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GLOBAL JUSTICE AND IMMIGRATION: ASSOCIATIVE DUTY TO  
ADMIT

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**Abstract:** One of the reasons for perpetuating global injustice is the asymmetrical allocation of resources and duties. This obstacle is more challenging to overcome due to immigration control and state borders. This dissertation develops an alternative reading to Rawlsian justice theories with the associative responsibilities framework. It argues that the political conception of justice can be adjusted to a concurrent version that applies in the transnational domain and generates a transborder associative responsibility. Then, it posits a duty to admit immigrants to correspond to the transborder associative duty on the grounds of the overriding interest of the individual. It brings supporting justification from international human rights to demonstrate prospective immigrants' interests and the arbitrary allocation of political membership as a contributing factor to global injustice.

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“I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.”

Hatice Sare TEMEL

## INTRODUCTION

Immigration has been a hot topic for the last decade and keeps the essence of its popularity today. It was an obligatory subject for the audience; it was on the news, it was in politics, it was in their neighbourhood, and it was in their children's school. Yet, immigration is hardly a new phenomenon; it had been a stable issue since World War I and accelerated after World War II. Even before that, reportedly, 20% of soldiers in the United States Armed Forces during WWI were of immigrant background.<sup>1</sup> As the accelerating factor, the transition from multinational empires to nation-states as a consequence of WWI induced the asylum-seeking process for millions.<sup>2</sup> The end of colonisation in Asian and African countries also played an effective role in the increasing number of immigrants in later decades. After WWII, some countries even made it the official policy to import more immigrants to increase the population and close the labour gap, and they even adopted special policies for seasonal guest workers.<sup>3</sup> Then, the question arises: When did immigration start to become a problem?

Nevertheless, this dissertation does not consider immigration a problem; rather, I present it as a solution to global injustice in the end. I argue that a transborder political association creates a shared responsibility for justice. While this responsibility is inherently imperfect due to the absence of clearly defined duty-bearers, I maintain that when a potential immigrant seeks admission, this responsibility becomes a perfect duty for the receiving state to grant entry, grounded in the principle of associative responsibility. I dispute that under certain circumstances, where the individual is exposed to frequent human rights violations in his current country of residence, the urgency of his benefits overrides the state's interests. The prevailing opinion on human rights jurisdiction considers the fulfilment of rights as a domestic matter, meaning that only those who share a community are responsible for justice against each other. In contrast, I argue that our transborder responsibility generates the duty to fulfil human rights, maybe not in full but at least to a significant extent. Immigration displays multiple functions for this purpose. First, through the questions I presented at the end of the previous paragraph. I find it no coincidence that the increase in the protection of civil rights both through social movements and legal documents, both domestically and internationally, shortly precedes and majorly overlaps the high anxiety around immigration. It is not a secret either; equal rights and liberties for immigrants created a demand for privileged treatment for citizens and,

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<sup>1</sup> [Immigrants and WWI | National WWI Museum and Memorial](#) accessed 11.12.2024.

<sup>2</sup> [Refugee | Definition, History, & Facts | Britannica](#) accessed 11.12.2024.

<sup>3</sup> [Immigration | Definition, History, & Facts | Britannica](#) accessed 11.12.2024.

consequently, heightened control over borders.<sup>4</sup> This perspective shows that the problem is not state sovereignty over borders or increased crime rates; rather, it is the long-term consequences of immigrants forming ethnic or social groups. The inconvenience of immigration is oddly related to the upper classes losing their privileges, at least to an extent. The disturbance regarding the matter gives the impression that the problem is losing exclusivity and not sharing the resources. Then the answer to the earlier question takes shape: Immigration becomes a more and more urgent problem as the immigrants exercise their civil rights, as immigrants or brand new citizens through naturalisation- and increase their visibility.

This perspective brings us to the second function of immigration in a global justice discussion. Even if “the problem of immigrants” is resolved in domestic affairs, which is an unprecedented achievement in the modern age, immigration will remain a threat, or just a question, for global justice as long as countries operate on a closed-border policy. From a rudimentary point of view, the problem is that states need to justify the limitations they impose on individuals by denying them the ultimate freedom. Luckily, the history of civilisation rescued us from such a basic problem by recognising the sovereignty of states through their territories. Today, the problem has transformed from “On what grounds can a state justify depriving someone of their freedom?” -which was never the case- to “Why should states admit foreigners into their territory?”. From a contemporary point of view, I still have three questions: Does border control play a part in domestic justice? Does border control contribute to global injustice? Can immigration be considered a possible remedy for alleviation of the justice gap across the world?

I attempt to answer these questions in this dissertation through an account of global justice. The intuitive idea behind this project is to develop an inclusive account of justice building upon the Rawlsian framework. Rawls’ signature work, “A Theory of Justice”, presents an appealing theory of distributive justice that employs a special form of egalitarianism and even conceals deeper moral ideas underneath the principles of justice. Particularly, the difference principle suggests “social and economic inequalities are to be arranged so that they are . . . to the greatest benefit of the least advantaged”<sup>5</sup> However, he limits the theory to a self-contained domestic society and defines the theory as inapplicable to the transborder domain. To overrule this limitation, I will start with a quest to explore the foundational argument of “A Theory of Justice” in limiting the responsibility for justice

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<sup>4</sup> Cristina M Rodríguez, 'Immigration, Civil Rights & the Evolution of the People' (2013) 142(3) *Daedalus* 228; Kevin R Johnson, 'The End of Civil Rights as We Know It: Immigration and Civil Rights in the New Millennium' (2002) 49 *UCLA Law Review* 1481.

<sup>5</sup> John Rawls, *A Theory of Justice* (Harvard University Press 1971) p.266.

to domestic matters, then process this argument into another argument to answer immigration questions. Let me walk you through it.

This dissertation consists of three comprehensive chapters. The first and the second chapters are connected by topic and lead to an aggregated argument. Chapter I lays out the ground upon which I will establish an argument for transborder responsibility. I subscribe to the Rawlsian justice theory and argue that his principles can be adopted in a way to be utilised in a global justice theory. We need to deconstruct some suppositions in our minds to compartmentalise this. People have the responsibility for justice against each other, and they authorise states to fulfil this responsibility. States are tasked to achieve and maintain justice as the representative of their people by abiding by Rawlsian principles of justice. However, states do not interact with each other as representative of their own people; therefore, they do not have the same responsibility for justice against each other's citizens. I argue that individuals in different countries still have responsibility for justice against each other, and interstate interactions do not exhaust this responsibility.

In Chapter II, I explain that Rawls' theory is associative in character and, unlike what the political conception of justice suggests, can be adjusted for a broader application. I develop a set of conditions to detect an association with a basic structure and test it on my examples: the World trade order and past colonial relationships. In conclusion, I demonstrate that responsibility-generating associations exist beyond state borders, meaning states have a transborder responsibility to justice. I also state that the nature of the associating bond determines the type and extent of the byproduct responsibility. Consequently, this responsibility is not as strong and demanding as domestic responsibility, but it is still stronger than the current practice.

Chapter III researches the implications of transborder responsibility on the individual level. Because the transborder responsibility is not entirely demarcated, there is an ambiguity in determining the required duties and identifying duty-bearers. I consider immigration as a quick fix for individuals' ongoing human rights violations for two reasons. First, I suggest that citizenship is a social good distributed arbitrarily (by state) and requires further adjustment to achieve justice. Surely, my recommendation does not indicate the allocation of citizenships from scratch. I simply suggest the admission of immigrants with disadvantaged backgrounds. Secondly, I speculate that border control is an aggregating factor for global injustice. I aim to justify the nature of my recommendation on the matter by demonstrating that it is fairly related to the matters of citizenship and border control. In light of these facts, I argue that due to his overriding interest opposed to the state's sovereign right over its borders; I argue that states have a duty to admit prospective immigrants.

After this brief description of the argument, I think it is only appropriate to provide a detailed map of each chapter below.

### Justice, incarcerated: How do borders limit justice?

In the first chapter, I will focus on the limitation of the domain in Rawlsian justice theories. My concern is neither the content of the theory nor the principles of justice. I ask Rawlsian theories: "Why should we limit (this particular understanding of) justice to the domestic society? The most satisfying explanation is that distributive justice is the byproduct of associative responsibility, which arises from the intertwined lives of individuals who live in the same domestic community. This approach allows us to construe the theory of justice as a scheme of moral obligations and justifies one's rights and duties as an outcome of associative responsibility.

The versatility of associative responsibility as the justifying concept for moral obligations arises from its plain character, or at least in the way I attempted to reduce it to a basic formula. Most authors indeed attribute associative responsibility to certain types of interactions, commonly to coercion and collaboration. Nagel, for one, argues that political association is the outcome of mutual coercive activity exercised through state institutions. The state applies enforcement on behalf of each individual person to, again, each individual person. This, even so theoretically, creates a connection between the individuals, which he refers to as the political association.<sup>6</sup> In another example, Abizadeh lists pervasive impact as associative interaction, which refers to inevitable social interaction that manifests in individuals' relationships with society.<sup>7</sup> In both cases, the hypothetical conduct is assumed to be mutual, equal, and entirely independent of the individual's actions.

My approach is fairly reductionist compared to these elaborate argumentations. I do not engage with the questions regarding the formation of the association nor the nature of interaction that operates through it. Instead, I mainly focus on whether there is a de facto association around a specific conduct. This approach allows us to utilise the concept of associative responsibility in various domains. In the way it appears in the political conception, it applies to elements of domestic justice. However, in the way introduced by Dworkin, it also identifies the type of relationship observed in smaller non-political groups, such as families or local communities.<sup>8</sup> Just as it is the reconstruction of a social phenomenon, I believe that, with a simplified formula, associative responsibility may apply to a larger domain, such as global justice.

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<sup>6</sup> Thomas Nagel, 'The Problem of Global Justice' (2005) 33(2) *Philosophy & Public Affairs* 113.

<sup>7</sup> Arash Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice' (2007) 35(4) *Philosophy & Public Affairs* 318.

<sup>8</sup> Ronald Dworkin *Law's Empire* (Oxford, Hart Publishing, 1998).

I must clarify the terminology at this point to avoid further confusion. There may seem to be repetitive use of certain terms, and their connection with each other is not as clear. Let me start with Rawls: In his justice theory, Rawls argues for responsibility to *distributive justice* and provides principles to achieve it on the national level. Nagel argues that the source of this responsibility is the *political conception of justice*, which suggests that all citizens are members of a *political association*, and they have the responsibility for justice against each other due to *associative responsibility*. In other words, because the members of a community are politically associated with each other (by being members of a community), they have responsibility for distributive justice in the community.

Before moving any further, I should also determine the domain of justice that I will frequently invoke in the following chapters. Regardless of the alternative uses for each term, in this paper, they are designed to indicate a different set of domains for justice concerns. Domestic justice refers to exercising principles of justice in a self-contained political community with a basic structure, that is, states. As will be explained in the first chapter, Thomas Nagel considers domestic justice as the current and only domain to exercise the political conception of justice. I will acknowledge and adopt his use of the term, but I will also argue that there are larger domains to apply the political conception, and domestic justice is the first and smallest level. Any responsibility-generating association that is smaller than the structure of domestic justice must be either apolitical or a sub-branch of domestic justice (e.g. local communities, federate states).

Secondly, in the way I prescribed for this paper, international justice refers to the relationship between the states and, therefore, is of a different nature. This particular use of the term follows John Rawls' "The Law of Peoples", the book which allegedly discusses the concern of justice outside of state borders yet only engages with the relationship between states as "Peoples". This preference singles out the term "international justice" among others: In matters of international justice, the nature of the subjects, who are the basic moral unit, is distinctly different from that of domestic justice. The principles of domestic justice, because the basic moral unit is individuals, must take human nature into account. Humans need certain conditions to sustain themselves: shelter, food, water, protection, etc. Furthermore, humans have thoughts and feelings; they seek respect and dignity; they have a sense of equality and fairness; and they are born with natural advantages (being muscular, intelligent, athletic) and disadvantages (being psychically disabled or intellectually challenged) that cannot be fixed but require consideration and compensation. When the basic moral units are the states, as in the case of international justice, the qualification of the subjects (as a state)<sup>9</sup> is considered their responsibility and

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<sup>9</sup> "Sustainability as a state" might sound like an odd phrase to spell out loud. There are three requirements for statehood according to international law: territory, population, and sovereignty. Being a party in international relations, which is subject to international justice, strictly relies on satisfying these requirements. Equality in

is considered a prerequisite of international justice. The other states do not necessarily bear responsibility for the given state to continue its existence. In this regard, it can be said that the term international justice refers to “justice in international politics ” rather than justice outside of borders.

Global justice is exercised in the same site as international justice, which is worldwide, but addresses the same subjects as domestic justice, which are individuals. On that front, it is safe to say that the domain of global justice is, in fact, the extension of the domain of domestic justice to the transborder domain, where justice appears as a concern. I must emphasise that nowhere in this paper do I argue that the principles of justice for domestic and global contexts are the same. The principles of justice, as I will argue in the second chapter, are defined according to the relationship among the subjects. The commonality I mentioned refers to the subjects of the said relationship, which inevitably leads to some similarities in principles. To express differently, global justice encompasses domestic justice, meaning every concern or principle that applies on the global level automatically applies on a domestic level. However, the reverse is not true: because global justice extends beyond national borders, principles of domestic justice do not automatically apply to global justice. (See Picture 1)

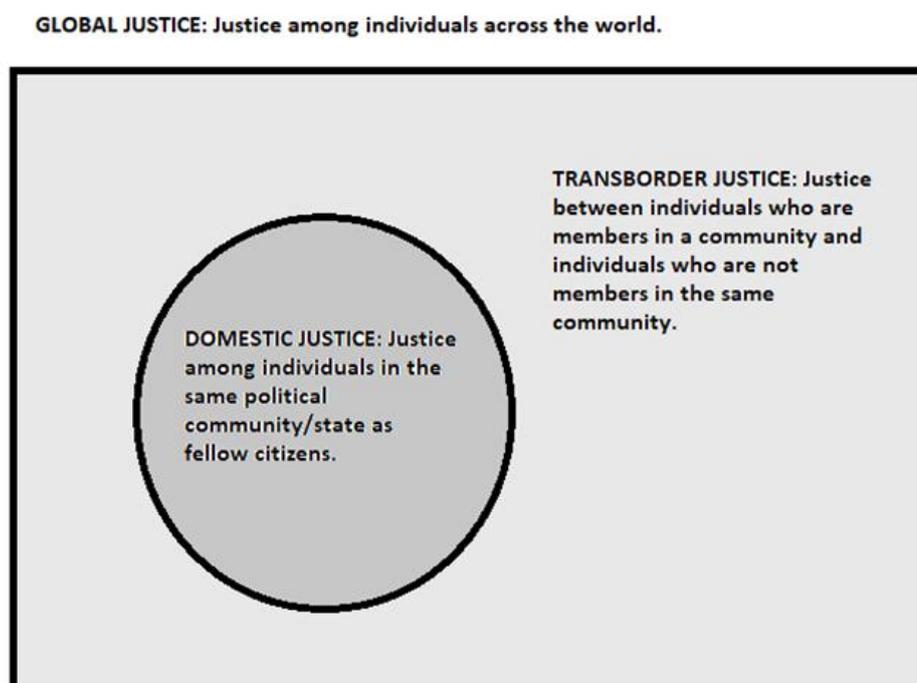
This distinction clarifies that when we make a comparison between domestic justice and global justice, we actually address the zone between the two, which I refer to as transborder justice. The concerns of domestic justice are equal to the concerns that are exclusive to the political community added to the concerns of global justice. We tend to ignore this fact because the principles of domestic justice already generate a more extensive responsibilities and more detailed duties than global justice. The term transborder justice, on the other hand, only indicates the domain of justice concerns as the domain that only principles of global justice apply.<sup>10</sup> For example, the right to life is a global human right and requires an unequivocal duty to attend when under threat. However, to your co-citizens, you only have a broader responsibility that encompasses accessing the healthcare system within the country due to distributive rights based on equal treatment of citizens. So, when your taxes pay for the healthcare services provided to a fellow citizen, it does not need to be grounded in the right to life. The reason for this distinction is not that domestic justice does not generate the right to life. The real reason is that the rights generated by domestic justice are already more comprehensive and attentive to the person’s interest compared to those of global justice and transnational justice. Considering both

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international justice comes with the fulfilment of these conditions as opposed to humans being born with equal moral value.

<sup>10</sup> One may argue that (members of) a community may have different relationships with non-member individuals, such as citizens of post-colonisation states and the members of the former colonising community, which I entirely acknowledge. However, a case-basis analysis is nearly impossible to trace down and, even if one intends to, is in the next step of arguments after this paper. Therefore, transborder justice will be used as a general term.

will be used in opposition to domestic justice, I think it is safe to use the terms “global justice” and “transborder justice” interchangeably, as I will in the following chapters.



Picture 1

This brings us to the content of justice. Even though this dissertation does not directly address the principles of justice that apply to domestic theory, my argument in the second chapter regarding transborder responsibility suggests that it is an extended, diluted form of domestic responsibility. Therefore, I invoke the distributive justice principles of Rawls’ “A Theory of Justice” at times when I need to extend the domestic principles beyond the borders of the community. I may not engage in discussions regarding the reliability of the principles or how they should be exercised, but I will assume that those are the principles that apply to domestic justice and will argue that their inapplicability to global justice constitutes an injustice. On the global level, neither the political conception of justice nor the arguments laid out in this paper suggest that the same principles of distributive justice apply. However, there are global principles that are widely adopted by even most, excluding statist views.

The first example of the globally adopted principles of justice is humanitarian rights, which posits the protection of the most basic rights of individuals (even) in times of war. Apart from the general philosophical acceptance, the principles and rules of International Humanitarian Law are extensively listed in multiple legal documents, including but not limited to the Geneva Conventions of

1949<sup>11</sup>. The key feature of IHL is that it refers to the protection of individuals in the conditions of an armed conflict and endorses imperatives that are compulsory for all states, whether they are a party in the conflict or remain neutral.<sup>12</sup> Without a doubt, this statement brings many exceptions and nuances, such as nationals of a state which is not bound by the convention not being protected by it<sup>13</sup> or the United States not being a contracting party for the Additional Protocol I to the 1949 Conventions.<sup>14</sup> On another note, humanitarian law is not limited to treaty law. There is an expanding body of customary international humanitarian law that now provides humanitarian protections to all individuals, regardless of whether the armed conflict is international or non-international in nature. Regardless, the core element of the term stands unaffected by the exceptions that have been made: There are certain rights and interests that are stringently attached to one's existence as a human being that they are not to be violated under any circumstances, so much so that their protection is an obligation to any state.

The second example in this character is, as one would expect, human rights. Similarly to IHL, the rules of International Human Rights Law are also listed in legal documents and are binding for all parties. Nevertheless, human rights refer to a broader category of rights that are recognised in various documents, some of which confirm the aforementioned core element of humanitarian law, whilst others are more controversial. As for the recognition of rights, the Universal Declaration of Human Rights lists 27 articles confirming the specific rights to which every individual is entitled. Then, Article 28 recognises the right to be a member of social and international order in which those rights would be fully realised, and Article 29 assigns corresponding duties to the individual against the community his personality has fully developed.<sup>15</sup> This creates the problem of the duty bearer in the case of UDHR; the Declaration recognises the rights but does not specify the appointed authority for their completion. It can be argued that the reference to a community in Article 29 implies the responsibility of the respecting state, considering the individual's reciprocal duty is owed to the community he lived in. However, Article 28 unambiguously commands the international enforcement of human rights and dismisses the political limitation of States by referring to them as "social order".

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<sup>11</sup> [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

<sup>12</sup> Jean S Pictet (ed), [The Geneva Conventions of 12 August 1949: Commentary, Volume IV](#) (ICRC 1958). accessed 23.12.2024.

<sup>13</sup> [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#), article 4.

<sup>14</sup> United States of America did not ratify the "Additional Protocol I to Geneva Conventions, Relating to the Protection of Victims of International Armed Conflicts". More information available [Statement at the 79th General Assembly Sixth Committee Agenda Item 81: Status of the Protocols Additional to the Geneva Conventions of 1949 - United States Mission to the United Nations](#) accessed 23.12.2024.

<sup>15</sup> [Universal Declaration of Human Rights](#) (adopted 10 December 1948) UNGA Res 217 A(III).

On the other hand, the International Covenant on Civil and Political Rights, which includes the majority of the rights listed in UDHR, brings a territorial limitation to the Covenant. Article 2 explicitly states that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction...”<sup>16</sup> When interpreted with UDHR, it is tantamount to “recognition of the rights, avoidance of duty” in the transborder domain. Then again, the human rights that overlap with those humanitarian rights remain universally effective.<sup>17</sup>

Another way to distinguish rights is by content. In the 1970s, the Secretary-General of the International Institute of Human Rights, Karel Vasak, categorised human rights by their content and the required corresponding duty. His categorisation divided the rights into three: The first-generation rights primarily encompass civil and political liberties and require negative action by States. These rights are stringently attached to human nature and are listed in ICCPR and UDHR as well as being classified as humanitarian rights.<sup>18</sup> Some examples of this category of rights are the right to life, freedom from torture, and the right to free trial. Second-generation rights refer to the rights protecting individuals' social, economic, and cultural well-being, and they require the active involvement of states.<sup>19</sup> In contrast to first-generation rights, these rights stem from the notion of equality, e.g. the right to work, the right to equal welfare, and the right to education. Third-generation rights are collective rights, and by their nature, they are to be exercised in the international domain and out of the discussion in this paper.<sup>20</sup>

When it comes to the political conception of justice, it draws a clear distinction between the first and second generation of rights. Because first-generation rights mainly refrain states from actively violating individual interests, and they protect qualities that are inherent in human nature, they are still valid in the transborder domain and apply as principles of global justice. We attributed these qualities to humanitarian rights, first-generation rights, and the human rights listed in UDHR and ICCPR. Based on this particular overlap, I will refer to them as “humanitarian rights” in the rest of this paper, ignoring the nuances between their content and application. The primary subject of my argument is,

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<sup>16</sup> [International Covenant on Civil and Political Rights](#) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 2.1.

<sup>17</sup> The overlapping of human rights or humanitarian rights, or the distinction between them, is the topic of a whole other discussion. One view suggests that neither set of rights is limited to the times of war or peace.

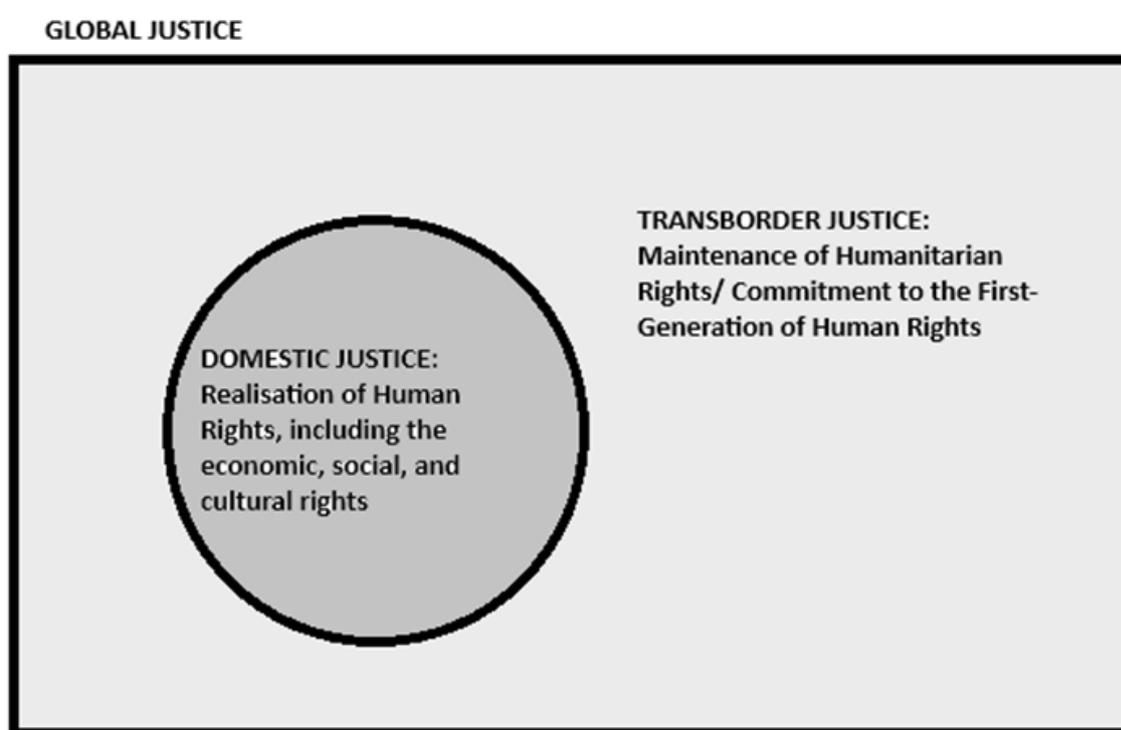
But also, they complement each other theoretically. If a person is a citizen of state A or in the territory of it, then the state bears the corresponding duty of the right. If state A is violating a non-citizen's rights in the territory of another state, then it translates into a belligerent action by state A. In any case, this paper is only concerned with the contents of the terms (as in which rights they refer to) and uses them in their narrower meaning.

<sup>18</sup> Spasimir Domaradzki, Margaryta Khvostova, and David Pupovac, 'Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse' (2019) 20 *Human Rights Review* 423.

<sup>19</sup> *Ibid*, p. 425.

<sup>20</sup> *Ibid*, p. 426.

however, second-generation rights. In contrast to first-generation, they need a background that evokes equality to inflict duty to states on behalf of individuals. Therefore, the political conception suggests that responsibility for this set of rights can only be a matter of domestic distributive justice.<sup>21</sup> In general, the term “human rights” is used to address both first and second-generation rights. Because I argue for extended responsibility for second-generation rights, I will build my argument on the assumption of full responsibility for humanitarian rights and use “human rights” for those left uncovered. To sum up, “humanitarian rights” will refer to first-generation rights that are attached to one’s humanity; “human rights” will refer to second-generation rights that the political conception denies transborder responsibility for their fulfilment. (See picture 2)



Picture 2

### Associative Responsibility and Transborder Justice

In the second chapter, I focus on associative responsibility in how it is tacitly adopted by Rawls and justify the moral obligations that distributive justice yields. I attempt to develop a simple, rough formulation: What is an association? When does a group of people start to form associative responsibility for each other? What responsibilities does an association generate? My answer to these

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<sup>21</sup> Nagel, p. 127.

questions heavily relies on the involuntary<sup>22</sup> characteristics of associative responsibility. In my approach, an associative relationship is not that contractual. It stems from the intensity or frequency of our interactions with each other. As constant or repetitive interactions create a stable scheme, it generates responsibility among the actors. This responsibility stems from the permanence/continuity of the relationship. We call this scheme (or pattern) of relationship an association; the constant occurrence of the interaction(s) implies the permanence of the scheme and the complicity of actors in its continuity. This continuity triggers responsibility for justice, which we call associative responsibility.

The involuntary characteristic implies an organic foundation for associations. This means that ordinary interactions may transform into associative relationships when they acquire community or permanence over time. In order to detect organically formed associations, first, I will improve a simple formula, a checklist of conditions, to determine if the relationship is a responsibility-generating association. Then, I will apply this formula to various global concepts to argue that there are global associations that create responsibility on the transborder level. By the end of the chapter, I will conclude that we have a transborder responsibility to justice, but it is not as extensive and intense as domestic responsibility.

A possible confusion about my approach to associative relationships is the conduct that forms the association: It is widely accepted that associative responsibility is grounded in the nature of the relationship as the constitutive factor. Nagel suggests that the state's coercive power that it uses on behalf of citizens onto citizens creates mutual responsibility as the justifying factor.<sup>23</sup> Rawls, on the other hand, designs his theory around the basic structure, a cooperative scheme that runs on the collaboration of individuals sharing a community.<sup>24</sup> I find this distinction unnecessary for a couple of reasons. First, neither author explicitly limits the responsibility to coercion or cooperation. Secondly, we have already determined that the association in question is inflicted upon the subject involuntarily; he just happened to find himself as a member of the association. Finally, in both conduct -or any other suggestion of conduct-, the key factor is the extension of the interaction over time. For example, one cannot argue that because the state has not exercised coercive action on person A, no responsibility is actualised against this person. The responsibility stems from the overall subjection to the conduct, regardless of its visibility in one's life.

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<sup>22</sup> The word "involuntary" here does not indicate reluctance, rather it indicates indifference to one's autonomous will.

<sup>23</sup> Nagel, p. 137-8.

<sup>24</sup> Rawls, p.7.

The crux of my argument lies in the simultaneous plurality of associations to which a person belongs as a subject. I suggest that the political community, as in the state where he is a citizen, is not the only political association in which he becomes a member and acquires a set of duties and privileges. There are concurrent transborder associations which generate benefits and losses for the members; therefore, they must be subject to distributive justice. This statement may seem unorthodox, but it is not much different from bringing an analogy between social associations and the nationwide political association and concluding that political obligations are associative.<sup>25</sup> The underlying notion is that our moral obligations to others are determined according to our relationship with them. In a social association, such as a friend group or a family circle, members have consonant responsibilities towards each other. In other words, the nature of the relationship between individuals defines their reciprocal duties. In the setting of a nation, as if it is one large community, these reciprocal duties are exercised through state institutions due to the size of its site. Individuals, in theory, authorise the state to act on behalf of them to protect the land, avoid crimes, resolve/prevent disputes, improve the infrastructure and so on. This indirect application of associative responsibilities renders them political instead of social. Therefore, our political obligations are principally associative. When states engage with other states (on behalf of their own citizens) or their citizens, it is still on behalf of individuals. But, because the relationship is practised through states, it creates a political association rather than a social one.

An important concern regarding my argument is the types of conduct I will examine. After developing a simple formula for detecting transborder associations, I will exemplify my argument with two cases: The world trade order and late history colonialism. Both practices present an example of an interaction that extensively affects individuals' lives in which current parties did not exercise any willpower. However, the initial judgement for either case is that they are mere misconduct that occurred repeatedly, subjecting these practices to transitional justice<sup>26</sup> and limiting the responsibility to each incident.

I find this perception undeniably limited, considering the magnitude of the misconduct and the disproportionate loss and benefit of the parties, even after the exercise of designated principles of

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<sup>25</sup> Dworkin, p. 195-206. Even though the argument that "political obligations are in associative nature" is prominently attributed to Dworkin due to his elaborated theorisation, there were less prevalent arguments in the same track by various authors, such as C. H. Wellman's account of associative allegiances or M. Gilbert's account of group membership. For reference to some of those arguments and Simmon's counterargument on the matter, see: A. John Simmons 'Associative Political Obligations', *Ethics*, vol. 106/no. 2, (1996), pp. 247-273.

<sup>26</sup> In fact, the terms fit poorly to the discussion. Transitional justice mostly addresses post-war scenarios and aims to achieve stability and compensation for past violations. It does not, however, address the systemic imbalance that emerges as a byproduct and might even have caused the violations to begin with. [Transitional Justice \(Stanford Encyclopedia of Philosophy\)](#) accessed 27.12.20204.

transitional justice. In my perspective, the continuity/repetition of misconduct without any repercussions eventually transforms the relationship into an association which operates through an unfair structure. An individual incident, or maybe plural incidents that occurred over a reasonable period of time, can be compensated and resolved through the principles of transitional justice. However, when these incidents are facilitated by a system in which advantages and disadvantages are unevenly distributed or if their repetition creates an unfair system, then they must be subject to principles of distributive justice.

One possibility for this scenario is that the inequality within the structure was present before the start of the interactions. The initial inequality facilitated the formation of an unfair balance within the relationship. The other possibility is that the parties were on relatively equal terms at the beginning, but aggregation of the uneven distribution of benefits and losses eventually created the imbalance and perpetuated the inequality over time. In either case, the ongoing momentum of the interaction displays the system's adaptation of the unfair interaction, and, in this form, it is a problem of distributive justice rather than transitional justice.

As I clarified earlier, I do not argue for a transborder association encompassing only a list of countries as members. It might be possible to do so through detailed argumentation and intricate work of relationships between countries. My argument in this chapter, on the other hand, addresses the general picture it draws: If there is both historical and contemporary evidence for the intertwined webs of interactions, then there must be a matching associative responsibility to maintain justice within the association. The purpose of these cases is not only to prove that there are ample examples of international interactions. They demonstrate something even more crucial. The resources and treasures of the world are on a zero-sum game. An aggregated wealth and prosperity on one part implies the existence of deprivation on another part. This obligation to feed from the same pot binds us in an association.

A significant detail of this argument is as follows: Because the relationship is not as close-knit as sharing the same political community, then the extent of the responsibility must match the concentration of the relationships. Let me specify it step-by-step.

1. Transborder justice identifies the responsibilities and privileges of individuals as subjects (not states), similar to domestic justice.
2. One person can be a member of multiple domestic social associations or transborder political associations. Each generates different duties and privileges that are related to the type of relationship between members.

3. A close-knit association generates a more extensive responsibility compared to a sparse association. This means that the intensity of the association is directly proportional to the extent of the responsibility that individuals have for each other.
4. Transborder associations generate less extensive responsibility than domestic political associations.

By the end of the chapter, I conclude that there is a transborder associative responsibility, but there appears to be a small problem. Because the subject of transborder justice is individuals and states only act on their behalf, then it must be individuals again at the receiving end of justice. However, it is still possible for states to act as the beneficiary on behalf of individuals. Before moving on to the third chapter, I briefly discuss the possibility of states being subjects of distributive justice. Then again, I reaffirm my stance that it is individuals who are the original beneficiaries of the transborder associative responsibility. In the third chapter, I discuss individuals as the subject of global injustice and explain why the admission of a prospective immigrant should be considered an alternative implementation of transborder responsibility.

#### Admission as an Associative Duty

In the first two chapters, I argued that we have a transborder associative responsibility, but it does not yield the same duties as domestic political responsibility. This claim means that the current level of globalisation suggests an associative responsibility that is stronger than the commitment to humanitarian rights but not as strong as co-citizenship. In this chapter, I start with the presumption that transborder responsibility is a diluted version of our responsibility for our fellow citizens. The new question is determining what duties and privileges this responsibility generates and for whom.

The responsibility in question at this point is associative responsibility for distributive justice. Nevertheless, this does not mean we can apply Rawlsian principles of justice globally. Apart from it being impossible to achieve, it has already been determined that the responsibility at hand is lesser than what it takes. This means that the transborder associative responsibility does not require direct application of Rawlsian distributive justice principles. Then, what can be done to fulfil such responsibility?

I admit that I do not have a definite answer to this question, I suspect anyone would have one. However, I have a proposal for an associative duty, which I am certain corresponds to the transborder responsibility that we have concluded. In the third chapter, I argue that when a prospective immigrant

from a disadvantaged origin requests to be admitted to a wealthy country where his conditions will significantly improve, it is an associative duty for that country (meaning the state institutions on behalf of citizens collectively) to admit him. From my perspective, the most urgent matter of global justice is the uneven fulfilment of human rights or merely the lack of it for some groups, and I will discuss it on the grounds of human rights fulfilment. It perfectly fits the earlier narrative on associative responsibility: A state has responsibility for the fulfilment of a non-citizen's humanitarian rights but not the entirety of human rights. I will move on with the assumption that the exercise of responsibility for justice is tantamount to the full realisation of human rights. I will follow a specific route of reasoning, starting from the individual's point of view as the beneficiary, to reach this argument, as indicated in what follows.

As the first step, I propose that citizenship is the key factor for an individual's fulfilment of rights, and I invoke the right to have rights as the identifying concept of the matter. This premise contributes to the final argument in two ways. First, it presents recognition or fulfilment of one's rights as a separate right, which is not legally accurate but practical for discussion purposes. Although the right to have rights is not considered a human right itself, it indicates a significant step in realising human rights globally. The circumstances of the time when the term was first conjoined explain the necessity of the term and the precise gap of recognition it refers to. The conditions of the time might have stayed in the past, but the recognition gap stays behind another cover.

