapses into full-blown contextualism. I'll then defend it from a further worry that the notion of reasonableness has a particular conception of the good built into it.

Barry's own response to the potential problem of indeterminacy about the exact level of partiality which his theory allows is to retort that 'if something is not easy to determine then it is not easy to determine, and any theory that makes it look easy must be some kind of

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<sup>14</sup> Freeman, 'Universalism, Particularism and Cosmopolitan Justice', p. 79.

fraud.’<sup>15</sup> He is not averse to allowing that a range of distributive principles would be compatible with justice as impartiality, and stresses that the main role of the test of reasonable rejection is to determine the limits of justice, rather than to prescribe a particular outcome. He states that:

‘the theory of justice as impartiality... does not aspire to offer a blueprint for a just society which leaves no room for historical contingency or collective decision-making. Consistently with the demands of justice as impartiality, societies can develop different sets of moral norms, and they can take different collective decisions within the area legitimately open to collective decision-making.’<sup>16</sup>

So according to Barry we shouldn’t expect justice as impartiality to be able to provide a clear answer in every case, but instead realise that it allows for a set of principles within certain limits. This isn’t a wholly satisfying answer, since the question remains, what are those limits, and how are they determined? To take the case of familial partiality as an example, where should we draw the line between acceptable and unacceptable forms of favouring one’s children? In some cases we have very strong intuitions as to whether partiality is allowable or not. So for instance, it is generally accepted that nepotism in the allocation of political appointments is unacceptable. And to take a more specific example, most people would view it as unacceptable to favour my own child over a more talented child when awarding the £10 prize in a talent competition but not wrong for me to favour her over the more talented child when allocating £10 in the form of pocket money. It seems that justice as impartiality should have something to say about such cases in order to explain our strong intuitions.

If we think that our intuitions are right in these two cases then we are presumably committed to thinking that in the talent competition case my reason to reject a principle that doesn’t allow me to be partial is outweighed by a reason that the most talented child has to reject a principle that doesn’t recognise her claim on the basis of her talent. In the pocket money case, however, it seems that my reason to reject a principle that doesn’t allow me to be partial itself outweighs this competing reason. My reason to reject a principle that doesn’t allow me to express my partiality by giving £10 to my child is outweighed in one instance but not in another. Now in order to get at the heart of what separates the two cases we need to keep all other things equal. So I am going to assume that the set of reasons in each case are the same. The question which we need to be able to answer is why in one situation (talent competition) child A’s talent outweighs child B’s relationship to myself, whereas in the other situation (pocket money) child B’s relationship to myself outweighs the talent of child A?

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<sup>15</sup> Brian Barry, ‘Something in the Disputation not Unpleasant’, in Paul Kelly (ed.), *Impartiality, Neutrality and Justice: Re-Reading Brian Barry’s Justice as Impartiality*, (Edinburgh: Edinburgh University Press, 1998), p. 213.

<sup>16</sup> Barry, *Justice as Impartiality*, p. 197

### 6.3.1. Contextualist Justification?

A contextualist like Miller has an easy answer here – he can distinguish between the different distributive contexts of prize giving and pocket money, and argue that the internal distributive logic of the context determines whether talent or familial relationship is the salient consideration. In many ways this seems like the right kind of answer. After all, if the set of reasons is the same in both cases then something else must be different which explains their variable salience. And how else can we explain this difference except by saying something like ‘in talent competitions talent *just is* the significant concern in a way that it *just isn’t* in the allocation of pocket money.’ Presumably, however, I cannot ascribe such a move to Barry, because it involves appealing to contextual justification. I have criticised contextualist theories of justice for being inherently conservative and lacking critical force, and so if justice as impartiality turns out to in some sense collapse into contextualism then my argument is in trouble. It would be a mistake, however, to assume that any appeal to contextualist justification along these lines would result in a collapse into contextualism. I think that there are two significant ways in which justice as impartiality can admit contextualist variation without collapsing into full-blown contextualism, as I’ll now explain.

Sticking with the example of parental partiality, we can expect contextual variation of principles in two ways, as follows. First, the amount of partiality that is allowed will vary depending on the particular global circumstances that we find ourselves in. So in a situation of global scarcity, in which there are only just enough resources available globally to meet the basic needs of each individual, then the freedom of parents to express partiality will have to be limited. In a situation of abundance basic needs can be met for everybody with some left over, and so (all other things being equal) parental partiality can be allowed to increase. In this first sense then the amount of parental partiality licensed by justice as impartiality is contextual – it will vary according to the particular global situation. However this kind of contextualism is unproblematic for a universalist, it is simply a recognition that our principles of justice must be sensitive to certain facts about the world. Justice as impartiality can recognise that theorising about justice should not take place in a vacuum, and that there are relevant empirical considerations that must be taken into account. But the process of justification remains intact – principles of justice are still subject to the same universal test of reasonable rejectability.

The second form of contextualism which I think justice as impartiality allows is more significant, and is relevant to the cases considered above. Justice as impartiality will allow that partiality can be justified in one particular social context but not in another, and can explain this with reference to the fact that the relative strength of reasons can vary from context to context. However this does not mean, in contrast to how it may appear at first, that

justice as impartiality collapses into full-blown contextualism. I'll now outline how I think justice as impartiality can employ this kind of contextual justification whilst remaining universalist.

I think it makes sense to say that when particular social practices have certain allocative criteria built into them as constitutive norms then justice as impartiality will respect these norms. So in the case of a talent competition we can say that it is constitutive of the practice itself that talent is the appropriate allocative criteria. In other words, it is central to the very idea of a talent competition that prizes be awarded on the basis of talent. This is why child A's talent outweighs child B's relationship to me in the talent competition case but not in the pocket money case. There is room for contextual variation in the relative weight of particular reasons. So in the talent competition case child A's reason to reject a principle that doesn't reward her talent is more significant than her very same reason in the pocket money case. The additional norm which is present (and constitutive) in the talent competition case in effect tilts the scales so that talent becomes a weightier consideration than it would otherwise be. In this sense the amount of parental partiality licensed is contextual – it can vary according to the particular social setting. This level of contextual variation brings justice as impartiality closer to the kind of contextualism espoused by Miller and Walzer, but there remains a clear difference between the two kinds of approach. Full-blown contextualism relies solely on contextualist justification of this kind, whereas justice as impartiality as I am interpreting it only partially relies on contextualist justification.

It is important to note that the additional norm in the talent competition case does not render all other reasons insignificant. All it does is tell us that talent is the main factor that we should take into account in this situation. And even more importantly we should recognise that justice as impartiality will set limits on the kinds of social practices that we can justly initiate. So for example, we could not consistently with justice as impartiality set up a competition in which prizes were allocated on the basis of skin colour. The constitutive norm in this case would be reasonably rejectable by those who would be discriminated against on the same grounds as racist principles can generally be reasonably rejected – because they arbitrarily favour the interests of one group over another. This caveat is extremely important because it serves to prevent the collapse of justice as impartiality into full-blown contextualism. Despite allowing that contextually-variable constitutive social norms can affect the salience of reasons, justice as impartiality remains non-contextual in the most fundamental sense – there is a universal standard of justification that applies in all cases and regulates all principles. So it should not be concluded from the fact that some forms of contextual justification are allowed that an account like Barry's must be fully contextualist in the same way as a theory like Miller's is. The key difference between the two approaches is that contextualism doesn't allow any justification of principles apart from contextual

justification. Justice as impartiality not only allows context-independent justification of principles of justice, but demands it. In our example of the talent competition, the contextualist justifies the special significance of talent in the same way as I have above – by appealing to some kind of constitutive norm. However, unlike my argument above, for contextualists this constitutive norm is not itself subject to any further justification process.<sup>17</sup>

So I think that justice as impartiality can provide determinate answers to the question of when partiality is reasonable, and can explain why this varies in different situations. I've argued that justice as impartiality can appeal to contextualist norms which provide guidance in certain situations, but that it can do so without collapsing into full-blown contextualism. I will have more to say about the implications of the differences between contextualist and universalist justification in the conclusion. My argument in this section has relied on the claim that the test of reasonable rejectability provides a crucial extra level of justification which protects justice as impartiality from a collapse into contextualism, and allows partiality to be defended with reference to a neutral standpoint. At this point I anticipate that a contextualist might object that it is this test of reasonable rejectability which itself is problematic. The suspicion might be that the notion of reasonableness itself relies on specific moral assumptions, which constitute a particular conception of the good reflecting the theorists own commitments. If this were the case then justice as impartiality would not be neutral in the way that Barry asserts. I'll consider this objection in the next section.

### **6.3.2. A Specific Conception of the Good?**

We saw in the previous chapter that Barry's theory of justice as impartiality is put forward as a neutral solution to the problem of reasonable pluralism – the fact that there are several different competing conceptions of the good, and there seems to be no way to distinguish one as superior. Justice as impartiality therefore aims to be neutral between competing conceptions of the good. However, as I've introduced briefly above, there is a potential objection that can be made by a contextualist critic of justice as impartiality here. It is clear from the preceding discussion in both this and the previous chapters that one central notion of justice as impartiality is reasonableness. Specifically, when determining which forms of partiality are just, and which are not, our answer will depend on which forms of partiality we think are reasonable. The objection that a contextualist might make here is that the notion of reasonableness itself contains particular moral assumptions which determine the recommendations of the theory. If true this objection would be damaging, especially since I

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<sup>17</sup> The difference between the two kinds of justification echoes that between the two different forms of contextualism that I outlined in Part II. Justice as Impartiality as I am developing it here is similar to the universalist contextualism that Miller sometimes seems tempted to adopt. This is, as I outlined there, very different from interpretive contextualism, which remains fully contextualist at all levels of justification. See Section 6.4. below.

have criticised contextualism itself for failing to be properly objective. One version of this criticism comes from Alasdair MacIntyre, who argues that supposedly neutral liberal theories, like justice as impartiality, covertly assume a specifically liberal conception of the good, and are therefore not neutral in the way that they claim. MacIntyre's criticism is aimed at liberal theories of justice more generally, and to provide a defence against it in its entirety is not feasible here. In this section my aim is simply to defend justice as impartiality against this charge.

