

Agents of Justice
A Particularist Perspective in Defence of Cosmopolitan Obligations

1. Political boundaries and cosmopolitan justice

Cosmopolitan theories of global distributive justice are characterized by both an ethical concern and institutional demands. Charles Beitz has tried to schematize the specific features of each through a distinction between a weak and a strong thesis (Beitz 1999: 198). The weak thesis, also called moral cosmopolitanism, holds that “every human being has a moral stature as the ultimate unit of moral concern” (Pogge 2002: 169). It constitutes a challenge to communitarian theories that consider the state, the national group or particular political communities as the source of ethical obligations that have a priority over other general and global responsibilities. Its roots lay in the moral philosophy of the Enlightenment and in the egalitarian idea that the choices of a society’s institutions should rely on the impartial consideration of each person (Beitz 1999: 200). Applied to the international sphere, this thesis focuses on the analogy of domestic and international society, and posits the former as being subject to the same requirement of distributive justice.

In its weak account such form of cosmopolitanism is sceptical about the specific features of the global political institutions required to meet the claims of distributive justice. This scepticism is however abandoned in the stronger version of cosmopolitanism. What is emphasized in terms of institutional requirements is here the need to extend to the international domain similar principles of distributive justice to the ones advanced by John Rawls in *A Theory of Justice* (Beitz 1999: 198). Scholars in defence of such an account argue that globalization processes, characterized by radical changes in communication, the emergence of uncontrollable economical flows, market finance and the consolidation of international monetary institutions, might require a deep reform of the existent political structures for a global distribution of resources. Increasing global inequalities, the existence of millions of people being deprived of basic subsistence rights and minimal standards of well-being, it is argued, require a dispersion of political authority among several levels in order to secure economic justice institutionally in the global sphere (Pogge 2002: 182).

This paper engages with the normative justification of cosmopolitanism on both a meta-ethical and a substantive level. In the light of the cosmopolitan-communitarian debate, I focus

on the problem of justifying and realizing the principles of international distributive justice and on the function of particular political communities for the promotion of socio-economic rights. On the one hand, the paper aims to discuss various strategies for the normative justification of principles of global distributive justice, while on the other it tries to examine critically the coherence of practical proposals in favour of trans-national agencies for a global distribution of resources. The paper maintains the distinction between moral and legal cosmopolitanism in order to discuss both the meta-ethical justification of trans-national obligations and the practical distribution of institutional agency required for their implementation.

In the first part of the paper, following the distinction between moral and legal cosmopolitanism, I consider different approaches: Rawlsian contractarianism, right-based approaches to cosmopolitan justice, and duty-based theories. This serves to discuss: a) the internal consistency of the normative justification of global distributive justice and b) the legitimacy of the cosmopolitan claim for trans-national institutions in charge of a global distribution of resources.

With regards to the meta-ethical investigation, the paper tries to show that cosmopolitanism does, indeed, succeed in providing a coherent critique of compatriot favouritism and presents a strong defence of the universal duty to promote basic subsistence rights. However, I argue that the notion of “basic subsistence rights”, which is so attractive for defenders of global distributive justice, limits the scope of cosmopolitan moral theory to the promotion of the duties of protection and assistance towards the needy, and fails to consider the relevance of the duties to prevent the replication of social injustice. This is because, I argue, cosmopolitanism emphasizes the need to distribute resources but does not pay enough attention to the social nature of the goods to be produced and to the context-dependency of the different types of social injustice. Cosmopolitan proposals of wealth redistribution through global institutions, as related to the promotion of basic subsistence rights, do not engage in the problem of eradicating inequality but only with a *post-factum* remedy to the problem.

Therefore, I argue, limiting trans-national duties to the fulfilment of subsistence claims, on the one hand, does not exhaust the universal scope of justice, while on the other, it creates the impossibility of affecting the system of poverty production. Because cosmopolitanism focuses on the redistribution of resources and not on the contextual causes of poverty, it fails to identify clearly the roots of inequality production. This impossibility/inability brings about a collapse in resolving the emerging problem of agency, namely, who is to hold the responsibility of cosmopolitan obligations of justice. In order to take into account the context

dependency of social injustice, I propose to broaden the notion of subsistence rights to that of social-economic rights and consider the inherently political character of claims for social justice.

In the third part of my paper, I argue that recognizing universal obligations to promote social rights does not intrinsically justify the need for trans-national institutions to distribute global resources. With respect to this distinction, the claim is that cosmopolitanism does not succeed in proving the arbitrariness of community boundaries for the purpose of social justice. Social rights are enforceable within political communities where they have been collectively recognized, and the process through which they are recognized is a political one. It requires a political arena and the globe is not such an arena. This means that while moral cosmopolitanism (the universal extension of the moral obligations) is well justified, legal cosmopolitanism (the positive claim for global institutional reforms for distributing resources) rests on weaker premises. As a consequence, the cosmopolitan claim of bringing particular political communities under some kind of superior authority distributing global resources poses the problem of legitimizing such an agency on a stronger ground. It also calls for a more analytical reconsideration of the shift from moral to legal cosmopolitanism and for a deeper consideration of the role of particular political communities in practically implementing the principles of social justice.

The last part of the paper provides a few arguments in favour of the primacy of political communities in undertaking obligations of social justice. Here I argue that distributive principles are entirely enforceable only within the boundaries of the political communities in which they have been collectively recognized. This is because when political struggles are developed in the name of a shared understanding of substantive collective ends, the promotion of social justice is not only a matter of implementing certain principles of justice, but also of developing practices of mutual constraint between community members. Finally, I suggest that if we want social justice to be more than a cosmopolitan manifesto, the development of principles of justice through a collective effort which transcends the limits of private morality should be considered more in depth.

2. On the normative foundations of cosmopolitanism

This section aims to discuss the normative foundations of contemporary cosmopolitan approaches to the problem of global distributive justice. I will first consider the Rawlsian account of the problem of distributive justice in the international sphere, and then I will

present the critiques of cosmopolitans such as Charles Beitz and Thomas Pogge to it. Secondly, I will discuss the problems of justification encountered by such contractarian approach and turn to the consideration of a human-rights' based strategy. Finally, I will consider the ethical and practical consequences derived by the defence of trans-national obligations in order to promote basic human rights and present my own considerations.

2.1. A contractarian approach: distributive justice and international society in John Rawls

One of the most powerful arguments made by cosmopolitan scholars in defence of cosmopolitan obligations aims at reproducing in a global scale Rawls's contractarian approach as we find it in *A Theory of Justice*. Given the implications of Rawls's account of justice for the definition of cosmopolitan obligations to distributive justice, it is worth considering in some length his reflections on both domestic and international society. I will therefore start with a summary outline of Rawls's main arguments and then consider a few cosmopolitan criticisms.

Rather than a historical hypothesis on the development of particular communities, the social contract represents in modern political thought, from Rousseau to Kant, a regulative idea about the legitimacy of our obligations to a just political order. It plays the same prominent function in John Rawls's *Theory of Justice*. In fact, Rawls' account of justice as fairness explicitly adopts a Kantian constructivist approach and proposes a thought experiment that summarizes the main features of a fictional social contract. Here, the principles adopted to assign rights and duties in the basic structure of society are the ones upon which all reasonable contractors would agree, if they were to decide on social institutions about themselves and their social and economic status behind a "veil of ignorance". I will not discuss in detail all the analytical developments of Rawls' strategy in justifying the principles of justice. However, given the importance of this principle for the question of global distribution, I will quote their final version as it appears in the *Theory of Justice*:

- 1) Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all (Rawls 1999: 266)
- 2) Social and economical inequalities are to be arranged so that they are both:
 - (a) to the greatest benefit of the least advantaged, consistent with the just savings principle;

(b) attached to offices and positions open to all under conditions of fair equality of opportunity.