What do I mean by that? This brings us to the second contribution of the term: Arendt's intuitive idea for the right to have rights is a consequence of the new world order that arose after World War I and did not settle until the aftermath of World War II. The change in the state borders (and constitutions) left thousands in a legally unrecognised situation: statelessness. Even if statelessness is not a prevailing problem today, it does not mean that there is no group whose rights fulfilment is not a concern at all. By utilising the right to have rights, I infer that even though people have citizenship, which appoints a state to be concerned about upholding their rights, their lack of rights remains stagnant.

The right to have rights emerged as a reactive concept to the events of its time, highlighting the necessity of belonging to a community to access even the most basic rights. Today, as circumstances have evolved, the context of the term has shifted due to the effective adoption of international instruments recognising fundamental rights, such as the Geneva Conventions, the UDHR, and the ICCPR. This legal progress reflects the degree of globalisation humanity has achieved. I believe the meaning of the right to have rights has evolved alongside these changes to address contemporary needs. Arendt's cynical account of human rights, which she considers nothing more than citizen's

rights, informs us that she aimed to address the gap between the notion of human rights and its actualisation through membership. At the time, this gap was populated by stateless persons, but today, it encompasses those whose rights are violated within their country. Accordingly, I use it to refer to the unfulfilled rights of citizens in underdeveloped countries.

After determining that we have a transborder associative responsibility to justice and the appropriate way to exercise that responsibility is to uphold beneficiaries' right to have rights, the question would become how this mission could be accomplished. At this point, I bring citizenship -or political membership- as an unequally distributed asset to the discussion. My point is not only that citizenship is by birth but also how it became so crucial as a social good that it can be considered a subject of distributive justice. I will follow this argument with a discussion about border control as the complementary problem.

The difference between political membership and citizenship, whilst needs to be spelt out, is trivial for this dissertation as I will be using both interchangeably. Both indicate the same but from different points of view. "Citizenship" refers to the legal status of a person in relation to the state. "Political membership" is a term of political philosophy, and it refers to one's belonging to a community. So, one acquires associative rights and responsibility through his political membership; it starts with one's existence in a community. Citizenship starts with legal recognition and one's admission as a member through law. An immigrant, for example, acquires citizenship after he immigrates and starts his residence. He becomes a citizen later when the state issues his status. For another example to reiterate this difference, a person who acquired citizenship through one of his parents but has never been to the country would still be a citizen of the state but would not have a political membership in the community.

I mentioned above that citizenship serves as a key factor determining the likely fulfilment of one's rights. However, its reflection on global justice encompasses multiple dimensions that go beyond mere access to formal rights. Human rights require states to establish specialised institutions and develop comprehensive systems to ensure the fulfilment of these rights. This includes tasks such as legislating protective frameworks, monitoring potential violations, and creating accessible mechanisms for individuals to seek justice. All these mechanisms become available through citizenship or, in general terms, political membership in society.

Yet, the influence of citizenship extends far beyond the administrative capacity of a state to uphold rights. It fundamentally shapes the very framework within which justice is conceptualised and applied. For instance, individuals born into wealthier, politically stable nations typically enjoy far

greater protections and opportunities than those from conflict-ridden or economically deprived states. This disparity highlights a troubling depth of injustice, where the accident of birth determines the degree of dignity and agency one can exercise. On top of this, citizenship affects not only the rights available within a state but also access to global mobility, economic opportunities, and political influence. The barriers faced by individuals without the privilege of citizenship in influential states—such as restrictive immigration policies or limited access to international platforms—underline the systemic inequalities entrenched in the current global order.

This brings us to border control as the complementary factor. If citizenship is arbitrarily distributed and it is the determinant factor for one's relationship with border control, then we can safely suggest that border control is the complementary factor for citizenship to assert and maintain its privileges. Moreover, considering the subsidiary benefits of residing in a wealthy country and the privileges that one internationally enjoys as a citizen, it becomes clearer that validating citizenship is not the only function of border control. It also protects wealth and opportunities by ensuring their exclusivity. In other words, it not only prevents people from becoming a member of another community but also how contributes to global injustice.

In this part of the dissertation, I argue that border control serves as an aggravating factor for global injustice, not only complementary to it, by reinforcing the arbitrary and unequal nature of citizenship. At its core, border control policies react to citizenship—a status that is often determined by the accident of birth and remains outside the control of the individual. This arbitrariness perpetuates a global hierarchy where access to wealth, resources, and opportunities is tied to national borders. Wealthier nations with stricter border controls protect their privileges and deepen global inequalities by limiting the mobility of those born in poorer and less improved countries. This accumulation of privilege within certain borders undermines the universality of human rights and solidifies a system where inequalities are perpetuated by the very mechanisms intended to ensure security and order.

The initial idea behind including this middle section of the chapter was simply to justify the right to immigrate. Though my argument is not an extension of freedom of movement, discussing the unlimited administrative power over border control is inevitable. But when it is conceptualised alongside the arbitrary appointment of citizenship, the problem it represents becomes more essential for global justice. On the one hand, border control maintains and expands the welfare gap by regulating the movement of people and wealth. On the other hand, the significance of citizenship as a social good increases with border control, which makes its arbitrary distribution a bigger problem. Looking at this

picture, it is not hard to figure out why immigration is a highly popular option among those who want a better life despite many obstacles and hidden challenges on the way.

Finally, I discuss immigration as the remedy for global injustice and institutional incapacity for human rights. But before that, I would like to reiterate the main argument of this dissertation in order to avoid confusion: I assert that there is a transborder political association that generates responsibility for justice. Even though this responsibility is imperfect due to a lack of determined duty-bearers, I argue that when a prospective immigrant requests to be admitted, it transforms into a perfect duty by the receiving state to accept him because of the associative responsibility. This transformation arises from the potential improvement in the beneficiary's fulfilment of rights and his will in determining the duty-bearer institution, which is the state he attempts to immigrate to.

The general discussion around immigration is focused on the advantages and disadvantages of immigration and evaluates its efficacy in compensating for global injustice. My approach, in contrast, takes individual well-being to the centre and evaluates immigration from a human rights point of view. When we remember that the associative responsibility to justice is owed to individuals by other people, it is axiomatic that the prospective immigrant is a beneficiary of it, and he does not only demand free movement or the right to travel. He demands the alleviation of the injustice that he has been subjected to and the shortening of the welfare gap he had as a citizen of an underdeveloped country. The fact that probable domestic injustice and further financial struggles not being part of the discussion demonstrates the expediency of this duty. In my opinion, the gravity of his interest overrides the concerns about immigration as a social phenomenon.

I concur that immigration is not a comprehensive or permanent solution to the complex issue of global injustice, as it fails to address the systemic inequalities and structural challenges that perpetuate disparities between nations. However, it stands out as the most immediate and practical response for individuals whose fundamental rights are being denied or unfulfilled in their home countries. By allowing people to relocate to places where opportunities and protections are more readily available, immigration can drastically improve one's welfare standards and fulfil most of his rights. While it does not resolve the root causes of global inequality, it offers a crucial mechanism for survival and hope for a person.

## CHAPTER 1: JUSTICE, INCARCERATED: HOW DO BORDERS LIMIT JUSTICE?

### 1. The Question of Justice

Justice is not an absolute concept. It may or may not be fulfilled depending on one's definition of justice. It is only possible to reach a judgement regarding justice after defining some parameters to satisfy its fulfilment. Where should one look at in order to reach an assessment regarding justice, whether it is achieved or not? If not, what should be done to achieve and maintain justice? Who should be responsible for its fulfilment? What is the scale of responsibility for justice? The challenging part is that the possible answers to each of these questions are interdependent, and they usually vary according to the answers given to the rest.

In general, John Rawls provides a well-rounded theory that answers these questions. He proposes a system in which social justice will be maintained through the distribution of rights, duties and privileges<sup>27</sup> in such a way that injustice does not occur. He calls this system of distribution the "basic structure of society" and explains its subjection to justice through its effects: "Taken together as one scheme, the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do."<sup>28</sup> This explanation lets us know that Rawls's justice concerns are not only regarding tangible rights and duties but also the cognitive development of the individual regarding his place within society. This criterion brings a significant challenge to the theory he proposes, which, in my opinion, he reasonably tackles with the two principles of justice.

When it comes to international justice, however, Rawls dramatically changes the parameters for maintaining justice in his later work, "The Law of Peoples".<sup>29</sup> This change is due to the type of justice that applies to the relationship between the subjects in question. Rawls prescribes justice as "the first virtue of social institutions"<sup>30</sup>. Consequently, the type of justice that applies is dependent on the

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<sup>27</sup> John Rawls, *A Theory of Justice* (The Belknap Press of Harvard University 1971), p. 7.

<sup>28</sup> Rawls, p.7.

<sup>29</sup> The main source of reference for Rawls's international justice theory is the 'Law of Peoples'. John Rawls, *The Law of Peoples* (Harvard University Press 1999).

<sup>30</sup> Rawls, p.3.

institutions or the social phenomena that ground the institutions. In the way I employ his theory, this means that social relationships among subjects create and define the institutions and the parameters of justice that apply to them. For domestic justice, the social relationship among the subjects is forming a community or being members of the same community. From the perspective of political theory, it translates into simultaneously creating political institutions to rely on and being subjected to those institutions and their enforcement. Therefore, these institutions are where justice is supposed to be achieved and maintained. Rawls names these institutions "basic structure", which will be discussed in detail in the next chapter.

For international justice, the same formula yields a different result for several reasons. First, the subjects of the relationship (the relationship where justice is supposed to be maintained, subjects of justice) are states rather than individuals. This perspective essentially limits the content of the discussion to international political relations.<sup>31</sup> Secondly, Rawls presumes that nations are self-sufficient, contained units with limited interaction with each other as opposed to people who are subjected to principles of domestic justice creating a community together. The absence of social -or shared- institutions<sup>32</sup> necessitates contrasting principles for the maintenance of justice. I will start by elaborating my point and discussing the consequences of this contrast below.

## 1.1. Two Theories of Justice

### 1.1.1. Subjects of the Theory

As mentioned above, there are two main differences between Rawls' domestic and international principles of justice, which I suppose are consequential to each other. The primary divergence is the change of the basic moral unit. In the "Theory of Justice"<sup>33</sup>, the object of the principles of justice is the basic structure of the state. It does not concern justice in legal disputes, personal affairs, or even the private market, for that matter. It directly aims to regulate the state institutions and how they should exercise their authority over individuals. In contrast, the principles of justice prescribed in the Law of Peoples<sup>34</sup> address the relationship between the states, or in Rawls' terminology, "Peoples".

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<sup>31</sup> For the remainder of this dissertation, I will use "international justice" to refer to the domain where subjects are states. I will use "global justice" to refer to the domain where subjects are individuals living in different states. The reason behind this decision will be explained later in the chapter.

<sup>32</sup> It is axiomatic that there are certain common institutions, such as the United Nations, in the international domain subjecting the states. Rawls' particular perception does not arise from the dismissal of this fact. Instead, he does not consider these institutions creating a social/political phenomenon the way state institutions do in domestic cases. I will discuss the accuracy of this perspective later.

<sup>33</sup> Hereafter will be referred to as "TJ".

<sup>34</sup> John Rawls, *The Law of Peoples* (Harvard University Press 1999). Hereafter, it will be referred to as "LoP".

It must be noted that Rawls emphasises that he does not use "peoples" interchangeably with states; rather, he uses it in terms of the political conception of society.<sup>35</sup> "Peoples" refers to a group of individuals that display certain features in three aspects: institutional organisation, cultural commonality, and shared political values (as in commitment to a shared conception of rights and justice).<sup>36</sup> "Peoples" as a term refers to any community that qualifies in these three aspects.<sup>37</sup> This semantic attempt to define nations is criticised for several reasons. First, it is reasonably suggested that both the term and the description can be conflated to address smaller groups within a country, such as ethnic minorities or politically organised communities. What Rawls intended to address with the term is clearly not just "peoples" but rather "peoples organised in states", which he did not clarify himself.<sup>38</sup> Alternatively, as Charles Beitz puts forward, it can be understood as a part of the ideal theory that refers to the moral nature of "Peoples" as members of the international community as opposed to states forward their interests without any moral constraints.<sup>39</sup> This means that what Rawls referred to as "Peoples" does not necessarily correspond to nations or members of states; instead, it is the description of an anticipated entity that is a prerequisite for ideal theory. *"The appropriate question about the idea of a people is whether it represents a sufficiently desirable form of human social organisation to serve as the basic constituent element of world society, not whether it serves as a realistic proxy for any actually existing states"*.<sup>40</sup> This perception complies with Rawls' statement that the LoP is the second step after determining the rules for justice within a domestic society.<sup>41</sup>

Overall, Rawlsian justice theories<sup>42</sup> constitute a two-step scheme for an ideal world. The first step is to determine the principles of justice in the domestic society. A liberal community would achieve this goal by starting at an original position where representatives of free and equal citizens would specify the terms of cooperation under fair and reasonable conditions.<sup>43</sup> It is safe to assume that the formation and running of the basic structure through these principles will eventually lead to "Peoples"

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<sup>35</sup> LoP, p.23.

<sup>36</sup> LoP, 23-4.

<sup>37</sup> Rawls reiterates that the preference of using "Peoples" instead of "States" also reflects his understanding of people's sovereignty being limited and his rejection of the "right to go to war in pursuit of state policies" LoP p.25-6.

<sup>38</sup> Allen Buchanan, 'Rawls's Law of Peoples: Rules for a Vanished Westphalian World' (2000) 110(4) *Ethics* 697.

<sup>39</sup> Charles R Beitz, 'Rawls's Law of Peoples' (2000) 110(4) *Ethics* 669, p.679.

<sup>40</sup> Beitz (2000), p.680.

<sup>41</sup> LoP, p.26.

<sup>42</sup> I refer to both domestic and international theories with this phrase as Rawls explicitly states that they are complementary to each other.

<sup>43</sup> LoP, p.30.

who are organised in a state, adopt baseline common cultural elements, and share basic political and moral values. Eventually, there will be more than one “Peoples” who will have to interact with each other. This brings us to the second original position in which the same model of representation applies among "Peoples" to specify the "Law of Peoples", the principles that would apply to the interactions of the groups rather than individuals.<sup>44</sup> Regarding the second original position, Rawls clarifies two things: First, it is not the members of the "Peoples" but their representatives who are considered free and equal in this position. The adjectives label the assemblage as the subject of the principles, not the individuals in the collective.<sup>45</sup> Secondly, because the subject of the principles is the assemblage, subjects do not have their own conception of good, only the principles of fair cooperation. In contrast to the first original position, representatives are not expected to have/disregard such knowledge.<sup>46</sup>

The significance of these details, all of which mainly underline that the basic moral unit of LoP is states, is that LoP is a theory of international political justice.<sup>47</sup> Therefore, the principles it proposes cannot be considered exhaustive in remedying the problem of global justice. Even when two theories are considered complementary parts of a long-run operation<sup>48</sup>, the need for addressing the individual from a global perspective still stands.<sup>49</sup> In the next section, I will briefly discuss the principles of both theories and present a method for determining global justice principles based on Rawlsian justice.

### 1.1.2.Principles of Justice

Another remark that confirms LoP as a theory of international justice is the contrast between the principles. Even though both sets of principles are theoretically produced through the same model of representation, a remarkable distinction is set between them. In both theories, agents choose the principles of justice behind a veil of ignorance, a mechanism that prevents them from knowing certain facts regarding their own particular case.<sup>50</sup> This mechanism aims to avert any possible bias by representatives to exploit the principles to their advantage.<sup>51</sup> However, this brings the question of stripping the representatives of the knowledge of good and fair, whether their own conception of it or the available alternatives. Rawls suggests that the parties have all the general information without

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<sup>44</sup> LoP, p.32.

<sup>45</sup> Lop, p.33-34.

<sup>46</sup> LoP, p.34.

<sup>47</sup> Beitz (2000), p.675.

<sup>48</sup> Beitz, (2000), p.677.

<sup>49</sup> Buchanan, p.698.

<sup>50</sup> TJ, p.136-7.

<sup>51</sup> TJ, p.137.

knowing their status in it. They would not know, for example, their gender, their race, their talent and abilities, the social background they were born in etc. Ultimately, they would choose the conception with the simplest general facts. The conception of justice they chose must be understood by everyone in general and, therefore, avoid displaying circumstantial nuances as much as possible.<sup>52</sup>

It is safe to suggest that Rawlsian principles of distributive justice accomplish this standard. He recommends two principles in lexical order, which also suggests a principle of priority between the two, and each addresses critical issues with a generalised and encompassing tone. In domestic theory, Rawls argues that in the original position, behind the veil of ignorance, the representatives would agree to the following two principles of fair cooperation:

*“1. Each person has a right to have an equal right to most extensive basic liberty compatible with a similar liberty for others.*

*2. Social and economic inequalities are to be arranged so that they are both*

*a) reasonably expected to be everyone’s advantage, and*

*b) attached to positions and offices open to all.”<sup>53</sup>*

Regarding the international principles of fair cooperation, the levels of simplicity in the two sets of principles do not match. In contrast to the domestic original position, Rawls states that the representatives do not have knowledge of possible conceptions of good or justice, which is a crucial step for the final outcome to be impartial. It is even more significant in this case that the principles of justice are free from moral relativism. This is because, in the international original position, the parties are already liberal “Peoples” with a constitutional regime. These subjects cannot have any conception of good or justice.<sup>54</sup> This shift reflects the international principles of fair cooperation, which follow:

*“1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.*

*2. People are to observe treaties and undertakings.*

*3. Peoples are equal and are parties to the agreements that bind them.*

*4. Peoples are to observe a duty of non-intervention.*

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<sup>52</sup> TJ, p.142

<sup>53</sup> TJ, p.60.

<sup>54</sup> LoP, p.34.

5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.

6. Peoples are to honor human rights.

7. Peoples are to observe certain specified restrictions in the conduct of war.

8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.”<sup>55</sup>

There are a couple of striking differences between the two sets of principles in general. First, it is evident that the latter set is not as simple as the former. It casuistically describes what it expects the parties to comply with. Second, the latter is more like a set of commandments regulating the way parties interact with each other or the values they must uphold.<sup>56</sup> It includes imperatives for the parties to follow. The former, on the other hand, describes how parties are to be treated. Finally, the latter addresses the parties directly, whilst the former addresses the society's structural organisation, also known as the basic structure.

These observations point out the key differentiating factor between the two theories. As Rawls puts out, as evident through the principles, the primary subject of justice in domestic theory is the basic structure of society. To describe briefly<sup>57</sup>, the basic structure of society refers to “*the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.*”<sup>58</sup> The reason for addressing the basic structure lies behind its comprehensive impact on individuals’ lives, which is not limited to rights and privileges but includes one’s life expectations from the beginning.<sup>59</sup> It means two things: First, the social position into which one was born limits one’s aspiration regarding life and, indirectly, his effort for a particular end. The unlikelihood of this end creates -in the best-case scenario- discouragement and leads to a failing merit. Secondly, and more importantly, it defines one’s notion of justice. Considering he has the same social position from the beginning, what is just or unjust is shaped around the collective values and anticipations.

In international theory, Rawls does not agree that equality is an inherent component of justice and is required under all conditions. He considers equality a necessary step for justice when the consequences of inequality affect the “basic structure of Society of People”.<sup>60</sup> Unlike the domestic

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<sup>55</sup> LoP, p.37.

<sup>56</sup> Beitz (2000), p.675.

<sup>57</sup> It will be discussed in length in the second chapter.

<sup>58</sup> TJ, p.7.

<sup>59</sup> TJ, p.7.

<sup>60</sup> LoP, p.123.

theory, inequalities in international theory are not conditioned to satisfy any criteria, such as benefitting the disadvantaged party.<sup>61</sup> This aligns with the notion that justice is a merit of political institutions rather than a moral condition to satisfy.<sup>62</sup> There is a basic structure, but due to the inherent differences between the two theories, such as the subjects and the ultimate goals, the outcomes of these two structures are vastly different.

In an alternative observation, Beitz suggests that one particular merit of TJ is that it builds upon the assumption that in a free society, there would be a variety of classes and cultures and that they will eventually manifest themselves in political forms. In this case, the basic structure will define the terms of cooperation and will function as a cooperating medium.<sup>63</sup> In other words, the basic structure is designed in a way that adapts and responds to this diversity. In the international theory, Rawls still works through this plurality, but because the “institutional structure of the Society of Peoples does not include an international analogue of the state”, the principles of justice are tasked with maintaining the smooth process of cooperation as possible and aims to expand the Society of Peoples.<sup>64</sup> Contrary to domestic theory, it is the subjects who are expected to adapt and respond to diversity in this scenario. The principles of international justice serve as a guideline for this task.

One may bring many criticisms and qualms to this statement. My objection would not be regarding the distinguishing characteristics between the two theories. Rather, I would underline the gap that exists in the presence of both. As pointed out by Buchanan,<sup>65</sup> there is still a need for a global justice theory that addresses individuals as members of the global community. So, the problem with Rawlsian justice theories is not exactly a matter of accuracy but a matter of sufficiency or lack thereof. In international theory, Rawls considers equality and distributive justice in a manner that complies with the general perception of the principles, which only applies to states.<sup>66</sup>

Rawls deliberately confined his theory to addressing individuals within their domestic societies. He envisioned a basic structure of countries, with domestic basic structures nested within them, and assumed this framework was comprehensive. His system, encompassing both domestic and international justice theories, indirectly addresses individuals. According to Rawls, if justice among “Peoples” is achieved and sustained, and well-ordered societies fulfil their duty of assistance towards

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<sup>61</sup> In domestic theory, the second principle, called the “difference principle”, conditions that inequalities are permitted as long as they maintain an exclusive benefit to the worst-off group.

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<sup>63</sup> Beitz (2000), p.671.

<sup>64</sup> Beitz (2000), p.673. By expansion, Beitz refers to the duty of assistance of well-ordered societies to burdened societies. Though this is a critical remark highlighting the difference between the two theories, it does not contribute to the argument of this chapter, and it will be discussed in the next chapter as a proposal for a remedy for global injustice.

<sup>65</sup> Buchanan, p.698.

<sup>66</sup> LoP, p.113-9.

burdened societies, then eventually, all individuals will attain a certain level of well-being. However, this approach has been criticised by many scholars, including myself, as insufficient.

In the way Rawls proposed, domestic justice added to international justice equals global justice. However, I believe that global justice should be an expanded and adjusted version of domestic justice, a separate theory in which the basic moral unit is still individuals, but the theory encompasses the globe. In the next section, I will address the question of global justice by bringing prevailing theories on the subject and exploring the implications of Rawlsian theories on this matter. I will follow Rawls' domestic theory, "A Theory of Justice," arguing that the distinguishing feature of his approach to global justice lies in the foundational reasons for establishing rights and duties. Drawing on Nagel's insights, I will argue that Rawls' emphasis on the political character of justice results in rights that are associative in nature. The significance of Nagel's argument is that it justifies the scope of the theory without engaging in its substantial components. More importantly, he does so by explaining the constitutive elements of the responsibility and simply argues that those elements are not available outside of the current scope, which is the closed-up community. Finally, I will explain why I prefer a Rawlsian justice theory and the political conception of justice to develop an argument on global justice. I will draw a general framework for the discussion by examining a couple of theories for or against global justice and demonstrate the unique position that the political conception of justice occupies.

## 1.2. Global Justice and Political Conception

Like every other issue on the table, global justice is subject to a variety of theories that engage with the question from different angles and provide even more diverse answers. I find it easier to start with the opposite ends of the spectrum and work towards moderation. In the case of global justice, one end would be denying global justice as a moral concern, which is the minimalist approach. The opposite end would be maximising the moral importance of the matter and arguing that there is no moral difference between global and domestic justice. I will start with the latter.

### 1.2.1. Cosmopolitanism

Cosmopolitanism presents the most inclusive answer to the question of global justice. As a moral idea, cosmopolitanism centralises what we have in common over what we have in difference. For example, Martha Nussbaum, who registers to strict moral cosmopolitanism shaped around egalitarian values of individuals, builds upon the presupposition that every human has dignity in equal measure by virtue of "*some basic threshold level of capacity for moral learning and choice*".<sup>67</sup> She translates each individual's equal and complete dignity into a cosmopolitan notion where no rank or hierarchy applies.

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<sup>67</sup> Martha C Nussbaum, *The Cosmopolitan Tradition: A Noble but Flawed Ideal* (The Belknap Press of Harvard University Press 2019) p.2.

Finally, she underlines that even though the cosmopolitan responsibility to justice is moral in principle, it generates political and economic duties in contemporary circumstances.<sup>68</sup>

Onora O’Neill demonstrates a similar approach in her discussions of justice. She anchors her cosmopolitanism in contemporary developments and states that increasing mobility of goods, capital, and ideas requires us to develop more extensive accounts of ethics and politics.<sup>69</sup> Unlike Nussbaum, she emphasises that the possibility and necessity of global justice are recent developments.<sup>70</sup> From a historical point of view, the question of global justice was epistemologically and practically impossible. People were not expected to know about the miseries of people outside of their locality, let alone be contributors to it. On another note, O’Neill classifies the views of Rawls and Kant as semi-cosmopolitan for their acknowledgement of the matters of international justice and their rejection of a world state. She partly builds her argument on the same starting point.<sup>71</sup>

Thomas Pogge is another philosopher who subscribes to cosmopolitanism and closely engages with the Rawlsian Justice theories. In his book “World Poverty and Human Rights”, Pogge not only approaches human rights from a moral cosmopolitanism point of view but also proposes extensive reforms to achieve global justice. He suggests further institutionalisation on the supra-state level to ensure long-term sustainability. This includes the establishment of the Health Impact Fund or Global Resources Dividend.<sup>72</sup> His proposal will be discussed later in this chapter.

Despite their close watch, cosmopolitan scholars often accuse Rawls’ two-tiered justice system of lacking more comprehensive moral principles regarding matters regarding global justice. On the one hand, Rawls rejects communitarianism by arguing that pluralism is a natural outcome of a free society. On the other hand, he observes justice through a binary code: Justice applies to either individuals in a society or “Peoples” in a transborder context.<sup>73</sup> It can also be argued that even though Rawls dismisses the underlying assumption of communitarianism (that the moral codes defining morals and political ethics are culturally defined), he reaches a similar outcome through his own brand of particularism.<sup>74</sup>

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<sup>68</sup> Nussbaum, p.3.

<sup>69</sup> Onora O’Neill, *Bounds of Justice* (Cambridge University Press 2000a).

<sup>70</sup> O’Neill (2000a), p.115.

<sup>71</sup> Onora O’Neill ‘Bounded and Cosmopolitan Justice’ *Review of International Studies*, 2000, Vol. 26, How Might We Live? Global Ethics in a New Century (Dec 2000b) 45.

<sup>72</sup> Thomas Winfried Menko Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Polity 2002).

<sup>73</sup> O’Neill (2000b), p.49.

<sup>74</sup> John Rawls is not generally associated with particularism; however, his liberalism is anticipated to apply in a world with unlimited variety. Recognising that there are various conceptions of right and wrong, good and bad, Rawls insists that principles of justice must be independent of any particular understanding of morality or school of thought. He aims for basic principles recognised and adopted by people with different worldviews. For more information, please see: Andrew Mason ‘Rawlsian Theory and the Circumstances of Politics’ (2010) 38(5) *Political Theory* 658.

Then again, it is a fact that the current global system operates through smaller units, or states as we call them, and each unit provides a different system for domestic justice - or fails to do so. Regardless, the current practice (of achieving justice) limits the wider responsibility with the borders of each state. Before going any further, it is important to note that the borders refer to limitations in two ways. The first is geographic borders which surround the land. The second is the political capacity of the state, which is the citizens, whether they are located within the geographical borders or not. A state is expected to exercise its jurisdiction only within its territory and/or only to its citizens. For transborder affairs, the contemporary understanding, both international legislation and the mainstream moral opinion, presupposes restricted responsibility to justice. Rawlsian justice theory overlaps with the mainstream moral opinion on this point.

In contrast to (strict) cosmopolitanism, statism recognises a (larger) dichotomy between responsibility for domestic justice and responsibility for global justice. This moral focus may be grounded in communitarianism, moral relativism, or institutionalisation. Whilst I will discuss different statist approaches in short, for the purposes of this paper, I shall start with the statist approach that is directly built upon Rawlsian justice theories, which is Thomas Nagel's so-called "political conception of justice". In the next section, I will explore Nagel's formulation of the statist view and sketch out its utilisation of the Rawlsian theory. Following that, I will discuss the alternative vindications for statism to bring a comparison with Nagel's argument. I will conclude that the political conception of justice provides the preferable grounds for statism and explains the partial treatment of co-citizens. By doing so, I will explain my preference of political conception for the matters of global justice. This is where Nagel and I part ways. Nagel employs the political conception to argue that transborder responsibility is limited to humanitarian rights and justice only applies domestically. In contrast to him, I argue that there is a political association outside the domestic community, and, therefore, there must be corresponding principles of justice to fulfil the associative responsibility that it generates. In chapter two, I aim to demonstrate the traces of the transborder association to conclude that transborder responsibility is more extensive than humanitarian rights. This chapter serves as a literature review for the next chapter. I argue that it is possible to theorise an analogical formula on the same grounds that generates transnational responsibility.

### 1.2.2. The Political Conception of Justice

In his 2005 paper "The Problem of Global Justice", Thomas Nagel presents a strictly statist reading of Rawlsian justice theory.<sup>75</sup> In Nagel's interpretation, the political conception of justice is predicated on a particular understanding of morality and the state, which suggests that the source of

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<sup>75</sup> Thomas Nagel, 'The Problem of Global Justice' (2005) 33(2) *Philosophy & Public Affairs* 113, p.114.

morality is essentially political.<sup>76</sup> The best way to explain this notion is by referencing contract theories. In the state of nature, when there was no political establishment, individuals would ultimately be free and unconstrained. Eventually, they confer part of their right to nature upon an authority figure in order to exercise their behalf.<sup>77</sup> This translates into the members of society being associated because they conferred their right to nature to the same agent, the sovereign. In democratic terminology, this agent would be the notion of being a society or, more directly, the association itself. In addition to sharing a community, the members are accepted as being involved in each other's lives by merely being part of it. According to Nagel, one's expected concern for the well-being of others is built upon this shared relationship.<sup>78</sup> The conditions within the association, whether the person is politically active or not, or the commutability of the influence, for instance, how different socio-economic classes affect the overall well-being of the society, are not considered relevant at this point. The interaction is presupposed to happen on the theoretical level; one's own moral commitment to this theory does not reduce or enhance his responsibility either. The cosmopolitan equivalent of such an associative bond would be the membership to humankind, which can be considered as the rightful ground for humanitarian rights and duties.

It is safe to say that TJ overlaps to an extent with contract theories<sup>79</sup>: The members of the community gather in the original position, which can be considered a version of the state of nature, and agree upon the principles through reasoning.<sup>80</sup> Nagel directly refers to the contractarian philosopher Thomas Hobbes when reading Rawls. In fact, he uses Hobbes' pragmatist use of the sovereign as the source of power and Rawls' idea of justice as the fundamental principle of the state as complementary. Hobbes' theory explains the essentiality of institutionalisation: Achievement of justice strictly relies on the ruling of a sovereign because there must be a centre of power to enable the enforcement of the principles of justice. Individuals cannot be expected to follow principles without an outside motive; it is natural that they will act in their own interest without enforcement.<sup>81</sup> Although personal moral codes might be effective in some cases, they cannot be relied upon to maintain a just social structure. A central force is needed to impose sanctions in the case of possible violations and to act as a supervisor for the maintenance of justice in the long term. He reiterates this point by bringing a comparison between

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<sup>76</sup> Nagel, p.116.

<sup>77</sup> David Gauthier, 'Hobbes on Sovereign Authority: How the Right of Nature Becomes Sovereign Right' in Susan Dimock, Claire Finkelstein and Christopher W Morris (eds), *Hobbes and Political Contractarianism: Selected Writings* (Oxford 2022; online edn, Oxford Academic, 20 Jan. 2022).

<sup>78</sup> Nagel, p.128.

<sup>79</sup> I must note that Rawls reiterates that TJ differs from the concept of social contract on numerous nuances. However, none of them suggests a difference that affects my argument. More likely, Rawls clarifies that the original position occurs within a defined community to determine principles of justice. Social contracts, on the other hand, hypothetically play a constitutive role for the community and justify the rule of a sovereign. John Rawls, 'The Basic Structure as Subject' (1977) 14(2) *American Philosophical Quarterly* 159, p.162.

<sup>80</sup> TJ, p.15.

<sup>81</sup> Nagel, p.116.

domestic affairs within a state where sovereign power is present and international relations between states in which there is not any official centre of authority. The matters of egalitarian justice are only valid for domestic society as there is a supervising authority to enable them.<sup>82</sup> Lack of authority does not imply that there is injustice; rather, it indicates that the concept of justice is inapplicable and that any related question is irrelevant.

The crucial point of Hobbes' approach is that it identifies two forms of justice. He does not deny the validity of justice qua moral imperative, which aims to correspond to the "sense" of justice experienced by the human mind. It is still possible to follow moral reasoning to understand justice and its requirements.<sup>83</sup> But he adheres to justice qua social function, which refers to the rules and principles applied by the state and may or may not engage with requirements generated by the moral meaning of justice. In other words, justice as an ideal can be discovered through moral reasoning, but an external entity must enforce justice as a practical virtue for it to be achieved. This entity, as Hobbes presumes, is sovereign or, in Nagel's revision, the institutionalised state.<sup>84</sup>

As mentioned, Nagel utilises Hobbesian political theory to construe Rawls' theories of justice. However, Rawls does not draw the same distinction between morality and politics. He states that "*Political conceptions of justice are themselves intrinsically moral ideas, as I have stressed from the outset. As such, they are a kind of normative value. On the other hand, some may think that the relevant political conceptions are determined by how a people actually established their existing institutions, the political given, as it were, by politics. ... To say that the political is determined by a people's politics may be a possible use of the term political. But then it ceases to be a normative idea, and it is no longer part of public reason. We must hold fast to the idea of the political as a fundamental category and covering political conceptions of justice as intrinsic moral values.*"<sup>85</sup> In this case, the correct form of moral reasoning is the principles of liberal democratic nations, originating from morality itself.

In TJ, Rawls criticises utilitarianism by arguing that it obliterates the distinction between people, that what is good for one may not be good for the other and, more importantly, may not be good for the group of people.<sup>86</sup> He rejects developing the principles for social justice by determining what is good for one person, which is likely to be the byproduct of a particular moral understanding, and making it a rule to apply to entire society. He insists that "the correct regulative principle for anything depends on the nature of that thing."<sup>87</sup> The dichotomy between TJ and LoP is simply a reflection of this rule.

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<sup>82</sup> Nagel, p.114-5.

<sup>83</sup> Nagel, p.114.

<sup>84</sup> Nagel, p.115.

<sup>85</sup> LoP,174n.

<sup>86</sup> TJ, p.127.

<sup>87</sup> TJ, p.129.

Unlike Nagel's Hobbesian approach, Rawls recognises that certain matters of justice do apply outside of the domestic society. But, because of the nature of international order based on a state-centred system, the aforementioned rule necessitates a different set of principles on the international domain than the ones applied domestically.

Predicated on this particular reading of Rawlsian theory, Nagel poses the political conception of justice as the justification for the limited state responsibility for justice beyond state borders. To clarify, this limitation only applies to global justice matters; he does not propose any objection or interpretation for international justice, which regulates state affairs. As opposed to cosmopolitan theories, which argue that equal moral value of each individual requires equal responsibility, Nagel's approach follows the contract theories and remains parochial. It conjoins the political identity and the notion of equal moral value and argues that responsibility to justice only applies amongst people with the same political identity.<sup>88</sup> More precisely, he considers equal moral responsibility as an extension of equal political identity, hence prerequisites the latter in order to claim the former.

To sum up, the responsibility for justice ( as in Rawlsian theory, egalitarian justice) arises from the associative relationship that members of a political community -or the citizens of a state- share. The notion of equality implies equal moral worth and demands just treatment of members within the community.<sup>89</sup> Naturally, it leaves non-members outside and requires partial treatment of co-citizens. There are two conditions to fulfil for this type of partial responsibility (of justice) to occur, each reflecting the aforementioned theories: First, a sovereign who will enforce the principles of justice, which is the state. Second, the membership to the community or, in other words, the mere existence of the community. These two conditions may seem to oversimplify the theory, but in fact, the main appeal of this formulation is its compact structure. It indicates the key features of political association accurately without including any secondary factor<sup>90</sup> or leaving a functional component outside of it. The simplicity of the conditions allows us to theorise a transborder replica of the associative responsibility and suggest that these conditions are not impossible to fulfil, as will be argued in the next chapter. Ultimately, I aim to demonstrate that states/nations are not exclusive examples of responsibility-generating associations. In the next section, I will discuss these two conditions to lay the groundwork for chapter two.