MacIntyre claims that the impartialist approach that theories such as Barry's adopt 'covertly presupposes one particular partisan type of account of justice, that of liberal individualism, which is later to be used to justify, so that its apparent neutrality is no more than an appearance.'<sup>18</sup> He states that:

'liberalism, while initially rejecting the claims of any overriding theory of the good, does in fact come to embody just such a theory. Moreover, liberalism can provide no compelling arguments in favour of its conception of the human good except by appeal to premises which collectively already presuppose that theory. The starting points of liberal theorising are never neutral as between conceptions of the human good; they are always liberal starting points.'<sup>19</sup>

Barry reads MacIntyre's criticism, I think correctly, as the claim that liberal individualism (in this case justice as impartiality) is covertly grounded on a distinctively liberal individualist conception of the good. The conclusions of a liberal individualist theory like justice as impartiality (that we should remain neutral between competing conceptions of the good) rest upon a premise which is supposedly neutral, but in fact 'embodies a distinctively liberal individualist conception of the good.'<sup>20</sup> So the charge against justice as impartiality is that the liberal individualist principles that it supports (such as equal freedom of religious worship) in fact depend upon a specifically liberal individualist conception of the good which the theory embodies. If justice as impartiality in fact embodies a specific liberal individualist conception of the good, then what is the content of that conception? Barry considers two possible alternatives here – a conception of the good as autonomy, and a conception of the good as want-satisfaction – and denies that justice as impartiality depends on either.<sup>21</sup> Instead, he claims, justice as impartiality is derived from a demand for consistency when we make claims about justice.

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<sup>18</sup> Alasdair MacIntyre, *Whose Justice? Which Rationality?* (London: Duckworth, 1988), p. 4.

<sup>19</sup> MacIntyre, *Whose Justice? Which Rationality*, p. 345.

<sup>20</sup> Barry, *Justice as Impartiality*, p. 127.

<sup>21</sup> Barry, *Justice as Impartiality*, pp. 119-138. More specifically, Barry argues that a conception of the good as autonomy does not support neutrality between competing conceptions of the good (so could not ground justice as impartiality), and that whilst a conception of the good as want-satisfaction can support this conclusion, justice as impartiality reaches it in a different way which does not make appeal to a specific conception of the good.

Justice as impartiality appeals to the idea that if you can reasonably reject an argument put forward by another based on his belief in his own conception of the good, then you must recognise that he can do the same to arguments put forward by you based in your belief in your own conception of the good. The only reasonable thing to do is to only put forward arguments that are neutral between competing conceptions of the good.<sup>22</sup> This argument for justice as impartiality doesn't appeal to any particular conception of the good, it simply relies on our unwillingness to accept reasons grounded in other people's conceptions of the good coupled with a demand for consistency between the type of reasons we are willing to accept and the type of reasons that we think others should accept. So, as Barry explains:

'Suppose you were to say: 'The reason why I should be able to practise my religion but you should not be able to practise yours is that mine is right and yours is wrong.' You would, obviously, reject a claim made in similar terms by somebody else with opposing ideas about what was right and what was wrong. In rejecting that claim you would be acting reasonably. But then it follows that you cannot reasonably object when others reject your claim.'<sup>23</sup>

I think that Barry's response to MacIntyre is correct – justice as impartiality does remain neutral between competing conceptions of the good. But there may still be a worry which is weaker than MacIntyre's but nevertheless problematic for Barry. Freeman argues that 'there must be moral inputs to any theory that has moral outputs. Thus, although the theory of justice as impartiality is neutral between conceptions of the good, it is based on the substantive moral idea of the equality of all human beings.'<sup>24</sup> So even though justice as impartiality is neutral between competing conceptions of the good as Barry claims, we still might worry that it rests upon a substantive moral claim.

We can't deny that Barry endorses a claim about the moral equality of all individuals, since he explicitly expresses his support for a cosmopolitanism that 'does not recognise any categories of human beings as having less or more weight; and... includes all human beings'.<sup>25</sup> We might think, as Barry admits, that '[t]here is nothing inevitable about such a claim: it would be denied by anybody who maintains that the interests of members of different races or ethnic groups are not to be weighed on the same scales.'<sup>26</sup> This would imply that this a substantive moral claim. I think that even though Barry is committed to a claim about the moral equality of all individuals, which could be disputed by some illiberal outlooks, this is not problematic for my defence justice as impartiality. This is partly because, as we saw in the first chapter, a commitment to moral equality of this type is shared

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<sup>22</sup> Barry, *Justice as Impartiality*, p. 142.

<sup>23</sup> Barry, *Justice as Impartiality*, p. 142.

<sup>24</sup> Freeman, 'Universalism, Particularism, and Cosmopolitan Justice', p. 75.

<sup>25</sup> Brian Barry, 'Statism and Nationalism: A Cosmopolitan Critique', in Ian Shapiro and Lea Brilmayer (eds.), *Global Justice*, (New York: New York University Press, 1999), pp. 35-36.

<sup>26</sup> Barry, *Justice as Impartiality*, p. 8.

by all parties to the debate I am concerned with. But even if this consensus didn't exist, justice as impartiality can still be defended without reference to this substantive claim. What is really doing the work in the argument for justice as impartiality is the sceptical claim that we cannot be sure enough about any particular conception of the good to endorse it as the basis of reasonable agreement. If people wish to be able to reject claims made on the basis of conceptions of the good that they don't agree on, then they should be prepared to accept that other people can reject claims that they themselves make on the basis of their own conception of the good. As soon as we recognise that everyone is in the same situation then we have to conclude that we should be neutral between competing conceptions of the good. The argument here rests on the assumptions that there are a plurality of conceptions of the good, and that we cannot prove that any one conception of the good is better than any other. We have to live together in a bounded geographical space (Earth), and so have to find principles that can regulate our interactions with each other. We cannot base these principles on any single conception of the good, because we cannot be sure about the superiority of any one conception, so we have to justify principles in a way that remains neutral between all competing conceptions. Justice as impartiality is supported by Barry's belief that we have to be sceptical about all conceptions of the good, not his commitment to the moral equality of all human beings.

In summary, justice as impartiality, in order to provide determinate answers to questions about which forms of partiality are just and which are not, can employ a kind of contextualist justification. What this means is that we can explain why partiality in some contexts is just, whilst in others it is not, and this explanation can reference socially constituted norms and practices. But this contextualist justification is constrained by the demand that we always refer back to the test of reasonable rejectability which takes the viewpoint of all persons into account. This is what distinguishes it from a fully contextualist account. The notion of reasonable rejectability doesn't depend upon substantive moral claims or upon a substantive conception of the good. Instead it rests on the recognition that it is an empirical fact that we are forced to share a bounded world with others who have different conceptions of the good to ourselves, and that we cannot be sure which conception of the good is superior.

#### **6.4. Motivation**

The third major criticism made against non-relational theories in general, and which I therefore need to defend justice as impartiality against, is the claim that such theories have insufficient motivational force, or rest upon an implausible picture of moral motivation. In this section I'll outline this criticism as it applies to justice as impartiality and outline the response which I think is most promising. In order to defend justice as impartiality here I will compare the account of motivation that it offers with Miller's account which was



outlined in Part II. I'll argue that whilst Miller's account might be superficially stronger, this strength only comes at the expense of other important virtues which a good theory of justice should possess.

We saw in the previous chapter that Barry's argument for justice as impartiality 'presupposes the existence of a certain desire: the desire to live in a society whose members all freely accept its rules of justice and its major institutions', or more generally speaking, 'a desire to reach agreement with others on terms that nobody could reasonably reject.'<sup>27</sup> This desire arises from the fact that we are forced to live together in a geographically bounded space, and so need to find rules by which we can regulate our interactions with each other. Barry does not think that this particular premise of his argument is at all problematic. He states that 'the desire to be able to justify actions and institutions in terms that are in principle acceptable to others is, fortunately, widespread.'<sup>28</sup> However it is clear that many would dispute such a claim – as Hardin points out 'the main complaint by Hobbes, Hume and many other theorists against a theory such as reciprocity or Barry's impartiality is that it depends on a motivation that is, though perhaps not rare, nevertheless too limited to underwrite government. The pragmatic appeal of Hobbesian and Humean theory is... grounded in the deep conviction that such motivations of morality as altruism, fairness, or even justice somehow defined simply will not carry the day in real life.'<sup>29</sup> This problem will no doubt be especially pressing in the international sphere, where motivations to behave fairly and to justify one's actions to others are substantially weaker.<sup>30</sup> At times Barry's response to this is to reject the supposed need for a theory to have motivational force: 'some writers appear to believe that a theory of justice must somehow pick people up by the scruff of the neck and force them to behave justly, regardless of their beliefs or inclinations. This is an absurd demand, as a moment's thought should be enough to show.'<sup>31</sup> He states later that his 'concern is with truth, not popularity.'<sup>32</sup> So we can assume that Barry thinks that justice as impartiality can escape objections based on motivational force, either by rejecting the idea that motivational force is important, or by showing that justice as impartiality does possess sufficient motivational force to be satisfactory.<sup>33</sup>

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<sup>27</sup> Barry, *Justice as Impartiality*, pp. 164, 168.

<sup>28</sup> Barry, *Justice as Impartiality*, p. 168.

<sup>29</sup> Russell Hardin, 'Reasonable Agreement: Political not Normative', in Paul Kelly (ed.), *Impartiality, Neutrality and Justice*, (Edinburgh: Edinburgh University Press, 1998), p. 146.

<sup>30</sup> Freeman, 'Universalism, Particularism and Cosmopolitan Justice', p. 76.

<sup>31</sup> Barry, *Justice as Impartiality*, p. 114.

<sup>32</sup> Barry, *Justice as Impartiality*, p. 115.