Rawls argues that, if a concrete democratic interpretation was given to his principles of justice, liberty would be associated with the first principle of justice, equality with equality to fair opportunity, fraternity with the idea of redistribution (Rawls 1999: 167). One *prima facie* conclusion of this democratic interpretation of the difference principle is that civic friendship and solidarity seem to constitute underlying conditions for the practical realization of the difference principle. The basic assumption is here that the mutual ties of political obligation among fellow-citizens justify constraints put on the autonomy of individuals with regard to distributive requirements. This question will be considered in more depth in the third section of my paper, when I will discuss the link between social justice and civic solidarity. For now, it is important to focus on the Rawlsian considerations on the applicability of his principles of justice to the international sphere and the critiques of it.

Whilst considering the need for a theory of justice with regards to global institutions, Rawls repeated his contractarian experiment and concluded with a straightforward Kantian account of the international society. In the *Law of Peoples* he assumed that the subjects of the second “original position” were, this time, representatives of just societies deciding behind a veil of ignorance about the rules orienting their international conduct. Moreover, in a way similar to Kant when he argued that the states which would agree about the conditions of perpetual peace were not completely lawless entities, Rawls underlined that the peoples participating in the second contractarian position were representatives of well-ordered societies.

The outcome of the second contract, Rawls suggests, are the conventional principles of international law and diplomacy: self-determination, non-intervention, non aggression etc. Such principles correspond to an extension of the first principle of justice in the international sphere; however, Rawls explicitly denied the possibility of deducing an equivalent of the difference principle in the global society. He nevertheless acknowledged that certain disadvantaged societies might lack the political and cultural traditions, human capital and material and technological resources needed to become well-ordered societies. Rawls therefore recognized that well-ordered societies have a duty to assist disadvantaged societies, but he denied that the only way of realizing this duty of assistance was to adhere to a distributive principle which aimed to regulate social and economical inequalities in the global order. The problem, he argued, is that, although financial transfers of resources might be essential, they will not be sufficient to rectify political and social injustices. Even a society

with scarce resources, Rawls claimed, can become well-ordered if its political and social traditions, the legal system, class and property structure and its culture and religious convictions can sustain such development.¹

This issue marks a relevant difference between Rawls and his cosmopolitan followers and is, indeed, of systematic interest. Two elements are worth emphasizing while examining the arguments of Rawls's critique: i) the procedure followed to justify the principles of global distributive justice and ii) the evaluation of the role of particular political communities while formulating the institutional demands arising from such principles. With regard to the first point, many authors, among others Brian Barry, Charles Beitz and Thomas Pogge, have claimed that it is ethically inadmissible to limit the scope of distributive justice to the domestic order and to ignore the severe inequalities and injustice perpetrated in the global sphere. A solid theory of justice which has nothing to say about the ways to overcome the extraordinary inequalities that exist between societies but re-propose the standard conceptions of post-Westphalian international relation theories seems too weak a device to face some of the major contemporary challenges: peace and security questions, environmental problems and the need to reduce poverty.

But does the Rawlsian account really have nothing to say? Or is a cosmopolitan perspective on global institutions the only feasible alternative, both ethically and politically? The authors that I have mentioned often criticize Rawls for rejecting the difference principles as a requirement of global distributive justice with no good reasons. According to Rawls, the difference principle does not apply to the international sphere because it would be unacceptable to require people to bear certain costs for the decisions made by another, like decisions affecting industrialization or the birth rate. However, Pogge, for example, claims that this perspective would disqualify the difference principle for the domestic society as well (Pogge 2002: 105). This is a very relevant point, but I will try to show that Rawls was essentially correct in limiting the applicability of the difference principle to the domestic sphere.

According to Rawls, the conditions presented while discussing his principles of justice only hold "when a basis is established for political reasoning and understanding within a public culture". Furthermore, "the role of a conception of justice is to enable all members of society to make mutually acceptable to one another their shared institutions and basic arrangements by citing what are publicly recognized as sufficient reasons" (Rawls 1999: 305). In stating his principles of justice, Rawls believed that the shared conceptions of what ought

¹ The whole section on the disadvantaged societies is of high relevance to this point. See J. Rawls, *The Law of Peoples* (Cambridge Mass: Harvard University Press, 1999).

to be considered right, were intrinsically related to the public culture of bounded political communities. The first principle of justice recognized in the international sphere is already implicit to the common set of norms established by the relationship between particular States in international relations but the reasons for which Rawls considered principles of distributive justice as an exclusive attribute of bounded communities need to be investigated more in depth.

While stating this point, it is important to underline that the Rawlsian account does not imply a dismissal of every trans-national duty, since I have already mentioned the importance of assisting disadvantaged societies *via* a system of international co-operation between states. So the crucial problem is now to recognize if and under what conditions a trans-national duty of assistance of the type that Rawls identifies implies a duty of distributive kind like other cosmopolitans claim. This means: a) from a meta-ethical perspective, understanding what justifies the passage from a duty of international assistance to a global principle of distributive justice; b) from a substantive perspective, being able to show what agencies should be in charge of a reallocation of resources and what kind of trans-national institutional reforms are required for such redistribution.

In considering this point, one should bear in mind that an important difference between Rawls and the cosmopolitans I am considering is that, in choosing to start from domestic society, Rawls is attributing a role that is more than arbitrary to the realization of justice in bounded political communities. Although Rawls does not make this point explicit in the *Law of Peoples*, the idea that the difference principle naturally explicates the notion of fraternity and that it might require that “people are bound by certain ties and willingly acknowledge duties that go against self-interest” goes in this direction (Rawls 1999: 48).

This question is certainly related to the idea that principles of justice apply to a well-ordered society where interactions between members are not merely the expression of a common desire for the same particular thing but are characterized by shared final ends and common activities (Rawls 1999: 460). The importance of this requirement for the second principle of justice, emerges very clearly if we consider the contrast that Rawls exposes between a *social union* and a *private society*, the latter being a sphere where individual interactions are guided by private ends “which are either competing or independent, but not in any case complementary” (Rawls 1999: 456). Only where a public sense of justice is established by the political practice in ways of life that are “necessary for and complementary to our own good” can a social union reach the effective forms of stability required for just arrangements to be in equilibrium.

The problem of the stability of a well-ordered society, viewed in these terms, and the importance of civic solidarity and sociability to achieve it, are among the main concerns of Rawls's theory. While turning to the normative justification of a cosmopolitan extension of the principles of justice, it is important to consider whether these elements can also be extended in a way that is both indefinite and undetermined by the specific political and collective development of mutual associative relations. This issue affects not only the coherence of an argument willing to assert the general validity of a distributive theory of global justice, but also involves its stability. The question of stability in certain institutional arrangements is posed by Rawls once we recognize that certain schemes of co-operation might be just, but lack the relative equilibrium required to prove the superiority of justice as fairness to other competing conceptions.