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<sup>88</sup> As the discussion is about global justice, the term "political identity" refers to citizenship in this context.

<sup>89</sup> The answer of the question "How is egalitarian justice achieved?" is the main argument of "A Theory of Justice" and outside of purpose of this paper.

<sup>90</sup> "Secondary factor" may seem like a term, but it has a literal meaning in this context. I used it to refer to any other components of a political community that are important in the general picture but actually the byproduct of any of these two conditions. The shared political history of a nation or the cultural elements that constitute a bond among members can be given as examples.

### 1.2.3. Nagel's Formulation

#### a) The institutional sovereign:

To start with the crucial point, in Nagel's political conception, the state is not merely an enforcement instrument. Aside from enabling the principles of justice, it also shapes how we, or the citizens, conceive the notion of justice. In order to comprehend the state's role for the community beyond a mere multi-function institution, one must think about the state in the practice-dependant concept: *"The content, scope, and justification of a conception of justice depend on the structure and form of the practices that the conception is intended to govern."*<sup>91</sup> It means that the nature of social and political institutions plays a decisive role in determining the first principles of justice.<sup>92</sup> This approach -hereafter will be referred to as institutionalism- dictates that political institutions must be apriori to the principles of justice that they are designed to practice. Therefore, in political conception, the state is a prerequisite not only for political conception but also for the determination of the principles of justice.

Returning to Hobbes' distinction between justice qua moral imperative and justice qua social function, institutionalism implies that justice appears as a social function before it appears as a moral imperative. In order to speak of the rights of man or the rights of citizens, there must be an institution to demand their rights from it. Furthermore, the institutionalist approach does not limit itself to the borders of the institutions either. It is argued that even the rights that apply globally, namely human rights, are an outcome of supra-national institutionalisation.<sup>93</sup> Even if the concept of human rights is grounded in the inherent characteristics of being human, it only plays a part in the moral reasoning behind the existence of human rights as a concept. The content and the scope of the rights are strictly determined by the institutions that construct them.<sup>94</sup>

Even though it conforms to Rawlsian justice theories and directly supports Nagel's political conception of justice, I find this argument overreaching. From a historical point of view, it is accurate that rights as a concept follow the political authority of the time. Indeed, the Magna Carta, as an example, is a direct outcome of sovereign rule, overruling the said sovereign regarding the liberties held by free men.<sup>95</sup> Nevertheless, it does not mean those liberties did not exist before the document was signed. On the contrary, it documents the violation of the liberties by the sovereign and aims to stop said violation. The existence of liberties is embodied in the demands of the rebels, who are inherent

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<sup>91</sup> Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality' (2008) 16(2) *The Journal of Political Philosophy* 137, p.138.

<sup>92</sup> This is one of the two types of practice-dependent theories. The other one, named cultural conventionalism, suggests that social goods, such as health or leisure, shape the first principles of justice. Sangiovanni, p.138.

<sup>93</sup> Sangiovanni, p.153.

<sup>94</sup> Sangiovanni, p.154.

<sup>95</sup> [Magna Carta | Definition, History, Summary, Dates, Rights, Significance, & Facts | Britannica](#) accessed 27/11/2024.

right-holders. In other words, the rights (and liberties, in the correct terminology of Magna Carta) do not rely on a sovereign to exist; they just manifest themselves according to him.

I find this explanation more plausible from a contract theory point of view. If the sovereign is justified by people relinquishing their right to nature and authorising the sovereign to act on their behalf, we can conclude that the scope and content of the rights take shape according to the sovereign; they do not emanate from it.<sup>96</sup> Regardless, the progression of the institutions (the sovereign) and the recognition/enforcement of rights develop correspondingly. It is possible to declare the political conception of justice as an institutionalist theory without further engaging in an egg-or-chicken debate.

I concur that institutionalisation is an integral part of achieving justice. Furthermore, it is evident that institutions affect the demand for justice through practice and, in political conception, it is designed to operate through states as the sovereign. One crucial task of states, apart from justice enforcement, is the demarcation of the community. By deciding who gets to be a member of the community, simply through distributing citizenship and controlling the borders, states encircle their domain and instruct subjects on the principles of justice that they approve. This brings us to the second condition of political conception.

#### b) The community and the members

"The membership to the community" is an attempt to define a vague but comprehensive component, which refers to several sub-concepts, including them all. First, it indicates the cooperative character of political conception. Whether justice is achieved or not, existing as a community implies the cooperative activity of members. The community is not only a group of people randomly interacting with each other. Rather, the members are, more or less, organised in an order that extensively impacts their lives. Rawls names this order "the basic structure".<sup>97</sup> Whilst I leave a wider discussion on the basic structure to the next chapter, I will underline one point about it: being a member of a community also means taking part in the basic structure. Membership in an organised community brings the privilege of social and political participation.

Then again, it is more than just participating in any institutional process. Another inference of membership for no active participation is the hypothetical responsibility it brings. Regardless of the individual's will, being a member of a community attributes a political responsibility to a person. The critical detail is that no active participation is required to fulfil this condition. As Nagel puts it, "*..a special involvement of agency or the will that is inseparable from membership in a political society. Not the will to become or remain a member; for most people have no choice in that regard, but the*

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<sup>96</sup> Gauthier, p.101-18.

<sup>97</sup> Rawls (n.53) p.164-5.

*engagement of the will that is essential to life inside a society, in the dual role each member plays both as one of the society's subjects and as one of those in whose name its authority is exercised."*<sup>98</sup> So, there is no designated condition for a member to conform in order to bear this responsibility, nor has he been given a choice to be a member or not. Simply existing as a member is sufficient.

One possible interpretation of this condition is understanding it as a reference to democracy.<sup>99</sup> What better way is there to describe the interactive ruling and subjection that is based on (hypothetical) participation? Democracy is indeed the best condition to reflect the notion of political conception from the membership point of view. It has been defined as the ruling of people by people and for people. Each citizen has the privilege and the duty to participate actively in the government election without an option of renouncement. Ignorance of the duty or relinquishing the privilege does not take off the responsibility. However, I'm suspicious that Nagel limited this theory to democratic communities. In contrast, it's sufficient that the ruling is done "by the name of its authority", regardless of any actual participation being sought. The crucial point is the correspondence of the enforcement and the subjects: The enforcement is exercised in the name of subjects who are at the exact receiving end of the enforcement. In other cases, as in the Magna Carta, disinclination for a reform or indifference towards the ruler translates into authorisation of the current sovereign. In this regard, it is safe to assume that any system that is short of absolute tyranny automatically fulfils this condition.

It is important to underline that Nagel does not deny the equality of humans as the primary moral unit. He acknowledges that everyone holds a certain set of core rights, such as freedom from slavery or the right to be rescued from immediate danger.<sup>100</sup> Nevertheless, those rights can only be counted for a primitive level of morality that only justifies a narrow set, which I will call humanitarian rights. Any responsibility beyond that list requires political involvement on an institutional level to impose equality among members. Because the involvement of individuals occurs within the domestic community, and the state acts as their representative in international matters. Therefore, the notion that states have a transborder duty (against individuals) based on any further responsibility falls irrelevant to the equality of human beings.<sup>101</sup> On the other hand, institutional involvement allows people to claim equal treatment which demands distributive justice. In other words, the rights that create positive duties for states are elicited from political involvement or social cooperation, which is why they are called associative rights. It means these rights are only arguable within a pre-existing, defined, and exclusive relationship. In short, the political conception of justice attributes humanitarian rights to human moral value and associative rights to equal political identity.

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<sup>98</sup> Nagel, p.128.

<sup>99</sup> Philippe Van Parijs, 'Just Europe' (2019) 47(1) *Philosophy & Public Affairs* 5, p.16.

<sup>100</sup> Nagel, p.131.

<sup>101</sup> Nagel, p.127-135.

This approach reflects the Rawlsian dichotomy between domestic justice and international justice<sup>102</sup>. Even though Rawls proposes a form of transborder moral duty on the international level, individual claims of justice stand unrecognised beyond the political community in which one lives. On the contrary, according to Rawls, a state's ultra-domestic moral duty is limited to assisting another state to develop in a particular direction. Rawls suggests that politically better developed states have a “duty of assistance” towards those that are not. The assistance in this context is not necessarily about the well-being of persons either; rather, it aims to achieve the adoption of liberal democratic political values by the receiving society.<sup>103</sup> In addition to following this dichotomy, Nagel's argument carries Rawls' statism one step further by arguing that states have no positive duty beyond humanitarian rights in the international domain. Humanitarian rights are the primary set of rights derived from individuals' moral values as humans. They are assumed to be global due to shared human experience. However, any other right that requires positive duty from a state to be fulfilled is “fully associative”.<sup>104</sup> The justifying ground for those rights is the association itself; hence, the content of rights and duties strictly relies on the nature of the association. For example, socio-economic rights fall under this description. One is entitled to these rights because he is a member of an association, and he simultaneously bears the responsibility for the fulfilment of his fellow members. I will refer to them hereafter as associative rights and associative responsibility, respectively.

Associative responsibility is the main duty-generating concept within Nagel's political conception of justice. It simply infers that the very origin of socioeconomic justice lies within the dynamics of a political community, more accurately of being co-members of the same organised, functioning civil society, which happens to be ruled by one state.<sup>105</sup> This theory presupposes that each individual is not only a member but also an active participant in the constructive elements of the political community. As briefly discussed above, each citizen is both a) subject to the state (sovereign) and b) a party to the contract that is the foundation of the state that subjects others. This mutual influence over each other's lives, either on a minimal level or purely hypothetical, is the factor that generates the associative responsibility for justice.

Nagel reiterates this point by giving immigration as an example: The political conception posits that people of a community bear responsibility against each other because they are subject to rules enforced on their behalf. To clarify, when a state exerts power on the citizens, it does so by virtue of the authority given to it by citizens. Theoretically, citizen A shares accountability over rule X being dictated to his fellow citizens. Because he is also subjected to rule X, each and every co-citizen bears the same

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<sup>102</sup> Nagel, p.120.

<sup>103</sup> Rawls, p. 106.

<sup>104</sup> Nagel, p.127.

<sup>105</sup> Because an organised society must have a state and the state holds power on behalf of the society, I will be using the terms “state” and “society” interchangeably.

responsibility against him. However, when the state exercises a particular immigration policy, the subjects mandated by that policy are not the citizens who share the responsibility for it. The nature of the issue requires the said policy to be exerted on non-citizens. Nagel underlines that this double standard does not extend the scope of responsibility of justice to non-citizens. This is because the justice concerns do not apply outside of the community in the first place. Hence, the citizens have no accountability over the immigration policy against non-citizens.<sup>106</sup>

On the other hand, Nagel criticises Rawls' premise that arbitrary characteristics affecting one's life prospects create inequality for being insufficient or inaccurate.<sup>107</sup> As Rawls indicates in the difference principle<sup>108</sup>, arbitrary factors one cannot control create injustice (failure to justice qua morality) and require rectification towards the individual. Nevertheless, Rawls' theory is designed to be employed in a domestic community where the political conception of justice applies. This nuance translates into only arbitrary characteristics within the community qualifying for rectification. On the other hand, the acquisition of membership to the community, the existence of the community itself, is a major arbitrary factor that occurs beyond one's control. So much so that a person not only cannot choose the community he gets to be a member of; in some cases, it becomes a key factor for aggregation of these arbitrary disadvantages.

Rawls's explanation for this double standard is that the former occurs within a societal context as the causal factor. Nagel braves this argument and stands clear on the grounds of political conception. He argues that it is unreasonable to consider the arbitrary factors that occur within the society and the arbitrariness that results in being a member of society as different types of disadvantages for both bear the same moral weight. Therefore, arbitrariness alone is insufficient as the justification for this partiality. What Nagel offers is a narrower definition: The existence of the responsibility to fix injustice exclusively occurs within the community; it merely emerges from certain domestic dynamics. In other words, the problem that needs attention is not only arbitrariness but arbitrariness in a context where the principle of equality is expected to be maintained. Therefore, it is not arguable as a matter of injustice beyond the borders, so much so that justice, as a concern, only exists within the society.<sup>109</sup>

This is the essential point that I build my argument upon. As if it is a chemical reaction, Nagel requires the interaction of certain elements under specific conditions for justice to become a concern. This statement calls for examination from two distinct aspects: First, does it provide sufficient grounding for limited responsibility on the transnational level? What are the alternative theories for statist approaches, and how do they interact with Nagel's point? Secondly, can this argument be

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<sup>106</sup> Nagel, p.129.

<sup>107</sup> Nagel, p.128.

<sup>108</sup> TJ, p.76-80.

<sup>109</sup> Nagel p.128.

reformulated to introduce justice to domains other than sharing a political community? I will answer the second question in the second chapter with a detailed argumentation. Before doing so, I will give a brief answer to the former, for it infers the broader issue and brings possible criticism.

## 2-Alternative Justifications for Domestic Responsibility

In the last section, I explained that Nagel only considers justice as a concern when there is a pre-existing political association that requires it. My argument in the second chapter is a reconstruction of the political conception of justice to a global extent. One might find it presumptuous or ignorable that one of the many justifications for statism can be construed in an expansive approach to create an argument for global justice. After all, other justifying theories exist for the partial treatment of co-citizens. The power of statism does not rely on any of these theories but is predicated on the accumulation of all. I want to explain that my focus on Nagel's political conception of justice is not because it is easily adaptable to a global domain. I sincerely believe that the political conception of justice is an accurate justification for the domestic responsibility of distributive justice. What I disagree with is that it is only observable in a closed-up community. Therefore, I will compare multiple justifications for statist approaches to justice in this section and conclude that the political conception of justice is the most suitable and accurate justification among them.

When it comes to justifying the partial responsibility for fellow citizens - or arguing against it - , the discussion is blessed with abundant literature. This means that I need to identify the ones close to the political conception or possible alternatives to it. Before starting, I must clarify that strict moral relativism falls out of the scope I aim to conduct this discussion. One of the distinctive qualities of the political conception of justice is that it recognises a certain level of universal morality but follows a lexical order<sup>110</sup> among moral rights. As mentioned above, Nagel acknowledges the responsibility of being a fellow human, even though he considers this responsibility strictly limited to humanitarian rather than egalitarian justice. On the other hand, the type of moral relativism that rejects any universal moral ground is outside of this discussion by its nature and the trajectory of the main argument. All the theories I will discuss below are comparable to the political conception of justice because they recognise a certain level of universal responsibility.

### 2.1.Moral Relativism

This still leaves us ample space for examination. One approach to address this issue is to lay out what we expect from a justification for partial treatment of co-citizens. This is where soft moral

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<sup>110</sup> By "lexical order", I refer to the order of priority among rights. In this case, humanitarian rights are prioritised over human rights (which do not overlap with humanitarian rights) and distributive rights (rights that are generated by the principle of equality in a community). This order implies that, regardless of the right bearer, the fulfilment of humanitarian rights will always have priority over the fulfilment of distributive rights.

relativism catches us.<sup>111</sup> The appeal is that soft moral relativism does not only claim to explain justice and what it requires through the moral understanding of society. It also determines the rights and privileges that are supposed to be distributed through the same lenses. Each right protects an individual's particular interest. Relativism considers this corresponding interest as an extension of social and cultural standards. Because "the same thing is valued for different reasons, or it is valued here and disvalued there"<sup>112</sup> the significance and the priority of that "thing" vary in different societies.

Reasonably, there is no point imposing a right on a society when they are uninterested just because there are other societies in which said right bears utmost importance. Equally, dismissing a benefit that is considered crucial for everyone in society would be a shortfall for any theories of justice. The content of a right is measurable through the right-holders interest in the corresponding duty. The intuitive idea is that people are part of the socio-cultural structure, as in the political conception. They are heavily influenced by their community, and they presumably contribute to society as a member. This diversity might be a result of geographical determinants as well as timely parameters. The importance of a certain good may change over time, and something once considered crucial might fall redundant after a certain amount of time.<sup>113</sup> This lack of global standards on what is to add or subtract to the principles of justice leads to limiting the definition of justice within social units with one shared morality.

This approach may be understood as a parallel to and supportive of the political conception. It is plausible to think that some rights carry different meanings and weights in different societies. On the other hand, the significance of certain goods and freedoms is factually global. It is biologically determined that every human being needs a definite amount of food and water in a day. The need for shelter, work or dignity, for that matter, is also axiomatically universal. As explained above, humanitarian rights reflect this notion; they are the basic rights emerging from global moral values and human needs. The rest are the associative rights, which arise from associative conduct and are grounded in the relative moral understanding of the association. We can conclude that political conception and moral relativism limit responsibility for justice within a closed society, but they ground this limitation on different reasonings. Moral relativism marks the effects of socio-cultural diversity on morality as the reason, whereas the political conception points out the associative conduct, or more precisely, lack thereof.

As a third option, J. Donnelly proposes a reconciliation of both approaches. Despite being a moral relativist himself, Donnelly argues that either naturally or artificially, human rights are now

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<sup>111</sup> Andras Miklos, *Institutions in Global Distributive Justice* (Edinburgh University Press 2013).

<sup>112</sup> Miklos, p.15. See also: Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford, Basic Books, A Member of the Perseus Books Group 1983), p.7.

<sup>113</sup> Walzer, p.9.

adopted by international society and made their way into all nations across the world.<sup>114</sup> After all, it has been half a century since the United Nations General Assembly adopted the Universal Declaration of Human Rights. In the meantime, it kept promoting and instructing human rights through supporting treaties, such as ICCPR<sup>115</sup>, ICESCR<sup>116</sup>, and CEDAW<sup>117</sup>. To support this point, Donnelly points out the fact that human rights are widely considered as the criteria for the political legitimacy of governments, regardless of the type of governing body that the state adopts.<sup>118</sup> Whether in a constitutional democracy or a commonwealth of nations, violation of human rights is the report cards of governments on the international public opinion as well as domestic groups. The key feature of the versatility of human rights is that they are minimalist and abstract formulas already adopted by diverse beliefs, ideologies, or philosophies. Most of them are suitable to be justified by various schools of thought. Therefore, it is suitable to argue and be factually accurate that human rights constitute an "overlapping consensus"<sup>119</sup> among the cultures that practice separate moral values.

It is correct that most schools of morality aim to protect the rights and interests that International Human Rights Law addresses. The belief system in every culture more or less recognises the dignity, security, and peace of individuals. It is safe to suggest that UDHR aimed to elevate an existing common ground in theory into international law and politics. As the preamble states, "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind..." the declaration serves an evidentiary or clarifying purpose rather than constituting the rights. The moral essence of rights has a long-documented history of recognition before International Human Rights. So much as natural rights theories suggest that rights are inherent in human nature, it is inevitable for moral theories to address them. IHR served as the transforming vessel for values from morality to legality.

Even though he is a moral relativist, Donnelly points out that the premise of overlapping consensus brings the theory of International Human Rights closer to political conception by distancing it from its deontological roots. Rights might be the main primitive for and derived from moral theories, but human rights are hardly considered that way.<sup>120</sup> To explain, for example, natural rights theorists ground human rights in humanity as a race or human features such as human dignity<sup>121</sup> or intellectual

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<sup>114</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press 2013), p.57.

<sup>115</sup> International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 16 December 1966.

<sup>116</sup> International Covenant on Economic, Social and Cultural Rights, GA Res 2200A (XXI), 16 December 1966.

<sup>117</sup> Convention on the Elimination of All Forms of Discrimination against Women, GA Res 34/180, 18 December 1979.

<sup>118</sup> Donnelly, p.55.

<sup>119</sup> Donnelly, p.58.

<sup>120</sup> Donnelly, p.60.

<sup>121</sup> James Griffin "On Human Rights" (Oxford University Press, 2010).

capability.<sup>122</sup> However, assuming IHRs are the overlapping consensus of states suggests that they are designed to be instructed and, eventually, inculcated so they sustain a global standard of achievement.<sup>123</sup> This presumption complies with associating conditions of the political conception of justice where all subjects are entitled to and responsible for a level of equality. In this scenario, the associative rights would be human rights.

To the extent that it is successful in this mission, Donnelly might be considered correct in suggesting that human rights constitute an overlapping consensus. Nevertheless, exempting International Human Rights from the scope of moral relativism might be a quick step. It is one thing to acknowledge the honour and safety of people; it is another thing to propose pre-determined conditions for its fulfilment. Life, for a start, is one of the most inherent and instinctive values; teleologically, it is the most essential interest, considering one must be alive to have other rights and interests. However, what the right to life requires is not as widely accepted as the value of life itself. As of 2021, 55 countries still retain the death penalty and actively continue executions.<sup>124</sup> The problem is not that those countries do not recognise everyone's right to life, but they assume that the person loses his entitlement to the right by committing a particular crime. This point of view gives an even more dramatic picture when it comes to freedom and equality. Both concepts are so vast and extensive to be one of the rights of a person that it takes so little to breach the consensus on the scope of these rights. What is covered and what is exempted from the right to freedom may alter the concept in so many ways that it would be impossible to argue a consensus on them. In addition, the duties generated by IHR are remarkably more comprehensive than moral theories; states are not only expected to provide moral recognition for the rights but also facilitate and administer their fulfilment. A right not only to be recognised but also instructed by the state institutions through domestic policy, education, and discipline for its violation. As we look closer at the picture, ignoring small cracks in the perfect picture becomes harder.

In conclusion, the vision of having human rights as the overlapping global consensus might not provide any further claim regarding the transnational responsibility of justice compared to political conception. The unanimity over the rights will be limited to those without which one can not factually function as a human being, which are the fundamental rights. For domestic responsibility, on the other hand, moral relativism supports the associative responsibility argument by referring to the shared moral values of a community. In this regard, the association among members does not necessarily emerge from political interdependence. On the contrary, shared moral values serve as a constitutive element for the formation of the community and chronologically precede political interdependence. Then again, it

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<sup>122</sup> Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Belknap Press of Harvard University Press 2011).

<sup>123</sup> UNGA, Universal Declaration of Human Rights (adopted 1948) Res 217 A, preamble.

<sup>124</sup> [Death Penalty 2021: Facts and Figures - Amnesty International](#)

is just as possible to consider moral relativism and the political conception of justice complementary to each other rather than competing theories.

Another point is that the notion of human rights as the overlapping consensus calls attention to the institutional character of IHR. Even though one can subscribe to the idea that human rights are of a moral character and based on the deontological understanding of values and interests, it is also undeniable that IHR is part of international law and politics and operates through institutions. Indeed, these institutional features are the vessels that provide it with global availability and recognition, so much so that it definitely operates as a popular point of congruence, if not an overlapping consensus. In this respect, it is safe to argue that IHR complies with political conception in a way that it conforms to the allocation of duties and responsibilities, and as mentioned above, it serves as the primary source of legitimacy for the states. In addition, even though it does not substantiate a global consensus (yet), it presents the conditions for its possibility and provides guidance. This opportunity is crucial for the bigger picture I would like to draw: IHR implies that the globe itself can be counted as a closed-up community with human beings as the primary moral units. In this scenario, I will argue for a gradual increase of responsibility inversely correlated to the size and scope of the community. As the size of the community increases, it is harder to argue that the associative relationship is as tight and effective for the individuals' lives. On the other hand, it is also possible that the association is small in size yet still infers a limited relationship, indicating associative conduct occurring in a particular aspect. I will provide a wider discussion on the matter, however will put a pin at this argument and proceed to the second alternative statist account.

## 2.2. The Universalist Explanation of Particularism

An alternative -and a closer- theory to political conception for justifying the distinct levels of responsibility is the subject-oriented method. Instead of focusing on morality in general terms, this approach proposes grounding the increased responsibility to the relationship between the parties. Just as in contractual liaison, the increased intensity in relationships entails increased responsibility rather than general moral responsibility. In much-used terms in the literature, special relationships elicit special duties. For example, one's responsibility for his family, his coworkers, and his friends falls into this special relationship category. Regarding domestic responsibility, nationalist theorists argue that being a member of the same nation is also a special relationship; hence, it entails increased moral responsibility.

It is easy to notice the parallelism between these types of nationalist approaches and political conception. First of all, both accept the basic level of global moral responsibility, just as soft moral relativism. Secondly, both build upon the assumption that there is a specific type of relationship among

co-citizens, which is where the diversion starts. Political conception identifies this special relationship as being members of the same political community, not to deny that there exist other types of connection but to argue that the responsibility arises from political interdependence.<sup>125</sup> Nationalist approaches, in contrast, ground the higher responsibility to constitutive values of the community, whether it is regarding the benefit of the community or one's sense of belonging. Either way, there is a hypothetical relationship that invokes a particular set of moral values to apply.

The most direct way to look at this segregating phenomenon is to consider it purely instrumental. It is also possible to pragmatically argue that the most efficient way of distributing goods and maintaining justice is through existing state borders and avoiding attribution of any solemn characteristic to nationality. This approach is based on the idea that distributive justice applies best within a limited domain. As the scope of the application expands, it gets harder to configure the distribution of goods and allocation of privileges, and vice versa.<sup>126</sup> Goodin, for example, simply argues that increased moral responsibility to co-citizens is not the outcome of a special relationship on a deeper level; rather, it is the result of administrative practicality.<sup>127</sup> To illustrate the difference, the example of a lifeguard demonstrates the perfect example. When someone is under the threat of drowning in the sea, no matter how many people are there to save him or which one of them is the best swimmer, regardless of his relationship to any of the other visitors or the lifeguard, it is the duty of the lifeguard to run for his aid. In the absence of the allocation of this duty, it might cause greater harm among helpers or, in a more pessimistic scenario, no one might take it upon themselves to rescue. Analogously, the increased duty among co-citizens is merely the allocation of a general duty on a special case.

Goodin's perspective is appealing for multiple reasons. First, the argument of practicality serves satisfying fit for the justification of special responsibilities on a national level. Any other argument on the matter may build upon it in a different direction, but very unlikely to contradict its suitability to the situation. Secondly, the premise that co-nationality does not solitarily provide ground for special moral responsibility is coherent with more cosmopolitan approaches, which allows a larger domain for general responsibilities on a global level. This specific point of view accepts the equal moral value of every individual and hence recognises a larger spectrum of fundamental rights. It just allocates the duty to fulfil those rights to co-nationals. It suggests that co-nationality magnifies or multiplies the pre-existing duties rather than generating them. By doing so, it still presumes the imperfect duty for non-national individuals, which is contradictory to the political conception<sup>128</sup>. This theory suggests a global responsibility to justice exercised through subdivided moral units that are states. In contrast, political

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<sup>125</sup> I have suspicions about this term because political conception does not necessarily limited to democracy. But it will be examined in the following chapter, so I will let this slip for now.

<sup>126</sup> David Miller, 'The Ethical Significance of Nationality' (1988) 98(4) *Ethics* 647, p. 661.

<sup>127</sup> Robert E Goodin, 'What is so Special about our Fellow Countrymen?' (1988) 98(4) *Ethics* 663.

<sup>128</sup> Goodin, p.685.

conception rejects the notion of self-standing global responsibility. It only allows moral space for humanitarian concerns. This particular disparity may sound incoherent with my earlier task of examining theories similar to political conception, but it serves a specific function for the arguments that will follow. Suffice it to say that it conforms<sup>129</sup> to the aforementioned Rawlsian notion that "The correct regulative principle for a thing depends on the nature of that thing"<sup>130</sup> and hence bears the potential to ground an alternative. In principle, Goodin's theory adopts full responsibility on a global basis, but the extent of the responsibility, which is comprehensive and dense, requires implementation in smaller units. Therefore, it is safe to say that if the rule is suitable for the nature of a smaller unit, the scope of its application narrows down. To explain, humanitarian rights require negative duties, so they are fit to apply globally. In contrast, socio-economic human rights require positive duty and, therefore, are only applicable to the domestic society.

Furthermore, Goodin demonstrates, through multiple examples, that being a co-citizen does not always require privileged treatment, which concludes that the hypothetical relationship does not necessarily indicate a better or stronger connection. For instance, non-nationals are kept exempt from paying taxes, even if they reside in the country in some cases. On the other hand, co-nationals are bound to pay certain taxes regardless of their country of residency.<sup>131</sup> From Goodin's point of view, this type of situation in which co-nationals are burdened with disadvantages, whereas aliens are exonerated from the same burden, proves that there is not any special deep connection that associates members of a nation. Nevertheless, according to political conception, this is the exact situation that creates the association. As partially explained above, justice requires a sovereign with coercive power to ensure members comply with the rules and fulfil duties. Thus, members are associated through being subjected to the one coercive power applying the same set of moral principles. The shared resource of the burden and benefit creates the so-called association rather than denying the connection.

This civic understanding of community demonstrated in political conception, compared to ethnic interpretations of nationality, provides a release from the burden of justifying the constitutive elements of a nation or questioning their relevance in the real world. Otherwise, justification for increased responsibility for co-nationals would rely on the authenticity or, more importantly, the significance of the connection, whether it is crucial enough to justify a special obligation or not. Admittedly, it is possible to attribute certain characteristics to national adherence; artificial or not, national elements greatly influence one's identity, even personality. However, nationality is not necessarily the sole factor that has this particular capacity. There are ethnic, political, religious and other cultural elements that affect one's identity on the public level.<sup>132</sup> It's impossible to ascertain and compare

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<sup>129</sup> I wanted to reiterate that "conforms" indicates "does not contradict" in this sentence, not "reflects".

<sup>130</sup> Rawls (1971), p.25.

<sup>131</sup> Goodin, p.666-7.

<sup>132</sup> Miller, p.657.

the moral significance of each, especially considering the possibility of "artificial" appropriation. In this sense, I find it very pragmatic that the political conception bypasses these arguments and remains in the political domain.

### 2.3. National Affinity as a Political Good

One possible breach of this successful workaround is when political or non-political elements constitute a value that can be considered a shared social good. In this case, the increased responsibility to co-nationals does not depend on subjective measures but arises from objective standards. In simpler words, this approach does not argue that one needs to care about his co-nationals due to his deep and special connection with them, but rather due to the fact that they -probably- have a historical camaraderie.<sup>133</sup> The difference might seem frail and nuanced, but it is promising.

Whilst appealing this argument, Thomas Hurka classifies two types of affinity that possibly justify partial treatment, one being subjective and the other one being objective. Subjective affinity is highly intuitive; it refers to inexplicable, non-reasonable attachment. Objective affinity, on the other hand, is about attributing value as a result of evaluation; it refers to qualities that are possible to observe from an outside point of view.<sup>134</sup> For example, an apple being ripe and sweet creates objective affinity; whether you like apples or not is merely subjective. If you do not like apples, that does not change the fact that that apple is ripe. If you do like apples, you may still not like one particular apple because it is not ripe. However, in order to justify the objective affinity and the increased responsibility associated with it, those qualities must be factual.

When it comes to national affinity, it gets a bit tricky. It is possible for everyone to attribute a list of qualities to their nation; they are mostly impossible to prove and, hence, not necessarily accurate. The inaccuracy may not invalidate the nation's constitutive belief; if that belief helps members to feel belong, one cannot argue the nation is false just because the belief is incorrect. However, it arguably disqualifies as a justification for partial treatment by rendering the connection subjective. Nevertheless, there is also an objective quality one can undeniably put forward, which is the historical commonality with co-nationals. In simpler terms, what makes our co-nationals different from the rest of the world is our subjective relation to them.<sup>135</sup> The content of this relation is usually the objective affinity towards the nation, regardless of its historical accuracy. To clarify, in this case, subjective affinity is the qualities that one possibly attributes to his co-nationals. Objective affinity is the historical commonality with the co-nationals that occurs during the formation of subjective affinity.

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<sup>133</sup> Thomas Hurka, 'The Justification of National Partiality' in Robert McKim and Jeff McMahan (eds), *The Morality of Nationalism* (Oxford University Press 1997).

<sup>134</sup> Hurka, p.150.

<sup>135</sup> Hurka, p.151.

I will not engage in debates on the sufficiency of historical commonality as a justifying element for partial treatment. What is important for my argument is the outcome that the political culture reflects in the national identity. The significance of political culture, apart from being part of the culture that brings the nation together, weighs in even more when it is considered a key to future welfare. For one, Rawls reiterated that a country's wealth and welfare mainly depend on political culture, political virtues and civic society.<sup>136</sup> Contrary to a *prima facie* understanding of the matter, the shortage of resources is not the main determinant of individual welfare. Even in grave examples like famines and crises, the main problem is detected to be the failure of respective institutions rather than the scarcity of resources. Furthermore, Rawls suggests that the political culture and the social culture, to the extent it interacts with the political culture, influence how society progresses in the near future. For example, adopting policies regarding women's empowerment directly affects population growth. Arguably, as women join social life more actively, the population growth rate will naturally decline, which will result in an increasing level of wealth.<sup>137</sup>

Can this be a justification for the partial treatment of co-nationals? The short answer would be yes, to the extent that it affects the general picture. What Hurka suggests identifying the historical commonality, he actually addresses the objective affinity that one may have towards their co-nationals. In his argument, producing good or suffering evil together may create a strong association that can justify partial treatment.<sup>138</sup> The association, in this case, refers to the sentimental connection one develops during the process or with reference to the process, regardless of the interaction at the time. It is admittedly natural that one feels solidarity with those who have witnessed the history from the same side. However, as he also acknowledges, this type of association is not limited to the nations' and I think this constitutes an undermining aspect of the general validity of his argument.

It is clear that the association of historical commonality has a larger domain of application than nations. It can easily be appropriated by the Jewish community across Europe, people with African heritage who were not born in Africa, or, more recently, the LGBTQ community all over the globe. In this sense, such an argument does not offer more grounds than any nationalist account, nor is it immune to criticism of competing elements of one's identity. It is presumptuous to argue that national affinity holds an exclusive space for an individual amongst all identities he shares a historical commonality. Nevertheless, it accurately identifies a type of connection that objectively influences the community in a way that can be considered a type of interaction in which political conception presumes to create an association.

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<sup>136</sup> Rawls, p.109.

<sup>137</sup> Rawls, p, 118.

<sup>138</sup> Hurka, p. 152.

What is the quality of the association if it does not refer to one's affinity to his co-nationals? The connection I would like to highlight is the co-ownership of the outcome of common history rather than sentimental affinity because multiple status quo parameters result from historical perseverance or suffering. For example, the survival of a culture in the particular way it did is the result of the adoption of certain components of the said culture by a significant number of people. After suffering from an ineffective health system for a long time, a new, efficient system is arguably an outcome of past sufferings by each participant. The change of an outdated law and elimination of a redundant bureaucratic procedure are the result of past dissatisfaction expressed by others who suffered through it. This type of causality can be more attainable in democratic countries in which elected representatives are accepted to work on behalf of citizens. In comparison, the participation of a random member in a theocratic community is much less visible. Nonetheless, even inactive action might be considered participation in one way or another, either as affirmation or as approval.

From this perspective, the argument of historical commonality provides a reasonable ground for a national association. The nation, as a community with multiple common characteristics, and the country, as the set of facilitation of said community, is the result of a common history shared by the members. Hence, it is arguable that the members share ownership of the status quo, not in the sense that each member owns it by himself, but the entire community owns the product. This categorisation reflects the associative responsibility in political conception in the sense that associative rights are the execution of the community's responsibility. They function to realise the community's duty of justice, not A's individual moral responsibility towards B within the community. Therefore, it is reasonable to accept that the historical commonality can be considered a type of association that generates special rights and privileges.

In summary, associative responsibility is not a far-fetched idea to explain domestic responsibility. Though none of the above theories significantly overlaps with the political conception, the general opinion circles around it and makes it easier to pinpoint its subject. For example, the political conception does not argue against moral relativism, but moral relativism provides support for the notion of an association. The merit of the political conception of justice is reiterating the difference between global morals and values and local rights and privileges. Indeed, some matters are subject to moral relativism, but there are also specific issues that can safely be considered global. Institutions are meant to facilitate this duality; they do not offer a ground; they are a reflection of the actual grounding theories; therefore, they are expected to flex to conform to the changing circumstances and actual theories. As today's institutions reflect the past needs and demands, the institutions in the future will be shaped according to today's circumstances. Hence, it is possible to imagine an updated political conception with a different understanding of associative justice.