<sup>33</sup> Barry did intend to argue in the third volume of the *Treatise on Social Justice* that 'some well-known arguments about the psychological impossibility of impartial justice are misguided', but unfortunately this project was abandoned, *Justice as Impartiality*, p. 115.

Given that I am offering Barry's theory as an alternative to Miller's contextualism, I want to defend the motivational force of justice as impartiality. For we have seen that one of the strengths of a contextualist theory like Miller's which is grounded in people's commonsense intuitions is that people are more likely to be motivated to act in accordance with it. My arguments will therefore primarily be responses to Miller's critique of universalist theories. I do not want to simply reject the idea that motivational force is an important thing for a successful theory of justice to possess, even though I do have some sympathy with Barry here. I will therefore explore possible arguments that Barry might be able to appeal to in order to show that justice as impartiality does in fact possess motivational force. I will also argue however that whilst this force is important, it can only be achieved beyond a certain degree at the expense of other, more important concerns, and that Miller's contextualism falls on the wrong side of this trade-off. This argument will draw on the discussion of Miller's theory in the previous section.

To recap from Part I., Miller claims that universalism:

'rests on an implausible account of ethical motivation.' This is because under a universalist theory 'when I act on moral principle, I am supposed to act simply out of a rational conviction that I am doing what morality requires of me. I am not to be influenced by my sentiments towards the objects of my duty, nor am I to allow the reactions of those around me in my community to guide my behaviour... But it seems unlikely that rational conviction can carry the weight required of it, except perhaps in the case of a small number of heroic individuals who are genuinely able to govern their lives by consideration of pure principle. For the mass of mankind, ethical life must be a social institution whose principles must accommodate natural sentiments towards relatives, colleagues, and so forth, and which must rely on a complex set of motives to get people to comply with its requirements – motives such as love, pride, and shame as well purely rational conviction.'<sup>34</sup>

Michael Stocker makes a similar argument, claiming that acting in accordance with universalism forces a split between the agent's motivation and his judgment – a split which causes 'moral schizophrenia.' According to Stocker, acting in accordance with impartial morality will demand acting in contradiction with one's desires in a psychologically damaging way.<sup>35</sup>

There are, I think, at least two different points being made by Miller and Stocker here. Once we distinguish between the two separate claims it becomes easier to see why they are not problematic for justice as impartiality. The first is a criticism of the kind of motivation that universalism requires. Miller and Stocker claim that universalism requires us to act from duty rather than from sentiment – to be motivated by rational moral concerns rather than our

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<sup>34</sup> David Miller, *On Nationality*, (Oxford: Clarendon Press, 1995), pp. 57-58.

<sup>35</sup> Michael Stocker, 'The Schizophrenia of Modern Ethical Theories', *The Journal of Philosophy*, 73/14 (1976): 453-466, at p. 456.

natural emotions. This, they argue, is an implausible picture of motivation. For Miller this is simply because he thinks it unlikely that people will be motivated to act from purely rational deliberation, but for Stocker there is the deeper worry that acting from such rational motivation is psychologically damaging. The second, quite separate, point being made here is that universalist principles of justice are too demanding, and therefore that people will find it difficult to follow them. This essentially is the worry about practical conflict that I discussed earlier in the chapter. Since I have already replied to this worry I will not address it here.

With regard to the first criticism, it should be immediately clear that Barry's theory of justice as impartiality does not endorse the picture that Miller and Stocker paint of universalist moral motivation. The picture that they present is of a Kantian conception of morality in which to act morally one must have moral motivation.<sup>36</sup> But justice as impartiality does not fit with this picture. The Scanlonian original position stipulates the motive of wanting to find principles which others cannot reasonably reject, but beyond that, it makes no claims about why people should be motivated to act in the way that they do. And because justice as impartiality simply imposes limits on how people may act, beyond those limits they are free to act as they choose and for the reasons that they choose. Universalist theories like Barry's do not allow particular facts (including relational facts) to influence moral reasoning at the fundamental level. In Barry's terminology this is the division between first and second order impartiality – universalism endorses second-order impartiality. This differs from the particularism endorsed by Miller in that particularism allows these particular and relational facts in at the fundamental level. Both first and second order impartiality are rejected. But Barry's commitment to universalism (or second-order impartiality) does not involve the commitment to purely rational moral motivation that Miller and Stocker outline. The reasons people have to comply with principles of justice under justice as impartiality are that they are the result of a fair procedure under which no principle is allowed if any individual can reasonably object to it. Given that justice as impartiality is concerned with imposing limits on what people may do, for a considerable proportion of the time people will be acting according to the types of everyday motivations that Miller lists. It is only when what they want to do is ruled out by a principle of justice that they will have to constrain their desires and act according to a principle of justice. And in these cases Barry postulates that they will be at least partially motivated by the desire to act fairly – to act in ways that no one can reasonably reject. The type of motivation that Miller and Stocker describe is the typically Kantian motivation which requires acting from the moral motive in order to be truly moral. Justice as impartiality doesn't make any claim of this type.

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<sup>36</sup> How accurate this is as an interpretation of Kant's own view is a matter for debate.

So the criticism made by Miller and Stocker against universalism does not apply to justice as impartiality. In the rest of this section I want to turn the attention onto the issue of motivational force itself, and to question whether it is really as good a feature for a theory of justice to possess as Miller and others who criticise universalism seem to assume. I will argue that the motivational force that practice-dependent theories like Miller's seems to possess in fact brings with it other negative implications.

We saw in Part II. that there are two different ways to interpret Miller's contextualism. The first, which I termed 'interpretive contextualism', is based on Michael Walzer's approach to justice. It draws on shared beliefs about justice and is committed to strictly contextual principles of justice. The second, which I termed 'universalist contextualism', allows a level of universal justification of principles of justice, and so is not completely contextualist. This second approach is obviously much closer to Barry's universalist theory of justice. If we read Miller as a universalist contextualist then it seems plausible to say that he would have to appeal to the same general kind of fairness motivation as Barry. The reason we have to comply with principles of justice is that they are the result of a decision procedure that we endorse, and therefore we consider them to be fair. If however we read Miller as following the Walzerian interpretive method then the motivation that he will be appealing to will be much more particularistic. We will be motivated to comply with principles of justice that result from this method because they will be the principles that we already endorse, once we have interpreted our commonsense intuitions and beliefs in the right way. We will just be able to see that the principles are the appropriate ones for the relevant contexts, without appeal to some outside authority. Principles arrived at in this way will no doubt be highly motivational because of the weight that they give to people's commonsense beliefs and desires regarding justice. Miller argues that contextualism is preferable to universalism because it does not impose alien principles upon people from above, but rather interprets and systematizes the beliefs and desires that they already have into coherent contextually valid principles. But this method is itself open to objection. Whilst it is obvious that if we accept people's existing beliefs and desires then the theory that we come up with will have motivational force for those people, it in no way guarantees that our theory will provide a desirable theory of justice. Barry argues that 'if we insist on a theory of justice that simply takes existing beliefs and desires as given, the only general theory available is justice as mutual advantage.'<sup>37</sup> One of the major problems with justice as mutual advantage in Barry's view, as we saw in the previous chapter, is that it provides little protection for minorities. Equal rights will only be granted to minorities (or powerless outsiders) if it is in the interests of the majority (or powerful insiders) to do so. In fact, Miller himself argues that it is a mistake to rely solely on people's existing beliefs and desires and intuitions about justice,

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<sup>37</sup> Barry, *Justice as Impartiality*, p. 114.

because to do so will leave our theory of justice lacking critical force. But, as we saw in Part II., contextualism is only able to criticise existing intuitions about justice internally – from within the relevant social context. This again points to a tension within contextualism between the desire to embed principles within local and particular contexts and therefore imbue the theory with strong motivational force, and the need to refer to universal and external standards in order to be able to criticise the status quo and protect the powerless. As Freeman points out ‘it is not difficult to motivate people to xenophobia, but this motivational fact is an inadequate basis for a theory of justice.’<sup>38</sup> It seems then, that there is weight behind Barry’s refusal to engage with the problem of motivational force – it is no doubt desirable for our theory to have weight with people, but not at the expense of providing an accurate and fair theory of justice with genuine critical force. So for Barry, the problem of motivational force is not as important as the demand for impartial justification. But importantly, justice as impartiality does not demand that we act according to impartial motivation. We should be guided partially by a desire to act fairly, but justice as impartiality also leaves plenty of room for us to act according to our own conceptions of the good – as long as we remain within just limits.

## 6.5. Conclusion

In this chapter my aim has been to defend Barry’s non-relational theory of justice against several major criticisms that have been made against it. First, I argued that a theory of justice as impartiality can account for non-derivative special obligations in a way which does not demand excessive justification of partial activities. I showed that justice as impartiality is concerned with setting limits on people’s pursuit of their own conceptions of the good, and beyond those limits we are free to act as we choose. This means that we can act partially to those close to us because we value them intrinsically and without reference to impartial justification. I also defended the account against the charge of practical incoherence. From this discussion arose a potential objection from a contextualist critic, which centres upon the question – ‘how do we know what is reasonable?’ I argued that justice as impartiality is able to include a level of contextualist justification but that it can do so in a way that doesn’t lead to a collapse into full contextualism. I also defended justice as impartiality against the claim that the notion of reasonableness rests upon an implicit conception of the good, or upon substantive moral claims. I then argued that contrary to common criticism of non-relational theories, justice as impartiality does have motivational force, since it allows people to act according to their own conception of the good. I admitted that this force might be less strong than in a relational theory like Miller’s, however, because justice as impartiality is constrained by a demand for fairness and impartial justification. I argued that the greater

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<sup>38</sup> Freeman, ‘Universalism, Particularism and Cosmopolitan Justice’, p. 69.

motivational force of Miller's theory can arguably be taken as a sign of its conservative nature and lack of critical purchase, and so that perhaps Barry is right to argue that motivational force is not the first virtue of a theory of justice.