An appropriate answer to the question is, according to Rawls, related to the issue of political obligation and to the idea that relationships of reciprocity, mutual obligation and the existence of a public sense of justice are needed in order to practically achieve just arrangements (Rawls 1999: 435). I cannot explore such issues further in this paper, but it will be useful to bear them in mind while engaging with some specific arguments of contractarian cosmopolitans in response to Rawls. If the contractarian perspective does not succeed in justifying under what conditions the second principle of justice can be applied to trans-national institutions so as to assign distributive duties and maintain the stability of the emerging institutional arrangements, one has good reasons to be sceptical about the legitimacy of a cosmopolitan perspective on the basic structure of global society. However, it is worth considering the most relevant authors separately.

2.2. Global society and distribution of resources in Charles Beitz

The study of Charles Beitz *Political Theory and International Relations* (1979/1999), offers a set of arguments that try to prove the trans-national and cross-cultural validity of principles of distributive justice, including the application of the Rawlsian "difference principle". His argument follows on the basis on the analogy between the international and the domestic sphere. Global interdependence, co-operation and the scarcity of resources require, according to Beitz, a comprehension of the world as a single society and legitimize the extension of the same principles of justice without need for a second contract between states, as in the Rawlsian account. In fact, Beitz argues that "owing to the growing interdependence of

domestic economies and societies, the two realms are sufficiently similar that whatever principles of justice we are prepared to acknowledge in the domestic case, we should be prepared to acknowledge in the international case as well” (Beitz 1999: 200).

One should, however, ask whether the presence of mere interdependence in both cases is sufficient to justify principles of distributive justice. In Rawls’ theory, the case seems to be that domestic society is not only a schema of constant interaction, but also one where the rules to which actors are bound “specify a system of cooperation designed to advance the good of those taking part in it”. Indeed, in *A Theory of Justice*, the concept of a well-ordered society is introduced to characterize a “cooperative venture for mutual advantage” (Rawls 1999: 4). One has good reasons, then, to ask whether this understanding would also work for the society of states. The problem here is not just being able to show what kind of common conceptions on the sharing of primary goods would emerge from a substantive agreement in the international sphere. It relates, in particular, to considering whether justice as fairness would appear as a reasonable stable conception given the distance, heterogeneity and the absence of mutual ties of reciprocity in the international society of states.

This is not to deny all kinds of sociability in the international sphere. However, in emphasizing the analogy between the domestic and the international society, Beitz seems to focus on a more simplified view of social life than the one Rawls had in mind. One should remember the Rawlsian distinction between a “private society” and a “society of men” here. For Rawls the idea of the sociability of human beings does not merely imply that, by sharing certain things, “men acquire needs and interests that prompt them together to work for mutual advantage in certain specific ways allowed for and encouraged by their institutions” (Rawls 1999: 458). This understanding also applies to a “private society” a concept that one may find analogous to Smith’s and Hegel’s description of “civil society” and seems to bear certain similarities with contemporary interactions in a globalized society.

However, in order to achieve stability, the principles of justice require a public recognition of them and the common acknowledgement of the general laws of moral psychology that “conspire together to support the institutions of a well-ordered” society. One might wonder if this would be the case in an international co-operative scheme and if the members of the international society would find sufficiently strong such motives of action without reference to a set of collective values. This is not to say that a cosmopolitan extension of general feelings of friendship, mutual trust, solidarity or the enforcement of a common sense of justice throughout time should be considered impossible. However, it is worth reflecting in what ways it could develop in a theoretical framework of the global society that

considers the collective development of such elements in a community form of life as only contingent or arbitrary.

These observations very much weaken Beitz's analogy-based argument that requires an extension of the contractual experiment without need to consider the plurality of states as intermediaries between individuals and the international sphere. It also determines the impossibility of reaching an inter-subjective agreement on the principles of justice required for global distribution. Beitz himself has recently acknowledged the strength of such critiques and abandoned the contractarian argument by trying to justify legal cosmopolitanism on the basis of the moral equality of persons. One of the key elements of this account is that it is inclusive and non perspectival; "cosmopolitanism encompasses all points of view and gives them equal credit" (Beitz: 1994. 124). Everyone is entitled to minimum standards of humanity and justice and, Beitz holds, the value of institutions is determined by the degree to which they fulfil basic needs and respond to specific entitlements. Here, he follows a similar strategy to that of Thomas Pogge who has also tried to rely on Rawls's original position in order to develop his own arguments in a way that allows for a construction of the global principles of distributive justice. I will say something about a similar account in the next section.

2.3. Thomas Pogge and the redefinition of the contract's function

In *Realizing Rawls*, Thomas Pogge has challenged the Rawlsian function of the social contract by using it as a generalized argument to assess universal principles of justice with no limit to domestic society. In fact, Pogge suggests that the individualistic basis of Rawls's theory of justice supports an interpretation on which "global parties represent persons and therefore assess an institutional scheme by the worst representative individual share it tends to produce" (Pogge 1989: 254). Hence, separate societies should be considered legitimate only if they result as a product of a decision that emerges from a kind of meta-original position in which all the inhabitants of the world are represented.

It is superfluous to say that the attempt to prioritize principles of justice for the basic structure of global society very much complicates the strategy of justification pursued by Pogge. The basic objection that could be moved to such an account is, as acknowledged by Pogge himself, that "the ideal of a global regime that is just by Rawlsian lights may cohere well with *our* cultural heritage and *our* considered judgments but is nevertheless inappropriate on account of existing cultural diversity of traditions and moral judgements" (Pogge 1989: 267). This point becomes intuitively clear if one recalls the debate generated by the 1993 UN

conference on Human Rights in Vienna, where several African and Asian representatives emphasized that the individualistic account of justice is an exclusively specific feature of Western interpretations, as opposed to alternative conceptions of human dignity that are less individualist and less inclined to accept the priority of an abstract moral agent's claims over the settled community norms.²

Clearly, this is not to say that such an argument invalidates Pogge's claim *tout court*. One might always try to argue that a Kantian constructivist account can be universalized from whatever perspective, provided the general acceptability of the moral autonomy of agents. However, this strategy very much complicates the possibility of reaching the "reflective equilibrium" needed for a coherent justification of principles of justice applicable to global institutions. In fact, if certain individuals in the world find it impossible to abstract from their embeddedness in particular communities because of the lack of affinities to Western cultural and philosophical conceptions of institutions then it is not easy to see how the priority of a global contractarian approach could be justified over the domestic one. The advantage of considering collective subjects rather than individuals as participating in the second original position, as in the Rawlsian *Law of Peoples*, is precisely the need to avoid engaging in a discussion about fundamental principles that are not historically consolidated or publicly tested in a community form of life.

Probably aware of such difficulties Pogge, in more recent papers, has somehow abandoned the contractarian strategy of justification and tried to provide a more comprehensible theory, focused on the link between the institutional requirements for global distributive reforms and broadly shared ethical demands. In *World Poverty and Human Rights*, he offers a general definition of cosmopolitanism as consisting of three elements: individualism, universality and generality. Whereas individualism claims that the ultimate units of concern are individuals (not members of larger entities), universality attaches this status to everyone equally and generality extends its force of application to all (Pogge 2002: 169). Such definition is functional to the understanding of another distinction offered by Pogge, between legal cosmopolitanism and moral cosmopolitanism, understood as both institutional and interactional. I will first illustrate Pogge's arguments on such issues and explore their links to his final account of "institutional cosmopolitanism based on human rights". This will introduce the second type of normative justification of cosmopolitan distributive justice, based on a human rights approach.