The universalist explanation of particularism embraces this aspect of institutional order. It considers institutions merely functional entities without attributing moral value or identity attachments. Whilst perfectly functional as complementary to cosmopolitan ideas, it fails to acknowledge the unique morality people undeniably value. Even though the institutions/states result from organisational necessity - even though they have organically emerged, they might have done so out of practicality -the community they host will inevitably develop exclusive moral imperatives over time. It is possible to elaborate on this topic by discussing the various elements that may be effective for this phenomenon, from geography to religion, but it is futile for our discussion in this chapter. The political conception circumvents this mistake by encompassing both particularism and universalism on different levels. Moreover, it prevents any possible contradiction by putting them in a lexical order.

To avoid any confusion, I have to clarify that the object of moral relativism is not national affinity. National affinity indicates the characteristics and qualities one attributes to his co-nationals due to their common identity. However, the object of moral relativism must be the concept of good and bad. Naturally, both concepts are related but refer to the different aspects of the community. Regarding national affinity as a justification for partial treatment, it is probably the most problematic dialect. As a concept, national affinity encompasses social and cultural elements. It is indeed possible to assume a theoretical connection between those elements and political identity. Nevertheless, presenting that connection as a grounding factor for political obligations is a flimsy argument. First, it is hard to draw a line of causality between a national characteristic -or all of the national characteristics, which we call affinity- and the obligation. A person being as hardworking, brave, and philanthropic as you are does not ground an obligation for you to provide him an unemployment benefit. The disconnection between affinity and obligations also problematises determining the extent of the responsibility. It may be equally argued that not all political rights are included in the responsibility, as unemployment benefits may not be a right at all, or some social and cultural rights can be included; if your neighbour gets ill, you may need to take care of his child.

It may sound like I am engaging with argumentum ad absurdum. However, the very nature of the national affinity suggests a deeper and more comprehensive bond than the political conception. Grounding political obligations in such an abstract concept would blur the line between the duties of beneficence and the responsibility to justice.<sup>139</sup> The political conception avoids this confusion by providing a justification grounded in the theory of state legitimacy. It focuses on the existing elements within the theory instead of incorporating social elements into it. At best, national affinity might be considered the social equivalent of the political conception.

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<sup>139</sup> For more information, see: Pablo Gilabert, 'Justice and Beneficence' (2016) 19(5) *Critical Review of International Social and Political Philosophy* 508. See also: Andrew Schroeder, 'Imperfect Duties, Group Obligations, and Beneficence' (2014) 11(5) *Journal of Moral Philosophy* 557.

### 3. Conclusion

This chapter has three functions for the dissertation. First, it serves as a literature review for the second chapter and the first part of my argument. At the end of the dissertation, I will argue that there is a transborder duty to admit on the grounds of Rawlsian distributive justice. To be able to argue such duty, I need to exhibit that there is a transborder responsibility for justice, which is a version of the political conception of justice, and it generates associative responsibility at the transborder level. In the next chapter, I will argue for transborder associative responsibility by demonstrating global concurrent association models. Therefore, I started this chapter by discussing Rawls' division of domestic and international justice and why it does not work for us. Then, I provided a detailed description of the political conception of justice and pointed out that it utilises the theory of associative responsibilities to argue for partial treatment of fellow citizens.

This brings us to the second function of the chapter. As I defined Rawlsian justice theories and Nagel's political conception of justice, I also displayed the connection between the two. To reiterate, Rawls provides two theories for justice (domestic and international), and Nagel explains the reasoning behind this distinction. Ultimately, this chapter specified the domain of our discussion.

Finally, at the end of the chapter, I explained my reasoning for proceeding with the political conception of justice by contrasting it to the alternative theories of justification for the partial treatment of co-citizens. This step is particularly significant because it shows that my preference for political conception and associative responsibilities is not merely out of convenience. As I discussed above, every alternative is unfit to provide a justification that encompasses all necessary aspects without including any irrelevant or secondary elements.

The next chapter will start with the theory of associative responsibilities and the definition of responsibility-generating association.

## CHAPTER 2: ASSOCIATIVE RESPONSIBILITY AND TRANSBORDER JUSTICE

### 1. Associations and the Associative Responsibility

In the first chapter, I began my argument that there is a transborder responsibility for distributive justice. I started with the presumption that Rawlsian justification for domestic distributive justice is called the political conception of justice, which considers responsibility for justice an associative responsibility. Then, I briefly described the political conception with its central components and explained how it is the optimum justification for domestic justice. In order to explain the reason behind my preference for the political conception of justice, I exhibited that associative responsibility presented in the political conception provides the best justification for the partial treatment of co-nationals among the alternatives. Even though my argument concludes in the opposite direction, my point of view is not to argue against associative responsibility, nor is it to deny the viability of its premises. I want to suggest that the accuracy of the political conception of justice also validates using the same formulation in a larger domain and creating another argument based on associative responsibility.

The second chapter discusses “associative responsibility” and the connection of its elements, namely, the association and the responsibility. First, I will argue that the dynamics of the association define the responsibility, and there is a direct correlation between the association as the ground and responsibility as the outcome. As members in the association get closer and associated through more direct vessels, the responsibility they bear for each other becomes deeper and more comprehensive. Furthermore, the content of the responsibility is reflective of the nature of the association, meaning the specific duties yielded by this responsibility must be limited to the context of the associative relationship. The goal of this argument is to explain that transborder responsibility for justice, although it is the same type of

responsibility, is not as comprehensive as domestic responsibility. Later, I will lay out my formulation for associative responsibility and how we can employ it in different domains. I want to reiterate that when I say “my formulation”, it does not indicate that I argue for a new type of responsibility. Rather, it is a reformulation of prevalent theories in the subject with a specific reading to reach a better balance. I will end up suggesting a set of criteria that is assumed to be the skeleton for every associative responsibility.

To remind it briefly, with the political conception of justice, Nagel argued that the principles of justice necessitate a sovereign - or an institutional organisation in Rawlsian terms- and a closed-up community to be exercised. Not only do these two conditions rely on each other, but their absence disqualifies justice as a merit to apply or to be sought. This approach concludes that principles of (distributive) justice are only applicable to a domestic society. However, I refuse to think this is the end of it. Even though neither Nagel nor Rawls is alone in limiting the responsibility of justice to domestic affairs, it is also possible to do a reverse reading and utilise the political conception to presume an institutionally organised global community. If we presuppose a list of human rights that are universally accepted -or assumed to be universally accepted by the respective political institutions- we should also acknowledge that it creates an extent of political equality. This political equality is the institutionalised counterpart of moral equality that is affirmed by universal human rights. From this point of view, it can also be argued that a certain level of responsibility arises from the equality established and confirmed by international human rights discourse, regardless of one's political membership status. Consequently, the global adoption of human rights principles and the growing institutionalisation of International Human Rights Law serve as a suitable unifying factor worldwide. It is perfectly possible to construe this fact as the political reflection of moral equality.

This is just an example to illustrate my approach. I employ associative responsibility as lenses through which we can interpret rights and obligations. In the next section, I will elaborate on this point and discuss the defining characteristics of an association. Then, I will bring attention to multiple levels of association and how they define associative responsibility.

Let me reinstate what I meant before by gradually building towards it instead of reversing an opposite idea. I have distinguished before that associative rights arise from membership in a political community, whereas certain fundamental rights -we called them humanitarian rights- arise from merely being a human. Alternatively, we can imagine ourselves

as members of the largest community (the community of humans) and consider humanitarian rights as the outcome of that particular association. As a result, this membership grants us a set of rights which we identify as human/humanitarian rights. On a smaller scale, we are also members of a political community with specific names and rules, which is how we acquire the specific set of associative rights that are membership/citizen's rights. The relation between the nature of the community and the set of rights is not a linear causation; rather, it is a two-way road that is fully realised only if both factors are sustained.<sup>140</sup> This dual requirement explains the point itself: The community exists through associative rights, and the associative rights implies the presence of an associative community. The idea of being a community that provides rights is the main motivation behind creating/assuming the community. In the case of human rights, the associating factor is simply being human. Though it does not create an exclusive community -or plays a constitutive role in the emergence of the community-, it generates (human) rights that must be recognised and fulfilled universally. Therefore, it is reasonable to argue that the association of humanity also creates associative responsibility. Predicated on this assumption, the realisation of universal human rights would be the fulfilling duty of the associative responsibility.

Surely, such responsibility is not as strong as what the political conception of justice demands in a closed-up community. The political conception, in the way described above, is an example of a political association in the strongest possible form.<sup>141</sup> However, it is possible to observe even more compelling responsibilities arising from more intense yet apolitical associations. For example, one's responsibility to family or friends arises from a stronger association and leads to a wider set of duties. In some cases, it can even be an obligation to provide special treatment to those in the close circle.<sup>142</sup> To give an example, the necessity for exclusive treatment could be a matter of efficacy; if A has the means to aid either his brother or a stranger, then he is expected to become partial in favour of his brother. Sometimes, it could be a matter of knowledge and capability; no doubt, it is easier for one to diagnose and meet the needs of close people. In some cases, it can be a matter of psychological competency; if one's intimates are in need, he may exhibit low enthusiasm to aid those in relatively grave situations. The significance of these examples lies in the distinction that one could reasonably argue that

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<sup>140</sup> Samantha Besson 'Human Rights and Democracy in a Global Context: Decoupling and Recoupling' (2011) 4 *Ethics & Global Politics* 19, p.22

<sup>141</sup> I want to reiterate that any political association smaller than the community itself is either a derivative of the main association (the community itself) or a social association.

<sup>142</sup> Barbara Herman '*Kantian Commitments: Essays on Moral Theory and Practice*' (Oxford: Oxford University Press, 2022), p.53.

the intensity of the association positively correlates with the level of responsibility and the type of the relationship. It might look unclear when the special association converges to the political association, but it is unambiguous that one has a greater set of moral duties to his own children compared to a neighbour's children. The main challenge we face is to draw the comparison between two distinctly unsimilar cases, therefore I will start by developing a formulation based on the theory of associative responsibilities to ascertain a level of satisfaction.

Before moving on, one might argue that the relationship with friends and family is mainly agreement-based and bilateral; therefore, it is unsuitable for such an analogy. This objection ignores that there are major arbitrary factors included in those relationships, similarly to those we have with the other members of the political community. The similarity between these cases are multifaceted: they all create an association, there is an element of arbitrariness in membership, and strikingly, one's voluntariness is assumed through absence of their rejection rather than they are being asked to provide demand or even consent. More importantly, my aim with bringing this comparison is to demonstrate that the partial treatment is justified by the associative responsibility, and the intensity of responsibility is justified through the strength/nature of the association. An alternative example can be developed on the scale of a political community: It is also perfectly arguable that one bears a special type of responsibility to those who grow up in the same village or neighbourhood with one another. In a situation where there is no threat to life and sources are limited, one can assume oneself excused to help the person who grew up in the same town as him rather than a random stranger, or he can willingly extend the scope of his effort for such a person. This example refers to almost the exact situation scaled down to a smaller community as opposed to a nation. The associating factor in both cases is being subjected to a common political institution. The scope of the responsibility is proportionate to the tightness of the commonality.

In the following section, I will discuss the theory of associative obligations and then proceed to develop a more comprehensive account based on Dworkin's description and encompasses Rawlsian notion of the basic structure of a society.

### 1.1. The Defining Parameters of an Association

In his 1986 book *Law's Empire*, Ronald Dworkin presents the theory of associative obligations in an attempt to bring justification to the coercive enforcement of legal obligations

by the state.<sup>143</sup> He argues that “the best defence of a political legitimacy – the right of a political community to treat its members as having obligations in virtue of collective community decisions-....is to be found in the more fertile ground of fraternity.”<sup>144</sup> The word “fraternity” might sound excessively intense to describe co-membership to a community, however, I will shortly explain that the appealing virtue of the theory of associative obligations lies in this stretch.

Dworkin’s argument contrasts from Rawls’ version of a social contract where parties hypothetically create a demos and agree upon the principles of justice at the original position.<sup>145</sup> Dworkin refuses the presumption that we, as members of a community, are parties of a contract through tacit consent due to the reason that this type of consent cannot be binding on people.<sup>146</sup> In addition, he finds Rawlsian duty to support just institutions insufficient as explanation of democratic legitimacy because of the ambiguity within this given duty. He contests that this duty does not sufficiently address the connection between special obligations that are generated by exclusive institutions of a particular community.<sup>147</sup> The solution he proposes is drawing an analogy between the political community and small-scale social communities, or as he calls, fraternity.

### 1.1.1. Conditions for a True Association

Dworkin ascertains four common characteristics of a social association and suggests that only communities in which members sustain these conditions could be considered political associations.<sup>148</sup>

1-) The members must regard the group as special, a distinct entity with a limited number of members.

2-) The responsibilities that arise from this association should be effective on the personal level, meaning each member should genuinely take it upon themselves to comply with them sincerely, not just as a formal necessity.

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<sup>143</sup> Ronald Dworkin *Law's Empire* (Harvard University Press 1986), p.196

<sup>144</sup> Dworkin, p.206.

<sup>145</sup> Rawls, “A Theory of Justice”, p.15.

<sup>146</sup> Dworkin, p.192.

<sup>147</sup> Dworkin, p.193.

<sup>148</sup> Dworkin, p.212.

3-) All duties expected on the personal level are, in fact, the derivative of a general responsibility and commitment, that is, being a member of this distinct community.

4-) The care and concern must include and be expected from all individuals within the community equally, not in strict equality that offers the same concern for all, but equitable care and attention for each member according to their position and needs.<sup>149</sup>

At the first look, all four conditions address the notion of being in a community in one's consciousness. It requires members to be aware of the association and behave with the awareness of being a member in such association. Each condition reflects a different element, which can be respectively listed as sense of awareness, sense of responsibility, outcome of the responsibility, and reciprocity. What is aimed here is a well-rounded description of the relationship between an individual and a community (of various scales) to which he is a member.

The main problem with such a detailed account of associative responsibility is that it challenges its primary merit as a type of responsibility that arises from social practice, an uncontrolled and unplanned phenomenon which naturally entails consequences among members. In the bigger picture, associative obligations is subsidiary of a specific account of natural law theory, that is interpretivism. The core premise of interpretivism is that legal duties and obligations are determined by not only institutional practice (or social practices as non-moral factors) but also moral principles.<sup>150</sup> Ultimately, the law is the outcome of the interaction -or as Dworkin calls "interpretation"- between these two factors. The theory of associative obligations proposes a form of non-moral normative factor that creates a context for morality to be interpreted.<sup>151</sup>

By bringing such strong epistemological preconditions and requiring an autonomous commitment, Dworkin makes the theory impractical on the political level. These conditions assume that the individual is aware of this arrangement and consciously exercises their role in it. Let me explain this way: Dworkin criticises contract theories for attributing tacit consent to individuals for this type of consent cannot be binding due to lack of freedom or genuine

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<sup>149</sup> Dworkin, p.198-200.

<sup>150</sup> [Legal Interpretivism \(Stanford Encyclopedia of Philosophy\)](#)

<sup>151</sup> George Pavlakos, 'Revamping Associative Obligations' in Salman Khurshid, Lokendra Malik and Veronica Rodriguez-Blanco (eds), *Dignity in the Legal and Political Philosophy of Ronald Dworkin* (OUP 2018) 337-60.

alternative choices.<sup>152</sup> This information lets us understand that the type of commitment he seeks is stronger than tacit consent and closer to explicit consent. It concludes that the relationship sought in the theory of associative obligations is more similar to those in a contractual nature rather than those organically developed in smaller social structures, as friendship groups, specific societies, families and so on.

I find the second and the third conditions are reasonable and necessary for the exercise of associative obligations. The second condition suggests that the community has a direct impact on the individual's life as a conclusive factor, meaning that the individual must consider their membership as a reason for making certain choices. I will push this one step further and argue that if the membership effectively limits their options, even though it is not a genuine autonomous decision, the association stands as the causing factor between the individual and their choice, therefore satisfying this condition. This does not necessarily contradict and is even complementary to the follow-up rule set up by the third condition: There is one general associative responsibility that justifies all relevant responsibilities, obligations and duties. All duties that are fulfilled by the individual with the motivation of being a member of the association are considered the outcome of his associative responsibility as a member. To make it clearer, I will only refer to the general obligations of association as "responsibility" and call each of the particular derivative responsibilities "duty".

On the other hand, I find the first and the fourth conditions slightly circumstantiated. Members could deem the association as demarcated with limited number of members. Nevertheless, it does not suggest that they attribute any specialness or exclusiveness to it. The same commitment to associative responsibility can be formed through negative qualities or shared miseries without the sense of parochialism. In a social association, the usual flow of events suggests an organic formation for an association rather than a designed and determined arrangement. It is not as much of contemplating the limits of the association but marking the other individuals as one of themselves or not in the individual's perspective.

This qualm extends to the fourth condition. It is accurate that every member should feel entitled to equal care and consideration; however, it is not necessarily the case in political associations, such as states, or even less in social associations that the duty to care is defined and attributed to a duty bearer. Members do not receive a briefing about their role or

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<sup>152</sup> Dworkin, p.192-3.

commitment, nor do the commitments come predetermined. Their role and the content of their responsibilities is rather interpretative and circumstantial. We need the concept of associative responsibility precisely to describe when we have a general responsibility that may be tantamount to various types of duties. Dworkin's explanation indeed does not refer to any of these matters. He only reiterates that even though there is a hierarchy, armies could be considered associations in which equal concern is practised. But a caste system in which some members are considered more valuable than others does not conform to this condition. Given this, it is more accurate to brand the fourth condition as a "normative equality clause" rather than a condition of equal concern.<sup>153</sup>

As nitpicky as this criticism sounds, it is vital for the main argument of this chapter. We are seeking a theory of political obligations that prioritises the social relations first to argue that this ongoing relationship bears the potential of yielding unjust consequences; therefore it needs to be subjected to concerns of justice. In my understanding, the obligations and structure of the group are observable through the history of social practice. As the relationship is not contractual, the elements of the association, such as the relationship dynamics, expectations and obligations, are presumed to grow organically. In other words, details regarding the associative relationship is not designed by a mastermind, rather they appear as the result of social/economic/political dynamics. However, the main factor distinguishing associative responsibilities from contractual obligations is the ambiguity that comes with the lack of a contract. What that specific association brings and requires is open to interpretation from an individual point of view. This interpretation can be personal, it can be accurately exercised and adopted by the wider community or ignored over time. The subjective factor in an associative relationship is the element of interpretation rather than, as argued by others, the emotional attachment.<sup>154</sup> This leads to the notion that even though there is no consent or autonomous decision expressed by the individual, participation in social practice or lack of objection to it suggests tacit amalgamation with the ongoing system. This point is a crucial factor for the final argument of this chapter as I will argue that aggregating contingent additions to social practice may create an unjust structure for the members if there is no concern for justice.

There are two qualities of the theory of associative obligations that is not explicitly stated but implied in the argumentation. The first one is the correlation between the strength of

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<sup>153</sup> Dworkin, p.201.

<sup>154</sup> Dworkin, p.196.

the association and the scope of the responsibility, that is simply the outcome of the fluid nature of the theory. Dworkin uses the theory of associative responsibility to provide grounds for political obligations based on the politically associated community, more precisely, citizens of a country that are connected through their subjection to the state. To remind the definition, associative responsibilities are “the special responsibilities social practice attached to membership in some biological or social group”, and political obligations can be classified as a special responsibility attached to membership in a political group. This analogy between the social circles and political community indicates that the benefits and obligations that come with membership are respective of the strength of the relationship. Dworkin addresses this correlation by pointing out the interpretive nature of reciprocity in the relationship. He states that “The reciprocity we require for associative obligations must be more abstract, more a question of accepting a kind of responsibility we need the companion ideas of integrity and interpretation to explain..... Associative obligations can be sustained among people who share a general and diffuse sense of members’ special rights and responsibilities from or toward one another, a sense of what sort and level of sacrifice one may be expected to make for another.”<sup>155</sup>

The second quality that the interpretative nature of the theory associative obligations suggests is the context-based understanding for one’s responsibilities and obligations. As one person may have, or as can be observed in natural flow of life, does have more than one biological or social groups, he consequently has multiple set of special responsibilities attached to each type of social practice. Dworkin states that “Different forms of association pressed oppose different kinds of general concern each member is assumed to have for others...The concern they require is an interpretive property of the groups practises of asserting and acknowledging responsibilities-these must be practices that people with the right level of concern would adopt, not a psychological property of some fixed number of the actual members.”<sup>156</sup>

To describe it precisely, we seek to identify an ongoing practice that creates mutual responsibility in ways that comply with the nature of the practice. For example, imagine a closed marketplace where fifteen salesmen open a vegetable stand daily. They take turns cleaning the common areas, share a couple of tools as a common property and attend to each other's customers if needed. We can easily see that the association is demarcated by those

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<sup>155</sup> Dworkin, p.199.

<sup>156</sup> Dworkin, p.200-1.

fifteen salesmen. We can safely assume those duties are derived from their associative responsibility. Imagine one of the salesmen falls, breaks his leg and is carried to the hospital by paramedics. Now, his neighbours are expected to keep his commodity safe or pack it away as part of their associative duty. There are two facts supporting this statement. First, the other salesmen find it natural to exercise this duty in a way that, if asked beforehand, they would agree to do so. Second, without knowing what happened to his commodity in the market, the man with the broken leg assumes that his neighbours have attended to it, and he would do the same if their roles were reversed. Furthermore, the nature of their association commands vocational liaison among members; therefore, this particular action is considered associative duty because it aligns with it. If the man with the broken leg asks one of his fellows to drive him from the hospital to his home, it will not be an associative duty but an act of beneficence<sup>157</sup> because it is not related to their associative conduct, which is selling fresh products in the same marketplace.

In the political associative relationships, it is a bit indirect compared to this example. I explained in the first chapter that, theoretically, people transfer certain freedoms and duties to the state for efficiency. The state acts as the representative of individuals and exercises their associative responsibilities on behalf of them. This extra step renders it into a political association because the state is a subject in the mutual relationship. It also means that transborder associations are classified as political associations for the same reason. Therefore, I will develop my argument based on Rawlsian theory of justice and Nagel's formula as the ground for my argument but will invoke and utilise Dworkin's formulation in the chapter.

### 1.1.2. The Political Conception and Associative Obligations

Nagel's position is not dramatically different from Dworkin's, yet his argument does not indicate the complexity of the concept of associative responsibility. As discussed in detail at the end of the previous chapter, Nagel addresses the state as the sovereign who enables justice by coercing the law/principles of justice to individuals. By virtue of the state as the common factor of enforcement, justice as a political merit is possible to achieve or to be failed. Whilst Dworkin acknowledges that varied numbers and types of associations entail responsibility for one, Nagel mentions only association amongst the community members. This navel

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<sup>157</sup> For more information, see: Chiara Cordelli 'Prospective Duties and the Demands of Beneficence' *Ethics* 128 (January 2018), 373. See also, Andrew Schroeder, S. 'Imperfect Duties, Group Obligations, and Beneficence', *Journal of Moral Philosophy*, vol. 11/no. 5, (2014) 557.

contemplation corresponds to the bonding factor he suggested, which is the positive or negative contribution that is the natural result of one's autonomy.<sup>158</sup> In any regime sorter than tyranny, and perfectly complementary to any liberal democracy, each and every member, even though it was not their choice to be a member, contributes to society on a minimum level. This contribution includes positive actions that are perceptible by other members or negative actions that are exercised as refrainment. For Nagel, this is sufficient to presume an association, and the term association, in fact, reflects the abstract "spirit of the community".<sup>159</sup> It is like a self-feeding cycle: Because the society or the institutions of the society act on behalf of members, each member carries "some" responsibility. But also, each member is required to comply with the rules of the society and hence affected by what the society rules on behalf of the members. Similarly, Dworkin also seeks a two-way road for the formation of the association whilst acknowledging the possibility of overlapping structures among multiple associations in a complex scheme. But he is more descriptive and elective than Nagel for recognising the association, which is not necessarily a merit for our purposes.

This nuanced distinction between the two accounts is the outcome of a more grounded divergence. As mentioned above, Dworkin's natural law account of interpretivism adopts a relations-based approach to the formation of rights and responsibilities.<sup>160</sup> Conforming to the natural law tradition, it presupposes a metaphysical morality that is reflected onto or shaped by the relationship between individuals. On the other hand, Nagel subscribes to an institutional account of justice by requiring an operative mechanism as enabler, either a sovereign or a state. Even though he acknowledges a baseline morality that applies universally, justice as a political merit can only be a matter of concern in the presence of facilitating institutions.

Nagel's approach is reflective of his understanding of Rawls' theory of justice. Even though Rawls does not come across as explicit as Nagel, his description of justice as the merit of social and political institutions provides enough grounds to be interpreted in a strictly institutionalist sense. In addition, Rawls makes it clear that the theory he proposes is to be applied domestically due to his definition of community as a self-sufficient, closed-up group. Nevertheless, it is still possible to argue that Rawls' commitment to the basic structure of the society as the subject of justice can be considered purely instrumentalist. The principles of

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<sup>158</sup> Thomas Nagel, 'The Problem of Global Justice' (2005) 33(2) *Philosophy & Public Affairs* 113, p.128.

<sup>159</sup> This is also where he clearly states that democracy is a contributing factor to one's influence instead of the main ground for associative responsibility. So, democracy is not an absolute condition for the establishment of the association.

<sup>160</sup> Pavlakos, p.341.

distributive justice apply to the basic structure because the distribution of benefits and obligations operates through it. In an alternative domain in which there is no basic structure, such as an international domain, Rawls does not dismiss concerns of justice but argues that a different set of principles of justice applies.

### 1.1.3. The Basic Structure within the Association

Even though Rawls does not refer to the term association in his “A Theory of Justice”, I consider the theory of association and the basic structure fairly similar, or more accurately, compatible with each other. Elsewhere, Rawls defines social practices as “any form of activity specified by a system of rules which define offices, roles, moves, penalties, defences, and so on, and which gives the activity its structure”.<sup>161</sup> For Nagel, the reasons for establishing the association are quite contingent; people are associated because they interact as members of the same community. Existing as a member within the community is sufficient, even without active participation, for being associated. This simplicity is the crucial point of Nagel’s version of a political association; it does not require any improvement or allow disqualification once established. However, it does not effectively provide us with instructions for identifying an association.

By struggling through this medley of political obligations theory, I simply aim to pull them close enough to mark their overlap. I believe it is possible to use the term association in the Rawlsian sense, referring to a more elaborate scheme than a fraternal community. Dworkin makes a distinction between a “bare community”, a group formed around a random social practice, and a “true community”, which satisfies the four conditions he listed for an association.<sup>162</sup> The basic structure, on the other hand, is the main subject of justice, for the principles of justice regulate the inputs and outputs of this structure. The problem of justice, then, is the problem of allocation of those inputs and outputs among those who operate the basic structure.<sup>163</sup> The association, in the Rawlsian theory, would refer to the people who engage with, affect, and are affected by the basic structure. Conversely, when a random community develops a basic structure, they become an association which requires the application of the principles of justice. It concludes that a community with a basic structure is

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<sup>161</sup> John Rawls, 'Justice as Fairness' in Samuel Freeman (ed), *Collected Papers* (Harvard University Press 1999), p. 47, n. 1.

<sup>162</sup> Dworkin, p.201.

<sup>163</sup> T M Scanlon, 'Rawls' "Theory of Justice"' in Henry S Richardson and Paul J Weithman (eds), *The Philosophy of Rawls: A Collection of Essays* (Garland 1999) 53, p.87.

a “true community” in the Dworkinian sense, an association that yields associative rights and obligations.

Reading Rawls through an account that is alternative to institutionalism, my aim here is to imagine a scenario in which the basic structure is not equal to the state institutions. ‘For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions, I understand the political constitution and principal economic and social arrangements.’<sup>164</sup> The key characteristic of a basic structure is its function in the distribution of rights and duties, benefits and harms. It easily conforms to the institutionalist perspective in which the question of justice is asked when there are already institutions.

When we read the same excerpt with the theory of association in mind, it gets a bit tricky. We move on the premise that there is an association in which every member has role-dependent duties and rights that stem from the associative responsibility that every member equally has. This translates into the fact that there are rights and responsibilities being distributed in an association, but the rules and principles are not predetermined by a central authority or determined through a set of principles.<sup>165</sup> The basic structure of a non-political association is mostly transparent, but it is still there. It is possible to argue that this ghost structure can be identified through relationship dynamics and regulated to comply with principles of justice. Nevertheless, my argument reaches for a transborder association and engages with this question from a political point of view. I explained in the first chapter that even though the basic moral value of my argument is still individual persons, states act as their representatives, which grants this discussion a political nature.

This resurfaces the “sovereign enabler” argument. Nagel refuses the notion of transborder justice due to the lack of a sovereign power, a central authority to coerce individuals to abide by the principles of justice. One aspect of this argument suggests that in the presence of a sovereign power, coercion is already exercised, whether it enables justice or not. This common subjection to coercion is the associating factor for individuals to become a community. The other aspect suggests that in order to achieve the principles of justice, there

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<sup>164</sup> Rawls, TJ, p.7.

<sup>165</sup> It is possible to start a discussion on “public reason” at this point, but it would not present any contributions to the final argument.

must be a sovereign power present to act as the enabler. In Rawlsian theory, this enabler is the basic structure with established institutions and settled customs. By distributing rights and duties, it already indicates the presence of an association with a central power to enable justice by employing the principles of justice.

My argument is that there is already a basic structure distributing rights and duties, indicating the formation of an association on the transborder level. However, the absence of a sovereign power, at least *de jure* sovereignty, still stands as a fact. My argument does not oppose this fact; rather, it aims to eliminate the requirement of a sovereign for the recognition of a transborder association with a basic structure. This covers the former aspect of the sovereign question. For the latter, it is the exact line by which my argument stops. I will conclude below that there is a transborder responsibility that stems from a basic structure camouflaged by a complex web of political and economic – and even social- institutions, operating internationally. However, it must be noted that none of these institutions solely bear the responsibility to enable justice or act as the sovereign due to their subject-specific design or smaller-scale operative units. For example, one might argue that Apple selling products all over the world makes it part of the global basic structure, but it cannot bear the responsibility as they are merely a product-focused technology company.

The same condition applies to states as they are part of the basic structure as institutions that are tasked with the distribution of rights and benefits, but their scale is limited to their sovereignty. Each of these elements plays an aggregating role in the emergence of the transborder responsibility. The absence of a comprehensive institution is the exact core of my complaint, not because I would rather it exist and enable justice, but because its absence provides these singular institutions with the suitable conditions to camouflage. Based on the analogies I have built so far, it is perfectly arguable that the way we transitioned from the idea of a sovereign as the central authority to a basic structure, it is possible to argue for a similar transition in the exercise of the principles of justice. Nevertheless, this suggestion would be the subject of another dissertation, as all I argue here is the emergence of responsibility.

In addition, this idea has already been explored by some scholars in various forms. Most strikingly, Aaron James provided a well-rounded reconstruction of the Rawlsian framework outside of political institutions based on the global trade order.<sup>166</sup> He reframes Rawlsian

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<sup>166</sup> Aaron James, 'Distributive Justice without Sovereign Rule' (2005) 31 *Social Theory and Practice* 533-559.

principles of distributive justice as a corresponding outcome of the different features of a social practice, namely principles of due care and fair distribution. Following this, he discusses how trade displays the necessary feature, revoking the application of the corresponding principle. For instance, he argues that considering the transformative effects of international trade on the domestic economy, the principle of due care necessarily applies due to economic loss caused by this shift.<sup>167</sup><sup>168</sup>

Similarly, Iris Marion Young contributes to the literature by exploring the political responsibility surrounding the causal relationship between the agent and the wrongdoing. In contrast to the prominent accounts that operate on harm-based understanding, she proposes a new model of responsibility that is allegedly more productive in the long term. The “social connection model” redefines the agent-based responsibility in the light of structural conformity, acknowledging the varying ability of any agent to cause or prevent the harm.<sup>169</sup> Her approach significantly displays the invisible structural connection behind the creation of the harm, rendering a seemingly tort liability case into political responsibility. I will discuss both of these examples in more detail below.<sup>170</sup>

Returning to the question of global association with a basic structure, I seek answers to two complementary questions: First, if we need to identify the basic structure to detect an association in loose, then what is “basic structure”? Rawls describes the basic structure as “the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties” and shape the division of advantages that arises through social cooperation.”<sup>171</sup> According to Rawls, an association with a basic structure bears these three qualities:

1-The associates are given the status inherently, as in the case of citizenship; members are subjected to this status rather than choosing autonomously.

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<sup>167</sup> James (2005), p.545.

<sup>168</sup> Further elaboration of James’ argument can be found on pages 91-96.

<sup>169</sup> Iris Marion Young, ‘Responsibility and Global Justice: A Social Connection Model’ (2006) 23 *Social Philosophy and Policy* 102.

<sup>170</sup> Further criticism of Young’s account takes place between pages 81-85.

<sup>171</sup> John Rawls, ‘The Basic Structure as Subject’ (1977) 14(2) *American Philosophical Quarterly* 159, Thomas W Pogge reads this definition in broader but more detailed terms, which, in fact, narrows down the scope of the term for the sake of clarity. Nevertheless, he acknowledges that his version is different from Rawls’ follow-up definition in “The Basic Structure as Subject”. See: “Realizing Rawls”, (Cornell University Press, 1989) p.23.

2-The associates are specific to this basic structure and the association it represents; if the association were removed from the picture, the consequences would be incalculable.

3-No sharp demarcation of the association is possible; it organically emerged rather than was instructively constructed.<sup>172</sup>

None of these characteristics deviates from Dworkin's definition of the association above. What is distinctive about the basic structure compared to a random "association" is the institutional hierarchy, which replaces, redirects, or overrides the autonomy of the individual in a continuous manner. This not only indicates the formal restrictions on one's behaviour, as in the case of state institutions. It includes informal social practices, preapproved patterns of acceptable interactions, and the lack of alternative opportunities dominating one's process of autonomy.<sup>173</sup> The absence of an autonomous decision of the individual at the beginning renders the later semi-autonomous interactions associative.

The second question becomes even more urgent with this definition: How does the presence of such a basic structure affect the scope of association? In other words, what does this specific definition of basic structure mean for the general argument of this dissertation? Though no demarcation is possible, this definition provides us with a general understanding of the members of the association. The second quality especially points out the organic members of the association itself; a member is such a person whose life pattern is drastically defined over his membership to the association that the omittance of it would be imagining a different pattern. In this case, the type of conduct undertakes the task of associating; regardless of the effect being culminated in the current result, whether it is coercion or cooperation, he is a member of the association because it happened to him. Conclusively, we can follow a broader but more precise definition of the scope of the association. An association is a group of people connected through a basic structure which " (1) engaged in a scheme of social cooperation regulated by the same institutions, or (2) pervasively impacted by the same institutions, or (3) subject to coercion by the same institutions."<sup>174</sup> As I reiterated above, the type of conduct indicates the presence and strength of the association, which renders these examples non-restrictive.

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<sup>172</sup> Rawls (1977), p.162

<sup>173</sup> Laura Valentini, *Justice in a Globalized World: A Normative Framework* (Oxford University Press 2011), p.124. Valentini uses the term "system of rules" to refer to the organisational scheme within an association.

<sup>174</sup> Abizadeh (2007), p. 320.

This is where I want to offer an alternative account that is based on the overlap of both theories and adopts distinctive qualities from both. Even though Rawls developed his understanding of basic structure in a closed society, his definition of association<sup>175</sup> leaves us fair space to move around. Dworkin's definition, on the other hand, is still ambiguous in certain parts and not practical for my argument to adopt. Nevertheless, I find certain points in his observation of associations and associative responsibilities that precisely fit my purpose of the concept. The first one is that associative responsibility is the main flow that generates duties that are responsive to the circumstances. Associative duties vary depending on the capacity of the duty bearer at the time, the needs of the beneficiary, and the surrounding conditions. On the other hand, all the possible associative duties are the result of a specific connection that necessitates a broader moral responsibility than general morality. Associative responsibility refers to this increased responsibility; it builds upon general moral responsibility based on the association between the parties. Consequently, people with the same association bear the same type of responsibility to each other. Regardless of the fact that all associative duties derive from this particular responsibility, they may turn out to be in different forms.