My aim has been to defend justice as impartiality as an example of a non-relational, practice-independent theory of justice that can withstand the criticisms often made of such approaches. In the conclusion I will compare Barry's theory with Miller's relational, practice-dependent approach, and argue that the non-relational approach is superior.

### **Summary of Part III.**

In this part of the thesis my aim has been to outline and defend a non-relational account of global justice, based on Brian Barry's theory of justice as impartiality. In summary, justice as impartiality is a non-relational and practice-independent approach to justice, which places impartial justification of principles of justice in terms that all people can reasonably accept at the foundation of the theory. Barry recognises that this impartial justification necessarily has global scope, and so is a committed globalist. In Chapter Five I demonstrated that the mechanism of justice as impartiality leads to cosmopolitan principles of justice – including global egalitarian principles. In Chapter Six I defended justice as impartiality and the non-relational approach that underpins it against the key criticisms of non-relational approaches that I identified in Chapter Two. I argued that justice as impartiality can provide a non-derivative account of partiality and special obligations, and that it therefore does not lack practical force. I also demonstrated that justice as impartiality unproblematically supports a set of universal basic human rights. In the conclusion to the thesis I will compare and contrast Miller and Barry's accounts more directly, in order to demonstrate with reference to my earlier arguments, that Barry's non-relational approach is preferable.

## Conclusion

In Part II. I examined a specific relational approach to global justice advanced by David Miller and critically evaluated the approach in relation to contemporary global justice debates as outlined in Part I. In Part III. I looked at an alternative theory of global justice based on the non-relational approach of Brian Barry, and again critically evaluated the theory. In this concluding chapter I wish to make some direct comparisons between the two approaches in order to draw out the key issues at stake between them. I will argue that the shortcomings identified in Miller's theory are characteristic of the relational approach in general, and I will show that Barry's theory, as a non-relational approach, overcomes these shortcomings. My conclusion will therefore be that a non-relational approach is capable of meeting the criteria of a desirable theory of global justice which were outlined in Part I., and that it can do so better than a relational approach. This conclusion is at odds with the current focus of the literature on relational approaches of various kinds, and so I will argue that we would be better off directing our efforts into developing a fully worked out non-relational approach.

In my discussion of the two different approaches to justice in this concluding chapter I will focus particularly on three issues that, as it has become clear throughout the preceding chapters, are central to the debate between opposing theories of global justice. These are: (1) special treatment and partiality; (2) basic rights; and (3) equality. The discussions of Miller and Barry's theories have shown that relational and non-relational approaches differ fundamentally in their views on these three issues, and in this chapter I will sum up these differences and explain the implications that they have for resulting principles of global justice. I will show, with reference to my arguments from the preceding chapters, that in each of these three cases the story that the non-relationalist tells is more plausible than the relational account.

### **Special Treatment and Partiality**

In Chapter Two I discussed the common objection that is made against universalist and impartialist theories of justice, which is that they are unable to satisfactorily account for our intuitively valuable and important partial attitudes and behaviour towards those with whom we share special relationships, or are close to in certain ways. I demonstrated that crude forms of this objection are clearly false, since, in general, universalist and impartialist theories do not recommend universal first-order impartiality (at the level of action) as is sometimes suggested. However I recognised that the objection still has force, since particularist and relational approaches do put special relationships at the heart of their



theories and so seem to be able to account for this part of our lives much more naturally than the universalist non-relationalist. In what follows I will summarise my arguments from the previous chapters to demonstrate how a non-relational theory like justice as impartiality can account for special treatment and partiality in a non-problematic way, and will argue that this account is actually preferable to the relational account because it possess a much greater degree of critical force.

A particularist relationalist like Miller can account for special relationships and the partiality that is integral to these relationships quite easily, since for the particularism relationships are the building blocks of morality and justice. On this picture we owe people certain forms of treatment just because we are in certain kinds of relationship with them. A universalist non-relationalist like Barry on the face of it has a harder time accounting for the intuitive importance of these relationships and the partiality that sustains them. In the universalist case it seems as if the theorist has to 'make room' for these relationships, as opposed to them being foundational aspects of morality. We owe certain kinds of treatment to people, according to this kind of account, because of intrinsic characteristics of them qua persons. Their relationships with other people seem to be arbitrary facts that the moral point of view should ignore, much like race, or sex, or eye colour. In order to account for relationships and special treatment the universalist non-relationalist has to explain in impartialist terms how they are justified. The worry that arises here is that the justification that is offered will reduce the value of the relationships to instantiations of some general value, or that it will distort the way we understand and view these relationships. In Chapter Six I defended an account of special treatment based on Barry's theory of justice as impartiality. I argued there that justice as impartiality has room for non-derivative special obligations and allows people to value both their relationships, and the people with whom they are in relationships, in a non-problematically partial manner. In short, justice as impartiality doesn't treat relationships reductively because it recognises a generic reason that all persons have to value such relationships. This reason is generic in the sense that we all have it, but its force is personal – I favour my children simply because they are *my* children, not because favouring my children allows me to further the universal value of relationships between parents and children. Justice as impartiality allows people to act according to their own personal conceptions of the good – it does not prescribe a universal conception of the good.

So actually both relational and non-relational theories of justice can account for relationships and special treatment in a way that respects the fundamental importance we attach to these relationships. And, if we adopt the Scanlonian constructivist model as Barry does, the non-relational story can be very similar to (and so share the advantages of) the relational picture. As I demonstrated in the previous chapter, justice as impartiality leaves room for some level of contextual justification of certain forms of special treatment and special obligations. The

example I used there was of a talent contest, which is best understood as a socially defined context which has particular distributive obligations built into it – obligations that are constitutive of that context in some way. Justice as impartiality can endorse a contextualist-like argument along the following lines: the distributive logic which defines a talent competition is desert, and so justice *prima facie* demands that the prize should be awarded to the most deserving competitor according to the particular criteria of the contest.

There are at least two different ways in which we can conceptualise this idea of context-specificity. One way, which is how I have characterised the talent contest, is to understand it as arising from social roles. The idea here is that we have particular obligations in virtue of holding a certain social role. These obligations are role obligations.<sup>1</sup> So for example, when someone accepts the socially and legally defined role of legal guardian for a minor, they acquire various special obligations that are constitutive of that role as it is socially and legally defined (to protect the interests of that child and so on). In the talent contest case, it is the role of judge that is relevant. Alternatively, we could view this context-specificity as arising from relationships between people, rather than roles. Most interpersonal relationships depend upon some form of special treatment between the people in the relationship. We can understand this special treatment as being constitutive of the relationship itself. So for example, the relationship between a child and a parent might be thought to entail certain forms of special treatment. This relational picture is clearly closer to Miller's view. These two explanations are not mutually exclusive, in fact in many situations we can expect both to be relevant. So in the case of a parent, it seems like both the role of parent, and the character of the relationship between parent and child, play a role in explaining the special treatment that the parent can and should show to the child. Certain obligations attach to the role of parent, and furthermore the emotional relationship between parent and child licenses a certain amount of partiality between them. This picture is contextualist in the sense that the nature of the role, relationship or social context defines and prescribes the nature of the special treatment and partiality that is licensed or required. However, and this is the crucial point, the account differs from a fully contextualist account like Miller's, because it still demands universalist (and so context-independent) justification.

We can see this difference clearly if we consider the difference between the way in which Miller and Barry can handle a case like the talent contest. For a thoroughgoing contextualist like Miller, the justification for giving the prize in the contest to the most talented child is simply that the distributive logic of the context of which the contest is an instance is desert, and according to the criteria of the contest, the most talented child is the most deserving. For justice as impartiality as I have developed it however, whilst the distributive logic of a talent

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<sup>1</sup> See Michael O. Hardimon, 'Role Obligations', *The Journal of Philosophy*, 91/7 (1994): 333-363, for a lengthier explanation of this kind of obligation.

contest has justificatory relevance, it isn't the only consideration that we should take into account. We must always also consider whether this contest is itself just – whether it passes the test of reasonable rejectability. The distributive logic is one important reason that we take into account when assessing this particular case, but there are also other reasons that must also be considered. Those other reasons will include the effect of the contest on equality of opportunity considered more generally. So, for example, consider an entrance exam for a prestigious private school, in which the child who attains the best score gets a full scholarship. This is arguably a specific instance of the general context that we might call 'talent contest.' The exam has clearly defined criteria (academic merit) and a clearly defined method of measuring that criteria (test scores). From a contextualist perspective, it seems clear that justice is served as long as the child who gets the top score (and does so legitimately, i.e. without cheating) gets the scholarship. The only relevant considerations are whether the test accurately measures the criteria and whether the criteria itself is correctly identified. So for example, if it were discovered that because of bad design the test arbitrarily favours right-handed children then the contextualist can criticise the result. But this is internal criticism, based upon the distributive logic of the context. Favouring right-handedness is ruled out because right-handedness doesn't track academic merit. In contrast, justice as impartiality, as a universalist theory of justice, demands not only internal but also external justification and criticism. Continuing with the example above, if we discover that the test favours right-handedness and so fails to identify the children with the most academic merit, then we can criticise this not just on the basis that it fails to measure the internal criteria but also on the stronger grounds that awarding such a valuable scholarship on the basis of an arbitrary characteristic such as right-handedness is simply unjust.

Justice as impartiality is not only concerned with ensuring that the criteria truly reflects the context, or that we accurately measure the criteria, but also whether the criteria itself is just according to an external standard. We can therefore go much further than the contextualist. For example, if empirical evidence suggests that academic merit is largely determined by background social and material factors (rather than natural talent or effort) such that children from poor households are on average less academically gifted by the time they take their scholarship exam, then we can question whether distribution of such a scholarship on the basis of academic merit is just. In order to determine whether the criterion is just or not, we have to consider whether a principle of distribution according to this principle can be reasonably rejected. If the principle of distribution according to academic merit can be reasonably rejected, perhaps for instance because it conflicts with the principle of equality of opportunity, which as we saw in Part III., is supported by justice as impartiality, then we can say that the distributive logic of this particular talent contest is unjust. If however we find that the distribution of the prize according to talent can't be reasonably rejected then we can be satisfied that the awarding of the prize in this way is just, not only according to the

internal distributive logic of the contest itself, but also according to an impartial and universal test which considers the point of view of all those who might be affected.