² A more exhaustive discussion of this point can be found in Chris Brown, *Sovereignty, Rights and Justice*, Cambridge, Polity Press 2002.

Legal cosmopolitanism, according to Pogge, involves a concrete political model of a global order under which all persons “are fellow citizens of a universal republic” (Pogge 2002: 169). Under this form cosmopolitanism appears as a particularly demanding theory since it might require considerable interventions to reform the existing international order, without excluding the possibility of a world-state. On the other hand, moral cosmopolitanism holds that all persons are in certain moral relations with each other and that such relations put constraints on actions. Pogge’s aim is to discuss a specific account of moral cosmopolitanism in order to consider whether “it supports reforms that would bring the global order closer to the ideal of legal cosmopolitanism”. This account is concerned with two types of moral constraint on actions: a) institutional and b) interactional. An institutional conception postulates certain principles of *social justice* and assigns responsibility for the unfulfillment of human rights to institutional schemes. By contrast, an interactional conception postulates certain fundamental principles of *ethics* and requires *individuals* and collective agents to be accountable.

Now, according to Pogge, “making the institutional view primary leads to a more plausible and more pertinent overall morality because taking part in the global institutional order makes unfulfilled human rights everyone’s responsibility”. (Pogge 2002:171). In fact, everyone, Pogge claims, has a duty not to impose an unjust institutional order “even while this duty triggers human-rights based obligations only to fellow-participants in the same institutional scheme”. Here comes the requirement to act positively to implement global institutional reforms that meet broadly shared human right claims.

A general discussion of the meta-ethical foundations of such an account is beyond the scope of this paper. I will therefore limit the critical analysis of it to the problem of global *distributive* justice and to the analysis of material poverty and deprivation and leave out the question of other unfulfilled human rights. Now, if the validity of a contractarian approach for the justification of distributive principles of justice is ruled in the global sphere, accepting the alternative of prioritizing institutional over interactional cosmopolitanism requires: i) a clear concept of the type of right violated in the case of “unfulfilled human rights” in the global order; ii) a clear concept of the institutions that should be assigned responsibility a) for such violation and b) for the distribution of duties corresponding to trans-national rights; iii) a clear concept of the political initiatives that should establish another socially just alternative.

Such questions, *i.e.* the normative justification of global duties to a trans-national distribution of resources require a more analytical understanding of what kind of *right* is the corresponding *right* to it and the type of claims that can be made over it. This implies a shift

from a contractarian approach trying to identify principles of justice that can assign rights and responsibilities in the global order, to a strategy based on the attempt to defend an account of human rights as broadly shared, weighty and unrestricted moral concerns (Pogge 2002: 54). I will now turn to this second strategy and consider the type of obligation that they generate as well as the nature of the institutions required for their implementation.

2.4. A human rights approach

Human rights are often considered to be the natural descendents of natural rights. However, in the natural law tradition, the status of right holders was considered to be derived from an attribute that would only pertain to human beings in a fictional state of nature. On the other hand, the emphasis on human rights stresses the link between this concept and the moral dignity of persons. It is often claimed that, in order to consider the conceptual origins of this point, one should rely on the Kantian assumption: 1) that every individual is an end in itself; 2) that he/she is entitled to certain rights independently of his/her nationality, political opinions and religious beliefs; 3) that every human being is morally obliged not to violate these rights.³

These statements are very important when considering the difference between a strategy which aims to justify trans-national distributive obligations from a contractarian approach and one that focuses on the moral validity of rights to a just distribution of resources. In the contractarian approach, the validity of such rights is not presupposed, instead, it constitutes a result of the plurality of interests and moral intuitions of individuals participating in the establishment of principles of justice. It is then an agreement on the structure and content of these principles which determines the assignment of rights and duties and the functioning of the basic structure of society.

Now, as I have tried to show in the previous section, the difficulty of justifying rights to a distributive allocation of resources from a contractarian approach in the global sphere requires the adoption of a strategy that considers certain rights as the basic starting point. This is a much weaker and more demanding device than the Rawlsian one, in that it presupposes, rather than expects, a certain agreement on the conceptualization of such rights. In fact, in the Rawlsian account, the principles of justice are precisely what is needed to determine the consistence, the order of priority and the relevance of rights and duties in a well-ordered society. If we consider these rights to be already established and recognized, even only as

³ The third point might also serve as a tool to shift from a discussion on the definition of cosmopolitan rights (i) to a discussion on the concept of cosmopolitan duties (ii).

moral claims, we are avoiding the problem of finding principles to justify them. In other words we are presupposing what is meant to emerge at the end of a procedure of justification. I will focus later on this point, for I will now discuss the strategy adopted to justify both the trans-national validity of rights to a just distribution of resources and the need for trans-national institutions to be in charge of their enforcement.

Two strategies are followed to justify trans-national obligations to global distributive justice. The first one is to derive their validity from the recognition of certain rights, defined as entitlements to a minimum standard of humanity, justice and well-being. We may expect the significance of such concepts to be clarified by the international human rights doctrine, as has been articulated in the United Nations Declaration of Human Rights. While trying to justify their cosmopolitan perspective, both Beitz (Beitz 1994: 126) and Pogge (Pogge 2002: 57) occasionally adopt this strategy to justify the need for trans-national institutions in charge of their enforcement. The basic idea here is that since the moral demands generated by such rights can be isolated from the concrete context of their implementation there is no reason to assume that particular political boundaries pose more than a contingent empirical obstacle to the demand for trans-national institutions. The function of the United Nations Declaration here is to make intuitively clear the existence of a *consensus omnium gentium* on the moral weight of socio-economic rights.

A similar strategy, although not related to the question of global distribution can be found in legal positivist accounts on human rights (Bobbio 2000). The problem here is that referring to the UN Declaration in order to assert the recognition of certain rights as both universal and positive does not facilitate the adoption of a cosmopolitan perspective that recognizes individuals as the immediate subjects of international institutions. This is because although the Universal Declaration of Human Rights refers to the rights of human beings *as such*, it does so *via* the sovereign states, the only recognized subjects of international law. This means that “cosmopolitan rights” could be considered as the “positive universal rights” of human beings only in a weak sense, with regard to their scope, but are enforceable in a stronger sense only as the rights of citizens that exercise sovereignty in a bounded political association. This does not imply that a claim to give priority to individuals as such should be considered as illegitimate. However, the argument that one should recognize individuals rather than particular political communities as the proper subjects of international justice requires a stronger justification.

The second strategy of linking trans-national obligations to distribute resources to the trans-national validity of human rights is to rely on a philosophical justification of moral

cosmopolitanism and to derive from it certain institutional requirements. A philosophical justification of moral cosmopolitanism implies the ability to isolate the philosophical conception of rights from a particular context of manifestation, be it the state legal system of states, community's norms or others form of collective legitimization, and provide a universal foundation for it. As a further step, this would require: 1) a philosophical clarification of the concept of "right" (unrelated to the development of a specific legal order) and 2) a clarification of "universalism" as related to a transcendent concept of "human reason" (unrelated to a contingent historical development). This seems only possible through 3) a comprehensive moral theory which might ultimately require an ontological, absolute foundation.