The second point that I would like to adopt is reflective of this unstable nature. The duties that are generated from the wider responsibility may appear in pre-defined and undefined forms. For example, a citizen is anticipated to pay taxes as a pre-defined duty arising from associative responsibility; he pays taxes to the state, but the grounds for the obligation to pay taxes is his associative responsibility against his co-citizens. In another scenario, a citizen might have been expected to help a co-national whose wallet had been stolen, whom he randomly encountered in a touristic foreign city. The difference in the two cases is the forms of the duty, which are actually a derivative of the exact same responsibility. In the first scenario, what makes the duty more concrete and defined is the lack of an alternative method of fulfilment, which is the institutional design. In an alternative reality, one could have fulfilled such a duty by doing community service as well. In the second scenario, because there is no institution supervising the situation, it depends mostly on the duty bearer or the agreement between the duty-bearer and the beneficiary, in which way this associative responsibility is to be fulfilled. He may lend or gift some money, refer him to the authorities, or even give him a ride home

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<sup>175</sup> I must underline that Rawls explained what I refer to as "association" with the term "basic structure". Thomas W Pogge argues that when Rawls used the word association, he referred to a smaller organisation that is not related to the notion of basic structure. Thomas W Pogge, *Realizing Rawls* (Cornell University Press 1989) p.23.

with his vehicle. In this case, in which way is this duty to be fulfilled interpretive? This is the second characteristic that I would like to adopt from Dworkin's theory, that associative duties are usually interpretative and unspecific<sup>176</sup>; it is defined by circumstantial parameters, like the capabilities of the duty bearer, the interest of the beneficiary or, most crucially, the nature of the association.

Another characteristic I aspire to find in an account of associative responsibilities is the non-consensual nature of the incitement of the association. The grounding factors for the association are not necessarily dependent on one's conscious decision to consent; for example, nobody chooses their family; they happen to be a member. In most cases, individuals do not decide their nationality either; they are born with it and bred according to environmental factors. Therefore, it is not controversial to argue that the development of an association is rather contingent and circumstantial to a great extent. In that sense, it is possible to draw a comparison between the duty of care and associative responsibility. The duty of care is a legal imperative that obliges individuals or entities to act with a reasonable standard of care to prevent harm to others. It does not impose a specific obligation but requires the individuals to take all possible measures within reason to ensure the safety of others. Both the duty of care and associative responsibility represent spatial responsibilities that encompass multiple aspects of life and bear the potential of generating duties that are responsive to the current circumstances. Then again, the duty of care is limited to the acts of negligence; it reflects a failure in due diligence. On the other hand, I consider associative responsibility more comprehensive and organised, so much so that there is a repeating pattern or a basic structure that suggests the permanence of the harm. It addresses systematically ignored harms because it creates an aggregated advantage or disadvantage for one party's account.

Without furthering too much into the details of both approaches, I would like to clarify my point in this section: It is possible for one to be part of more than one collective, which results in associative responsibility. The scope of the responsibility is defined by parameters that depend on the character of the collective, and the strength of the association it creates, as I argue, is one of them. In cases where responsibilities arising from different associations compete, they can be assumed to form a lexical order. Then again, the structure of this order also requires respective assessment. Stronger association entails wider responsibility and justifies special treatment, but it does not justify the allocation of entire resources to the

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<sup>176</sup> Dworkin, p.203.

beneficiary of said duty. Crucially, overriding duty does not eliminate the secondary duty unless there is a scarcity of resources. To illustrate, if someone sees a child drowning in a pond as he walks by, he is expected to intervene and save the child. If there are two children drowning in a pond, one of them being the by-walker's own, he is allowed to save his child first but still expected to return for the other.

My proposal is an association that is stronger than normative (moral) equality. But not as an alternative but as the complementary foundation for the duty to realise certain rights. I need this concept because the problem I aim to address is not merely the existence of the right itself but the identification of possible duty-bearers as well. In the way I described the transnational responsibility, with humanitarian rights, the associative conduct is being human. Consequently, the responsibility it generates includes the rights that are strictly related to being a human; for example, violation of the right to life interrupts one's existence as a human, and violation of the freedom from torture disturbs one's dignity as a human. Accordingly, if we argue that an association generates rights that are more comprehensive than humanitarian rights, then we have to demonstrate that the association implies a connection that is stronger/closer than being human.

## 1.2. The Association and Autonomy of the Member

Understanding the political conception as a Rawlsian account of justice, it is possible to make two readings of this argument. If membership in a community, the existence of the community, and the consequences of being a member are all contingent and linked to one another, then it is possible to attach those consequences to either of these three phenomena. As I argued in the previous chapter, the relationship between society and the individual who is a member goes two ways: the member is expected and assumed to contribute to the point that even his inaction is accepted as an action. In return for this privilege, the community constructs and restricts the autonomy of the member in both conscious and unconscious ways. Even though Nagel's emphasis on the sovereign may remind the legal restrictions, a community's constitutive power over members is evidently much greater than recognised by law. This is the reason why any political system that is short of tyranny, regardless of the level of democracy, is presumed to have established this relationship between members and the community.<sup>177</sup>

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<sup>177</sup> Nagel, p.128.

Another presupposition that comes with starting from a Rawlsian point of view is the notion that the basic rules of application of different sets of rules at the domestic and international levels, which still stands. There are principles of justice to be applied at domestic level, and there is a separate set of principles that Rawls proposed to apply on international level, which my argument does not engage as it can be better characterised as a theory of international relations among states rather than a justice theory based on moral equality of individuals. My argument addresses the latter case and argues that we can build up from domestic theory to global justice. It indicates the application of principles of distributive justice (to an extent) on a global level, by enquiring about the presumption of a so-called self-contained society. This is not as far-fetched of a task as it looks. Kant has long established that "international economic cooperation creates a new basis for international morality."<sup>178</sup> In addition, the idea that "international order coming more and more resembles domestic society"<sup>179</sup> has become more and more relevant today. Because the increase in globalisation did not happen at a linear pace, it acquired an accelerated speed, and this process created an urgency for moral attention.

For all I am concerned, it is not reasonable to restrict the grounding of justice concerns to equality that comes with political membership. Apart from defining the merit of a political community, as Rawls described, justice also refers to a moral value that is perceptible by an observer. Justice indicates the moral quality of a situation that can be reflected in one's conscience, and this type of justice (qua moral value) precedes justice that is a merit of a community (qua political value). This approach, admittedly, has more in common with deontological approaches to the grounding of rights.<sup>180</sup> However, deontological right theories do not address the practical obstacles that emerge due to the lack of a centre of power, which is a joint sovereign. Nor do they present an alternative relationship or a counterargument to the notion of associative responsibility, which is an undeniable phenomenon in the functioning of a state rather than a preferred transcription of the structural norm. The normative moral equality that is associated with the notion of universal human rights, though it constitutes a foundation for rights, may fall insufficient for grounding the socioeconomic rights due to the fact that these are the rights which revoke positive duty rather than a duty to refrain. Furthermore, the essential

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<sup>178</sup> Charles R Beitz, *Political Theory and International Relations* (Princeton University Press 1979), p.144.

<sup>179</sup> Beitz, p. 128.

<sup>180</sup> Besson, p.27. For the distinction between deontological rights and teleological rights, see: Miriam Ronzoni, 'Teleology, Deontology, and the Priority of the Right: On Some Unappreciated Distinctions' (2010) 13(4) *Ethical Theory and Moral Practice* 453.

obstacle before the global realisation of human rights is not the appropriation of rights but rather the appointment of the corresponding duty. This is the problem I am trying to address, and it requires an insight into the content of the rights. I will leave this issue to the last chapter and discuss the formation of a global public below.

### 1.2.1. Coercion or Cooperation

Before moving on, it is important to specify the domain of the discussion once again. First, there is ambiguity about the parties to the said occurrence. Following the Rawlsian theory, the appropriate distinction would be individual and state on the domestic level and state-to-state on the international level. However, when we talk about a state applying coercion outside its borders, it is usually not an incident between two states. Rather, it is between a state and a citizen/citizen of another state. Then, I need to pinpoint the problem: Does the coercion applied by the state on behalf of its citizens to non-citizens create an association between citizens and non-citizens? The designed formulation of this question already implies the answer. In the following section, I will discuss the formation of an association based on coercive application or cooperative exercise. This is to be explanatory for the later parts of the chapter.

The aim of this discussion is to address the mainstream views in the literature. The emergence of distributive justice is prominently argued over either cooperation in a community or coercion caused by the community, referring to the member's presumed contribution and inherent restrictions, respectively. Nevertheless, it is important to emphasise that I do not consider either of these factors as the root cause of the associative responsibility. Rather, they indicate not only the presence of an association but also the density of it. As I argued in the previous section, there is a correlation between the density of the association and the extent of the responsibility. Observation of cooperation and coercion is merely an apparatus to detect the density of the association, which is strong enough to trigger responsibility for socioeconomic justice.

Does this argument, which is a nuance of what is argued in the rest of this dissertation, sound like a stretch? It is perfectly possible to think it is, considering the prominent literature is based on pursuing either of the two as grounds for national association. My preference for understanding cooperation and coercion as indicative of association rather than constitutive of it is the result of two points: First, in the context of national association, it is apparent, and crucial for the later parts of this dissertation, that the autonomy of the member is not the

decisive element for one's inclusion in an association. It does not depend on an individual's will to be a part of the association; instead, the will to be associated is expected to grow ex-post to the member's inclusion, noting that it would not change anything if it did not grow at all. To explain it literally, the autonomous will of the individual is the main distinctive characteristic between cooperation and coercion – in general, not just for associative conduct. If one willingly participates in an ongoing practice, he cooperates with the practice. If he is obliged by an outer force -or mere lack of options-, he is coerced. In multiple domains of our discussion, either regarding national association or global justice, one's choices are either moot, as in being a member of a nation, or restrictively limited by the very nature of the practice, as in working at an outsourced workshop of a global corporation, which will be discussed briefly. From my point of view, neither case allows individuals to act with full autonomy.

The second reason is purely pragmatic; I will not dismiss the possibility that there might be other elements observed by arguing that cooperation and coercion are exhaustive grounds for associative practices. Abizadeh, for example, lists “pervasive impact” along with coercion and cooperation as another distinctive reason for an association and extensively discusses each one's interpretation of Rawlsian theory of justice.<sup>181</sup> Nevertheless, he still utilises these factors as indicative of an association, or in his terminology, of “basic structure”, to argue for the applicability of principles of justice. In this case, observation of any of these three qualities within the institutions overseeing the operation of the society is sufficient to assume the existence of a basic structure, or as we identify in this study, the association.<sup>182</sup>

Then again, the members autonomy/voluntariness/consent plays a role that is just significant enough not to be ignored. The member's cooperation within basic structure is heavily controlled by the opportunities given to them by the basic structure or presumed by their abstention. In addition to contributing to society, a member is exposed to the rules of society. This exposure is justified by the member's contribution to society, which does not only imply tacit consent but also ensures reciprocity among members.<sup>183</sup> The coercive rules within the society are the second element that confirms (and establishes) the association among members. However, the stakes are higher in this case. Because the state acts as the executive agency in matters of coercion but still relies on individuals for justification, hence, it is presumed that the

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<sup>181</sup> Arash Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice' (2007) 35(4) *Philosophy & Public Affairs* 318.

<sup>182</sup> Abizadeh (2007), p.319

<sup>183</sup> Nagel, p.129.

members collectively possess a shared autonomy to implement the rules alongside their individual autonomy.

If autonomy is the rule, and coercion is the violation of autonomy, the coercive rules that come with a society must be justified accordingly. Furthermore, autonomy remains a condition to be maintained through rules and the basic structure. Before discussing the balance between default coercion of a community and individual autonomy, one should briefly outline the rule first. To do so, I will simply revoke Raz's account of autonomy. According to him, three pre-conditions must be met for a person to exercise full autonomy. First, the person must have the appropriate mental capacities to comprehend his options and decide according to his intentions. Secondly, there must be an adequate number of options for him to choose among them. Finally, there must be the absence of coercion and manipulation for an autonomous decision to be made.<sup>184</sup> Apparently, the second and third conditions are external to the subject and concern specifically the basic structure of the community in which the subject lives. The absence of coercion and manipulation is maintained through individual freedoms and, in most cases, must be exempt from circumvention. On the other hand, an adequate number of options is a more flimsy condition to evaluate. It depends on the nature of the object, the total number of possibilities as well as the choices that the subject was given. Nevertheless, it is far from controversial that both conditions are intertwined with the basic structure and the regulative principles that one is subjected to comply with its rules.

This means that the exercise of autonomy as a community member strictly depends on the conditions of the said community and personal capability. On the other hand, the legitimacy of a state depends on its coherence with members' autonomy. For a state or any other institution, it is unavoidable to exercise some level of coercion, and it legitimises this coercion by action on behalf of autonomous individuals. So, the problem within the community is not to secure the natural autonomy of an individual but to draw the balance between individual autonomy and state coercion that is supposed to reflect the very same autonomy.

The discussion over maintaining the aforementioned balance is not the issue I want to bring here. It is to demonstrate the association that is created by legitimised coercion on the scale of a community. Arguably, the same balance can be sustained among any group of people

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<sup>184</sup> Arash Abizadeh, 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders' (2008) 36(1) *Political Theory*, pp. 37-65.

on different scales, analogous to the correlation between the intensity of the association and the extent of the responsibility. However, the first problem we encounter when we seek this type of interaction is to detect examples of coercion without proper legitimisation. How do we characterise the coercion that a state applies outside of its borders? Such question opens the way for many more, which is the outcome I tried to avoid by bringing theory of associative obligations. I presume that coercion and cooperation are justified as natural outcome of being a member in an association, instead of building up a direct connection between the responsibility and the conducts, coercion and cooperation. Accordingly, these conducts do not play a constitutive role in the formation of the association, rather they are indicative of the existing relationship.

If coercion or cooperation is not the grounds for associations, then what is? And what is the function of cooperation and coercion -and other possible factors- in this scheme? In my opinion it is not the type of conduct that creates the association. The answer to this question is the backbone of my argument: It is the contingent formation of the association as a social phenomenon, the permanence of the relationship between members, regardless of the causal elements and formative factors. In each scenario, the association indicates that the conduct occurs repeatedly/regularly/on a continuous basis. The self-sustainability and permanence affirm the non-contractual basis and the multilateral nature. In short, the presence of the relationship creates the association, not the type of the conduct between members.

For this particular understanding, coercion and cooperation define the dynamic of the relationship<sup>185</sup> whilst association is grounded on the existence of the relationship itself. This suggestion might be confusing when one starts with the assumption that the responsibility is generated by the character of the relationship as in coercive conduct creates responsibility between the coercer and the coerced due to its effect on one's autonomy. Alternatively, one might consider the common subjection to coercion by the shared actor (sovereign, state) entails the responsibility due to commonality of the experience. Respectively, cooperation as part of a shared structure might be considered as the factor that generates responsibility due to common objective that autonomy of each subject is directed towards.

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<sup>185</sup> Just to avoid any confusion, the "relationship" refers to the existing/hypothetical bond between members. In social associations, the bond usually exists and is observable by the members. In the political associations, as in the political conception of justice, the bond is hypothetical.

The reason for this confusion is the chronological delay of the responsibility. Because this approach suggests the said conduct occurs, then creates the association which yield the responsibility. My argument suggests that when actors/subjects are connected enough to exercise any coercive conduct to each other or be affected by the same coercer, the association is already established and generated the associative responsibility. By identifying the (structural) coercion, we understand that there is already sufficient commonality between subjects that enables the coercive conduct to begin with. The causal factor for responsibility is this exact commonality rather than the coercion itself. Even in the cases where we can presume an association on the basis of repeated/elongated coercive conduct, as I will shortly below, what we identify is the structural tenability of the association rather than repetition of coercive activity.

### 1.2.2. The Association as an Entity

I understand the imbalance between the nuanced standpoint of this account and the gravity of the overall argument. I allege that there is an abstract structure consisting of smaller units that enables coercive or cooperative activity to all members, which I call the transborder association. Furthermore, I discharge the requirement of a *de jure* sovereign either as a unifying or enabling agent, as I argue for the presence of a *de facto* community. On the other hand, there is no normative element that characterises the nature of this association. I explained earlier in the chapter that if we talk about an association of humans, the associative rights and responsibilities would be human rights (I called them the humanitarian set of rights, as explained in the first chapter), and the normative publicity element would be humanity/human nature. Considering that my proposal for a transborder association yielding more extensive rights and duties, then it must identify with a more intimate relationship than merely sharing the same species. Then, what would be the common normative value that individuals in a transborder association share?

Let us approach this problem from the other side of the spectrum. On the domestic level, there is an association that formed around a central power, which is the sovereign state that is the institutional embodiment of the basic structure. The sovereign, in this case, is not merely present *de facto* but also achieved *de jure* reality through the rule of law. The normative element that connects the members of the association and the segments of the basic structure

can be assumed to be the rule of law,<sup>186</sup> as each and every member is subject to it and - knowingly or not- shapes their lives according to it. Furthermore, it legitimises the sovereign power by enabling the satisfaction of the publicity principle by building the connection between morality and politics.<sup>187</sup> The publicity element reveals itself as the communication between the public and the sovereign power. It indicates the subjection of the public to the sovereign and the legitimacy of the sovereign in the eyes of the public. In other words, it ensures that the law and politics are interconnected with the public morality.<sup>188</sup>

How is it possible to create this reciprocal balance without a central sovereign? To what, exactly, does publicity imply the subjection of the public? My attempt to answer this question requires a compartmentalised definition of publicity. Most apparently, because there is no communication between the sovereign and the public, then we cannot hold the publicity principle as the legitimising element for the sovereignty. The notion that is set apart here is not the one that “in the absence of publicity, there is no justice”, in the form that is suggested by the negative principle of publicity.<sup>189</sup> Rather, it questions the common element that transforms the group of individuals into a public that is fit to be subjected to a potential central power, by which they will acquire rights and obligations.<sup>190</sup> Clearly, this positive condition is a prerequisite for the aforementioned negative principle.<sup>191</sup> To summarise, the positive condition refers to the formation of the public, without which the rights would not exist, whereas the negative condition assesses the administration of these rights to correspond to the public’s sense of justice.

Thus, it becomes clear that the publicity condition in its entirety refers to an “ideal public” which is expectedly to have developed a sense of morality that would communicate the fairness of the rights with the sovereign.<sup>192</sup> Correspondingly, the publicity principle is associated with the ideal levels of normative unity, a precondition of justice in politics. It is tricky in the sense that the basic structure needs the principles of justice because it is considered

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<sup>186</sup> I discussed the validity of different accounts for associative norms in the first chapter “1.2. Alternative Justifications for Domestic Responsibility”.

<sup>187</sup> Kevin R. Davis ‘Kantian "Publicity" and Political Justice’ *History of Philosophy Quarterly*, Oct., 1991, Vol. 8, No. 4, Hume and Kant Issue, p. 409-421. Also see Katerina Deligiorgi 'Universalisability, Publicity, and Communication: Kant's Conception of Reason', *European Journal of Philosophy*, vol. 10/no. 2, (2002), pp. 143-159.

<sup>188</sup> Davis, p. 413.

<sup>189</sup> J. Lipping, ‘Kant and the Two Principles of Publicity’ (2019) 25 *The European Legacy* 115–133, p.121.

<sup>190</sup> Lipping, p.121.

<sup>191</sup> Davis, p.413.

<sup>192</sup> Davis, p. 414.

unjust (by Rawlsian theory), the way it exists. This means that we also need to develop a compartmentalised understanding of Rawls' theory. It must be acknowledged that the formation of the basic structure is part of the non-ideal theory; it frankly emerges independently from the principles of justice. Nevertheless, it cannot be considered clear of any normative element; there are rules and principles effective on the political and social level, no matter how unjust they are. More importantly, the members of the public are subject to these principles on a non-voluntary basis. In the absence of the central sovereign, these self-imposed rules create and conform to the condition of publicity. Crucially, this is the reason I argue that they are supposed to be subject to *some*<sup>193</sup> principles of justice. We may try to identify this unideal set of norms by observing the interaction between the transborder basic structure and the individuals it encompasses.

This brings us to the case in hand. In the set-up of this dissertation, the formation of a “public” reveals itself as an associative conduct. As the association takes shape, it creates the rules and principles, benefits and burdens apply within, without the coercive hand of a sovereign. Correspondingly, as Rawls puts it, the basic structure is sufficient as an element of publicity. Its presence as a cooperative scheme indicated a common understanding of the regulative principles of social cooperation, regardless of their conformity to the principles of justice.<sup>194</sup> Though it does not mean that members are familiar with the principles of justice, rather it addresses the norms that are effective in the operation of the basic structure. “...the problem to which a conception of distributive justice is addressed – namely, constituting societal cooperation – can be solved by that conception only on the supposition that it is publicly known.”<sup>195</sup> Clearly, the implied publicity is not achieved by the principles of distributive justice that are designed to be applied by the central institutions. Rather, the rules that are already in effect and they facilitate social cooperation as the way it exists.

This notion is further elaborated in his follow-up article “Justice as Fairness: Political not Metaphysical”, where he explains that the principles of justice have to apply distinctively to general morality and, therefore, his theory of justice starts from within a certain political

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<sup>193</sup> Just a note in advance: As I will argue for a transborder association that is not as strong as the domestic association, I will assume that the responsibility it generates is correspondingly narrower/less demanding. This concludes that principles of justice must be adjusted according to the extent of the responsibility.

<sup>194</sup> Jon Garthoff ‘Publicity’ in J. Mandle, D.A. Reidy, (eds) *The Cambridge Rawls Lexicon*. Cambridge University Press; 2014, p. 673-678.

<sup>195</sup> Garthoff, p.673.

tradition, which presupposes the political nature of the discussion.<sup>196</sup> As stated, “The essential point is this: as a practical political matter, no general moral conception can provide a publicly recognised basis for a conception of justice in a modern democratic state.”<sup>197</sup> For him, it is the cognitive development of the sense of justice in members’ minds that eventually results in adherence to the principles of justice.<sup>198</sup> The existence of this political matter is contingent upon the social and historical facts that result in political unity.

“It should also be stressed that justice as fairness is not intended as the application of a general moral conception to the basic structure of society, as if this structure were simply another case to which that general moral conception is applied. In this respect, justice as fairness differs from traditional moral doctrines, for these are widely regarded as such general conceptions. Utilitarianism is a familiar example, since the principle of utility, however it is formulated, is usually said to hold for all kinds of subjects ranging from the actions of individuals to the law of nations. The essential point is this: as a practical political matter, no general moral conception can provide a publicly recognised basis for a conception of justice in a modern democratic state. The social and historical conditions of such a state have their origins in the Wars of Religion following the Reformation and the subsequent development of the principle of toleration, and in the growth of constitutional government and the institutions of large industrial market economies. These conditions profoundly affect the requirements of a workable conception of political justice: such a conception must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies.”<sup>199</sup>

Let me wrap up this discussion by providing a clear summary and a statement: The formation of a public (or an association) starts with the cognitive adoption of the rules-in-effect by (potential) members. This epistemic subjection indicates the achievement of the publicity condition on an individual basis. Then, it is completed by their compliance with and exercise of these rules. Precisely, the reciprocal communication occurs between the individual and the abstract system of principles, which determines the rules and subjects the public to itself. Returning to my terminology, this phenomenon is translated as the connection between the association and its member. Acknowledgement of the shared rules and attained roles is

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<sup>196</sup> John Rawls ‘Justice as Fairness: Political not Metaphysical’ *Philosophy and Public Affairs* Vol. 14, No. 3 (Summer, 1985), p. 223-251.

<sup>197</sup> *Ibid*, p. 225.

<sup>198</sup> Garthoff, p.675.

<sup>199</sup> Rawls (1985) p.225.

achieved during the formation of the association as a precondition (explained above)<sup>200</sup> in the form of the distribution of associative rights and obligations. As members comply with these exclusive rules, as they engage with the distribution of benefits and burdens, it becomes apparent that there is an association with its distinctive (idiosyncratic) normative element. The association can be observed by an external observer through this reciprocal communication.

The distinctive features of the transborder association will be extensively discussed in the upcoming sections. States, as I will argue, are part of the global basic structure as institutions that are representative of their citizens but also are agents in the international political structure. The imbalanced basic structure is visible when some states hold more political power than others, either *de facto* due to various practical reasons (economic power, geopolitical advantages) or even by rules regarding international politics (e.g. members of the UN Security Council). It is also clear on the individual level, for example, when these states provide their citizens with passports that are unequally enabling. Both types of inequalities are results of social and historical conditions that effectively contributed to the formation of the global basic structure. However, they are not the consequences of a (publicly) centralised politics or an overarching ideology, nor are they generated by such normative principles that constitute a comprehensive ground for them.

This criticism conforms with the examples I discuss below: Individuals are subject to the global basic structure because they are born into it; they did not have the freedom to disassociate with the norms and principles around it. The conditions in which the structure fails to protect their rights and the establishment of their autonomy, resulting in their epistemic subjection to the normative element of the association, contingently exist. The design of their life, in fact, is majorly shaped by the rules and restrictions imposed by the association. Imagine an underpaid mine labourer in Congo. Their political engagement with the global trade order is provided through the negative or positive action of their state. Consequently, the natural resources of their country are being extracted to be commodified for international trade. The only option available to them is either to work as a labourer or not. Their refusal of such an option will not change the loss of natural resources or the demolition of the local infrastructure, nor will it prevent the negative social and economic consequences that frustrate the local conditions.

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<sup>200</sup> Section 1.1.1.

In conclusion, based on Rawls' description of publicity and Dworkin's conditions for an association, the normative element for a transborder association is the rules which administer the distribution of rights and obligations amongst members. The recurring pattern of the interaction affirms that the distribution operates through a set of customs, which consequently revokes the implementation of the principles of justice. Because the presence of customs ensures that any imbalance in distribution will aggregate over time and entail bigger injustice. Hence, the circulation of burdens and benefits marks the public, and the public's subjection to the rules of distribution confirms the satisfaction of the normative element of publicity. At this point, all we need is to differentiate between a random relationship and an association that generates benefits and harms to be distributed. This necessity to distribute is how and why an association generates (associative) rights and (associative) responsibilities. Rawls refers to this phenomenon as the "basic structure".

The dichotomy in the terminology here is not merely rhetorical. To explain briefly, what differentiates basic structure and association is the scope of their meanings. When we refer to an "association", it indicates the wider structure, which is a closed-up community whose members are connected through an intertwined set of relations to each other. Such a definition would include friendships, families, social clubs and unions. "Basic structure", on the other hand, is a Rawlsian term; it indicates the system that distributes rights and responsibilities within a political association. The structure of the community is regulated and maintained by the institutions that are part of the basic structure. Hereof, it would not be wrong to consider that every "political association" encompasses a "basic structure". A more extensive discussion about the components of basic structure will follow.

The difference between the two terms becomes clearer as one dives into the theories explaining the nature of associative responsibility. As stated earlier in the chapter, Dworkin defines this responsibility as multiple sets of responsibilities that are generated from one main responsibility, that is, the special duty of care one has for other members of the association.<sup>201</sup> But more importantly, he underlines the non-voluntary nature of these obligations, that the duty bearer may or may not choose to have the role that generates them. For instance, one does not get to choose the family he was born into or the nationality he acquires, as both occur contingent on his will and even before he develops any consciousness. On the other hand, one may get to choose their friends or other communities that bear the potential to entail different kinds of

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<sup>201</sup> Dworkin, p.200.

associative responsibilities. What is reiterated here is the indifference of one's will to associative duties after they have emerged.

Another point Dworkin emphasised is reciprocity among members. The associative responsibility must be interpersonal and represent equal respect for all. It definitely does not refer to the relationship between an individual and some hypothetical entity, which is the community itself. In this regard, each and every member bear the associative responsibility towards each and every member.<sup>202</sup> This portrayal might look too intricate and extensive for one person to take upon themselves, and it indeed might be the case, considering it comes with a set of duties. However, there is also a catch: the non-contractual nature of associative responsibilities leads to ambiguity in its substances. When compared to a contractual relationship, in which rights and duties are determined in principle, there is no list of obligations to attend or rights to demand. The ways in which members practice the responsibility are interpretative to the extent that equal concern for all may instruct different duties to be fulfilled regarding the dynamic between the duty-bearer and the beneficiary. As an illustration, in a family, equal concern for the elderly members revokes different duties than those for children. The common characteristic of both groups of duties is that they emerge from the same associative responsibility.<sup>203</sup>

The decisive point, from my point of view, is the recurring or continuous pattern of the organised social practice that in some way generates benefit and harm to the parties. The uninterrupted of the consequences of practice allows us to consider it to be a replica of a basic structure where distributive justice applies. Because in the absence of principles of distributive justice, the unjust benefit and the harm have the potential to aggregate in time to create an even bigger problem. This definition arguably fits the cooperation and coercion theories. I argue that both types of conduct infer a certain level of interaction, and the continuity of the interaction creates the association. The main reason for my argument is not only the continuation of the harmful practice but also the aggregation of the loss of one party. Regardless of this theoretical convergence, I differentiated the global practices below by the most apparent conduct that they exhibit.

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<sup>202</sup> Dworkin, p.199.

<sup>203</sup> Dworkin, p. 199.

### 1.2.3. Liability or Connection

As reiterated above, this is not a discussion about two types of association based on either cooperation or coercion. On the contrary, both types of conduct allude to the presence of an association and entail the same result as the other, at least to the point that both create an association that is strong enough to generate distributive duties. The complication with coercion is that it is often accepted as adjacent to tort liability. The coercive practice applied by the state is the wrongful action that initiated the process, and when the claimant, either another state or a non-citizen individual, retrospectively denounces coercion, which creates the responsibility for transitional justice or compensation rather than distributive justice. So, the critical objective here is to decide when a coercive action of a state entails associative responsibility instead of either of the former options.

Tort liability of states occurs when a state causes a violation of the rights of individuals or entities by its actions or omissions. This liability arises in cases where state officials or institutions act negligently, unlawfully, or in a way that causes injury or loss, such as property damage, personal injury, or environmental harm. Tort liability may also encompass state responsibility for breaches of obligations under treaties or international norms, especially when the harm affects foreign nationals or entities. Remedies often involve compensation to the injured parties or a duty to restore the original state.<sup>204</sup>

Another suggestion that comes to mind is transitional justice. Similar to tort, transitional justice addresses widespread human rights violations that occur during times of conflict. Transitional justice aims to acknowledge past abuses, deliver justice to victims, and rebuild societal trust while balancing accountability with reconciliation to promote long-term peace and stability. It encompasses a wider set of mechanisms, such as criminal prosecutions, reparations, and institutional reforms.<sup>205</sup> even though transitional justice focuses on eliminating the consequences of the conflict, it does not engage with the applicability of distributive justice or the overall well-being of the individuals.

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<sup>204</sup> For more information about the tort liability of states, see: George P Fletcher, *Tort Liability for Human Rights Abuses* (Hart Publishing 2008) and Haim Abraham, 'Tort Liability for Belligerent Wrongs' (2019) *Oxford Journal of Legal Studies* and Melissa J Durkee, *States, Firms, and Their Legal Fictions: Attributing Identity and Responsibility to Artificial Entities* (Cambridge University Press 2024).

<sup>205</sup> For more information, see: Alexander Laban Hinton, *Transitional Justice: Global Mechanisms and Local Realities After Genocide and Mass Violence* (Rutgers University Press 2010).

From my point of view, neither mechanism addresses the collateral effects of long-term interruption (of the violations). The continuity or repetition of misconduct without any repercussions eventually transforms the offender-victim relationship into the subject of an unfair structure. An isolated incident, or even multiple incidents occurring over a reasonable period, can often be addressed and resolved through transitional justice or tort liability. However, when such incidents are enabled by a system that unevenly distributes advantages and disadvantages, or when their repetition establishes and sustains an unfair structure, they must instead be addressed under the principles of distributive justice.

There are two major phenomena that I can bring as an example in this case: military intervention and economic exploitation. In both cases, individuals not only get affected negatively out of their control or protection but also their communal integrity is interrupted by an external factor. There are multiple forms in which such interruption might have occurred. For instance, military intervention might cause the disposition of legitimate political representation by appropriating authority. On-war or post-war situations possibly cause a violation of individual autonomy by failing to conform to the external conditions that are mentioned above. For economic exploitation, the examples are more straightforward. The detrimental effects of colonialism and imperialism have been studied expansively by a wide range of researchers and argued that the regression and interruption caused by both still apply to suffering parties. Whilst the consequences will be examined in the next chapter, I will suffice by stating that the aggregation of historic injustices may result in an ongoing association.

The most obvious analogy for domestic social cooperation is, arguably, the contemporary flows of global trade. The productive efficiency and economic growth rate that comes with international trade are normalised in today's conditions. It exhibits effects on multiple levels; it benefits the investor by facilitating higher profit with lower funding at the beginning, and it serves the customer at lower prices at the end.<sup>206</sup> Surprisingly, it is not that the disadvantages are hidden between two ends. On the contrary, the global economic order is argued to benefit all parties in the equation.<sup>207</sup> Whether this observation is accurate or not, the main problem is still the uneven distribution of the weights and benefits.

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<sup>206</sup> Beitz, p.145.

<sup>207</sup> Iris Marion Young, *Responsibility for Justice* (Oxford University Press 2011), p.128.

The reason for such a pessimistic attitude is the growing gap between the interests of the parties.<sup>208</sup> Even in the best possible scenario in which the interaction occurred between two equals, uneven distribution of benefits will, eventually, result in the aggregate advantage of one side and increased vulnerability on the other. Evidently, this result perpetuates the "asymmetrical vulnerability" if not interrupted and may render the initial dynamic to an abuse of power.<sup>209</sup> The prime instance of this benefitting exploitation can be found in the recent push for accountability within the apparel industry. Many daily items that are produced through labour-intensive processes are imported from under-developed countries due to lower production costs. The campaign known as the "sweatshop movement" brought attention to the low wages and working conditions under which the majority of everyday clothing is manufactured. The object of the movement was to hold retail brand sellers in affluent countries accountable for the working conditions at the factories and workshops in underdeveloped countries.<sup>210</sup> The viability of this argument will be discussed at length in the following chapter. For now, I only need to emphasise two features of the whole matter: First, this exchange is not happening between equals, and one party is certainly favoured over the other. Surely, international trade is managed among multiple parties, but it is possible to observe a correlation between the value of the share and the mediating parties between the manufacturer and the final buyer. Secondly, the intricate network of international trade creates a qualified association to apply distributive justice, at least to a certain extent.

Another reason for transborder responsibility-generating associations is political interruption. However, this notion stands on a different ground than the international trade chain. As I argued above, the association serves as the basis for establishing associative rights or application of distributive justice. The reason for the national association is the entitlement of contribution members have, which compels them to contribute by exercising or by refraining from exercising it. This is what a member offers to the community, but there is also the other side of the coin, which is what a member is exposed to by the community. And, as I argue, it leads us to the association based on political enforcement. Let me emphasise that I am not arguing for two distinct interactions to be founded on different phenomena. Rather, I am trying to identify components of the national associative association to determine if there is an international archetype of the same dynamic.

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<sup>208</sup> Onora O'Neill, *Bounds of Justice* (Cambridge University Press 2000), p.122.

<sup>209</sup> Beitz, 147.

<sup>210</sup> Young, p. 126.

Young makes a distinction on this account regarding global distributive justice. She formulates two distinct global justice models: the liability model and the social connection model. The liability model is analogical to tort; it is based on past wrongdoings and historical payoffs and calls for reparation and compensation regarding issues. The social connection model, in contrast, is based on contemporary global interdependence, primarily focusing on trade networks. She simply argues that the current interdependence is dense enough to create political responsibility for each of us. It is not only institutions that are supposed to carry the responsibility but every individual because "the state's power to promote justice depends to a significant extent on the active support of its citizens in that endeavour."<sup>211</sup>

What is striking in Young's arguments is her discredit of the liability model. She finds it unpragmatic to aggregate the past misconduct to get even today. Admittedly, it entails high tension and drags the discussion into an ideologically driven dead-end. She proposes to open a clean slate with widely interpreted responsibility based on complex interconnection. As appealing as it is, I suppose it is problematic to hold these two models as alternatives to each other.<sup>212</sup> Apparently, the social connection model concerns the execution of distributive justice; it aims to expand the domain of application beyond the state's borders. The liability model, on the other hand, proclaims a version of corrective justice; it comes into effect after an initial wrongdoing between a limited number of parties. Therefore, it can not taken as expansive and comprehensive as the social connection model.