Contextualism is unable (and indeed unwilling) to assess the distributive criteria in the same way. They can question whether academic merit truly reflects the distributive criteria of the context, which will involve trying to find the best interpretation of the context itself. They might wish to say that academic merit is the appropriate criteria, but that given the extent to which social and material background conditions affect children's academic development, a test to measure it at a certain age is an inappropriate way of identifying the most deserving. They could then attempt to develop a test which took these factors into account and so measured 'true' academic merit in some way. This is effectively the same as discovering that the test favours unintentionally favours right-handedness. This response seems promising, but if we alter the example slightly we can highlight the limitations of the contextualist approach. Suppose the private school awards scholarships explicitly on the basis of class background. They have devised a way of measuring social class that accurately and reliably identifies which child is from the highest class background and so can award the scholarship correctly on the basis of the criteria. The universalist can straightforwardly say that such a principle of distribution is unjust – that the criteria being used can be reasonably rejected. The contextualist can only say whether such a criteria is just or not with reference to the internal logic of the context. So they might argue that the belief that class background is the appropriate criteria for this context is mistaken, and press for an alternative interpretation. Or they might say that the context itself as been wrongly identified as one in which class background is appropriate when in fact it is an instance of a different context entirely. The trouble here is that these are interpretive claims, and as long as there is disagreement about which is the most authentic interpretation, we can't conclude that the awarding the scholarship according to social class is unjust.

We can see this difference between the universalist and contextualist justification of Barry and Miller in another way if we consider the idea of first and second-order justification discussed in Chapter One. As I outlined in Part III., justice as impartiality demands that principles of justice are impartially justified at the second-order level (the level of principle). What this means is that principles of justice themselves can have partial content or consequences (in other words they can license partial behaviour), but that they cannot be justified with reference to partial reasons. The apparatus of justice as impartiality (the criteria of reasonableness) rules out certain kinds of reason that individuals might want to use to reject candidate principles of justice – including reasons that rely on false beliefs, that refer to values internal to a particular conception of the good, or which are partial in the sense that they arbitrarily favour the interests of some over others. The reasons that can be used to reject candidate principles must therefore be common in the sense that they can be shared by

others who do not share the same particular conception of the good. In contrast, the contextualist approach doesn't really move beyond first-order justification. Partial behaviour is licensed if it is in accordance with contextually-specific principles of justice, but the principles themselves are not examined at the second-order level. Furthermore, to the extent that these principles are examined, there is no block on the admittance of partiality at this level.

This demand for an extra level of justification should most definitely be seen as an advantage of universalist approaches like justice as impartiality. When principles of justice are practice-dependent and solely justified with reference to the internal distributive logic of a particular context, as we saw in both Chapter Two and Chapter Four, there is an inherent danger of conservatism. Justice becomes too closely tied to how we currently distribute goods and resources, and so loses its status as a critical standard. Justice as impartiality, in demanding contextual-independent justification of principles of justice, retains this crucial critical standard. The extra level of justification demanded by justice as impartiality as a universalist theory is therefore a source of critical force that contextualist theories like Miller's lack. The only critical perspective possible according to a contextualist understanding of justice is an internal one. In order to be able to say that the current principle of justice being applied in a particular context is not appropriate, and that a different principle should be applied, critics internal to that context can only point to features of that context to demonstrate the inappropriateness of the original principle. They cannot appeal to external values, or standards of justification, to validate their criticism. Which principle is appropriate to which context is determined purely by features of the context itself. Internal critics have to fight against several conservative pressures, including the fact that people tend to favour the status quo, especially when doing so favours their own interests, and often because they have rationalised or internalised the dominant social standards. And, if after reasoned argument and debate, there is still disagreement about the most authentic or appropriate interpretation of the context, then there is no external source of adjudication. In contrast, justice as impartiality allows both an internal and an external critical perspective.<sup>2</sup> The internal critic can respond to how people actually think about justice, but with the added safeguard of the external critic to test these views against an impartial standard of justification.

So, in summary, a non-relational approach based upon justice as impartiality can non-problematically account for special treatment and partiality, and for the contextual-specificity

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<sup>2</sup> Justice as impartiality therefore tells us to examine inequality wherever it occurs and make sure that it is not being sustained as a result of unequal power relationships or inertia. As Barry points out, 'those disadvantaged by an inequality may well choose to act in ways that sustain it, even though they would reject it in a hypothetical ideal-choice situation.' Brian Barry, 'International Society from a Cosmopolitan Perspective', in David Mapel and Terry Nardin (eds.), *International Society: Diverse Ethical Perspectives*, (Princeton, NJ.: Princeton University Press, 1998), p. 147.

of some principles of justice. It can do so by utilising contextualist-like arguments, but whilst retaining a universalist standard of justification. This universalist standard provides a level of critical force that is unavailable to the contextualist. So whilst it initially appeared (in Chapter Two) that particularist approaches like Miller's contextualism would be better able to account for special treatment and partiality, in fact, their method of justification suffers from a serious flaw.

## **Basic Rights**

In Chapter One I established that a commitment to some minimal set of basic rights has become widespread amongst mainstream Western political philosophers working on the issue of global justice. Whether cosmopolitan, statist, or nationalist, most theorists profess to believe in a minimal set of universal rights. Given this apparent consensus amongst political philosophers, I assume that we can view an account and explanation of these basic rights as an essential component of a satisfactory theory of global justice, in the same way as we have demanded an account of special treatment and partiality. We cannot simply assert that there are universal rights without providing some explanation and justification of their grounding. And if particular theories cannot provide this explanation and justification then we have to conclude that they are simply paying lip service to an ideal that has become so widely accepted that they do not want to discredit their theories by denying it.

Non-relational approaches can provide a simple and straightforward explanation of universal rights. This type of approach grounds justice in universal features of human beings, and so it is these features that ground our universal moral concern and demand certain minimal standards of treatment. In the specific case of justice as impartiality, as I outlined in Chapter Five, a set of basic human rights follow from the test of reasonable rejectability. All persons have a generic reason to reject principles of justice that prevent them from living a minimally decent life, as well as to reject principles that restrict certain essential liberties. Justice as impartiality demands that we recognise that the only reasonable way to protect such entitlements and liberties is to extend them equally to all. If I demand these rights for myself then I cannot refuse to grant them to others, without being unreasonable. Just as an account of special relationships and partiality comes naturally to a relational theory of justice, since such relationships are central and foundational elements of that view, an account of impartial justice and universal rights comes naturally to a non-relational theory of justice, which starts with the premise of equality and impartiality.

Relationalists have two options when accounting for basic rights. They can either adopt a relational justification which grounds these rights in features of relationships between people, as they do with comparative justice, or they can adopt a non-relational justification

which grounds them in universal features of human beings in the same way as the non-relational account. This second option is open to relationalists because they are only necessarily relational about comparative justice, and basic rights are issues of non-comparative justice. As I argued briefly in Chapter One, and more extensively in Chapter Five, the first option is unattractive because relational accounts of rights don't cohere with the traditional picture of rights. If rights are grounded in features of particular kinds of relationships between people, then the having of those rights depends upon being in the right kind of relationship. If someone is not part of the relationship that grounds rights then they cannot, according to this picture, be said to have rights at all. A relational justification of rights makes rights themselves contingent upon the scope of particular relationships. Rights will only be universal if the relationship that grounds them is itself universal. This picture is problematic in several ways. First, it is not clear whether there does in fact exist some kind of relationship at the global level between all human beings, or what kind of relationship it would be. We might think that it was a very thin relationship, such as shared membership of the human race. But if we characterise it in this way then it seems like we have simply collapsed into a non-relational justification, since membership of the human race is surely a shared universal feature of human beings. A plausible, thicker, alternative candidate for a relationship with global scope is economic interaction and interdependence. Rawlsian cosmopolitans have grounded global justice in a global economic and institutional system along these lines.<sup>3</sup> But it is still a matter of debate whether all human beings can be said to be part of such a relationship, and as long as this is so, then basic rights that are grounded on it will not necessarily have universal scope. In response to this a defender of a relational account could argue that it is a mistake to think that there necessarily has to be one single relationship that exists between all human beings for rights to be universal. Instead, it could be the case that all human beings are in the right kind of relationship with some other people, but not necessarily each one with every other one. So for example, as long as everyone is a citizen of a state, they are the relevant political relationship with other people that gives rise to rights. However this response is inadequate since there are likely to still be individuals who are excluded from all instances of the relevant relationship (in this example stateless people).<sup>4</sup> And, even if it were the case that all individuals were citizens, it would not be clear that the citizens of one state would owe anything to the citizens of another state, because they wouldn't be in the right kind of relationship with each other. If rights were relationally justified in this way then they would not give rise to general duties, but instead only duties relative to their particular relationships. For the account to be relational it has to be the case

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<sup>3</sup> See for instance Thomas Pogge's argument that 'there are significant international interdependencies and cross-border externalities some of which clearly aggravate the situation of the global poor', *World Poverty and Human Rights*, (Cambridge: Polity, 2002), p. 15. Pogge focuses on two specific features of the 'new global economic order' – the 'international borrowing privilege' and the 'international resource privilege' – as instances of injustice.

<sup>4</sup> An obvious example here are the Roma, but we might also include here the populations of failed states such as Somalia, and refugee populations and asylum seekers across the world.

that membership of the relationship gives one rights, not some capacity or potential to enter into relationships of that kind. This is because a capacity or potential of this kind would count as a pre-relational, universal feature of individuals, and so the rights would in fact be grounded in non-relational features. So a relationalist cannot argue for general duties by claiming that rights are grounded in the ability or capacity to be a part of a political community, which should be recognised even by those with whom we are not in a political relationship. To do so would again be to ground rights on a shared universal feature of human beings and so to collapse into a non-relational account.