The third point is particularly problematical. As John Rawls underlined in *The Law of Peoples*, human rights do not depend on any particular comprehensive moral doctrine or philosophical conception of human nature. An attempt to justify them from a moral perspective would require a metaphysical foundation upon which hierarchical societies would not agree. Moreover, it would require a binding theory of "comprehensive" ethics that would hardly obtain a generalized consent in pluralistic societies. Therefore, Rawls claims that human rights should instead be conceived as expressing the basic standards of well-ordered political institutions that belong, as members in good-standing, to a just political society of peoples (Rawls 1993: 68).

This last point does not imply a complete defeat of the attempt to justify legal cosmopolitanism. It only suggests that we reconsider a normative strategy based on what could be called the ontology of human nature. It also shows that it is impossible to justify the shift from moral to legal cosmopolitanism in the name of a generic universal interest to promote human rights. Starting from Rawls's account of rights as a special class of moral concerns expressing basic standards of well-being, another route seems possible for global distributive justice. It focuses on a conception of rights as entitlements to basic natural and human resources and tries to defend cosmopolitan rights as those rights generated by the duty to fulfil basic human needs. The attempt to justify a conception of rights as entitlements to basic natural and human resources is founded on two claims: 1) that basic subsistence rights have priority over other rights (i.e. civil, political *etc.*); 2) that the duty to protect the so-called subsistence rights is not only a duty of omission (*i.e.* negative duty) but also of assistance (*i.e.* positive action is required in order to provide access to the rights in question). Many authors, including Henry Shue, Jeremy Waldron, Charles Jones and Robert Goodin, from different perspectives, have presented relevant arguments in favour of this account of legal cosmopolitanism. I will now turn to their analysis and try to show that, while they succeed in

providing a thorough critique to the communitarian claim of a priority of moral duties towards compatriots, there are several problems that remain unsolved for the justification of institutional cosmopolitanism with regards to global distribution.

1. The priority of basic subsistence rights over other types of universal human rights such as civil or political rights is generally defended:

(a) negatively: on the basis of the premise that the absence of a right to subsistence makes individuals vulnerable in a way that threatens the credibility of any other distribution of priorities (Shue 1996: 24-25)

(b) positively: on the basis of the claim that rights generate from interests and the interests that individuals have in meeting their subsistence needs is of primary importance (Waldron 1993: 11).

Subsistence rights, it is argued, have priority over other civic or political rights because they constitute entitlements to basic needs, *i.e.* food, shelter, clothing, clean water or health care. The importance of relying on a concept of basic need in justifying the priority of such individual rights is that needs have a priority over wants and an objective quality that can hardly be denied. They are not merely expressions of desire and do not constitute arbitrary claims to any good whatsoever but maintain a relationship with interests that qualifies the latter as vital. Moreover, basic needs can be interpreted as universal means or instruments for the pursuit of any purpose; they justify a claim to rights as entitlements to human survival and a minimally adequate existence.

However, the idea that basic needs can ground universal rights to material goods has encountered several critiques. In his study on *Rights*, Peter Jones mentions in particular: i) the libertarian charge to welfare rights as a violation of the human right to property; ii) the socialist critique that their practical implementation *via* the welfare state is not more than an emollient of the objective contradictions of capitalism; iii) the communitarian argument that, rather than human rights, welfare rights should be conceived as citizens' rights (Jones 1994: 146-148). I will try to show that the libertarian critique is inconsistent from an ethical point of view and the socialist one (at least in Jones' account of it) is incoherent from a theoretical point of view. I will first examine these two and then turn to the implications of the communitarian critique.

a) To the libertarian critique, one might respond that denying the priority of subsistence rights over rights of different kind leads to a restriction of the notion of self-determination and to a violation of substantive self-ownership. The argument of the violation of property rights could be taken seriously only if a defender of libertarianism managed to prove that a right to

property has the same essential *standing* as subsistence right, *i.e.* in its absence no other right could subsist. In fact, the priority of welfare-subsistence rights over other rights is due to their essentiality for the proper development of the civil and political status of persons which, in their absence, would not exist. Property rights do not have the same impact; an owner of certain goods would maintain his social and political stand even in cases of a reduction of these goods, provided that they do not affect the level of subsistence and that it is not for arbitrary reasons. Therefore the redistribution of individual property should be considered ethically justified if it was done in order to extend the participation to the common deliberative sphere.⁴

b) The scope of the socialist critique is to deny that recognizing subsistence rights could be considered a solution for accommodating the contradictions of liberal economy. Here, a Marxist would probably argue that the redistribution of resources is too weak a device to provide a long-lasting remedy to the problem of world poverty and human subsistence. Instead, the focus should be on a radical intervention into the way goods are produced, opting for a collectivized, rather than a liberal exchange-based economy. To a similar critique, one might respond that all that the normative argument in favour of subsistence rights is claiming is the priority of basic needs over other, less vital, interests. It is not defining which political strategy would be a better means of guaranteeing these human rights. In order to justify a radical intervention in production, a Marxist-oriented theory would still have to justify the priority of certain social rights over other civil and political rights. This is exactly what the defender of subsistence rights is providing. In this case, Marxism would overlap, rather than conflict with such an account. The question would then remain open as to what kind of intervention would be most suitable to respond to such basic entitlement but this is a substantive, rather than a normative problem and a political agreement of the two perspectives is certainly not excluded *a priori*.

c) There are several versions of the communitarian critique to a defence of cosmopolitanism grounded in a trans-national duty to promote subsistence rights: compatriot favouritism (Fletcher 1993, MacIntyre 1985); nationalism (Miller 1988; 1994); ethical relativism (Walzer 1993; 1994) and post-modernism (Rorty 1989).⁵ Common to all of them is the idea that socio-economic rights can only be regarded as a claim over a specific pool of

⁴ This is a very rough critique to the libertarian position. For more detailed considerations on this point, see *G. A. Cohen, Self-ownership, freedom and equality* (Cambridge: Cambridge University Press 1995).

⁵ For a deeper discussion of their arguments from the perspective of a rights-based account of cosmopolitanism see *C. Jones, Defending Cosmopolitanism*, Oxford, Oxford University Press 1999, pp. 111-202. Among the authors mentioned above, I have only consulted directly Walzer, Miller and Rorty. The discussion of all the others rests heavily on the study of Charles Jones.

resources, which belong to particular societies that constitute, in Rawls' definition, mutual schemes of cooperation. Hence, welfare rights are rights that people only have as citizens of particular societies (P. Jones 1994: 165). Only the associative and communal obligations arising from participation in the collective forms of self-determination can legitimize an absolute duty to meet specific distributive requirements. Individuals, as citizens, are embedded in particular normative relations which should be considered as moral "givens", determined by the cultural and historical continuity of a nation (Miller 1988) or by the participation in common political practices (Walzer 1980). This point is highly relevant for the purpose of my investigation, so I will discuss it in more detail.

2.5. Social justice and political boundaries

The question of the inherently political character of socio-economic rights needs to be analysed more in depth. Such investigation requires both an understanding of the normative foundations of socio-economic rights and its substantive conditions of realization. I will try to explain these claims better and then discuss the problem of cosmopolitan distributive justice in light of my observations.