From my point of view, it is better to hold two models complementary, which is similar to the argument regarding fundamental rights and associative rights above. The social connection model provides us with a global association with associative rights, which pertain to the exact situation. However, this account of explaining transborder responsibility bears the risk of distributive justice being perceived as philanthropy, causing its moral weight to be underestimated. It would not be fair to ignore what the liability model has to offer. For this reason, redistribution is not merely a commitment to the notion of distributive justice; it illustrates the reasoning behind such a notion. The liability model, or my interpretation of it, explains the current imbalance in economic resources, political instability, and even domestic development. Approached this way, it is clearer to understand the cause-and-effect relationship between two concepts of justice.

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<sup>211</sup> Iris Marion Young, *Responsibility for Justice* (OUP USA 2011) p.125.

<sup>212</sup> Young, p.105.

Another argument to consider is that responsibility for wrongdoing has a higher moral claim in public opinion and holds a practical advantage. It would not be morally correct, or possible at all, to disregard the past on a realistic account simply. The past has made a fair contribution to today's global structure. For example, it is not a surprise that post-colonial countries are at the worse end of the bargain, whereas former colonising powers perpetuated their position even though they are not colonising anymore. Certain acts of wrongdoing not only create harm through their direct consequences but also create a system that works to create and sustain imbalance between parties. That is why reparative arguments should be used as complementary to egalitarian arguments.<sup>213</sup>

This distinction also answers the challenge posed at the beginning of this section. If a coercive action establishes, perpetuates, or facilitates an unjust system or an unfair balance that works at the expense of one party whilst benefitting the other in a recurring motion, then it should be regarded as associative liability rather than tort liability. The examples I have chosen above, military intervention and economic exploitation, demonstrate the gravity and the longevity of the consequences. In the next chapter, I will try to illustrate the causality between being subjected to political misconduct and being the demanding party on distributive justice.

In what follows, I will argue for an association that bears the potential of creating a duty for distributive justice. This association is modelled after the aforementioned concept of domestic political association that describes the relationship of citizens to each other and, consequently, with the state. In domestic justice, the associative conduct is the political community that generates its corresponding associative responsibility. Let us assume that this associative responsibility is fulfilled by applying the Rawlsian principles of justice. In this section, I argue that a similar, yet not as strong, association can be presumed on transborder to some extent. Considering that this latter association would not be as strong<sup>214</sup>, the responsibility it generated would be less comprehensive than distributive justice. If domestic socio-political interdependence creates responsibility for justice to a full extent, a less direct but nevertheless influential association still entails "some" justice responsibility. In other words, alternative associations across the border can create a diluted form of the same

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<sup>213</sup> Tan (n 6) p.286-87.

<sup>214</sup> I prefer using the term "diluted" in this context, referring to the fact that it is the same kind of association but not as dense, generates the same type of responsibility but less demanding.

responsibility, respective to the strength of the interdependence. The main challenge here is to identify the characteristics of the association and the extent of responsibility that it concludes.

## 2. Concurrent Association Models

In the first chapter, I introduced the political conception of justice and explained my reasoning for reconstructing it to fit a global scale. My argument is based on the pragmatic functionality of the political conception of justice; I argue that it is the most primitive theory that illustrates the domestic responsibility of the state without resorting to any ambivalent or abstract concept. It utilises associative responsibility to justify the responsibility for distributive justice among citizens. Then, I discussed the defining characteristics of an association. The key feature of an association is the correlation between the association's strength and the extent of responsibility. As the association among parties gets more robust, their responsibility for each other increases accordingly. Accordingly, the increase in the extent of the responsibility implies the intensification of the association between the parties. This formula is perceptible to observers on a personal scale and is also presented as a justifiable ground for associative rights on a national scale. I argued that associative responsibilities are also applicable to the global domain by deconstructing political conception to its components and bringing empirical examples to demonstrate its relevance. In this chapter, I will examine those examples in detail and illustrate the transborder association.

The first associative conduct that I will discuss is cooperation, and there is a wide array of international cooperative relationships that we can bring examples. Thanks to irrepressible advancement in technology, transborder activity is a dull part of our day. From entertainment to religion, arbitrary and incalculable aspects of our lives are interlaced with international interaction. Furthermore, these interactions are not all at ultimate liberty; they are being monitored and even regulated by the respective transborder organisations. For example, 34 years after the first-ever international football match, which was played between England and Scotland in 1870<sup>215</sup>, *Fédération Internationale de Football Association*, better known as FIFA, was established.<sup>216</sup> Growing at an accelerating speed, today FIFA has 211 member associations, governed by 6 regional organisations, identifies itself as “FIFA exists to govern football and to develop the game around the world” and pledges to be “truly global” on its website.<sup>217</sup>

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<sup>215</sup> [150 years ago today: The birth of international football - FIFA Museum \(english\)](#) accessed 25.02.2024

<sup>216</sup> [Sepp Blatter | Biography, FIFA, & Facts | Britannica](#) accessed 25.02.2024

<sup>217</sup> [About FIFA](#) accessed 25.02.2024

What does the game of football have to do with political philosophy? I apparently do not argue that the World Cup makes states interdependent in a way that triggers associative responsibilities. By bringing such an idle illustration, I want to raise two points: first, international interaction does not necessarily occur out of necessity or in unfavourable conditions. Contrary to Rawls' illustration in *Law of People*, the notion of self-sufficiency is not mutually exclusive with international interaction. The increased accessibility turned the question "Why should we interact with other nations?" to "Why not?". Secondly, transborder expansion is the dominating trend in excessive aspects of our lives, so much so that we do not keep track anymore. 20 years ago, a person in the UK could enjoy his Indonesian ramen whilst watching a Korean movie he borrowed from the library, then snuggle into his Egyptian cotton bed sheets and reflect on the poetry written by a Chilean diplomat, and would acknowledge how elite this lifestyle is. Today, the same person can entertain a political discussion with another random person in Russia about the civil war in Sudan before watching a video titled "10 tips to bake perfect Challah" from a Canadian chef's channel on his phone screen that was made in China; and it never crosses his mind that what he was doing is a transnational interaction. Frankly, today's regular Joe has access to a wider horizon than most of the population back in the day when Kant wrote the *Perpetual Peace*, and it does not look like it is going to turn around.

Another example of the degree of international cooperative relationships is the transnational justice system, also known as international arbitration. As reiterated in the first chapter, one strong objection argued against global distributive justice is the lack of a central authority to enable principles of justice. Whilst the role of the authority as coercive enforcement of rules in the international arena will be discussed in the next section, cooperative activity as the replacement of a sovereign is a common international practice. The authority-granting cooperation might be specialised for a certain activity, like the example of FIFA above, or as a designated authority for a certain type of interaction, like international commercial arbitration. The crucial characteristic in the case of arbitration is that it has a certain level of autonomy over the subjects that are otherwise subject to a sovereign state. Surely, part of this autonomy relies on state complicity, non-intervention of the national judiciary, facilitation through necessary domestic regulations, and, most importantly, enforcement of the results.<sup>218</sup> Arbitration being obliged to state administration for the enforcement of the results is,

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<sup>218</sup> Ralf Michaels, 'Is Arbitration Autonomous?' in C L Lim (ed), *The Cambridge Companion to International Arbitration* (Cambridge University Press 2021).

admittedly, the biggest touchdown to the autonomy of arbitration. Nevertheless, it is basically instrumental. On the other hand, there is also a self-standing component to this autonomy, similar to the rule of recognition for national jurisprudence; it is authoritative because it is accepted as authoritative.<sup>219</sup>

Just as well as private recognition of transnational authority, it is also possible to argue for a transnational designated authority in the public sphere. Beitz brings such objection to the argument that the international domain is in a state of nature as opposed to the domestic civil community. He argues that, based on the analogical proposition that in international relations, states are the main actors, in the same way in domestic relations, persons are the main actors, the current international relations can no longer be accepted as a state of nature.<sup>220</sup> Beitz brings multiple state-based or individual-based coalitions as an example and argues that states are not the only actors in the international sphere, nor do they hold relatively equal power to rationalise the non-domination. Rather, states engage in various schemes of liaisons for the maintenance of security, domestic economic and welfare development, and various other functions that states take an interest in.<sup>221</sup> Even though states are recognised as the ultimate sovereign in their own territory, they voluntarily participate in binding cooperative activities. Admittedly, the lack of enforcement does not equalise it to a domestic civil society, but it signals the direction of the trend.

Whilst it is possible to bring more examples and extend the discussion with details, as I just stated, the mere existence of a cooperative activity is not sufficient to argue for an association. I would like to sum up the discussion at the beginning of the chapter and clarify the criteria of assessment for the following sections. Arguing for the validity of concurrent associations as grounds for associative responsibilities, I will discuss the subsistence of the following qualities;

- 1- The association would not depend on member's choices and generate benefits and/or harm on an ongoing basis. (Continuity)
- 2- Association has to be in an organisational form, regardless of whether such formation occurs organically or inorganically. (Structure/institutionalisation)
- 3- The association must have affected members' lives to a tangible extent, in whichever conduct it occurs, through positive or negative action. (Impact)

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<sup>219</sup> Michaels, p. 127.

<sup>220</sup> Charles R Beitz, *Political Theory and International Relations* (Princeton University Press 1999), p.36.

<sup>221</sup> Beitz, p.42-9.

A major detail about my perspective regarding the cases and the conclusions I draw from them is that I do not consider these cases independent from each other. I believe, and I have reasons to believe, that there is a correlation among the parties around these cases, and it is even possible to draw a causal scheme. However, since such a task would require intricate work of political history and global financial relations, I will stay on normative grounds for now and engage in this causality scheme only at points that are relevant to my argument.

### 2.1. World Trade Order as Transborder Cooperative Activity

It is not a challenge for anyone to find an example of how wide and intricate the contemporary trade network is over the globe, at least in today's conditions, in which every item in the supermarket is originated in a different country, and every piece of clothing is manufactured overseas. A butterfly flapping its wings in Amazon forests may not cause a tornado in African deserts in reality, but we all witnessed a transatlantic blockage of the Suez Canal, causing panic in German automotive companies because they were unable to receive crucial parts coming from China.<sup>222</sup> Shortly after that, the war in Ukraine not only made every individual in Europe aware of where the sunflower oil they were using was coming from but also troubled snack companies in the United States because importing countries would create competition in the U.S. domestic oil supply market.<sup>223</sup> Though these cases exhibit striking global interdependence, the tricky part of this chapter is to illustrate the density of networks to prove that it creates an association that triggers associative responsibilities of distributive justice. Then again, my argument is based on the presumption that “the strength of the association correlates with the extent of the responsibility”; hence, I am not aiming as high of a bar.

How does the world trade order establish an association? The prominent literature around this argument is focused on cooperation as the grounding conduct, which is better compliant with the Rawlsian understanding of association, which is the basic structure. As repeatedly mentioned, Rawls considers society as “one system of social cooperation” where “the main political and social institutions of society fit together”. The mere existence of the society is to engage in cooperative activity to reach certain interests and advantages. This

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<sup>222</sup> <https://www.cips.org/supply-management/news/2021/april/the-top-industries-impacted-by-the-suez-blockage/>, accessed 26.02.2024

<sup>223</sup> <https://time.com/6155095/sunflower-oil-russia-ukraine/>, accessed 26.02.2024

definition also clues away that not every cooperative activity is considered social cooperation, though; it has to be a fair means of cooperation that is conducted through public rules and procedures, based on mutual care and respect, and serves to the advantage of each member for their own ends.<sup>224</sup> Only then will the principles of justice become relevant and necessary, as cooperation identifies itself as a fair and just system.<sup>225</sup> The demand for justice occurs when there is a cooperative practice that is committed to fairness and the benefit of the parties already exists.<sup>226</sup>

Before moving on, I should also note the multiple scales of the discussion. When we talk about national responsibility as the result of association, the primary moral unit is the citizens of the country, who are also the members of the association. The institutions of the basic structure are developed as the outcome of the cooperation and tasked to regulate both cooperative activity and its consequences. When we discuss international trade as a cooperative association, we face a multilevel relationship to detangle. The primary moral unit of the discussion still stays as individuals, but the active agent of the associative interaction becomes companies, enabled and restricted by states. One level higher, there are global institutions supervising the trade flow, like the World Trade Organisation or Organisation for Economic Cooperation and Development. Nevertheless, the authority of these supranational institutions is not equitable to the state's authority over citizens; hence, states keep the position of main authority over free trade.<sup>227</sup> On the other hand, the primary actors and the largest beneficiaries of global trade are multinational companies. Here is the catch: unlike what we see in Law of People, my aim in this dissertation is to discuss transnational associative responsibility in a manner that is inclusive of all these levels. I will refer to this notion in the upcoming parts.

At its simplest form, my account for the cooperative argument for transborder associations is as follows: When a state is stripped down to its organisational skeleton in the means of the basic structure, it is possible to make an analogy to the current world trade order, as the key components fairly match. The intended comparison is not in the sense of an algebraical formula; in case it feels like it is, we are not replacing a couple of unknowns on an equation to reach an alternative conclusion. Doubtlessly, it is more complex and less intense than its domestic counterpart. It is more complex in the sense that the primary units of the

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<sup>224</sup> John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press 2001), p.6.

<sup>225</sup> Rawls (2001), p.7

<sup>226</sup> Abizadeh (2007), p.334.

<sup>227</sup> Aaron James, *Fairness in Practice: A Social Contract for a Global Economy* (Oxford University Press 2012) p.22.

global economy are states, but the ultimate beneficiary aimed at transnational associative responsibility is individuals. Less intense, in the sense that the domestic association will always be stronger than the transborder associative connection. The argument does not aim to build an exact allegory; rather, it claims the possibility and the exigency of a similar comparison.

What makes the world trade order comparable is various sets of qualities, as has been long-argued, that allow us to observe the extensive organisational structure and undeniable impact over associates. It has been a quarter of a century since Charles Beitz wrote, “international relations is coming more and more to resemble domestic society in several respects relevant to the justification of principles of domestic social justice”.<sup>228</sup> Since then, the world around global trade has shifted in a way that it has become the mainstream practice, so much so that aggregate international trade has reached about half of the world's GDP<sup>229</sup>. While experts disregard the calls for divestments and present a new era, globalisation 4.0, the damage is done. Either surrendering to this craze or resisting the consequences of free trade any further, the global society will move around an already-existing structure of global trade. In order to demonstrate the relevance of this phenomenon, I will recall the earlier criteria I set for an association to qualify to generate associative responsibility and discuss the continuity of global trade, structural organisation, and effects on members.

- Continuity

The first criterion, which I will call continuity in short, may sound an odd choice at first glance. However, generating benefit and harm on a continuous basis is a causing factor to the notion of political justice (that is, subjecting a basic structure) and also a challenging condition to sustain. It not only indicates duration but also refers to the liaison that imposes interdependence whilst generating profit and loss. Continuity contributes to the essence of an association in two aspects: First, it refers to the cumulation of benefit and harm as the consequences of repetitive interaction, implying that the parties are neither indifferent to each other nor fairness is sustained among them. Secondly, it refers to mutual interdependence, the transformation of the interaction between parties from a random interaction to a habit. The trade between countries does not occur on an occasional basis, nor is it merely an economic activity. Current trade is heavily based on the “mutual market reliance” of states, operating either on a bilateral or multilateral basis. Even more importantly, it is highly interactive with

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<sup>228</sup> Beitz (1978), p.128.

<sup>229</sup> <https://www.weforum.org/agenda/2019/01/how-globalization-4-0-fits-into-the-history-of-globalization/>

external actors and affairs, especially with political ones, which gives the notion of free trade a sceptical outlook.

The continuity in the case of trade signals a significant characteristic of an association, which is interdependence. The trade operates around structure that is formed by repeating interactions on a steady balance in which parties do not change roles or interest. It is available for observation in the form of mutual assurance in trade activities when parties engage in risk-taking and plan ahead, relying on each other. The required assurance arises in the notion of mutual benefit; even though parties acknowledge their lack of control over the other side's discharge of their end, they rely on mutual benefit in fulfilling the cooperation. International trade is an abundant field in risks and uncertainties, though; the only reasonable way to circumvent this problem is to sustain a trading practice based on mutuality. This brings out a new risk: a party's failure to meet the requirement of mutuality will directly reflect on the other side, regardless of their success in reaching their end.<sup>230</sup>

This is why trade is no longer fit to be taken as a private activity among companies. State involvement in trade is not limited to whether "states choose to remove or withhold trade barriers" today; trade operations are "constitutively" dependent on a state-based system of international economic structure.<sup>231</sup> It is not just about the extent of the reliance on imported goods. International trade comes with ups and downs, and eventually, it becomes an extension of the domestic economic cycle. The practice of international trade, however, does not have distributive concerns, domestic or international, nor does it maintain a minimum standard of benefits in distribution. The "mutual benefit" is relative and arbitrary; the gain that comes with what is beneficial can be a fraction of what is fair, and it still constitutes a good enough reason for engaging in trade activity.

The problem is that international trade usually amplifies international and domestic inequality even though it operates on the assumption that it increases national and global economic growth.<sup>232</sup> While this is a discussion regarding the impact of the association, it also underlines the strength of the association and why, if it has none, international trade needs distributive principles. The continuity not only sustains the stable and organic nature of the association but also entails an aggregation of consequences in the long run. The lack of

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<sup>230</sup> James (2012), p.59-60

<sup>231</sup> James (2012), p.42.

<sup>232</sup> Beitz (1979), p.145. Pogge 'World Poverty and Human Rights', p.105-6.

distributive principles causes an aggregation of advantages and disadvantages. Given the fact that trade is an activity that operates through negotiation, it means that even in a scenario where the parties started with near equal leverages, the lack of equity concern bears the potential of turning into an imbalance of bargaining powers.<sup>233</sup>

When it comes to reality, the contrast is more dramatic. The participating parties of trade consist of states both developed and underdeveloped, so the interaction starts with unequal dynamics. For instance, it is not a coincidence that multinational companies are mostly concentrated in developed countries, whereas under-developed countries, in most, only stay on the receiving end of investment;<sup>234</sup> neither that those multinational companies serve the *crème de la crème* of international trade; they do not only reach more profit than local companies, but also they bring in the lion-share of the revenue to the centre.<sup>235</sup> In a free market where bargaining powers are the decisive parameter, the achievement of mutual benefit is not sufficient as a fairness standard because it is a matter of relevancy, not fairness. The result of aggregation bears the potential of transforming free trade into an exploitative practice. A wider discussion on this matter concerning the current empirical situation will take place below.

- Institutionalisation

Institutionalisation is the most important one among the three criteria I listed earlier because it refers to a crucial threshold that upgrades an association away from Dworkin's ambiguous description towards a Rawlsian basic structure. This threshold not only signals the density of the association but also indicates the transformation of trade from being a private affair to a positive social practice. Let me illustrate.

The primary hesitation about a “transborder association” is extensively Hobbesian. First of all, the possibility of a coordinated conduct of multi-lateral actors, even towards justice, is considered impossible without the enabling of a sovereign. What makes it possible is the existence of institutions that execute the sovereign's power for the maintenance of political, social and economic stabilisation.<sup>236</sup> To my understanding, it is accepted that even security from the power of a sovereign is included in this task, as well as a uniform understanding of

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<sup>233</sup> Beitz (1979), p. 146.

<sup>234</sup> Pol Antràs, Stephen R. Yeaple “ Multinational Firms and the Structure of International Trade” in “Handbook of International Economics” (Eds): Gita Gopinath, Elhanan Helpman, Kenneth Rogoff, Elsevier, Volume 4, 2014, p. 61.

<sup>235</sup> Ibid, p.65.

<sup>236</sup> Nagel, p.117.

the standards of certain political concepts, such as equality, liberty, or fairness.<sup>237</sup> The presence of a power that shapes, leads, and directs the subjects is the distinctive quality between a group in the state of nature and a civilised society.

The application of this notion to international relations would render the international domain a state of nature, given the absence of a sovereign who influences and enables conduct among subjects. However, the outcome is not at all similar. Apart from international political cooperation, the organisational structure around global trade allows us to observe certain qualities that adhere to a notion of civilised society that is maintained by a sovereign power. There are two distinct arguments I would like to mention in this regard.

The argument proclaiming the international trade structure is “civilised” enough to trigger distributive principles is James’ illustration of trade as a social practice.<sup>238</sup> He argues that because international trade bears the main characteristics of a social practice, it should, at least, be subject to the distributive principles that apply to social practices. There are four conditions which confirm international trade as a social practice:

- 1- It involves the cooperative behaviour of multiple agents: in the case of trade, the agents are states, represented by government bodies for matters regarding trade.
- 2- There are clear, if not specific, behavioural expectations that are required for the practice to continue. This condition refers to the mutual reliance on international trade mentioned above. In addition, these expectations are negotiated and clarified through agreements.
- 3- The expectations in practice are governed by decentralised mediums: There are an abundant number of governing bodies supervising international trade, including the World Trade Organisation, regional conventions and declarations, and non-governmental bodies advocating for public opinion.
- 4- The expectations are adjusted to a main goal: In the case of trade, this goal is clearly a mutual financial gain for both parties, regardless of their variable interests in particular cases.<sup>239</sup>

What makes James’ methodology so appealing is the analytic but cautious style of

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<sup>237</sup> Nagel, p.118.

<sup>238</sup> James (2012), p.39-40.

<sup>239</sup> James (2012), p.39-40.

the argumentation. Only from the part I shared above is it satisfyingly clear that international trade is not a private affair between gallant companies who dare to step outside of secure borders of sovereignty into a state of nature. Contrarily, international trade is an activity that is participated in and monitored by states, to the point that states act as agents in creating the system of rules to manage expectations and secure the persistence of mutual benefit. Active state involvement in the process of supervision proves that the lack of a central authority does not necessarily indicate a lack of enforcement. Rather, it allows more flexible means of enforcement, such as alternative dispute resolution.

Compared to James' proposal that international trade is a social practice, hence it is subject to the respective distributive principles; my argument is that international trade creates an association. Hence, it triggers associative responsibility, which may sound a bit stretched. After all, I made it clear that the primary moral unit of my argument is individuals, but trade as a social practice is merely a network of states and companies, even though they are also run by people. I will surely discuss how international trade majorly affects people in the next section, but at this point, I would like to briefly illustrate the way individual behaviour has participated in international trade through the example of fair trade.

The motivation behind the fair-trade movement at the beginning was arguably to eliminate the middlemen to deliver more profit to the manufacturers for charity reasons. With the involvement of retail sellers, not just the products but the notion of fair trade has spread to larger audiences.<sup>240</sup> The notion of fair trade quickly found reflection in political groups as well as academia. It triggered a wide spectrum of research regarding the individual worker's experience in manufacturing, ethical consumer behaviour or business ethics. But the main booster of the movement was the accessibility of information through media engagement and online publications, which is still very much present.<sup>241</sup> As it got easier to expose ethical violations of international corporations through means of technology and new means of communication, the moral concern domain of customers expanded epistemologically. Today, fair trade is considered to be a "consumer-driven phenomenon" that innovated a model of social involvement in the international economy. In addition, NGOs, as a decentralised medium in the international trade networks, as noted above, brought public opinion to the monitoring table. NGOs supporting fair trade not only systematically raise awareness for informed

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<sup>240</sup> Alex Nicholls and Charlotte Opal, *Fair Trade: Market-Driven Ethical Consumption* (SAGE 2004), p.19.

<sup>241</sup> *Ibid*, p.24.

consumer behaviour but also successfully create pressure against regulating bodies regarding ethical concerns.<sup>242</sup>

It is possible to discuss how the movement of ethical consumerism affected international trade or by which criteria public opinion judges businesses for being ethical or not. My take with this brief touch is as follows: International trade is not a social practice limited to corporations or governments or means the personal involvement in the international domain is not restricted to “governments and corporations run by people”. Either through market choices or NGOs, public opinion monitors and demands to get involved in the ways trade operates. The following section will provide a clearer picture of why this matters.

- Impact

As I reiterated before, the basic moral unit in my argument is individual persons. This means the associative connection I aim for presupposes a hypothetical interpersonal connection that entails an association. Any other entity, including companies, corporations, state institutions, and states, are considered agents acting on behalf of individuals. Thus, when I say “the association must affect members’ life to a substantial extent”, it indicates human members that are both behind an entity or interacting with these entities in any form. Unsurprisingly, this statement calls for another clarification regarding the criticism that Rawlsian theory of justice addresses the basic structure of society rather than individuals.

Rawls indeed explicitly stated that “The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances.”<sup>243</sup> The problematisation of this framing arises from the Rawlsian notion that “the correct regulative principle for a thing depends on the nature of that thing”<sup>244</sup>, which suggests the principles of justice designed for the basic structure do not apply to individual conduct. One criticism regarding the limit of the application of principles of justice suggests that it is incoherent for a society that would choose and happily live with these principles for their members to disregard these principles in their lives. For a society to be just, the

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<sup>242</sup> Matthew Anderson, 'NGOs and Fair Trade: The Social Movement Behind the Label' in N J Crowson, Matthew Hilton and James McKay (eds), *NGOs in Contemporary Britain: Non-State Actors in Society and Politics since 1945* (Palgrave Macmillan 2009)

<sup>243</sup> Rawls (1971), p. 54-55.

<sup>244</sup> Nagel, p122.

commitment of institutions to principles of justice is not sufficient itself; it also requires a social ethos to dictate those principles to people.<sup>245</sup> Otherwise, the achievement of justice is either ineffective or impossible. Besides, if it is not applicable to personal conduct, it is not clear what duty of justice demands from individuals. Sure, Rawls summarises individual duty as “supporting just institutions”, but it is still amply ambiguous for people to take a stance and exercise their respective duty.<sup>246</sup> In other words, the main criticism here is the challenge of proposing an institutional change without demanding the same change from people comprising those institutions. How can we achieve a collective duty if we do not hold each individual in that collective responsible for it?

As sympathetic as I am to these criticisms, I fail to endorse the explicit disbelief in separating the socio-political and personal spheres. In contrast, I believe the strongest merit of the associative conception of justice is its compact nature, the ability to follow a causal link between rights and duties, responsibilities and privileges, and categorise them by nature. Apart from general criticism directed at dualist moral traditions, I find Rawlsian associative justice theory sufficiently well-rounded and coherent in the way it asks individuals to support just institutions. Rawls explains that even though the political conception of justice is still a moral conception, it applies to a specific kind of subject, which is the basic structure of society. Therefore, it addresses the political, social and economic institutions rather than individual affairs.<sup>247</sup> It may sound more promising when it is reevaluated as complementary to the Kantian duty of leaving the state of nature and joining/starting a civilised community. My persistence in starting the responsibility on the individual level does not arise from such aversion. It is *prima facie* related to the fact that one person has multiple sets of associations that would burden them with associative responsibilities. When the associative connection is a hypothetical political interdependence, it is consistent that the outcome duty is also political. Even if the original owner of the responsibility is the individual, the correct way to fulfil that particular responsibility is by means of political action due to its nature. In fact, my entire argument is based on the presumption that the content and capacity of the responsibility is relevant to the causing association.

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<sup>245</sup> G A Cohen, 'Where the Action Is: On the Site of Distributive Justice' (2007) 26 *Philosophy & Public Affairs* 3, 3, p.11.

<sup>246</sup> Liam B Murphy, 'Institutions and the Demands of Justice' (1998) 27(4) *Philosophy & Public Affairs* 251, p.290.

<sup>247</sup> John Rawls, *Political Liberalism* (Columbia University Press 1993), p.11.

The associative relationship works both ways. When I argue that one person may have multiple sets of associations to burden him with responsibility, it also works the other way around. There is more than one set of associative rights for a person to claim, each encapsulating his life through different means. In the case of trade, the unfulfillment of these rights overlaps densely, and hence, the impact is equally loaded. Besides, the impact of global interdependence also goes both ways; it includes both changes in the first step of manufacturing and retail consumption. The studies regarding the effects of global trade prominently focus on the negative end as a reaction to the epidemic poverty; the low wages and extreme working conditions understandably attract attention. But if we are arguing for an association covering both ends, the advantages it brings to the other end must count as an impact, too. The problem is that the structure operates through too many mediums to deliver satisfying information regarding the situation or offer a solution. Let's go step by step.

There is widely available data on the rights violations in the steps of manufacture;<sup>248</sup> the results change depending on multiple factors, such as how integrated the country is in the supply chains, the wealth of major buyer countries, the political culture in the host country and so on.<sup>249</sup> Meeting demand through a cross-country, multi-contractor supply chain allegedly comes with advantages as well as disadvantages. One spoken-out advantage is that multinational companies offer higher wages and better conditions than local buyer companies.<sup>250</sup> But in reality, this is nowhere near a guarantee of fairness or acceptable standards to make an assessment. It is not a coincidence that the bottom units of the supply chains are typically located in overpopulated countries such as Bangladesh, China, or India. The only way these small companies can offer low prices on labour-intensive products and still make a profit is through overexploitation. They offer minimum wages for terrible working conditions, from lacking hazard control to improper ventilation. Because the job market is extremely

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<sup>248</sup> For empirical data and detailed analysis, see Angela Hale and Jane Wills, *Threads of Labour: Garment Industry Supply Chains from the Workers' Perspective* (Blackwell Publishing 2005); Kimberly Ann Elliott and Richard B Freeman, *Can Labor Standards Improve Under Globalization?* (Institute for International Economics 2003); Faqin Lin, 'Agriculture Exports, Child Labor and Youth Education: Evidence from 68 Developing Countries' (2022) 30(2) *Review of International Economics* 490.

<sup>249</sup> Elliott and Freeman, p.75.

<sup>250</sup> Drusilla K Brown, Alan V Deardorff and Robert M Stern, 'The Effects of Multinational Production on Wages and Working Conditions in Developing Countries' (2003) NBER Working Paper Series No 9669, National Bureau of Economic Research, p.8.

competitive, there is no job security, and usually, these are the best chances for the people who are working in these jobs.<sup>251</sup>

As we climb up the supply chains, we are able to observe the exercise of the same type of asymmetrical bargaining power between these workshops and the larger companies buying from them because the local units believe their only chance of surviving in the market is to offer the lowest price. Transnational outsourcing is not just a contract between two companies located in different countries; there is a multilevel scheme between the retailer and the manufacturer. Most of this scheme is located in the low-labour cost countries. The problem is that the competition increases at every step-down, reducing the bargaining power of smaller companies. Due to this fact, labour costs and working conditions get worse as the companies offer lower prices. Relatively, as the subcontractor companies get closer to the retailer brand, working conditions and wages improve but do not catch up to the retail country's standards.<sup>252</sup>

It is possible to extend the examples with more empirical data and analysis, but the crucial question remains: What does all this mean for our discussion? The first implication that comes to mind is that “the self-sufficient society”, in Rawlsian terms, does not exist. Regardless of whether it is possible or not, this is not the world we currently live in. Rather, people are connected through processes of production, foreign investment models, and transnational religious, scientific, and artistic practices.<sup>253</sup>

Secondly, one may argue that poor labour standards are still a concern of local governments since the well-being of the production line workers is the responsibility of the members of their society. It is correct that local authorities have the utmost pressing duty and logistic convenience to bring adjustments to the condition. Nevertheless, some states lack the regulations to set proper labour standards, and some developed the necessary legal rules but still lack enforcement.<sup>254</sup> This is not a discussion to deny the respective governments' responsibility. While it is true that domestic associative responsibilities remain valid, I reiterated before that one may have overlapping associative relationships. On the other hand, an alternative line of argument suggests that some countries do have reasons to abstain from

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<sup>251</sup> Angela Hale and Jane Wills, 'Threads of Labour: Garment Industry Supply Chains from the Workers' Perspective', (Malden, MA, Blackwell Pub, 2005) p. 97.

<sup>252</sup> Hale and Wills, p.98.

<sup>253</sup> Iris Marion Young, *Responsibility for Justice* (Oxford University Press 2011), p.140.

<sup>254</sup> Daniel Berliner, Anne Regan Greenleaf, Milli Lake, et al, *Labor Standards in International Supply Chains: Aligning Rights and Incentives* (Edward Elgar Publishing 2015).

raising costs and lose foreign investment. One possible reason is the extent of poverty, which is so strong that the consequences of losing trade opportunities for the state, which means losing a line of income for otherwise aidless people, are worse. Another reason is limited state resources preventing governments from monitoring production lines and exercising enforcement. Especially in developing countries with younger public service histories, political culture is not proportionately adjusted, and the bureaucracy is not operating effectively.<sup>255</sup>

A stronger argument draws a causal link between the incompetence or indifference of host states and the structure of the global trade order. Pogge argues political domination regarding the regulations over global trade order is as good as a cause of any. Pogge's argument has two levels. First, recognition of the government's disposition over national resources without running an assessment of legitimacy is problematic. The government automatically holds the authority to sell, rent, or use the natural resources of the country by any means. Furthermore, they also have the authority to borrow money from international financial institutions on behalf of the country. However, they are not subject to any international supervision on how they employ this specific income.<sup>256</sup> Thus, the capacity for corruption increases dramatically. Any political group with corrupt interests, in the unfortunate case they come into power, has not only the chance to abuse national revenue but also to use natural resources to get more revenue, even beyond their time, or the ability to put the country in debt. On the other hand, from a political perspective, it is not surprising for an unethical political group to gather support from international actors in comparison to an honest and contented political group because it will also open the door for the country's national resources, especially with the ones of value. Thus, it brings us to the danger of negotiations defining the regulations and the structure of the global economic order that is prominently dominated by already affluent countries. In a conflict of interest, there is an asymmetrical difference in bargaining powers that explains how international economic regulations may be arranged to serve the interests of developed countries.<sup>257</sup>

Apart from the problems within the structure, my argument is that almost the existence of the structure suffices to argue for an association on the transborder scale. Even if there were no violations of fundamental rights and the global supply chains were not working at the expense of bottom-level workers, retail consumers benefitting from multinational production of goods

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<sup>255</sup> Young, p.132.

<sup>256</sup> Pogge (2002), p. 111-3.

<sup>257</sup> Pogge (2002), p.115-6.

would trigger associative responsibilities. As I argued before this subsection, the presence of an association arises from the repetitive yield of harm or benefit. Continuous production of positive or negative values brings out the problem of the distribution of said value. In the case of trade, we can certainly observe a causal line of benefit; even if the workers were not better off without the trade, the consumers were better with it.<sup>258</sup>

## 2.2. Economic Exploitation as Associative Conduct

I suppose it is not sheer luck that the illustrative case Rawls drew on economic development is based on industrialisation. It is possible to observe a correlation between two phenomena: The Industrial Revolution is accepted to have occurred between 1733 and 1913, whereas Western colonialism was accepted to have started in the 15<sup>th</sup> century. However, it is also stated that “the global expansion of Western Europe between the 1760s and the 1870s differed in several important ways from the expansionism and colonialism of previous centuries. Along with the rise of the Industrial Revolution, which economic historians generally trace to the 1760s, and the continuing spread of industrialisation in the empire-building countries came a shift in the strategy of trade with the colonial world.”<sup>259</sup> The beginning of mass production was only possible through access to larger supplies of raw materials and resulted in increased wealth only through expansion to new markets. From a historical point of view, the achievement of both aims relies on the colonisation of third-world countries.<sup>260</sup> This brings us to question Rawls’ premise regarding the wealth of nations and political autonomy: Would industrialised countries reach the amount of wealth today without the facilitation of colonialism?

Nevertheless, the answer to this question is moot for our discussion; whether it is yes or no, colonialism stands as a historical fact that occurred and resulted in benefiting some countries while harming others. The main issue that begs the question here is the appropriacy of the notion of distributive justice in the context of colonialism. When considered as a historical wrongdoing, colonialism is fit to be a subject of corrective/reparative justice rather

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<sup>258</sup> For more information, see: A Harrison, J McLaren and M McMillan, 'Recent Findings on Trade and Inequality' (2010) NBER Working Paper Series No 16425, National Bureau of Economic Research.