A second issue with a relational justification of rights is the deeper worry that to view rights as contingent on relationships in this way is to fundamentally misunderstand the concept of basic rights itself. Relationally justified rights seem more like legal or civil rights, which one has in virtue of citizenship in a particular state. Since citizenship can be acquired, relinquished, and revoked, the rights that attach to it are unstable in a way that we don't want basic rights to be. A related third issue is that such relationally justified rights will, according to the contextualist and practice-based understanding that is prevalent amongst relationalists, have their content defined by the practice or relationship which they are grounded on. If basic rights are grounded upon features of relationships between people, then it is the nature of the relationship that determines the nature of the rights. If a particular relationship is characterised by inequality between participants then this may affect the rights that those members are granted in troubling ways. Not only is the scope of basic rights made contingent upon particular relationships under this view, but also the content of them. In effect this makes rights culturally relative, since the specific nature of citizenship relationships varies from culture to culture. This is in complete contrast to the dominant understanding of rights in current global justice debates.

As I outlined in Chapter Four, David Miller recognises these problems with practice-dependant and contextual accounts of basic rights, and so himself chooses the second option of the two, and adopts a non-relational account of rights. His account of rights employs what he calls the 'humanitarian strategy' – grounding rights in the basic needs common to all human beings. However, Miller's non-relational justification of rights is, as I argued in Chapter Four, incompatible with his commitment to the contextual approach to justice. I concluded there that Miller cannot consistently keep both his non-relational justification of basic rights and his commitment to contextualism. My argument against Miller referred to the dual use that he makes of the concept of need in both the relational and the non-relational argument. Of course this is a specific feature of Miller's theory, and so may not apply to other relational theories of global justice. I cannot show here that it is impossible to provide a relational account of justice that incorporates a non-relational account of basic rights. However, I do want to point towards two questions that the proponent of such a theory



would have to be able to answer if the theory was to be consistent, and I think that these questions point towards a flaw within the relational approach to global justice.

First, a proponent of a relational theory of justice that includes a non-relational account of basic rights needs to be able to explain why most of the principles of justice endorsed by the theory are justified with reference to features of relationships between people, whilst one separate aspect is justified with reference to universal features of human beings. There needs to be something that is different about rights that makes them subject to this different kind of justification. Relationalists make several different arguments that are supposed to show that principles of justice only apply within certain kinds of relationships and associations. We need to know why these arguments don't apply in the case of human rights. For example, some relational arguments have drawn upon the idea of feasibility – they have claimed that without an institutional or political structure in place to make the implementation of principles of justice possible, then justice cannot be said to be a relevant concern.<sup>5</sup> It is not yet clear why this argument doesn't equally apply to the case of human rights – it is plausibly the case that the protection and fulfilment of rights requires certain institutional and political structures, and so we might think that rights don't exist until such structures are in place. A relationalist who wants to provide a non-relational account of human rights needs to explain why the feasibility constraint doesn't apply here – why rights exist even when the necessary political and institutional structures for their protection aren't in place. Furthermore, any answer here needs to be restricted to apply only to the case of rights – otherwise it will conflict with the original feasibility argument and weaken the relational position itself. The problem faced by the relationalist here is that they need to be making arguments that are in tension with each other, and so must be careful that they remain separate and don't cancel each other out.

Second, we need to be sure that justice remains a coherent concept – that we don't understand justice in multiple ways until it becomes meaningless. Saying that justice requires rights, which are understood non-relationally, with one breath, but that it also requires contextual principles of justice, that are justified relationally, with the next breath, could stretch the idea of justice too far. In fact, we might think that what is being talked about by some relationalists in the case of rights is not really justice at all, but humanitarianism, or charity. This seems to be what Thomas Nagel, for example, proposes. He argues that it is uncontroversial that we have a set of duties corresponding to an absolute standard of minimal wellbeing, but that these duties are ones of charity. Justice, he claims, is

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<sup>5</sup> Thomas Nagel defends this Hobbesian view at length in 'The Problem of Global Justice', *Philosophy and Public Affairs*, 33/2 (2005): 113–47, at pp. 114–117. Simon Caney refers to this kind of argument as the 'viability thesis', and argues that proponents of such argument who also put forward global principles (such as those which support human rights) need to explain the discrepancy between the two arguments, 'International Distributive Justice', *Political Studies*, 49 (2001): 974–997, at pp. 981–982.

a matter of relative, or comparative, wellbeing, and only makes sense within a political society.<sup>6</sup> However, duties of charity, or humanitarianism, are commonly understood weaker than duties of justice in various ways. Charity is usually as seen as supererogatory, in contrast to justice, which is a matter of obligation. Charity and humanitarianism are goal-based – they are aimed at the relief of suffering, whereas justice is rights-based – it is aimed at giving people what is rightfully theirs.<sup>7</sup> If there is a duty of justice to provide everyone with the minimal level of resources necessary to ensure a minimally decent life, which is currently not being met, then in an important sense those who have the resources necessary to fulfil this duty are wrongfully in possession of resources that rightfully belong to others.<sup>8</sup> If however this duty is one of humanity or charity then they are being required to make a sacrifice for the benefit of others. The resources they give up in the charity case are theirs to give. In the justice case however those resources rightfully belong to someone else, and there is no sacrifice involved. Talking in terms of charity or humanity is to misunderstand the nature of rights. Making a distinction between justice and charity might provide a relationalist with an answer to the previous question – why are rights (non-comparative justice) and comparative principles of justice justified in different ways? – but it also removes much of the force behind the notion of rights themselves.

So in order for a theory of justice which combines a relational account of comparative principles and with a non-relational account of rights to make sense, we need to have answers to two questions: why is comparative justice different to non-comparative justice in the way that it is justified, and what does justice itself mean if different aspects of it are grounded in two completely different ways?<sup>9</sup> Until we have satisfactory answers to these questions it is unclear how a relationalist can provide an account of basic rights that doesn't make them contingent. Given that universal, non-contingent, rights have become widely accepted amongst contemporary western political philosophers, this is a problem for the relational approach. The non-relational approach is not vulnerable to this difficulty, since it can employ non-relational arguments to justify rights without any danger of inconsistency or contradiction. A theory of justice which is non-relational about both comparative and non-comparative justice doesn't face these questions. In the next section I will consider some

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<sup>6</sup> Nagel, 'The Problem of Global Justice', pp. 118-119, 128.

<sup>7</sup> Brian Barry, 'Humanity and Justice in Global Perspective', in J. Roland Pennock and John W. Chapman (eds.), *Ethics, Economics and the Law*, (New York: New York University Press, 1982), pp. 244-250.

<sup>8</sup> I am remaining deliberately ambiguous here about the identity of the agents upon whom these duties might fall. A fully developed theory will of course have to have answers to this kind of question, but it is beyond the scope of this thesis to provide them.

<sup>9</sup> As Leif Wenar points out, it is tempting to suspect that the reason that theorists who, like Miller, adopt the 'sufficiency not equality' position, are reticent about their arguments here is because they are worried that the 'momentum of their own arguments' about in favour of sufficiency will pull them towards a commitment to equality. 'Human Rights and Equality in the work of David Miller', *Critical Review of International Social and Political Philosophy*, 11/4 (2008): 401-411, at p. 402.

potential answers to the first question (what is special about comparative justice that means that it is grounded differently to non-comparative justice).

## Equality

It should be clear that a fundamental issue at stake between relationalists and non-relationalists is whether equality is a concern that is limited to within certain kinds of relational context, or whether it is a relevant concern between all persons qua persons. Relationalists, as we saw in Chapter One, argue that equality only becomes a relevant concern when we enter into certain kinds of relationships with other people. In the previous section I argued that relationalists need to provide an explanation as to why equality is special in this way – what it is about egalitarian concerns (comparative justice) that mean they are only relevant in certain relational contexts (especially given that they tend to support non-comparative principles of justice in the form of basic rights without a contextual grounding). In Part II. I considered David Miller’s relational theory of justice and criticised his specific arguments for contextualism and the restriction of egalitarian principles to within the domestic sphere. In this section I will consider a variety of arguments that have been put forward by relationalists, Miller included, and argue that the problems with Miller’s account are symptomatic of a general weakness in relational arguments.

In a recent paper Christian Barry and Laura Valentini discuss seven different arguments made by so-called ‘egalitarian critics of global egalitarianism.’ These egalitarian criticisms aim to show that inequality is a relevant concern in the domestic arena, but not in the global sphere.<sup>10</sup> Each of the arguments that Barry and Valentini discuss contains a normative claim to the effect that equality is only a relevant concern when certain factors are present (in certain contexts), and an empirical claim that these factors are themselves not present at the global level. The normative claim in each case is a candidate answer to the question I posed above – why is equality only a relevant concern within certain contexts. The arguments they consider refer to (a) social cooperation; (b) state coercion; (c) agency; (d) national responsibility; (e) shared social meanings; (f) international pluralism; and (g) feasibility.<sup>11</sup> I’ll briefly outline these arguments and my responses to them below. My intention is to show that none of them succeed in demonstrating the claim, which I have argued above that relationalists need to be able to support, that egalitarian justice is context-specific whilst non-comparative justice is universal. I’ll argue that whilst the first two of these arguments might succeed in establishing the positive claim that equality is relevant to a particular context,

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<sup>10</sup> Christian Barry and Laura Valentini, ‘Egalitarian Challenges to Global Egalitarianism: A Critique’, *Review of International Studies*, 35 (2009): 485-512, at p. 488.

<sup>11</sup> Barry and Valentini, ‘Egalitarian Challenges’, p. 486. Several of these arguments will be familiar from the discussion of Miller’s critique of global egalitarianism in Part II.

they fail to explain why equality is not relevant outside of this context. The other five arguments do attempt to establish this negative claim – that principles of egalitarian justice cannot be relevant outside of certain contexts – but I will argue that they fail to explain why principles of non-comparative justice are not vulnerable to the same arguments.