There are two ways of discussing socio-economic rights. One way is to emphasize their correspondence to basic human needs and the idea that socio-economic rights guarantee a minimum level of the provision of goods that allows full membership in a community and the proper development of one's personality. Another way is to emphasize their intrinsically political character and their strong link with the idea of democratic citizenship. From the perspective of the former, subsistence rights and socio-economic rights might be seen as analogous or mutually comprehensive. From the perspective of the latter, as T.H. Marshall points out, social-rights are intrinsically connected to the idea of democratic citizenship. This is because their goal is not exhausted in the creation of a minimal access to certain goods, *i.e.* it is not identified with that of subsistence rights. In a market-society social rights constitute a meaningful part of a political and even conflicting process that "has assumed the guise of modifying the whole pattern of social inequality" (Marshall 1992: 28).

It is precisely the conceptualization of the duties and responsibilities generated by each of these conceptions that needs to be clarified with respect to cosmopolitan justice. If the cosmopolitan argument is limited to the claim that we ought to fulfil our moral duties towards the needy, *i.e.* meet subsistence claims, then it is not easy to see why we need cosmopolitan justice for something that is already implicit in the existing structure of international

cooperation. If the argument is that fulfilling our duties of assistance is not enough to provide a distributive share of global goods, then cosmopolitanism is either: a) making an empirical claim or b) making a normative claim. An empirical claim would require more empirical evidence to justify the need for global institutional reforms, so I will consider only the normative claim with respect to political boundaries.

From a normative perspective, cosmopolitans would need to justify both the necessity of a global principle of distributive justice and the arbitrariness of political boundaries for such a purpose. In order to do so, they would have to argue: i) that needs do not depend on the social context in which they arise; ii) that distribution of shares ought to be universal and iii) that the particular political context to which the distributive principle applies is either global or irrelevant for the purpose of distribution. To these claims, one could respond by quoting David Miller when he claims that “distribution according to need, since it is a comparative principle, requires that its field of application be identified. On the other hand, as soon as we move beyond indisputable needs, a social element enters” (Miller 1998: 660). These observations rule out the argument on the irrelevance of a political association for the exercise of social rights. However, cosmopolitans might still affirm, *contra* communitarians, that social justice is not limited to particular political boundaries but may be extended to the whole world.

The delicate question for a systematic confrontation of these positions is whether cosmopolitanism could cope with the requirements of political groups and trade unions and produce a domestic equivalent of the particular political processes of social conflict and negotiation across borders. Defenders of institutional cosmopolitanism, such as David Held, Daniele Archibugi and Mary Kaldor, argue that this would be possible by creating global nets of cooperation and investing in the promotion of global civil society.⁶ However, given the actual global structure of power-relations, it is very hard to see how this could happen without substantial transfers of sovereignty from nation-states and the creation of global institutions capable of maintaining law and order, collecting taxes, providing services and defining the extension of property rights. In other words, it is very difficult to see how a global civil society of the type I have described could subsist without a global state.

I will say something more about these issues in the next few pages. Now, I am more interested in assessing the cosmopolitan meta-ethical challenge for communitarians and asking whether one could extend its moral commitments beyond borders without a

⁶ For an overview of such arguments see D. Archibugi (ed. by), *Debating Cosmopolitics*, London-New York: Verso, 2003.

universalistic meta-ethical foundation of principles of justice. David Miller tries to respond to this challenge by saying that “if we begin with universal obligations, we shall not end up by considering nationalities as the optimal basis for these obligations. But if, on the other hand, we start with selves already heavily laden with particularist commitments, we rationalize these commitments from a universalist perspective” (Miller 1988: 660).

Here, two systematic problems related to the cosmopolitan-communitarian debate emerge. One is related to the context dependency of moral obligations and the other to the context-dependency of their enforcement. I believe that cosmopolitan defenders can justify their claims with regard to the former but not to the latter. Regarding the context dependency of moral obligations, Onora O’Neill rightly affirms that, by starting to derive obligations from moral agents already embedded in particular cultural and political identities, we risk marginalizing those whose sense of identity is different (O’Neill 2000: 175-177). This observation tackles one of the most spread accounts of communitarianism, namely, the idea that the “ethical life” of a community has a normative priority over the claims of individual morality.

Cosmopolitanism normally responds to this claim by emphasizing the moral equality of all persons (C. Jones 1999: 118). From a moral-egalitarianist perspective, a normative defence of particularism would be inconsistent with the principles of impartial concern and equal consideration. In fact, defending particularism allows and even requires persons to prioritize the interests and needs of their compatriots compared to those of strangers. This account is, however, incompatible with a universalist account of justice defined as the equality and impartiality of all subjects, regardless of their origin and social or political culture. It is also difficult to reconcile with a Kantian understanding of obligations that require our moral judgements to consider every individual as an end in himself/herself, regardless of his/her being embedded in a particular political and social reality.

Rigorous defenders of communitarianism normally object to this argument that there *is* no impartial source of moral concern. The fiction of individuals deciding about the subjects and procedures of obligations behind a “veil of ignorance” is an excessively abstract thought experiment, to constitute an effective response to the challenges of the real world. According to communitarians, an enquiry into the significance of the cosmopolitan principles of justice, could not avoid posing the problem of their legitimizing source. The first obstacle encountered by a merely procedural conception of practical reason is, in this case, a quest on the very possibility of theorizing norms which are independent from their cultural-ethical context of elaboration. The implications of this argument challenge both the possibility of

conceptualizing individuals primarily as right-holders, without referring to the institutional context in which rights have been formulated and recognized, and the very possibility of sharing *positive* duties of distribution at a global level in the absence of a common legal, political and cultural development and of collectively-shaped communal obligations.

This last argument has two consequences, one of which is related to a consideration of justice as impartiality, and the other to the problem of agency in enforcing cosmopolitan rights. A human rights approach to institutional cosmopolitanism succeeds in arguing that entitlements to basic rights should not be limited to a community's boundaries. However, it is still not very clear what kind of duties correspond to such rights and how exactly the agents responsible for trans-national obligations should be defined. This leads the discussion to the second point mentioned in presenting an account of legal cosmopolitanism based on the justification of subsistence needs: understanding the type of obligations that correspond to cosmopolitan rights.

2. Obligations which correspond to rights are normally defined as: a) negative duties or b) positive duties. Recognition of negative duties requires nothing more from the agents than to refrain from committing an action that might harm other persons. These are duties of omission or non-interference. On the other hand, a positive duty requires a special commitment to act positively in order to meet the claims of the rights in question. Such duties might be defined as duties of assistance, protection and (I would add) prevention.⁷ A normative justification of the rights corresponding to such duties is particularly connected to three main presuppositions in favour of principles of distributive justice. I will present this set of arguments in the way introduced by Charles Jones, before I discuss the concept of obligation that is linked to them in depth:

- i) the distribution of valued resources is subject to human control;
- ii) those resources are indeed relatively scarce;
- iii) (at least in the present political context) nation-state boundaries either are or are not relevant for the purpose of determining justice-based obligations (C. Jones 1999: 9).