<sup>259</sup> Richard A Webster, Charles E Nowell and Harry Magdoff, 'Western Colonialism' *Encyclopedia Britannica* (18 December 2023) <https://www.britannica.com/topic/Western-colonialism>, Accessed 10 March 2024.

<sup>260</sup> I have to admit that there is limited work focused on documenting the causal relationship between colonialism and industrialisation. However, this explanation is clearly more rational than the mere coincidence of the historical proximity between two events. For more information, please see: M Shahid Alam, 'Colonialism and Industrialization: A Critique of Lewis' (2004) 36(2) *The Review of Radical Political Economics* 217; available online [MPRA\\_paper\\_37866.pdf \(uni-muenchen.de\)](https://www.mpra.oxfordjournals.org/doi/pdf/10.2139/ssrn.437866) accessed 10.03.2024.

than distributive justice. However, I strongly believe separating these two cases as matters of historical justice and global justice would dismiss the causality between past wrongdoings and today's global (economic/political) structure. Therefore, I argue that the consequences of colonialism also qualify to require associative responsibility, which is the measure of distributive justice. In this section, I will discuss the compatibility of colonialism with the criteria of association I set out earlier.

As opposed to the world trade order being a cooperative association, the constitutive conduct in political domination is coercion. In contrast to Rawls, some writers focus on coercion due to its central position in liberalism.<sup>261</sup> This centrality arises from its inherent contradiction to liberalism's main feature, which is personal autonomy. As Rawls explains, "Full autonomy is realised by citizens when they act from principles of justice that specify the fair terms of cooperation they would give to themselves when fairly represented as free and equal persons."<sup>262</sup> This gives full autonomy a quite narrow definition: it is exercised through only actions conforming to principles of justice, which are defined by the society of free and equal individuals that they live among.<sup>263</sup>

As discussed in the first chapter, this is the crux of Nagel's argument. My full autonomy as a member of a society is a derivative of the collective autonomy of the political community. From the beginning, I am conditioned, indoctrinated, or forced to exercise my autonomy in a certain way. This interaction, which dominates personal autonomy to a remarkable extent, is the grounding basis of associative responsibility. Similarly, Blake argues that autonomy "demands that the set of options provide adequate materials within which to construct a plan of life that can be understood as chosen rather than as forced upon us from without."<sup>264</sup> So, the coercive activity among the members of a society does not necessarily indicate full enforcement. Rather, it suggests the positive and negative facilitation of the person's autonomy regarding things he is able to endorse or reject or things he is not offered at all. The state's instrumental role here creates coercion; it determines the limits of one's authority on behalf of collective autonomy.

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<sup>261</sup> Laura Valentini, 'Coercion and (Global) Justice' (2011) 105(1) *The American Political Science Review* 1, p. 205-220.

<sup>262</sup> Rawls (1993)" p.77.

<sup>263</sup> Rawls explains that in the original position when people decide on the principles of justice, they do not employ full autonomy but rational autonomy through their representatives.

<sup>264</sup> Michael Blake, 'Distributive Justice, State Coercion, and Autonomy' (2001) 30(3) *Philosophy & Public Affairs* 257, p. 269.

The problem with this approach is that it draws a highly critical yet arbitrary line at the state borders. I explained in length in the previous chapter how our lives are interconnected beyond our closed-up community. Speaking in terms of coercion, it is safe to argue now that the facilitation of our exercise of autonomy does not merely rely on the collective autonomy of the society but also on compliance of the rest of the world. My argument in this section is predicated on this negative compliance; in other words, the consequences of external intervention on collective autonomy, subsequently, the interruption of personal autonomy of individuals living in the politically interrupted society.

Luckily, not all subscribers of the coercion theory follow the footsteps of Nagel and Blake. One alternative line of argument, for example, was brought up by Abizadeh on border control. Building up to his contention for a state's unilateral right to control borders, he argues that individuals are subject to a vast network of ongoing coercion by foreign states" as their autonomy to free movement is not only restricted but shaped by international border control.<sup>265</sup> However, this argument faces a very specific objection: Political conception assumes that the associative function of coercion arises from the fact that subjects of coercion are also hypothetical authors of coercion as members of the community. My minimal autonomy as a member of the community or a citizen of the state is included in the collective autonomy that coerces and facilitates the exercise of my autonomy. The exclusive merit of society in political conception is this looping effect: the objects and the subjects of the coercion, even so hypothetically, are the same individuals.<sup>266</sup>

Is there really an ongoing global coercion, whether or not authors of political conception recognise it? Cohen and Sabel draw attention to the power structure that appears in global politics and illustrate a picture that is similar to the one drawn by Pogge in the previous chapter: Briefly, the rules set out by international organisations to be adopted by states may analogically indicate an equipotential coercive authority in a global scale. The provisions imposed by global institutions, such as IMF, WTO, or UN, create similar associative coercion in the international domain.<sup>267</sup> On the other hand, Cavallero brings a more striking argument based on his empirical observations. He argues that the economic upper hand of certain (global) mega powers, namely the U.S., not only works in advantage of them but also obliges the rest of the world to adopt

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<sup>265</sup> Arash Abizadeh, 'Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice' (2007) 35(4) *Philosophy & Public Affairs* 318, p.348-9.

<sup>266</sup> Nagel, p.140.

<sup>267</sup> Joshua Cohen and Charles Sabel, 'Extra Rempublicam Nulla Justitia?' (2006) 34(2) *Philosophy & Public Affairs* 147, p.163-9.

and conform to their system of norms of property.<sup>268</sup> His argument, in fact, aligns with the capacity-building function of autonomy mentioned above; even though the U.S. do not claim global authority, by providing the rules and provisions of the international regime of property, it coerces all states to abide by and police the conformity to the regime.<sup>269</sup>

The significance of this “global coercion” argument lies in the multilevel perspective I have also been pursuing in this dissertation: Nagel dismisses the legal mandate of international institutions based on 1) International provisions are commanded to states, not individuals, 2) states voluntarily participate in the process of legislation, as opposed to individuals being coerced to perform as citizens.<sup>270</sup> Cavallero addresses the former with an analogy: If federate-state borders do not remove citizens’ associative responsibility for those who live in different federate states but under the same federal government in the U.S., then international state borders do not eradicate the associative responsibility arising from one coercive power.<sup>271</sup> As states participate in the decision-making process of international provisions, citizens of the states are accepted as participating by extension.

But is global coercion strong enough to trigger associative responsibilities? How does coercive conduct result in an association? Any possible answer to this question should specify the account of coercion it observes beforehand or should set up a sub-limit for admissible autonomy. Laura Valentini manages this task by providing a dual account of coercion and distinguishing associative coercion from agent-based definition. In her account, if a system of rules limits its subjects’ autonomy through foreseeable and avoidable constraints to a nontrivial extent, it constitutes “systemic coercion.”<sup>272</sup> The coercive element in this definition is the system itself rather than a central power. Regardless of the system’s consequential differences for agents, it is the set of rules imposed on the subjects that creates coercion. Whether all agents are being coerced equally or benefitting from the system is irrelevant. If coercive conduct within the system can be attributed to an autonomous agent, then it fits into the latter definition, which she calls “interactional coercion”.<sup>273</sup>

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<sup>268</sup> Eric Cavallero, 'Coercion, Inequality and the International Property Regime' (2010) 18(1) *The Journal of Political Philosophy* 1, p. 16-31.

<sup>269</sup> Ibid, p.27.

<sup>270</sup> Nagel, p.140.

<sup>271</sup> Cavallero, p.28

<sup>272</sup> Valentini, p.212.

<sup>273</sup> Valentini, p.213.

The prima facie appeal of Valentini's account is that it provides an agent-free approach to coercion. It relieves us from the burden of identifying a culprit and setting off the harms and benefits between parties. The formula is quite compact with three organic components: 1) there has to be a system of rules, 2) which enforces substantial restrictions on autonomous agents, and 3) the intensity of coercion has to be confirmed through a suitability assessment.<sup>274</sup> It does not discuss the source of the rules as they are irrelevant; neither does it address a specific type of agent as a subject of the system. Therefore, it circumvents Nagel's dismissal regarding voluntary participation and state-level responsibility. Regardless of the conditions of its emergence, a system of rules creates coercive conduct to its subjects, hence triggering associative responsibility.

Valentini is not alone in favouring a plain and focused approach to global justice. Her theory of pivotal coercion perfectly aligns with Iris Marion Young's social connection model. Young develops a comparison between two alternative models of justice, the liability model and the social connection model, respectively, based on the restorative approach and associative approach. According to her, the liability model is ineffective in regard to structural injustice, as attributing blameworthiness would be a futile task to achieve.<sup>275</sup> The source of injustice, which is the unjust set of rules, is individuals who lack the necessary means to address or even comprehend the issues within the system. Instead, she favours the social connection model, which promotes prospective responsibility for all on the grounds of association.<sup>276</sup>

Another detail that both accounts share is the type of associating activity, which is the international trade. Apart from the cooperative argument discussed in the previous section, it is also argued that the rules and provisions within the global trade network constitute not only cooperative connection but also coercive activity. The primary ground for such an argument is the global institutions dictating the rules of such as international trade, such as WTO or IMF.<sup>277</sup> Even in the absence of these institutions, it is also argued that the overwhelming bargaining power of industrialised countries operates through circumstantial coercion. In other words, the livelihood in poorer countries relies on international trade so much that their low bargaining power allows the other parties to take advantage of the stronger leverage.<sup>278</sup>

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<sup>274</sup> Valentini, p. 2012-4.

<sup>275</sup> Young, p.101.

<sup>276</sup> Young, p.105.

<sup>277</sup> Valentini, p.217.

<sup>278</sup> Valentini, p.208.

On the other hand, Young specifically refrains from attributing blame and prefers using the term “connection” rather than “coercion.” She explains that the merit of the social connection model is its positive approach to global interdependence, which avoids defensiveness in matters regarding distributing justice. What Young proposes is a dual approach; the matters that require attribution of liability are the subject of restorative justice, whereas the matters of distributive justice are based on social connection.<sup>279</sup>

Though the validity of these arguments is all clear and similar to the arguments supporting the cooperation theory that was mentioned above, I believe that drawing such a sharp line between these two phenomena would rub out the causal relationship between them. My argument on coercion theory builds upon the same arguments but emphasises this causality. Let me explain it from the top.

According to Rawls, the definitive factor determining a country's overall wealth is not natural resources but its mainstream political culture and “the religious, philosophical, and moral traditions that support the basic structure.” The failing factor behind the extreme situations of depravity, like famines, is not necessarily the lack of resources but the poor crisis management exhibited by the government.<sup>280</sup> Furthermore, Rawls argues that people can be held collectively accountable for the decisions their respective governments make. For example, in the case of two hypothetical countries, both of which have the same levels of wealth at the beginning. Over time, one of them chooses to industrialise and increase savings whilst the other does not. After a certain amount of years, when the former becomes wealthier than the latter, Rawls argues that because this critical decision reflected both countries’ philosophical and social values, the inequality between the citizens of the two countries is justified. Therefore, distributive justice is not applicable to those countries.<sup>281</sup>

This argument suggests that collective autonomy plays a significant role in the development of countries and their economic navigation. However, it is hard to claim that the wealth gap between countries suggests homogenous people holding the same social values on either side. As a matter of fact, every decision taken, especially in democratic and liberal countries, is a result of political conflict. A country being identified as progressive or conservative is the outcome of a loaded and often bloody political history. However, when

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<sup>279</sup> Young, p.113.

<sup>280</sup> Rawls (1999), p.108-9.

<sup>281</sup> Rawls (1999) p.117.

external factors intervene in this timeline, we can argue that the collective autonomy of the country is interrupted. My argument regarding coercion is based on this interrupted autonomy. I argue that when a country's institutions are exposed to political coercion, it creates a connection in which associative responsibilities are triggered. The cases I will discuss in this context are economic exploitation and military intervention. In order to argue that these cases will revoke associative responsibility rather than restorative justice, I will explain the results through the criteria I set up for associations above.

- Continuity

In the case of coercive conduct, continuity serves a transformative role. The primary difference between historical wrongdoing, revoking restorative justice, and associative conduct, which trigger distributive justice, is the continuity of the misconduct. Valentini illustrates this transformation by bringing two different concepts of coercion: interactional coercion and systemic coercion. Interactional coercion is the agent-based concept in which one agent exercises substantial control over another agent's freedom. When the second agent's autonomy is restrained by the coercer, the coercion is accepted to have occurred. The actions of the coercer must wilfully contribute to the restriction in a foreseeable and avoidable way. Otherwise, even if the agent's action causes the chain of events resulting in coercive activity, as long as it is unforeseeable or unavoidable, no coercion can be attributed to the agent.<sup>282</sup> As it is clear from the definition, interactional coercion does not necessarily display a continuous restriction; hence, it does not fit to result in an association.

On the other hand, systemic coercion, as suggested by the name, is an inherently continuous form of conduct. It substantially restricts the freedom of the coerced agent, but it does not require the involvement of an agent as the coercer; instead, a system of rules exercises coercive conduct. The system of rules may refer to "formal institutions, informal social practices, stable patterns of interaction, or combination of these".<sup>283</sup> This concludes that foreseeability and being avoidable are no longer considered conditions for the occurrence of coercion. On the contrary, coercive conduct reveals itself as the accepted expected way and

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<sup>282</sup> Valentini "Justice in a Globalized World" p. 130-2.

<sup>283</sup> Valentini "Justice in a Globalized World" p. 137-8.

relies on unavoidability to occur. On the other hand, the agent's coerced autonomy is still expressed differently than the agent's hypothetical free autonomy, which would occur in the absence of coercion. It means that even if the coerced agent internalises and complies with the rules of coercion, it is still considered coercion.

After this explanation, it goes without saying that the continuity of colonialism is not just a matter of duration. I mentioned above that there is no definite start date for Western colonialism; rather, there are shifts in policies of expansion that manifest new ideologies and practices and eventually reach their final form. More clearly, it can be fairly argued that the ground for the colonial project was the Crusades as the pioneer method of expansion. However, the practices of colonialism started being executed at a much later date and gradually built up to their final form.<sup>284</sup> The key point of continuity in the case of colonialism lies in the nature of the ideology behind it, which manifests its own system of values, rules, and customs. Structural coercion of colonialism operates both by institutionalised expansion and control over the mainstream mindset. Let's unpack.

We can define colonialism's *modus operandi* in two distinct types of operations, which allow structural variations with mixed characteristics in between them. In places where it is not feasible and profitable to create settlements, exploitation aims to extract goods through compulsion and state intervention. The object of this type of colonial project is just the transfer of resources.<sup>285</sup> Recalling Valentini's distinction earlier, this form of compulsion constitutes an example of interactional coercion, but there is a nuance: the coercive conduct is not only the transfer of goods but also compulsory labour of the indigenous people, which refers to the various types of interventions to achieve this compulsion, from political domination of collective autonomy to slavery. As the background conditions allowed, the frequency of interactions between the colony and colonising power took different forms. For example, "Indirect Mercantilist Imperialism" is the practice exercised by trade companies backed up by imperial power, operated through expansive control over jurisdictional structure and dominating the market.<sup>286</sup> Then, we have settler colonialism: A large number of people from the colonising country relocate to a new land where they not only practice trade but also replicate the culture, political and moral values of their homeland only to replace the existing

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<sup>284</sup> Webster et al.

<sup>285</sup> Daron Acemoglu, Simon Johnson and James A Robinson, 'The Colonial Origins of Comparative Development: An Empirical Investigation' (2001) 91(5) *The American Economic Review* 1369, p.1375.

<sup>286</sup> Margaret Moore, 'Justice and Colonialism' (2016) 11(8) *Philosophy Compass* 447, p.448

one that belonged to the indigenous population.<sup>287</sup> The root of the problem is not the mere act of immigration here: the colonies were foreign institutions imposed onto locals, subordinating their lifestyle, political structure, and even humanity in some cases.

- Institutionalisation

A curious detail to note is Margaret Moore's explanation of the oldest -and evidently the ultimate- form of empire, which is the Land Empire. The operation model for a Land Empire is as follows: the imperial power conquers a land beyond its boundaries, takes over the political rule, reaches full access to the resources, subjects the land to taxation, and eventually extends its culture to the new land. The Roman Empire is the perfect example of this type of colonial domination.<sup>288</sup> What I find interesting is that the line between this definition of colonialism and full annexation is quite fine and blurry, if there is any at all. If that is the case, then the practice of colonialism acquires a new dimension through which it is assessed for its legitimacy. As argued by Lea Ypi, colonialism is not inherently problematic, but the components of colonial rule can potentially create injustice. The political institutions exercising colonial power are subject to the same conditions of legitimacy as the state institutions. Therefore, misconduct is the outcome of the unjust basic structure that is created by colonial power.<sup>289</sup> Accordingly, in a scenario where a central power annexes a foreign land and extends its fair basic structure appropriately, there would be no misconduct and no structural coercion.

This particular distinction will be recalled later in the discussion. Still, at this point, it indicates one significant aspect: colonialism is a practice whose implications cannot be considered as a solitary misconduct that occurs in a vacuum. From the most encapsulating form to indirect domination through trade companies, colonialism operates by means of structural hierarchy and jurisdictional control. Moreover, regardless of whether there is a possibility of legitimate colonial power or not in an ideal theory, the history in hand tells quite a different story. We know for a fact that in all colonised countries, representatives of colonial power set up a social structure in which they occupy the highest rank,<sup>290</sup> that the colonial structure was organised around the notion of exploitation of natural resources, subordination of Indigenous folk, and favour of the coloniser or the settler<sup>291</sup> To be fair, Ypi herself clarifies that her argument

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<sup>287</sup> Acemoglu, p.1374; Moore, p.448.

<sup>288</sup> Moore, p.448.

<sup>289</sup> Lea Ypi, 'What's Wrong with Colonialism' (2013) 41(2) *Philosophy & Public Affairs* 159.

<sup>290</sup> Luis Angeles and Kyriakos C Neanidis, 'The Persistent Effect of Colonialism on Corruption' (2015) 82 *Economica* 535.

<sup>291</sup> Acemoglu, p.1375.

does not yield suspicion over colonialism's injustice; rather, it aims to analyse its wrongfulness.<sup>292</sup>

To recap, colonialism operates through a basic structure which ensures the continuity of coercive conduct. Furthermore, the particular type of coercion exercised by colonial powers is inherently continuous since its existence relies on that structure. The additional arguments regarding the continuous nature of colonial domination are a better fit for the discussion of institutionalisation below. My overall argument in this chapter is based on the usurpation of collective autonomy, which is tantamount to political control in all degrees. On the other hand, I find it hard to ignore the relationship between political control and cultural domination. The ripple effect of colonialism and how they are all related to each other will be discussed under impact.

### 3. Inequal Individuals in Theoretically Equal Countries

The discussion regarding the relationship between political membership and the welfare of an individual reasonably revolves around the wealth of states. It follows the presumption that rich countries have well-endowed citizens and poor countries have impoverished citizens. Apart from this assumption being accurate to a considerable extent, the logic behind the analysis of unfair distribution applies to my argument as well. It is pretty straightforward: If one is born in a rich country, they lead a flourishing life; if in a poor country, they are obliged to a restricted life. Or, for the purposes of my argument, if one is born in a country where the fulfilment of basic rights and responsibilities are protected and achieved through institutional adaptation, where political culture has adopted the notions of equality and freedom to an essential level, they are able to reach means and opportunities to accomplish self-realisation. If one is born in a country where basic rights are dismissed or inefficiently recognised, where political culture is corrupt and impaired, they are constrained to an interval between luck and relative privileges they have. However, morality dictates that one should not suffer for conditions that are outside of his control or the results of his actions. Unquestionably, one cannot control which country he was born in, nor can he choose the socio-economic background that provides him with the opportunities and instruments that could allow him to

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<sup>292</sup> Ypi, p.190.

make an immense contribution to it. Therefore, the fact that people suffer through unequal chances in life because of their birthplace is morally unacceptable.<sup>293</sup>

### 3.1 The International Political Inequality

When it comes to countries' wealth, the discussion somehow gravitates toward comparing natural resources. The first thing that appears to one's mind is that the difference between countries' wealth can result from the arbitrary distribution of natural resources. It is only natural considering the economic and even political powers that come with certain types of resources. Can it be argued that Norway was no less of a welfare state before the discovery of gas and oil reserves? <sup>294</sup> Or is it a coincidence that the top three most valued currencies belong to oil-rich countries in the Arabian Gulf?<sup>295</sup>

Nevertheless, it is also argued that natural resources are not the only factor affecting a country's wealth or citizens' welfare. In *The Law of People*, Rawls presents political virtues and social culture as the main factors behind a country's development.<sup>296</sup> He puts this forward in conjunction with his classification of societies according to their general conditions and argues that the primary focus for providing assistance to a less-fortunate society, or a "burdened society" as he calls it, is supposed to be the promotion of human rights and adoption of liberal democratic values.<sup>297</sup> He even provides empirical evidence by referencing Amartya Sen's work on famines and starvation to further his argument that mismanagement caused by political corruption is the main reason behind food deprivation in times of scarcity.

However, Rawls reads Sen's work in a very particular manner; he employs it merely to argue that "food decline need not be the main cause of famine..... The main problem was the failure of the respective governments to distribute (and supplement) what food there was."<sup>298</sup> Whilst this is an entirely accurate excerpt of Sen's work, he illustrates a more nuanced case and, most significantly, puts forward a more inclusive argument. He distinguishes starvation as

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<sup>293</sup> Cécile Fabre, 'Cosmopolitan Impartiality and Patriotic Partiality' in Daniel M Weinstock (ed), *Global Justice, Global Institutions* (University of Calgary Press 2007), p.142.

<sup>294</sup> <https://www.regjeringen.no/en/topics/energy/oil-and-gas/norways-oil-history-in-5-minutes/id440538/> accessed 12/05/2024.

<sup>295</sup> <https://www.bookmyforex.com/blog/highest-currency-in-the-world/> accessed 12/05/2024.

<sup>296</sup> Rawls (1999). p.108.

<sup>297</sup> Rawls, LoP, p. 109.

<sup>298</sup> Rawls, LoP, p. 109.

the absolute dispossession of food as opposed to poverty, which implies relative deprivation of goods.<sup>299</sup>

The most striking detail of Sen's work is his nuanced methodology. Sen acknowledges that in a possible food decline, not all groups are affected to the same extent or at all. It is even that a reduction of availability for a group may entail an increase in another. "While famines involve fairly widespread acute starvation, there is no reason to think that it will affect all groups in the famine-affected nation. Indeed, it is by no means clear that there has ever occurred a famine in which groups in a country have suffered from starvation since different groups typically do have very different commanding powers over food, and an overall shortage brings out the contrasting powers in stark clarity."<sup>300</sup> Additionally, Sen differentiates between relative deprivation and absolute deprivation, which allows us to understand that deprivation occurs in gradual measures. A relatively deprived group can still be well-off compared to another group that is relatively deprived compared to themselves. In the better scenario, the more deprived group is subject to aggregated deprivation.<sup>301</sup> In the other scenario, the worse-off group may be subject to acute absolute deprivation, which indicates that the deprivation is caused by their exclusive vulnerability.<sup>302</sup>

I am fully aware that Sen's work is based on food deprivation and starvation, which are only attributable to the first-generation rights. However, I still think there is a range of implications for wealth distribution and general inequality, both on domestic and global scales. I do not propose to apply the same measures to a global scale analogically, nor do I dismiss the difference of vitality between food deprivation and associative privileges for a person's life. What I find useful is that it is easier to illustrate the equality gap and demonstrate the incongruity of lacking when it is a matter of such a good as essential as food. The fact that the less urgent types of inequalities are playing a role as a contributing factor to food deprivation is a cherry on top.

There are a couple of points I take from Sen's work for my argument regarding global distributive justice. First, Rawls' case on political corruption being the primary reason behind the tragedies is particularly pertinent despite my earlier contest. It takes a certain level of commitment and adherence to fundamental political or social virtues in times of scarcity or

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<sup>299</sup> Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Clarendon Press 1981), p.39.

<sup>300</sup> Sen, p.43.

<sup>301</sup> Sen, p.31-2.

<sup>302</sup> Sen, p.44

crisis. Even though it can be considered as the supplementary factor to the decline in supplies, it keeps being the critical determinant for the end result. Additionally, one can easily argue that the same proposition applies to a global scale as well as domestic distribution. The failure in those cases is not to exercise the wrong measures but instead to refrain from exercising intervention in favour of the groups in danger. It is perfectly possible that imbalanced power relations can result in similar consequences in international politics. I discussed in the previous chapter that there are multiple power balances across the globe that enable some states to exert authority over others. For wealthy countries with high purchasing power, for example, the world trade order is a domain that provides them leverage to get prioritised or immunity from any possible global scarcity.

What kind of good falls into a global scarcity that creates inequalities? If the aim is to demonstrate international inequality, any good with universal use can be a measure of assessment. If we must talk about scarcity in the context of basic rights, then the recent pandemic and highly sought-after COVID-19 vaccines can present an example. Shortly after the COVID-19 vaccine became available, discussions about the expedition of manufacture and distribution of the available amount started. It was clearly a unique case: the problem was global, and individuals had different levels of protection, which also created domestic concerns of justice, but the distribution of the vaccines was primarily a matter of international affairs that created direct consequences for individuals. Then again, it is optimistic to assume that fair distribution of the vaccine was a priority because there are already multiple published pieces of research confirming that it was not the case. For instance, in a 2023 study<sup>303</sup> focusing on lower-middle-income countries, the authors stipulate various scenarios to assess the effects of unfair vaccine allocation from different perspectives. According to this study,

-If lower-middle-income countries could reach the same vaccination rates as high-income countries, more than half of deaths could be prevented.

-If lower-income countries had started the vaccination process at the same time as high-income countries, even if they were allocated the same amount of vaccine they did in reality, a significant fraction of deaths could be averted.

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<sup>303</sup> N Gozzi, M Chinazzi, N E Dean et al, 'Estimating the Impact of COVID-19 Vaccine Inequities: A Modeling Study' (2023) 14 *Nature Communications* 3272

-The late start of vaccinations, as well as vaccination rate, coverage, and timing, affects the success of vaccination campaigns.

-Higher vaccination rates and coverage resulted in a lower economic impact, whilst the later the start of the vaccination process and lower rates resulted in higher economic stress.<sup>304</sup>

The vaccine for COVID-19 demonstrates a dramatic yet exceptional case for global inequality. One may be hesitant to include it in global justice discussions or find it irrelevant to second-generation rights due to its crucial nature. After all, we have already established that everybody is entitled to the right to life and pertinent privileges. How does the allocation of vaccines suggest otherwise? The crucial point I would like to demonstrate here is that there is already an established system of inequality on a global scale that favours certain groups as opposed to others in times of scarcity. The absence of scarcity at the moment does not necessarily indicate that inequality is dismissed. On the contrary, the consequences of inequality may arise in matters that are less striking and constitute the norm regarding second-generation rights, which will be discussed shortly in the context of distributive justice.

The second implication of Sen's work for my argument is his identification of the problem as an entitlement failure. What he means by entitlement is a person's ability to command food (or any other good in question). There are surely cases where deprivations occur due to rights violations and extortions or, in the case of starvation, a decline in food availability. However, the cases where the deprivation is caused by a lack of entitlement in the first place are not as small to ignore. More importantly, even in the case of a decline in food availability, the lack of entitlement still stands as the key factor for starvation.<sup>305</sup> This means that 1) even if there is no shortage in supplies, the system may fail to secure the rights of certain groups, and 2) when there is a decline in the supplies, the system fails to manage the situation in an inclusive way that protects everyone. In either case, "entitlement failure" attributes the problem to systemic negligence rather than a particular case.

How is this second implication different from the first one? Both cases point out how the political culture shapes the system for better or worse, which determines entitlement in the first place. The crucial point for me is that entitlement does not directly indicate the right to food. Rather, it signals the ways one can acquire the necessary means to reach food. For

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<sup>304</sup> Ibid, p.5.

<sup>305</sup> Sen, p.154-5.

instance, one can produce food, exchange his labour for food, or exchange his labour for money to buy food, and so on. People inheriting food or inheriting property to exchange for food, similarly receiving social benefits such as food or means to get food, are also considered as types of entitlement.<sup>306</sup> Therefore, the “entitlement failure” signals the comprehensiveness of the problem. The failure is not only misconduct in the distribution of rights and goods; it is one’s general inability to maintain a standard life. When this inability leads to starvation or other type of life-threatening problems in the person’s life, it is mere crisis control instead of an increase in one’s welfare.

Let me offer some clarification. Even though Sen does not propose a comprehensive theory, his approach presupposes a civil community with a legal structure and enforcement. On the other hand, he identifies one of the limitations of the entitlement approach as the dispute between the right to property and freedom from starvation, for both of these rights are protected by legal mechanisms. When starving people attempt to loot piled-up food stocks that are someone’s property, it creates a dilemma for law enforcement,<sup>307</sup> as the consequences of an entitlement failure can only be reduced by allowing a failure in the right to property. If they do not, it leads to a greater failure, which violates multiple rights, including the right to life.

Despite the author’s classification of this impasse as a limitation, I find it explanatory in the sense that violation of different rights results in consequences at various levels of harm, which indicates the necessity of prioritising the rights in lexical order under particular circumstances. More precisely, it demonstrates the urgency of certain rights over the general welfare or successive rights of other individuals. The right to property is a fundamentally significant individual right and is protected by a wide array of mechanisms, from UDHR<sup>308</sup> as a universal imperative to the EU Charter of Fundamental Rights<sup>309</sup> as a regional covenant. Nevertheless, compared to a limited number of rights of which violation bears the possibility of greater harm, the right to property can afford subordination. Admittedly, it is a dangerous proposition to attribute a level of importance to even the most fundamental group of rights. However, as mentioned shortly before, this is merely for the purposes of crisis control, not a suggestion for the welfare system.

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<sup>306</sup> Sen, p.2-4.

<sup>307</sup> Sen, p.50.

<sup>308</sup> UNGA, Universal Declaration of Human Rights (adopted 1948) Res 217 A, Art 17.

<sup>309</sup> EU Charter of Fundamental Rights [2012] OJ C 326/391, Art 17.

As a final point, I find the different experiences of various groups within a nation worthy of attention. This is not because it presents a micro picture of global inequality but because it resurfaces the question regarding distributive justice and state borders. It appears that the absence of distributive justice within a closed-up community, that is, a nation, exacerbates the vulnerability of disadvantaged groups. If the same, or, in a more cautious narrative, similar trend occurs on a global scale in times of crisis, as was arguably the case for Covid vaccines, is not it plausible to argue that the notion of distributive justice should be present at the table for global issues as well as domestic issues?

At this point, it is possible to attempt to seek an empirical answer to this question. How do state borders play a role in the distribution of wealth and well-being in a scenario where no aspirations of justice are present? Maybe it is the way Goodin suggested that states and nations are merely instrumental mechanisms in processing and managing human affairs.<sup>310</sup> Then, it would be plausible to argue that state borders, or countries as units, are irrelevant to concerns of distributive justice or any theory of social ethics. This presupposition would support the idea that domestic distribution is an extension of global distribution.<sup>311</sup> After all, natural resources do not start and end at borders; their limits and capacities are as arbitrary as their distribution to states. Then, what is the most egalitarian way to compensate for this arbitrariness?

A popular approach to this problem is to propose a scheme of redistribution of natural resources. Beitz, for one, suggests that, in an ideal theory, states would implement a resource redistribution principle similar to Rawls' difference principle. In the original position, with an attempt to ensure their own welfare, the states with a veil of ignorance would suggest a scheme in which access to resources would be centrally controlled and only granted when it is justified with respect to population and need.<sup>312</sup> Alternatively, Pogge proposes a scheme of taxation called Global Resources Dividend, in which governments would deposit a fraction of the profit they acquire through the usage or sale of the resources. More similar to the difference principle, this fund would be used to alleviate poverty and provide assistance to underdeveloped states.<sup>313</sup>

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<sup>310</sup> Goodin 663-664.

<sup>311</sup> Fabre holds a similar approach; she extensively argues that distributive justice and political self-determination are different matters and one does not present an obstacle for the other. Cécile Fabre, *Global Distributive Justice: An Egalitarian Perspective* (Oxford University Press 2008).

<sup>312</sup> Beitz (1979) p.138-41.

<sup>313</sup> Pogge (2002), p. 200-5.

Both proposals have already been extensively criticised. For example, Fabre finds the focus on location arbitrariness mostly futile and wrong, given that we have already witnessed examples of resource-rich countries turning out poor and resource-poor countries turning out to prosper.<sup>314</sup> Similar criticism is made based on the notion that wealth is the enabling factor for resource usage, not vice versa<sup>315</sup>; or wealth and resources are mutually enhancing factors in a country's growth, together creating an accelerated effect.<sup>316</sup> Finally, Pogge acknowledges that even with the funding from the Dividend, the domestic structure still remains the final factor determining the efficacy of his proposal.<sup>317</sup> For my concern, none of these criticisms or proposals manage to circumvent the political barrier between morally connected two individuals living in different states. It all ties up to Rawls' earlier proposition that political culture is the main determinant of people's well-being. The country's wealth is the secondary factor that only plays a role when 1) the basic standards of political and social principles are met and 2) the direct distribution of the goods is carried out on a global scale.

The way I understand it, it is also a mistake to dismiss state borders out of discussion. The location may not be the problem causing the country to be poor, but the country is the reason for someone living a bad life. By admitting this, I do not recede from my attempt to visualise the problem on an individual-to-individual basis, but I acknowledge the structural challenges for the fulfilment of moral duties. I will discuss how the country of birth is a determinant for one's life prospects in short, but before that, I need to explain why the international political domain is not satisfactory for my concerns.

### 3. 2. Duty of Assistance and Duty of Distributive Justice

The main reason for my aversion to engaging in the arbitrariness of natural resources is that it puts the discussion of global justice in myopic lenses. My argument, on the other hand, needs a more comprehensive reading of global justice and can only afford to focus on individual welfare. It seems to me that humanity reached a certain point in history where the libertarian narrative of original acquisition is empirically out of the picture. Recalling my arguments in chapter two, I have already discussed that there is a, even on a rudimentary level,

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<sup>314</sup> Fabre (2008), 143-5.

<sup>315</sup> Joseph Heath, 'Rawls on Global Distributive Justice: A Defence' (2005) 35 *Canadian Journal of Philosophy* 193.

<sup>316</sup> Tim Hayward, 'Thomas Pogge's Global Resources Dividend: A Critique and an Alternative' (2005) 2(3) *Journal of Moral Philosophy* 305.

<sup>317</sup> Pogge (2002), p.205.

global basic structure that operates on an informal level. This structure is shaped by historical events, as I argued, by colonialism and military interventions and sustained by the current world trade order. Even with an assumption that natural resources play a factor in a country's wealth, it is accompanied by internal political culture and external political and economic factors. I concluded that the gravity of this global structure spawns a transborder association which generates associative responsibility to its members.

Considering the previous section's arguments keep circling back to Rawls' point on countries' wealth prominently relying on domestic political culture, it might seem a bit contradictory that I still argue for a transborder associative responsibility. While I recognise the impracticability that is created by this dilemma as supportive of the final argument, I still differentiate between Rawls' international duty of assistance and transborder distributive justice. Let me start with the duty of assistance.