The first type of contextual argument canvassed by Barry and Valentini attempts to restrict egalitarian concerns to within systems of social cooperation. This kind of argument has its roots in Rawls's conception of a society as a cooperative scheme.<sup>12</sup> The basic claim is that since social cooperation is characterised by equality, egalitarian principles should apply within systems of social cooperation. However, as Barry and Valentini point out, whether this argument is convincing or not in establishing the conclusion that relationships of social cooperation should be governed by egalitarian principles, in its current form it fails to explain why social cooperation is a *necessary* condition for egalitarian principles to apply.<sup>13</sup> And unless a relationship of social cooperation is necessary for egalitarian concerns to be relevant, we have no reason to think that egalitarian concerns aren't also relevant in other contexts besides systems of social cooperation. This means that this argument fails to establish the conclusion that egalitarian concerns are not relevant outside of relationships of social cooperation.

The second kind of argument for the restriction of egalitarian concerns to within particular contexts refers not to social cooperation but to coercion. This is the argument made recently by Nagel and Blake.<sup>14</sup> The general claim here is that coercively imposed social rules need special justification, and the only way that this special justification is available is if these coercively imposed rules are themselves egalitarian. In the context of the state, citizens are coerced into following social rules. This coercion is an infringement of autonomy and as such must be justifiable if the state is to be legitimate. Citizens will accept state coercion as legitimate because it is necessary if they are to receive the benefits of citizenship. However they will only accept such coercion if the rules being imposed are themselves egalitarian, since this guarantees that they are not shouldering a disproportionate burden in order to provide the benefits of citizenship to others. The conclusion here is therefore that when people live under a shared set of coercively imposed social rules, then equality is a relevant concern. However, just as in the case of the social cooperation argument above, whilst this conclusion may be true, it does not itself imply that equality is not a relevant concern in other contexts besides shared coercive schemes. It fails to show that coercion is a necessary condition for egalitarian concerns, and so does not rule out the possibility of equality being relevant outside of systems of coercively imposed social rules.

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<sup>12</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 489-493.

<sup>13</sup> Barry and Valentini, 'Egalitarian Challenges', p. 490.

<sup>14</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 493-496. See discussion of this argument in Chapter One.

The third contextual argument for the restriction of egalitarianism is basically the claim that principles of justice require a subject – an agent whose conduct is to be guided by the principle.<sup>15</sup> If there is no relevant subject then principles of justice cannot really be said to be principles at all. So egalitarian justice is limited to contexts in which there is an agent or set of agents, such as the state, whose conduct is to be guided by those principles. The problem with this argument is that we might think it applies equally to non-comparative principles of justice. If comparative principles of justice require agency, then why don't non-comparative principles of justice also require agency? There doesn't seem to be anything special about comparative principles which means that they require agency. One possible difference is that comparative principles are more demanding than non-comparative principles, since they potentially require a higher level of redistribution. However the issue of demandingness is not relevant to this argument about agency. The claim here is not that agency is necessary for practical reasons (to ensure that principles can be enforced) but that agency is necessary for us to be making sense when we talk about principles of justice. The fact that non-comparative principles are less demanding than comparative principles is irrelevant – they are still principles. This means that if this argument about agency is a good one, then it applies to non-comparative principles just as much as it applies to comparative principles. This is a problematic conclusion for the relationalist who wants to restrict egalitarianism but not non-comparative justice. If there is no agency at the global level who can be said to be the subject of comparative principles of justice then presumably there is no agent at the global level who can be said to be the subject of non-comparative principles of justice such as those protecting basic rights.

The fourth argument appeals to the value of national self-determination. The argument is that global egalitarian principles of justice, which would require redistribution between nations, would infringe upon nationality responsibility. If we assume that nations are self-determining and should be held responsible for the policies and principles that they follow, then there is a problem with requiring nations who make prudent decisions and prosper to redistribute their wealth to nations who make bad decisions and suffer. This is the 'dynamic' argument against global egalitarianism made by Miller, which I outlined in Chapter Three.<sup>16</sup> However, just as in the case of the previous argument, it is unclear why egalitarian principles cause special problems here that are not also caused by non-comparative principles of justice. If respecting national self-determination requires not demanding redistribution from wealthy nations to poorer nations then this presumably applies to all forms of redistribution, whether in the name of equality or in the name of basic rights.

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<sup>15</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 496-500.

<sup>16</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 500-504.

The fifth argument for the limitation of egalitarianism refers to the shared social meanings which are thought to be necessary to provide the standard against which we can make assessments of relative shares.<sup>17</sup> This is Miller's 'metric' argument against global egalitarianism, which I outlined in Chapter Four. The claim is that we can only apply egalitarian principles of justice where we have access to shared social meanings which define the standard against which we can measure the relative resources or goods which are to be equalised. These shared social meanings are only available when people are in certain types of relationships with each other. In Miller's argument this relationship is one of solidarity. However again this argument has problematic implications for a relationalist wanting to restrict egalitarianism to within certain contexts but at the same time support universal non-comparative justice. It is not clear why this socially defined standard is necessary to be able to implement egalitarian principles of justice but not non-comparative principles. If this argument has force then it doesn't only lead to the conclusion that egalitarian principles should be restricted, but also non-comparative principles.

The sixth egalitarian argument against global egalitarianism is essentially the claim that the imposition of global egalitarian principles would fail to respect non-liberal cultures.<sup>18</sup> The assumption here is that egalitarian principles are supported by a liberal conception of the good which is not shared by all cultures or societies. Egalitarian principles can only be applied within contexts where the public culture supports liberal egalitarianism. In Chapter Six I argued that justice as impartiality is neutral between competing conceptions of the good, and so I would dispute the claim that we cannot support egalitarian principles globally without presupposing a particularly liberal conception of the good. However, even if we accept the claim that we should only apply egalitarian principles where there is the support for such principles, I think the same kind of problem arises in this case as in the previous two contextual arguments against global egalitarianism. Basic rights are also arguably grounded in a particularly liberal conception of the good, and so it is not clear that if we are worried about respecting international pluralism we shouldn't also refrain from enforcing and protecting basic rights at the global level. It may well be the case that it is currently easier to get close to international agreement on some minimal set of basic rights than it is to get the same kind of agreement on egalitarian principles, but this is not necessarily due to a principled difference between basic rights and equality, but instead a difference in the degree of demandingness that the application of either would involve. In other words, principled international resistance to egalitarian principles is not necessarily stronger than the resistance to basic rights, but psychological resistance might be, purely because egalitarian principles are more demanding. Here we should remember that the resistance to demanding egalitarian

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<sup>17</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 504-506.

<sup>18</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 506-507.

principles is most likely to come from those liberal wealthy states that would be required to redistribute wealth, rather than the illiberal poorer states that would be amongst the recipients of such distribution.

The final argument for the restriction of egalitarianism to within certain contexts that Barry and Valentini discuss refers to the feasibility of egalitarian principles.<sup>19</sup> This argument runs along similar lines as the agency and social meanings arguments discussed above. The key assumption is that principles of justice must be feasible or they are not relevant. However, just as before, it is not clear why this argument applies to egalitarian principles but not to non-comparative principles. And if it does apply to non-comparative principles (which it seems that it must since feasibility is a virtue of principles of justice in general), then again the relationalist will have trouble supporting universal non-comparative justice whilst dismissing universal egalitarian justice on these grounds. Whilst, as I have pointed out above, egalitarian principles are more demanding than non-comparative principles, and so will generally be less feasible to implement, this is a matter of degree rather than a principled distinction. Furthermore, as Barry and Valentini themselves point out, arguments that appeal to feasibility are usually ineffective since there is so much debate about which principles are feasible and which are not. As long as there is disagreement about whether particular principles are feasible or not, ruling out these principles on the basis of their supposed infeasibility will be unpersuasive. Finally, as I've argued earlier, whilst feasibility is a virtue of principles of justice, the fact that a principle is difficult to implement does not mean that it is incorrect. If we are confident that our principles of justice are well supported by good normative reasons then we shouldn't allow practical concerns to weaken our commitment to those principles. Just because something is difficult does not mean that it is not the right thing to do.

My discussion of these seven arguments for the restriction of egalitarian principles to within certain contexts has been necessarily brief, but my aim has been to demonstrate at least that they do not obviously offer a solution to the relationalist who needs to explain why egalitarian justice is contextual whilst non-comparative justice is universal. I have not shown conclusively that it isn't possible for relationalists to support the claim that egalitarian justice is context-specific, but I have demonstrated that the arguments that they use to support this claim tend to lead to the conclusion that non-comparative justice is context-specific also. So long as this is a conclusion that relationalists wish to avoid (and I've argued in Chapter Four and earlier in this chapter that they should avoid it), they cannot unproblematically endorse these arguments.

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<sup>19</sup> Barry and Valentini, 'Egalitarian Challenges', pp. 507-511.

## **Implications for Global Justice**

Having discussed how relationalists and non-relationalists differ in their approaches to the three key issues of special treatment, basic rights, and equality, I will now draw these themes together and summarise the general implications of taking either a relational or a non-relational approach to global justice. My aim here is show that the decision to choose one or other of the two approaches as our starting point has a considerable influence on the shape of the theory of global justice that we will finish up with, and the set of principles that we will consistently be able to endorse. Whilst I will not be able to show conclusively that a non-relational approach is superior, I will argue that the two approaches entail different sets of principles, and if we accept that there are a certain set of desirable general principles, we must adopt the non-relational approach. This conclusion is interesting because the dominant perception in the mainstream global justice literature is that one can take either of these two approaches and arrive at broadly similar sets of principles. I'll begin this section with a brief discussion of the different implications of Miller and Barry's approaches specifically, before summarising the general shape of the theories of global justice that we arrive at via the relational and non-relational approaches.