The last point is particularly important for the purposes of my research. The way defenders of cosmopolitanism respond to this challenge is hardly controversial. It is generally assumed that interdependence, scarcity of resources and the possibility of human control over distribution are all that is needed to discuss the principles of international distributive justice (Jones, 1999: 9). Then, starting from this assumption and despite the different strategies pursued in the normative justification of global distributive justice all defenders of

⁷ The last point is particularly important for my argument in favour of the need to consider subsistence rights under the broader scale of socio-economic rights.

cosmopolitanism agree in arguing that a *positive duty* to promote *basic subsistence rights* implies an interpretation of *political boundaries* that does not constitute a limit to the scope of justice (Beitz, 1979; Barry 1989; Jones, 1999; Pogge, 2002). This means that, in order for minimum requirements of humanity and justice to be met, the world's political structure should be reshaped so that States and other political units "are brought under the authority of supra-national agencies of some kind - a world government – perhaps or a network of loosely associated regional bodies" (Beitz 1994).

From this perspective legal/political cosmopolitanism:

- i) requires duties of omission to be generally fulfilled – this point is hardly controversial therefore I will not focus on it.
- ii) imposes to the agents moral obligations to bring about institutional changes that meet the cosmopolitan claims;
- iii) assumes that the existing political boundaries do not constitute a limit to the universal realization of justice.

In my investigation, I will argue in favour of the normative justification of the first two points but deny that they can lead to an uncritical acceptance of the third. Several authors have already pointed out that a rights-based account of cosmopolitanism fails: a) to determine precisely the type of duties corresponding to positive trans-national rights, and b) to indicate which individuals or agencies should be assigned responsibility for trans-national obligations. Onora O'Neill has argued convincingly in several contributions that a right-based approach to cosmopolitan justification cannot be taken seriously unless it is shown "what should be provided and what action will be required from whom if the right is to be respected" (O'Neill 2000: 125). In the next section, I will introduce a few systematic points on what I believe to be the problem with an account of institutional cosmopolitanism that assumes belonging to political communities to be arbitrary for the purpose of redistribution. Furthermore, I will try to show why the conceptual link between moral and political cosmopolitanism with regards to distributive justice remains problematical if the question of particular political communities is not conferred adequate theoretical dignity.

3. Cosmopolitanism and social justice

A quick look at the state of the art in the literature has shown the tensions arising in the cosmopolitan-communitarian debate with regards to global justice. On the one hand, all the accounts of cosmopolitanism examined so far have provided a coherent defence of moral

cosmopolitanism, *i.e.* have argued the universal extension of the moral scope of justice with regards to a right to meet specific subsistence requirements. However they have failed to give an appropriate justification of the trans-national institutional reforms needed to distribute resources on a global scale. In sections 2.2. and 2.3, I have tried to argue that the contractarian approach does not succeed in proving that abstracting from particular political communities leads to a more coherent justification of global distributive justice and to the necessity to adopt a global difference principle. In sections 2.4. and 2.5., I have tried to argue that the strategy followed by a human rights approach seems more feasible in assessing the primacy of basic needs, and the importance of trans-national duties of assistance and protection towards the needy (2.4), but it does not prove the arbitrariness of political boundaries for such purpose (2.5). I have also tried to show that this is because political or institutional cosmopolitanism makes very strong assumptions on the importance of trans-national reforms and the need for a global distribution of resources, but without being able: a) to provide clear indications on what kind of duties and what kind of agencies should be assigned the responsibilities for such reforms; b) to rule out the possibility that such reforms might be *consistent with* and *arise from* the political initiatives of particular societies.

3.1. Reconciling cosmopolitanism and communitarianism in theory

3.1.1. Right and good

The defence of international distributive justice has until now been founded on a liberal account of politics, considering collective institutions as being merely instrumental to the promotion of individual dignity. This has brought cosmopolitan scholars to consider the question of particular political boundaries as arbitrary to the scope of justice. The concept of particular political communities has had no normative weight in the cosmopolitan strategies of justifying global justice. My aim was to show that, in doing so, cosmopolitan theories fail to consider that the principles of justice resulting from such an account might lack the “reflective equilibrium” required not only to establish those principles but also to consider their stability (see Section 3.1.).

Although the starting point of the normative justification of a global theory of social justice needs to be based on the inviolability of individuals’ claims to dignity, I argue that the cosmopolitan language of “rights” needs to be broadened so as to encompass the

communitarian concern on the “substantive collective good” of a particular polity. Deeper discussion of such notions can be found in the communitarian literature, for example in the writings of Michael Sandel, Charles Taylor and Michael Walzer. Converting the notion of a “subsistence right” to that of “social right” is fundamental for such an extension. In fact, it allows to address the question of distribution according to need by emphasizing the particular social nature of the goods to be distributed, the public political culture in which they are considered valuable and the practical activities through which they acquire social meaning.

The crucial question here is an attempt to conceptualize the problem of global distributive justice in relationship to a notion of “goods” which are sustained or sought in concrete political associations. By trying to reconcile the dualism between the concept of “right” and that of “good”, the aim is to encompass in a unique ethical perspective both an ethical theory of individual interests and a substantive ideal of social citizenship. This does not mean that the nature of such “good” should be substantivized or considered homogeneous and stable throughout time in each political community. However, it is important as a regulative ideal to understand the collective political practices undertaken to sustain just political institutions in modern societies.

3.1.2. Individual interests and collective values

Communitarian political philosophy holds that the main problems of a community are positive (to create an institutional, political and legal system). Rights are certainly important and useful correctives in these processes but they should never be seen as the core of the collective association. As Rousseau pointed out in the *Social contract*, the conflict between particular interests in a political association needs to be balanced by the collective sharing of a common ideal, represented in a general will. This is also the conceptual root of the communitarian critique to the liberal account of society which only allows for the development of an ideal of democracy that leaves no space to civic education and social participation. A special focus on individual rights, it is claimed, which fails to consider the collective good of a community, creates a dangerous tendency of isolating individuals in the defence of particularist interests and ultimately brings about atomisation in society and an uncontained emergence of selfishness.

An appropriate understanding of these assumptions might be attained through a confrontation of two different paradigms of modern philosophy with regard to what is a political association: the Lockian and the Rousseauian account. Communitarians argue that,

by emphasising the non-compulsory nature of every individual commitment and the instrumental character of particular communities, a Lockian-oriented liberalism seems to reduce our connectedness to others and our being bounded to a specific political space (Taylor 1985: 293-294). Hence, it is unable to give a proper account of the exclusive concern of certain links and the establishment of strong and cohesive groups, stable movements and parties that might make our singular moral imperatives effective. Liberalism often fails to understand the collective meaning of concepts such as trust, personal sacrifice, solidarity and altruism, which emerge only through the sharing of particular political practices. It also undermines the fact that claims for social justice are linked to a common ideal of the good life that can only develop if the political sphere is founded upon a civic ideal of citizenship and supported by collective participation in democratic practices.

A theoretical discussion of the ethical standing of particular political communities with regard to cosmopolitan justice requires then a threefold approach: i) ethical; ii) political and iii) legal. From the point of view of the former, it is important to focus on the moral standing of political communities as the sphere where social rights are only enforceable because of the practical process in which they have been collectively recognized. This process is a political one. Therefore every attempt to conceptualize cosmopolitan justice through a shift from the political to the civil deliberative sphere which fails to consider the ethical relevance of bounded political communities lacks the legitimacy conferred by the citizens exercise of the general will in a specific collective practice. If this happened to be the case, from a legal perspective, the *jus cosmopolitanum* would substitute, instead of merely integrating, the *jus gentium*, without being able to avoid degenerating in a global despotic structure. I will say something more about such issues in the next few pages, where I consider the practice of promoting global justice.

3.2. Reconciling cosmopolitanism and communitarianism in practice

In Section 2.4. I tried to show that an attempt to justify and substantiate a cosmopolitan theory of distributive justice only *via* a human-rights strategy might lead to a weak justification of such rights, understood only as the moral entitlement to basic goods. I have also argued that a cosmopolitan theory based on the defence of human rights to subsistence and on the moral duty to meet certain basic material needs is not satisfactory enough to determine the principles of global distributive justice. What is more the argument that obligations are cosmopolitan in scope does not rule out the fact that certain rights might entertain a non arbitrary relation to

the particular political communities in which they are enforced. One should ask two questions here: i) whether a cosmopolitan moral duty can be limited to the fulfilment of subsistence claims; ii) whether the structure of cooperation in a society of states is unable, *a priori*, to meet such a claim and iii) whether the political function of particular societies and agents does indeed add nothing substantial to the basic structure of the argument. Only if the answer to both questions were yes, could the cosmopolitan argument in favour of a trans-national transfer of resources proceed efficiently.

However, all these points seem to be problematical. From the perspective of the former, what should be morally demanded is not only assistance and protection to the needy but also the prevention of poverty from reproducing itself. For this reason, what is required, even in order to build a coherent argument in favour of trans-national reforms, is a better assessment on the causes of inequality and massive poverty. Hence, cosmopolitanism should justify the existence of a global regime and should have a theory explaining how this came into being and how diverse human actions tend to unify into one structure. In this case cosmopolitanism, before trying to defend a trans-national application of the difference principle for a global distribution of resources, should try to argue in favour of a coherent account of the causes of inequality and of the system that produces poverty. It might be that we find that the causes of the production of poverty are global, for example that they refer to global market transactions, or local, for example an unjust distribution of property. However, in this case, the mobilising ground for cosmopolitan reforms would not be the violation of basic material entitlements but the broader issues of social injustice and political resistance to oppression.

These kinds of problems need to be assessed better and I can only provide here a sketchy outline on how to proceed further. The shift from the notion of “subsistence” to that of a broadly shared “social” right requires a more attentive investigation of the role of particular political communities in bringing about radical changes in the economic and political structure of society. From this perspective, it is important to remember that in the contractarian approach, although the primary function of social contract theories in modern political philosophy has been to protect and legitimize the equal right of every human being, only in the associative form of a collectivity can a strong political (not moral) duty to promote these rights be claimed. The question here is whether global society can become a political association without being a world-government, the need of which is normally denied by cosmopolitans (Beitz 199: 287). If the challenges of the contemporary world truly require a revision of the classical community related model of political association and a rethinking of the question of agency in global terms, would trans-national entities succeed in distributing

social rights and duties? Would the subjects of these changes comply with the distributive requirements without being bounded by a sense of solidarity and lacking any commitment to a particular political cause? Would the poor and the oppressed fight against poverty and injustice without a collective understanding of their political claim for recognition in a particular community? What powerful factors of mobilisation in favour of social justice could cosmopolitanism offer if the inherent relevance of collective association is abandoned due to the claim that boundaries are arbitrary?

By criticizing the assumption of cosmopolitan theories that trans-national institutional reforms are the primary way to social emancipation, I do not want to challenge the moral standing of this demand, but affirm that it is not necessarily a redistribution of material resources that can make a society more just. The empirical researches of Amartya Sen on famine have shown that lack of food is not necessarily the primary cause of famine. In several studies, Sen has tried to show that the decrease of alimentary production would not have been so severe as to bring famine if the people in consideration were represented by decent governments that were able to arrange access to primary resources via public institutions (Sen 1981).

This is why, although poverty constitutes an important challenge to the ethical concerns of citizens' in affluent country, the issue of redistribution could be raised only after a more analytic study of the social, economical and political causes of global suffering and oppression. The focus on the moral universal consent of the necessity to meet subsistence claims should not isolate the problem of individual welfare from the broader and more important question of social justice. As John Rawls correctly puts it, the primary function of international justice is to help to establish a just society of peoples but the welfare of individuals should be provided within the framework of particular political communities. Cooperative international efforts should be made for the former, but the ultimate possibility of realizing the latter relies on the public sense of justice, the particular collective self-comprehension and the political culture of political communities.

Of course these claims need a deeper and broader theoretical investigation in order to be justified. They also need to be considered more carefully in the light of contemporary debates on both the external recognition of the role of sovereign states as subjects of international law and the internal conditions of their legitimacy. In the light of contemporary transformations in global politics, a coherent discourse on the role of particular political communities in enforcing social justice would have to examine the relevant shifts of both these conceptions. It would also have to consider their intrinsic tension and experience of the interdependence

between a theoretical and a practical consideration of the problem. In fact, one of the most relevant phenomena produced recently in the global context is the emergence of trans-national institutions that threaten the self-sufficiency of particular political societies and weaken the possibility of political initiative within bounded communities. The objection that the actual structure of global economic and political power produces either the impossibility for sovereign states to protect their citizens from harm caused outside their legal and political rule or tolerates persistent and avoidable human right violations within their territorial boundaries needs to be taken seriously.

The efficacy of such empirical argument is that it captures a serious risk in my own argument, that of idealistically over-emphasizing the ethical standing of particular political communities and neglecting: i) their increasing inability to provide adequate protection for their citizens facing the pressures caused by political and economical globalization processes and ii) their responsibility in not being able to establish the necessary political institutions for an effective exercise of citizenship.

However, there are two straightforward ways of responding to this critique: empirical and theoretical. Certainly, nation-states are contingent historical figures and, as such - one could say with Hegel, they are voted to be *aufgehoben* by a new way of organizing power that the outburst of current contradictions will generate. However it is not clear why proposed global institutional reforms to distribute the resources of justice through the enforcement of global civil society (Held, Archibugi, Kaldor, Falk) or a multi-layered global governance (Pogge, Beitz, O'Neill) should succeed in providing an ethically and politically superior institutional frame to the already existent one. Instead, they might run the risk of weakening the old structure of international cooperation between states even more without being able to confer sufficient consistence and legitimacy to the new one. I cannot argue in depth here why I believe this is the case but a few considerations could be added from a theoretical perspective.

From a theoretical perspective, one could argue that claiming that because some states in the world are held responsible for deliberate violations of their citizens' rights, *the state* is a failed entity, would be the same as to say that the fact that some individuals make unlawful use of their rights denies the very significance of the concept. Again, this assumption could be challenged by saying that states are not the same as individuals and that the latter hold a moral status that the former do not have. This paper has tried to respond to this critique by proposing a more substantial notion of the polity, one that shifts from a liberal conception of the political association as a simple guarantor of individual rights in order to focus on the

practical activity that allows the realization of individual ends in a community's democratic practice. In the global scale, this does not necessarily imply underestimating the weaknesses of the existent structures by conferring equal moral value to all political communities. Instead, it allows us to argue in favour of cosmopolitan principles of social justice by focusing on the social and political practices that realize, in their own way, the moral imperatives of global justice. Indeed when political struggles are developed in the name of a shared understanding of substantive collective ends, the promotion of social justice is not only a matter of implementing certain principles of justice, but also of developing practices of mutual constraint between community members. If we want social justice to be more than a cosmopolitan manifesto, the development of principles of justice through a collective effort which transcends the limits of private morality should be considered more in depth.