The different ways in which Miller and Barry understand justice, and the different principles that they therefore support, are illuminating for debate between relational and non-relational views, and about global justice more generally. Miller is concerned with natural sentiments and the personal relationships that for most people are the most emotionally significant parts of their lives. He seeks to ground justice in these relationships, to demonstrate that different principles of justice are constitutive of different types of relationships between people. Because of the respect that he has for these relationships, he is reluctant to appeal to any universal standard of justification, or impartial and impersonal viewpoint, in order to derive principles of justice. Instead, he thinks that all we need to do is to critically interpret the principles that are constitutive of our important relationships with others in order to know which to apply. This interpretive approach clearly has strengths associated with being embedded so closely with people's actual experiences and thoughts about justice. Principles arrived at and justified in this way are seen as legitimate and highly motivating by the people to whom they apply. However one implication of thinking about justice in this way is that when there are people with whom we are not in any kind of relationship, justice seems to not apply. Miller of course denies that justice is completely irrelevant in this situation, arguing that there is a universal set of basic rights that we have in virtue of our humanity. I have disputed that Miller can support such rights and duties in the way that he does. But even if we allowed Miller to hold onto his account here, it is clear that these rights and the duties



that follow from them are subordinate to our more immediate particular obligations.<sup>20</sup> It is only when some individuals are completely failed by those with whom they are in primary justice relations, and when it can be shown that those individuals were not responsible for their situation, that we have any positive obligations stemming from our shared humanity. Given the extreme level of absolute poverty and the high occurrence of institutional failure at the state level in many parts of the world, Miller's theory of justice does constitute a significant challenge to the status quo. But so does any theory of global justice that posits the most minimal set of basic rights or general duties, because it is an unavoidable fact that basic rights are being violated on a massive scale the world over, and net transfers of wealth are from the global poor to the global rich. So, indeed, does any more traditional theory of social (as in domestic) justice which posits some level of redistribution from the wealthy to the poor, since in the UK and US at least, net transfers of wealth are again from the poor to the rich – the inequality gap is rising. So the fact that his theory is not a straightforward endorsement of the status quo does not mean that it isn't conservative. Miller's concern for natural sentiments leads to principles that are motivating and means that he avoids the danger of his principles being viewed as liberal imperialistic impositions, but only at the cost of being unable to make radical and critical proposals.

Barry, in contrast to Miller, is primarily concerned with impartiality. He recognises the importance of natural sentiments and personal relationships, but demands that we subject these sentiments to critical scrutiny, to ensure that we are not favouring ourselves and others at the unjust expense of other people. We must make sure that we act according to principles that are justifiable to others on terms that they can accept. This demand arises simply from our shared humanity, and from the recognition that this is the minimal level of respect that we would demand for ourselves. A theory of justice developed along these lines will clearly have radical implications for a world in the state that ours is in. The way in which we act has to completely change – a theory like Barry's demands that we radically expand the set of viewpoints taken as morally relevant. But, as I have argued in the previous chapter, it is a mistake to think that the highly critical nature of a theory like Barry's means that it must contradict our strongest intuitions about how we feel we should be able to treat those closest to us, and how much freedom we should have to determine the goods to aim at in our own lives. We are forced to reflect upon our sentiments, and consider whether our acting upon them can be justified to others, but this doesn't imply that we have to abandon them altogether. In fact, because of the naturalness of such sentiments, we will be able to justify a certain level of partiality based upon them – because everyone will share the desire to do so. But when our acting on them leads to injustice and systematic inequality then we will have to temper our partial inclinations and act according to the demands of global justice. Because

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<sup>20</sup> Michael Freeman, 'Universalism, Particularism and Cosmopolitan Justice', in T. Coates (ed.), *International Justice*, (Aldershot: Ashgate, 2000), p. 80.

of the emphasis on impartiality, Barry's approach does lead to a more demanding theory of justice. But this theory fits much better with the implications of a commitment to liberal egalitarianism than Miller's does. The aim of this brief discussion has been to demonstrate that the different theoretical starting points adopted by Miller and Barry lead inevitably to quite different implications for global justice. I'll now summarise the more general implications of adopting either the relational or the non-relational approach to justice.

If we adopt a relational approach to justice then justice is understood as being grounded in certain features of particular forms of relationship between people. Whichever particular relationship we pick out as significant, it is only such a relationship exists that we can say that justice is a relevant concern. This approach rests upon a particularist understanding of ethics according to which facts about our relationships with others are part of the fundamental building blocks of ethics. This particularist viewpoint allows relational facts to play a justificatory role in the relational theory of justice. By grounding justice in features of relationships between people, the relational approach employs practice-dependent justification, according to which principles of justice are conditioned by the practice to which they apply. This practice-dependence allows for a plurality of contextual principles of justice, in which different principles apply to different relational contexts. These contextual principles are grounded solely in features of specific relationships, and there is no external, or universal, principle or standard of justification. Because relationally grounded principles are practice-dependent and contextual in this way, the scope of those principles is entirely dependent upon the scope of the relationship in question. This obviously has implications for global justice, since principles will only have global scope if there is a relevant relationship which itself has global scope. Which (if any) contexts are global in this way is a matter of considerable debate, which shows no sign of being settled. So if we adopt a relational approach to global justice we can support globalist conclusions about the scope of justice, but only with the assumption that there is a relevant relationship with global scope that can ground justice. In general however, adopting a relational approach leads to a restriction in the scope of justice. It certainly leads to a restriction of the set of people to whom principles of justice must be justified. Contextual principles are internally justified, so there is no demand to consider the point of view of people external to the context in question. This makes justification of partiality amongst compatriots and co-citizens fairly easy for a relational theory of justice. Relational approaches therefore lend themselves to theorists who want to defend the current statist international system. Relationalists do tend to endorse a minimal set of basic human rights or general duties to relieve extreme poverty in the world. However, as I have argued in Chapter Six, and earlier in this chapter, there is a problem with their method of justification for these non-comparative elements of justice. Miller adopts a non-relational justification, but this is incompatible with his contextualist arguments for the rest of his theory of justice. Relationalists have so far failed to provide an adequate argument for

why comparative and non-comparative justice should be justified and grounded in different ways. Until they do, they can only consistently employ relational justifications for basic rights. But relationally justified rights are not universal in the way that we usually understand rights to be, since they depend on the existence of a relationship with global scope. This contradicts the theories of rights adopted by relationalists such as Miller, who explicitly seek to defend rights in a non-relational manner. So if we adopt a relational approach to justice we can derive principles and rights with global scope, but only if we assume that a relevant relationship exists with global scope. This approach does not therefore naturally lead to global justice, neither comparative nor non-comparative.

If instead we adopt a non-relational approach to justice then justice is understood as grounded in certain universal features of human beings. Justice is a relevant concern irrespective of the relationships that may or may not exist between individuals. This approach to justice rests upon a universalist understanding of morality, according to which all non-general facts must be excluded from the fundamental justification of principles of justice. This universalism implies practice-independence and non-contextualism – justice necessarily has universal scope, and principles must be ultimately justified without reference to the practices to which they apply. However, this impartiality and universality is only demanded at the level of principle formation. At the level of application of principles there is room for plurality and contextual variation – as long as all principles of justice can ultimately be justified with reference to a universal standpoint. Taking a non-relational approach necessarily involves talking about global justice, since it is universal features of human beings that grounds justice. Any theory of justice that takes a non-relational approach must be globalist – it simply does not make sense to restrict the scope of justice under this view. This implies that the principles of justice supported by this approach will have global reach, although, as stated above, there is room for contextual variation in the application of specific principles. What is clear is that principles of justice must always be justified with reference to the point of view of all individuals. Adopting a non-relational approach therefore leads naturally to cosmopolitan conclusions, and most basically, to support for a minimal standard of treatment that all individuals are entitled to. There is room for special treatment and partiality on this view (as long as it is independently justifiable) but partial reasons can never override this impartial standard. The non-relational approach therefore unproblematically supports a set of basic rights which are grounded in universal features of human beings. Adopting a non-relational approach leads naturally to a theory of global justice.

The conclusion that I want to draw here is that the non-relational approach is the only one that will lead naturally to a truly global theory of justice. If we share the intuition that there is at least a certain minimal standard that we owe to all individuals because of their moral

status as human beings, and want to enshrine this intuition in the form of basic rights or general duties of justice to uphold this standard, then we must adopt the non-relational approach. A relational approach can support global principles, but only if we accept the premise that there is a relationship with global scope.<sup>21</sup> What a relational approach cannot do is support rights or a minimal standard of treatment that is truly universal. Relationalists may be happy with this, and choose to abandon their support for basic rights which are non-relationally justified. But in doing so they move themselves further away from a global theory of justice, and from a theory of universal basic rights.

In this conclusion my aim has been to draw together the arguments from the previous three parts of the thesis. Concentrating on the three key issues at stake between relational and non-relational theories of global justice – partiality and special treatment, basic rights, and equality – I have highlighted the main differences between the accounts which each approach can offer. In each case, I have argued that the shortcomings of Miller's contextualist theory, which were identified in Part II., render the relationalist account deficient. I have contrasted the relationalist account in each case with a non-relationalist account based upon justice as impartiality, and argued, drawing upon arguments made in Part III., that the non-relationalist account is preferable. I have made these comparisons in terms of assumptions that are shared by both relationalists and non-relationalists – that an acceptable theory of global justice must be able to account for both the special treatment and partiality associated with interpersonal relationships, and some minimum set of universal basic rights. My overall conclusion therefore is that a non-relational approach leads to a more satisfactory theory of global justice, assessed according to assumptions shared by all parties to current global justice debates. This conclusion lends support to cosmopolitanism since the non-relational approach leads naturally to cosmopolitan conclusions, and the relational approach is unable to provide a coherent and internally consistent alternative.

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<sup>21</sup> Of course, through the process of globalisation we may arrive at a situation in which there is a relationship that has global scope which is justice-apt (and indeed many relational cosmopolitans think we have already reached this point). If this were the case then the relationalist could support universal rights. But, as I have argued, these rights would only be contingently universal, and it still the case that many relationalists (Miller included) are sceptical about this possibility.



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