Rawls explicitly states that A Theory of Justice is meant to apply to a closed-up community, and it can only be extended to international affairs to determine the limits of just war. For matters beyond the borders of communities, he refers to The Law of Peoples, in which he discussed both ideal and non-ideal theories. He acknowledges that the ideal theory would only be adopted by communities with certain characteristics, and the non-ideal theory provides instructions for them regarding their engagement with other communities. He presupposes five types of communities classified according to their domestic affairs.

well-ordered peoples	reasonable liberal peoples: have three basic features, <ul style="list-style-type: none"> <li>• Institutional: a reasonably just constitutional democratic government</li> <li>• Cultural: citizens united by “common sympathies”</li> <li>• Political: a moral nature<sup>318</sup></li> </ul>
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<sup>318</sup> LoP, p.23-4.

	decent peoples: non-liberal societies whose basic institutions meet certain specified conditions of political right(s) and justice <sup>319</sup>
Subject to conditions of non-compliance.	outlaw states: regimes that refuse to comply with a reasonable Law of Peoples <sup>320</sup>
	Burdened societies (by unfavourable conditions): societies whose historical, social, and economic circumstances prevent them from achieving a well-ordered regime. <sup>321</sup>
	benevolent absolutisms: societies that honour human rights but deny their members a meaningful role in making political decisions. <sup>322</sup>

According to Rawls' ideal theory, both types of well-ordered people in a hypothetical original position would agree to the same principles to apply to the affairs among them. As part of the non-ideal theory, Rawls appoints well-ordered societies with the task of bringing burdened societies<sup>323</sup> into the Society of well-ordered peoples. Regardless of the background story of the burdened society for being the way it is, the primary element holding it back is the political and social culture. "The crucial elements that make the difference are the political culture, the political virtues, and civic society of the country (that is, the qualities of the members)."<sup>324</sup>

In contrast to the general impression, the economic aspect of the assistance is minimal. There is no reason to assume that all well-ordered states are affluent and all burdened states are

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<sup>319</sup> LoP, n.2.

<sup>320</sup> LoP, p.5.

<sup>321</sup> LoP, p.5.

<sup>322</sup> LoP, p.4.

<sup>323</sup> There is a small confusion here about the receiving end of this duty. Even though Rawls explicitly states that the duty of assistance addresses burdened societies, he also mentions outlaw states as one of the targets that are expected to improve through the assistance of well-ordered peoples. LoP, p.106.

<sup>324</sup> LoP, p.108.

poor. The duty that is expected from well-ordered states is to provide guidance on establishing basic institutions and the adoption of democratic principles to achieve a just structure on the domestic level. Any possible provided funding must aim to serve this general purpose. Further specifics of this duty rely on the country that is at the receiving end; it is likely to include the promotion of human rights, incentives for an appropriate population control policy, and support for women's social inclusion. The burdened society in question might require instructive guidance regarding the establishment of essential political and social institutions or navigation for the correct social policies to achieve a shift in the political culture to ameliorate the existing ones. In whatever way the assistance is managed, it is eventually expected to result in the burdened society becoming a society of well-ordered peoples.<sup>325</sup>

One detail to clarify is that the duty of assistance is not some sort of mandate or propagandism. It does not propose interference with domestic affairs, nor does it aim to replace the fundamental cultural elements. What is targeted with the assistance is to create a suitable environment in which everyone can have their basic rights fulfilled and dignity maintained. This clarification is vital not only for the principle of self-determination but also for demonstrating that the duty of assistance does not serve a cosmopolitan ideal. It presupposes a set of standards for a country and cuts off when it is achieved. The well-being of the individuals and domestic justice can only be considered a collateral outcome that is expected to be achieved in the natural course of events. In this regard, it is only proper to ascertain that the duty of assistance is not a duty of distributive justice.

As evident in the previous paragraph, I consider associative responsibility to be the type of distributive justice that applies globally. If the duty of assistance is not the appropriate fulfilment of associative responsibility, then what is? The problem with the duty of assistance is that it offers a state-level mechanism for the overall conditions within the political and social institutions. The basic moral unit for its application is the state, the public institution that represents a community. However, for associative responsibility, the basic moral unit must be the individual, as it is for distributive justice. Therefore, associative responsibility must concern the well-being of individuals, not the states.

For the proper corresponding duty for transnational associative responsibility, I have to admit that I do not have a clear answer for its fulfilment. I set earlier that the responsibility

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<sup>325</sup> LoP, p.107-12.

must match the type and intensity of the relationship between the duty bearer and the benefitting party. Nevertheless, I have already presented three types of associating conduct that apply to variable parts of the world. It is not an easy task to track down this complicated web of associative conduct, and even more challenging to attribute a level of intensity for each or aggregated conduct. Instead of attempting to undertake such an enormous task, I propose approaching the problem from the perspective of the benefitting party.

### CHAPTER 3: ASSOCIATIVE DUTY TO ADMIT

In this chapter, I want to propose an adjunct to what I argued so far, not in a way to add up to what I concluded, but rather the implications of it on border control and immigration. In the first chapter, I discussed the various justification theories for patriotic partiality. There is a certain type of responsibility that defines what we owe to each other as humans, but why do we owe more than that to our co-citizens? I concluded that the most convincing reasoning for patriotic partiality is the political

conception of justice, which suggests that members of a community have certain conditions that bond members and create an associative relationship. This presumption on one's relationship with the community around him and the state as representative institutions rendered all the duties one has as associative duties of a citizen. In other words, by subscribing to the political conception of justice as the account of justification, I classified the relationship between members of the communities as associative. Accordingly, the political community, which is the association that engenders responsibility for justice, serves as the grounding association. Therefore any rights and responsibilities that arise from this particular relationship would be classified as associative rights and responsibilities.

This exclusion of other accounts of national responsibility gives a more precise focus to my argument. Whilst I use a political type of association to ground our rights and responsibilities as co-citizens, it is possible to identify many other social and psychological associations that would reasonably generate associative rights and responsibilities, such as families and friendships. On the other hand, what we owe to each other as human beings also implies an association of humankind and generates respective types of associative rights and responsibilities. The majority of those who subscribe to the political conception of justice limit associative rights and responsibilities elicited from the association of humanity with the humanitarian threshold. This is to say, according to most political conception scholars, everything that we owe to each other as humans for the sake of our common humanity only subsumes the basic and minimum set of rights. If we intend to argue for any right or duty that is more demanding, we need to ground them in something other than humanity, something that is more dense and connected. This reading of political conception leaves us with two lexical types of association: the association of humanity, in which there is only one available, and the association of political community, which refers to the community that is attached to a state as the associating institution. What I find intriguing is the possibility of another associative concept between humanity and the political community that is most overlooked.

This brings me to my argument in the second chapter. I argued that there are concurrent forms of associative concepts that grant us certain rights and require us to perform certain responsibilities, similar to our political association with our co-citizens. My argument there was not revisionist; I do not propose an alternative ground for patriotic partiality or define associative responsibility differently. Instead, I try to identify a similar pattern in a larger domain, based on available data and observations and how they fit into the definition of associative relationships. This attempt results in multiple types of associations that imply more connection than humanity but not as connected as a shared community. I would like to imagine the associative relationships on a waxing and waning scheme for easier comprehension. Some of them are more intense in our lives, while others do not affect us to a comparable extent. Respectively, when the associative relationship in question gets deeper and more involved in our lives, the number of rights and responsibilities it entails increases. Furthermore, as

associative rights and responsibilities are derivative of the associative relationship, they are restricted to the respective domain within our lives. For example, our political association with the political community we live in, which is the country in which we reside, can only provide grounds for politically grounded rights and responsibilities, which transform into legal rights and duties under the current system. In short, the nature of the association, as well as its density, provides us with a moderate indication regarding the associative rights and responsibilities.

The significance of this plurality is connected to my argument in this chapter. In chapter one, I first presented the concept of associative responsibility as the appropriate justification for the application of distributive justice in domestic affairs. In chapter two, I argued that associative responsibility is adjustable according to the type and intensity of the association. Then, I demonstrated the evidence to conclude that there is a similar but less dense type of association that exists in transborder affairs. This means that a version of distributive justice must apply to the extended versions of association. Finally, I explained that the duty of assistance as a remedy for global justice does not correspond to the responsibility that distributive justice requires. I confirm my position that the two are different concepts; they exist on different levels of the discussion, and they require different types of fulfilment. Consequently, the dismissal of the duty of assistance as a suitable mechanism to fulfil transborder responsibility brought us back to the political conception of justice and associative responsibility.

The simplest definition of what I attempt to evaluate through the reformulation of the political conception of justice is to determine one's ethical entitlement and responsibility within a particular community and to figure out how it extends beyond the given community by drawing a comparison. Let me put it this way: if we know the extent of responsibility -let us call this full extent- within a demarcated community, we can develop a rough idea about the extent of the responsibility in a larger but still demarcated community, the latter community being the globe. Given that the former responsibility is created by the relationship between the members of the former community, we can assume a responsibility that is proportionate to the relationship between the members of the broader yet less connected community. I do not promise precise answers at the end or offer an extensive account of corresponding duties fulfilling the associative rights and responsibilities. I argue that reaching reasonable parameters for the extent of concurrent associative responsibilities in undefined cases is possible by developing an analogy with the precedented cases at hand. More precisely, as in the case at hand, we can compare domestic associative responsibility to concurrent transborder responsibility to figure out the extent of the latter. My final aim with this chapter is to argue that when a person from a certain background wants to immigrate, his admission to selected countries becomes a corresponding duty of transborder associative responsibility. I explain below that there are two contributing factors rendering admission a better fit for this duty. The first is the overriding interest of the prospective

immigrant in becoming a member of this particular political community. I explain this interest by demonstrating the critical efficacy of political membership in the fulfilment of human rights. The second is the state's lower justification for unilateral control of borders. I elaborate on this point by illustrating how citizenship and border control contribute to global injustice.

To start, the association of humankind, in the way mentioned earlier, is the most basic but the least intense type of association one may have (with other humans). The responsibility that arises from this association is proportional to the intensity of the association and pertinent to the nature of the association. It endorses basic human needs, the requirements that are essential for one to keep one's status as a human, such as the right to live, the right to work, and the right to be treated with human dignity. For the purpose of the chapter, I will invoke the Universal Declaration of Human Rights as the full list of the most general set of associative rights and refer to this group of rights as "the first-generation rights". Since we established every human being has these rights for the sake of being a human and being a member of the association that is humankind, as we define a more intense type of associative relationship, we will introduce additional rights and responsibilities to this initial set of rights that are proportional and pertinent to the respective association.

Considering that my final argument in this chapter aims to offer a portrayal of transborder associative responsibility, I will limit my horizon to national association and discuss the concurrent associative relationships between the association of humankind and national association. This means that I will presuppose that national association is the most intense type of associative relationship and entails the most extensive associative responsibility. In this case, the associating entity is the political community in which one resides, as opposed to humanity, in the example of the association of humankind. Respectively, responsibility for justice in the association of humankind generates human rights as corresponding duties and responsibility for justice in the national association generates the principles of distributive justice as a condition of fulfilment. In this dissertation, I adopted the Rawlsian account of distributive justice, which I also refer to as the political conception.

The challenge I am facing in this chapter is shifting the domain of the discussion. The concurrent associative models signal an association that is broader than national association yet more dense than the association of humankind. Consequently, the responsibility for transborder justice is between the two types of responsibility mentioned in the previous paragraph. The challenge is how to execute transborder responsibility in a way that is an adjusted version of domestic responsibility (which requires the application of the principles of distributive justice). For example, the global trade network created a wide and asymmetrical type of association that is based on a financial practice with social and economic consequences. The problem is when we address this situation, it usually stays on the inter-state level, assuming that 1) states are primary actors of transborder associations and 2) individuals are represented by their states. This translates into that states are the beneficiaries of the duties generated

by transborder responsibility. I dismiss this notion of addressing only states as the receiving end of transborder justice<sup>326</sup> and address individuals in this chapter.

In this chapter, I will approach this dialect on an individual level and explore the implications of transborder responsibility for individuals as members in a non-Westphalian scenario -where states are not the main actors of the discussions on global justice. This is not to argue against national associations and our associative responsibility towards our co-nationals. On the contrary, it is to argue that our co-nationals are not the only group with which we have a two-way associative relationship. At this point, I need to reiterate that it is almost impossible to write an exhaustive list of corresponding duties for transborder associative responsibility, nor is it necessary. I argue for a transborder responsibility that is a form of associative responsibility which is designed to generate the particular duties accordingly to the beneficiary's need.<sup>327</sup> to suggest that particular states are the duty-bearers of such responsibility. I aim to argue that, under current conditions, admission of immigrants can be considered a duty for certain groups of states.

The significance of this particular duty lies in the system that generates it. Because the political conception defines the political community -in other words, the association that generated the responsibility- based on location, an immigrant's admission does not merely refer to a change in location as in transportation into a specific territory. It also refers to the immigrant becoming a member of the political community, getting entitled to rights and being burdened with responsibilities that are specific to the said community. In order to articulate this nuance properly, I will start addressing the effects of political membership on one's life prospects, more precisely, the fulfilment of their rights. It is important for me to reiterate that rights in this context do not necessarily need to be humanitarian rights. In fact, technically speaking, humanitarian rights are already under protection as they are associative rights of humankind. My argument at this point addresses human rights in broader terms, encompassing both humanitarian rights and socio-economic rights. As mentioned above, I will proceed with the assumption that patriotic associative responsibility requires the fulfilment of this latter group of rights. However, I would like to note that this assumption is based on a widely favoured international convention, and it is the baseline of the political conception of justice and even the Westphalian system of states. The reason for my aversion from factually acknowledging it is the secondary nature of these rights. Even though they are established theoretically and formally endorsed by 171 of 197 states<sup>328</sup> through the International Covenant on Economic, Social, and Cultural Rights, the normative content of the rights, as well as the implementation process, are still derivative of the primary right of equality. To put it in a clearer way,

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<sup>326</sup> Please see Chapter 2.4.

<sup>327</sup> Please see chapter 2.1.1.

<sup>328</sup> - [OHCHR Dashboard](#) accessed 08/05/2024.

the rights included in human rights but not humanitarian rights are, in fact, outcomes of implementing the principle of equality, e.g. equal rights and equal basic income for all.

We have recognised a wide variety of rights, either on this or that ground, signed and ratified an abundant number of treaties, and written and published innumerable amounts of research. Yet, the well-being of individuals is still contingent on a couple of arbitrary factors, such as one's natural abilities, the absence of disrupting elements, and, most significantly, the political community in which they were born to live indeterminately. For this reason, my object in this chapter will be the arbitrary nature of political membership in contrast to its disproportional consequences on one's general life prospects. I will illustrate political membership's cumbersome effects on an individual's life and its power as the key factor for his well-being. My schedule for this chapter is as follows:

I will begin by explaining the intrinsic role of the political community in one's life by employing the "Right to have Rights" and exploring its implications for contemporary discussion regarding human rights violations. Then, I will proceed to a more general question: Why does the system of political membership, as the way it is understood today, perpetuate global inequality? I will attempt to provide an answer in two folds: First, I will bring a critique of citizenship as an arbitrarily distributed social good, arguing that it is not only a system of security for individuals but also a protection mechanism for the preservation of privileges. My focus here will be the unproportionate balance between arbitrariness in its distribution and the extent of the benefits and privileges it brings - or omits. Second, I will exhibit border control as a complementary tool for citizenship and a contributor to global injustice. By connecting these issues, I aim to justify that states, owing to their obligations and the overriding interests of individuals, have a duty to admit prospective immigrants despite their sovereign right to control borders.

### 1. Hereditary Jackpot

My argument for immigration as a means for distributive justice develops as follows. Distributive justice asserts that people must not suffer from inequality or relative deprivation that are not consequences of their actions. However, the natural ascription of citizenship, or what is dictated by the system as the natural ascription of citizenship, somehow results in drastic inequalities among people. How are we going to resolve that matter?

Political membership, or citizenship in legal terminology, as an asset has asymmetrical characterisation. As the general practice, it is appointed by birth without any consent or request from

the holder. Whether it is acquired through the principle of territoriality or the principle of parentage, which depends on the jurisdiction that issues the citizenship, it is bestowed upon the person without any volition. This acquisition happens so early in life that it affects not only the person's future prospects, which we are criticising here; it even constitutes a part of an individual's identity. Skipping the tempting discussion on the mutual reliance of these two factors, the former addresses the significance of the community. For instance, if the person is born into a community of reasonable liberal peoples, as in Rawls' classification, it comes with the entitlement to distributive justice provided by democratic institutions and a politically moral community. In practical words, his rights and freedoms are under institutional protection.

### 1.1. Political Membership as a Human Right: The right to have rights

I have tried to explain why citizenship<sup>329</sup> plays a key role in the overall fulfilment of one's rights or general welfare. Expectedly, this is not a novel idea or brand-new argument to claim. On the contrary, it has been long argued by Hannah Arendt that one needs to belong to a larger community to have's rights fulfilled. In an attempt to keep the discussion clear and simple, I will adopt her term "right to have rights" and utilise it to pinpoint my argument. However, my use of the term will be slightly different than its originally intended use, and it may even sound contradictory to those reading it in a certain way. Yet, I suppose that it will address the very same problem that Arendt wanted to address.

How is the right to have rights going to help? I am not crudely arguing that the corresponding right for the intermediate associative responsibilities is the right to have rights. I aim to make two points on this right in the following sections: First, I think the right to have rights as a concept is a fantastic example to illustrate the direct -and almost entirely-<sup>330</sup> the causal relationship between citizenship and one's fulfilment of rights, or in other terms, general well-being, including fulfilment of basic rights and -even- welfare. The emergence of the right as a term, its designated content, and the surrounding conditions are perfect demonstrations of the effects of associative responsibility in the fulfilment of the rights. On the other hand, it is undeniable that the focus on the content of the right to have rights has shifted since the invention of the term. It acquired a more literal meaning in time, and that is the second

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<sup>329</sup> I have to reiterate that even though citizenship and political membership refer to different statuses, I use them interchangeably due to their common function for my argument. Technically, citizenship is a legal status and brings even better benefits whereas political membership is contingent upon one's social inclusion in the community. The difference between the two terms is vital enough to be a subject for separate research, but they indicate the same advantage, or lack thereof, in the context of the current discussion.

<sup>330</sup> The reason for my qualm on calling the relationship between citizenship and fulfilment of rights entirely causal is the domestic factors affecting one's reach for their rights.

function of the term in this dissertation. What if someone has citizenship but it does not provide them with sufficient security that their basic rights and freedoms are fulfilled? Therefore, I will focus on the meaning of the rights and how they contribute to my argument for immigration.

### 1.1.1. The surrounding conditions

It would be sloppy to talk of a right that is to have rights without understanding the surrounding conditions that revoke such a term. Arendt introduces the concept with the following words: “We become aware of the existence of a right to have rights and a right to belong to some kind of organised community”. The wording of this introduction indicates that the existence of such a right, or lack thereof, was observable to her as if it were a natural phenomenon that appeared in front of her. Apart from her personal experience as a stateless person between 1933 and 1951<sup>331</sup>, it is indeed easy to understand the problem she intended to undertake just by looking at the political and social status quo of the time. The fall of the so-called “multinational” or the way I prefer “, nationless” empires, such as Ottoman or Russian, overturned the correspondence between political and social structures through the simultaneous spread of the idea of the nation-state. The successor states with national attachments spawned on the former lands of empires, where residents have various national identities. One of the consequences of such change was the emergence of the minority problem, which was a drudgery for recently formed, crude, fragile nation-states. Then followed the mayhem: forced deportations and massive denaturalisation, which were issued in order to build and conform the image of a nation, created hundreds of refugees and stateless individuals.<sup>332</sup>

What Arendt observed in this picture, as Seyla Benhabib points out, is the violability of the rights of the people whose rights are not protected by the state, or any state at all. This disassociation, which is the result of the new political order, granted the freedom of unaccountability and emancipation from the rule of law that was reminiscent of the colonisation of Africa.<sup>333</sup> In other words, the dismissal of the rights of certain groups was so severe that it matched the treatment of those who were entirely alien to the rights and privileges that come with civilisation, such as human rights, and hence, their claim of those rights was futile. It turns out, that the deprivation of political membership to a community rendered the human rights that are supposed to be inherent in one’s humanness practically ineffective.

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<sup>331</sup> Alison Kesby, *The Right to Have Rights: Citizenship, Humanity, and International Law* (Oxford University Press 2012), p.2.

<sup>332</sup> Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge University Press 2004), p.53.

<sup>333</sup> Benhabib, p.52.

She noted, referring to the oppressive regimes dwelling around Europe, “...have demonstrated that human dignity needs a new guarantee which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities.”<sup>334</sup>

The right to have rights, either as a phenomenon to be observed or a construct to be offered, is her proposal for this particular chasm. If a human being is stripped of all the protection for his rights as a human when he is denaturalised by the political authority that he has been a subject, his rights as a human might as well be non-existent. In other words, the trajectory of the events at the time suggested, even proved, that only claimable rights are that one by virtue of his status as a member of a political community. This picture is undeniably parallel with Nagel’s political conception approach, as he concluded that (socio-economic) human rights are associative rights<sup>335</sup>; they only exist within a political community due to association among members, and there are no rights beyond the association of a political community. One crucial difference is that the right to have rights signifies membership to an association as a necessity for human existence. It manifests itself as the main human right which unlocks the set of associative rights.<sup>336</sup>

Arendt’s pessimistic interpretation of the status quo and pleading for rights to have rights is, in general, considered an obsolete dismissal of human rights. Ranciere speculates that human rights are only used as a last resort and are only grabbed by those who have no other form of protection.<sup>337</sup> This reading suggests that one’s civil rights as a citizen, in our terminology, one’s associative rights, constitute the primary form of protection by virtue of the right bearer’s membership to a community. Human rights, no matter how fundamental and universal they are, only provide humanitarian security rather than addressing one’s general welfare. Agamben draws an even more pessimistic picture and argues that human rights as a concept is a by-product of the nation-state system and signals the separation of the individual as a human and the individual as a citizen. If the nation-state system is managed to be left behind one day, then we will no longer need human rights as a concept.<sup>338</sup>

Seyla Benhabib presents a similar yet more optimistic reading of Arendt’s work. While recognising the problem’s accuracy, she also suggests that the conditions postulating it have evolved and demand to be addressed accordingly. “*The contradiction between human rights and sovereignty*

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<sup>334</sup> Hannah Arendt, ‘The Origins of Totalitarianism’, (A Harvest Book, 1976).

<sup>335</sup> Nagel, 127.

<sup>336</sup> Menke points out that Arendt’s article “The Rights of Man: What Are They?” was published in German with the title “There Is Only One Human Right”, and he argues this difference is suggestive of what she deliberated. Christoph Menke, Birgit Kaiser, and Kathrin Thiele, ‘The “Aporias of Human Rights” and the “One Human Right”: Regarding the Coherence of Hannah Arendt’s Argument’ (2007) 74(3) *Social Research* 739.

<sup>337</sup> Jacques Rancière, ‘Who Is the Subject of the Rights of Man?’ in Steven Corcoran (ed and tr), *Dissensus: On Politics and Aesthetics* (Continuum 2010).

<sup>338</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press 1998), p.131-4.

*needs to be reconceptualised as the inherently conflictual aspects of reflexive collective identity formation in complex, and increasingly multicultural and multinational, democracies.”*<sup>339</sup> Furthermore, she underlines that Arendt’s argument did not intend to dismiss the rights of non-members; she confirmed that humans have moral rights and obligations. Rather, it was to argue against the denaturalisations and deportations that were widely practised at the time.<sup>340</sup>

Possibly, Menke proposes the most helpful interpretation of the right (to have rights). His arguments do not dismiss human rights, which are an undeniable reality of today’s world, nor do they put the right to have rights in the same bag with them. He explains that Arendt’s disturbance regarding declarations of human rights was due to the presupposition of political membership for their fulfilment. Her suggestion of the right to have rights had a corresponding future by including those who lack membership. Once non-members are enabled to claim membership, then they are able to request the fulfilment of their other rights, whether those rights are called human rights or civil rights.<sup>341</sup>

Another crucial point of Menke’s reading is the conceptual consequences of adopting the right to have rights as a human right. It is explicit in Arendt’s writings that rights are the outcome of mutual agreement and guarantee, which is exactly why they are inherently political/associative in nature. Then it is not only declarations of human rights presupposing a political membership to claim rights, it is required by the very nature of the rights. Again, Arendt does not change this rule for the right to have rights but argues that it is “the only one that can and can only be guaranteed by the comity of nations”<sup>342</sup> As Menke comments, this point of view overcomes the problem of presupposition of political community by tracing the right back to an inherent type of community that is embedded in our humanness, the political entity of mankind.<sup>343</sup>

Despite the certain contradictions admitted by Menke<sup>344</sup>, I find his reading of the right (to have rights) to be the most accurate and functional. In the earlier chapters, I argued that associative rights can be generated by multiple types of associations that simultaneously exist. Even though political theorists obsess over the nation/political community as the prominent right-generating association, we also have a global association that is based on our humanity. I have already given the example that human rights are the associative rights that one bears due to membership to this widest polity of human beings, which is inherent in humanity. If being born as a human automatically makes one a political subject, or his capability of being a political subject suffice for his inclusion in a political community,<sup>345</sup>

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<sup>339</sup> Benhabib, p.65.

<sup>340</sup> Benhabib, p.66-7.

<sup>341</sup> Menke, p.749.

<sup>342</sup> Menke, p.750.

<sup>343</sup> Menke, p.751.

<sup>344</sup> He points out the oxymoron that the right to have rights is meant to be pre-political by nature, as its promise is a political community, yet it assumes a political community for its own existence.

<sup>345</sup> Agamben, p.153

this community might as well be the community of mankind. Then, by virtue of this membership in an all-inclusive community, he gets to claim the right to have rights, which indicates his entitlement to membership in a more private political community.

This is precisely the reason for including the right to have rights in this paper. To recall my earlier argument, the intensity and type of the association of humanity only generate humanitarian-level rights for its members. On the other hand, the selective political association, which is citizenship to a state, triggers the responsibility for justice and, hence, provides ground for distributive rights and obligations. I argued that there are intermediate types of associations that are more intense than humanity and, therefore, are capable of generating associative responsibility corresponding to the associative relationship. The problem is that the extent of the relationship is too complex and impossible to demarcate or trace back. Because of the ambiguity of its nature, it is hard to point out the limits of the responsibility or list the corresponding rights and duties. In the next section, I will explain how the content of the right to have rights can provide a bypass for all these ambiguities.

### 1.1.2. Content of the right

It might sound redundant to explain the historical development of a right as its key component and then argue that its meaning has changed for the better. For any other concept, this might be a perfectly viable criticism. However, it is an achievement for the right to have rights that its original meaning is no longer required; it is now the common acceptance that one's entitlement to certain rights is beyond his political inclusion in a community. In one way, it can be said that the phrase "right to have rights" gained a more literal meaning with this adaptation. Furthermore, the shift in the content of the right to have rights is conveniently in line with its phonetic playfulness. Let me explain this first.

By its very nature, "rights", as a concept, presupposes or requires the presence of another agent who will protect, grant or deprive the objective of the said right to the right bearer.<sup>346</sup> It is Kantian in the basic sense: All rights, except the innate right of freedom, are best provisional in character. Therefore, each person has a duty to leave the state of nature to live in a civilised society, where institutionalised recognition and protection of one's rights is available.<sup>347</sup> The "others" in the second "rights", or as it is known in the literature, right-bearers, are the members of this civilised society or the institutions on behalf of them. For the first "rights", on the other hand, the objective is to acquire those

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<sup>346</sup> Frank I Michelman, 'Parsing "A Right to Have Rights"' (1996) 3(2) *Constellations* 200, p.201-2.

<sup>347</sup> A John Simmons, *Justification and Legitimacy: Essays on Rights and Obligations* (Cambridge University Press 2001), p.188.

rights by being a member of a civilised society. The problem is that there is no determinate society being addressed, so the answer to the question of duty-bearers remains open.<sup>348</sup> This also summarises the complication in general: In a world with multiple civil societies, it is still indefinite which one is the bearer of such duty. But more on this point later.

In general view, the two “rights” within the right to have rights refer to different kinds of rights.<sup>349</sup> The first “right” is considered to have moral character due to the aforementioned complication, which renders it an imperfect right at best.<sup>350</sup> The irony is obvious: the lack of determinate duty-bearers leaves the right to acquire determined duty-bearers ambiguous. In contrast, the second “right” refers to the legal entitlements that are already established within a community, or associative rights as we call them. This quality grants it a civil and legal character. These rights exist by virtue of a community by which it is agreed upon and gets to be fulfilled. The first “right”, then, is a moral right to have the opportunity of inclusion in a community that will grant civil rights. In other words, the objective of the right in question is admission to a political community that will provide him with associative rights.

The challenge with this objective at the time was to have membership, but it has evolved over time. As Benhabib states, “*The right to have rights today means the recognition of the universal status of personhood of each and every human being independently of their national citizenship.*”<sup>351</sup> This observation, as much as it is true, marks a positive step towards cosmopolitanism in the understanding of rights: the rights, at least human rights, are no longer attached to citizenship, but one’s recognition as a human. Another view suggests that this was the case all along, but personhood was not automatically presumed. Rather, it was expected to be exercised by contributing to the “social production of moral consciousness” by being a community member.<sup>352</sup> As mentioned in earlier chapters, being a member is tantamount to political contribution; even aversion from positive action translates into approval of the ongoing/present/prominent option. The problem, in this view, is the contingency of the membership, one’s lack of choice or merit of being in a community. Regardless of whether he has an opinion or not, he lacks the receiving end of his contributions,<sup>353</sup> as opposed to membership, where even inactivity is perceived as an opinion.

My reading of the right to have rights adopts both of these views as complementary to each other. On the one hand, I find it inaccurate and vain to reduce the right (to have rights) to criticism or rejection of human rights. The obstacles to the realisation of human rights, and even moral disregard by institutions at times, do not make the entire notion futile, let alone deny the moral entitlement of each

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<sup>348</sup> Benhabib, , p.57.

<sup>349</sup> Benhabib, p.56-61; Michelman, p.201.

<sup>350</sup> Michelman, p.203.

<sup>351</sup> Benhabib, p.68.

<sup>352</sup> Michelman, p.204.

<sup>353</sup> Michelman, p. 204.

person to fundamental rights and privileges. On the other hand, the Kantian reading of the right, that there is only one innate right, and that the other rights are relied on and generated by a civil society, is still relevant. In fact, I believe it is pretty close to what Arendt meant: Kant argued that the only innate right is freedom, and one acquires the other rights by trading freedom for a civil membership. Similarly, Arendt argued that the only human right, the right that is inherent in our humanity, is the right to inclusion in a political community. The two hands may sound indifferent at first, but the nuance I am about to lay out is all that makes the difference.

What has changed since Kant, and what has increased at an accelerated rate since Arendt, is globalisation, which is the result of many cumulating factors, none of which are within the scope of this paper. Globalisation affected the understanding of human rights in two ways: First, it increased global interdependence; I illustrated a couple of concepts and their implications as part of my argument in the previous chapter, arguing that international interdependence reached the point that it constitutes a rudimentary yet valid basic structure. However, I must note that I differentiated between humanity as a global association and transborder social/economic/political practices as associative practices and used my examples to argue for the latter. Secondly, and more significantly, it caused an epistemological shift in social consciousness: The date was 1962 when Marshall McLuhan introduced the phrase “global village” to illustrate the ways modern media altered our lives, including our perception of time and space, cultural interaction, and even our experience of reality.<sup>354</sup> Six decades later, it is not at all absurd to argue that the world, as it is today, can be considered a civil society as a whole which grants human rights as associative rights to its members. If so, one can argue that the extra step Kant and Arendt inserted between a cosmopolitan understanding of human rights and the same rights presented as civil rights is already completed. Under today’s circumstances, the right to have rights indeed only refers to the recognition of one’s personhood.

One may object, and surely will, arguing that human rights are still imperfect moral rights due to the fact that there is no determinate duty bearer or an institution to appoint one. This is where I argue that the right to have rights plays an epistemic role. As briefly touched on above, one view considers the right as responding to the contingency of whether or not one is participating in “moral consciousness” (by being a member of a community). In a more detailed explanation, it translates one’s personhood as an agency that can only be exercised in the presence of a receiving end, which is a community.<sup>355</sup> When a person exercises his agency, it displays or proves his personhood and acquires rights. In a scenario where one’s membership status is independent of his merits, whether or not he can exercise agency, display his personhood, and be capable of having rights becomes a contingent matter. This view suggests that contingency is the central objective that is addressed by the right. In order to

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<sup>354</sup> Marshall McLuhan, *The Gutenberg Galaxy: The Making of Typographic Man* (Routledge & Kegan Paul 1962; University of Toronto Press 1962).

<sup>355</sup> Michelman, p.204.

eliminate the consequences of this predicament, the right (to have rights) recognises one's right to practice his agency to a receiving end, which is the community, and contribute to the collective moral consciousness. By doing so, he proves his personhood and acquires the rights annexed to it.

Building upon these two readings of the right, I argue the following: when a person, without his own fault and choice, is not given a chance to participate in a moral consciousness within a society, in other words, if one is left without a membership to a community by external causes, he is entitled to request inclusion. The lack of a determinate duty bearer gets resolved at this point. By requesting admission from a certain community, the person practises his agency to a specific receiving subject. This exercise of agency towards a community constitutes the exact same interaction with a member of the community exercises his agency when he contributes moral consciousness. By virtue of this interaction, he acquires personhood and the annexed rights. Consequently, I argue that when a stateless person requests admission from a political community, claiming the right to have rights, his will renders the imperfect duty a perfect one.

At this point, one loose end remains for my argument to reach completion. The protagonist of the scenario has been a stateless or displaced person who is claiming the right to have rights. However, most immigrants already have citizenship in their country of origin. Is it possible to draw the same conclusion for someone who already is a member of a community but requests admission, regardless?

## 1.2. Membership as an Asset

First things first: The most common way to acquire citizenship is by birth, which corresponds to the requirements of the right to have rights for the majority of the population. The majority of the world population gets appointed with at least one citizenship through either the principle of parentage or the principle of territoriality. The principle of parentage instructs that having a parent with a certain nationality grants the same citizenship -or the right to request the same citizenship- to the baby. In other words, the baby is presumed to be a member of the political community by virtue of his parents' membership. The principle of territoriality indicates the baby's right to have the legal citizenship of the state in which borders he was born. This rule suggests the baby joins the political community, which was closest at the time of his arrival to the world.<sup>356</sup> Both principles are independent of merit and successfully fulfil the need for "inclusion into a community".

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<sup>356</sup> Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press 2009), p.22.

Secondly, there are numerous ways to immigrate and acquire citizenship apart from appointment at birth. States, as legal entities regulating the membership, employ various naturalisation processes that are available for immigrants. Take the UK's skilled worker visa scheme as an example - though it lacks the notion of equality-. According to this scheme, a non-citizen can immigrate as a skilled worker sponsored by an employer and get qualified to apply for naturalisation after a certain number of years.<sup>357</sup> Similar processes apply in most countries; in the case of certain years of residency, naturalisation is available for most immigrants. But this is not why we are talking about membership and what we are talking about citizenship.

The problem with naturalisation is that it most commonly requires pre-inclusion to the community through residence. On the other hand, the initial inclusion into the community as a member remains the main challenge for a prospective immigrant, regardless of the level of integration there is to achieve. This confirms that borders, their existence or their lack of porosity, stand as a major contributing factor to global inequality. As immigration into a political community gets easier, the essential resources to exercise rights become more available. One may think that this trend would inevitably result in an increase in the number of naturalised citizens, but it would also diminish the pressing urgency over citizenship. In a scenario where freedom of movement applies across borders, neither complexities nor benefits of naturalisation would be considered such a big deal.

Then again, we do not live in such a world, and, more importantly, the porosity of borders is not independent of citizenship as a title. On the contrary, one's exercise of the right to movement, just as the other rights, is highly affected by citizenship, due to universalisation of passports and selective visa restrictions, as much as personal determinants, such as one's wealth. Citizens of some states correspondingly obtain passports that provide better and easier access to the right to movement. For the other group, enjoyment of the right to movement across borders is subject to visa obligation, on which the state carries no accountability, nor are its decisions subject to any control. This is the step where several other determinants may become effective: one's race, age, gender, and occupation bear the potential to change the outcome of a visa application.<sup>358</sup> On the other hand, wealth stands out as a quality that can compensate for what citizenship lacks or even trade it with a better one through specially designed immigration schemes.<sup>359</sup>

None of these is the direct argument of this section by itself. As quoted from Rawls earlier, ignorable inequality at the beginning may have cumulative consequences in time and entail a greater inequality on a longer scale. The current global inequality has not randomly accelerated, whether it

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<sup>357</sup> <https://www.gov.uk/browse/citizenship>

<sup>358</sup> Anam Soomro, 'People, Paper and Power: The Birth of the Passport in International Law' (2023) *Asian Journal of International Law* 1.

<sup>359</sup> For more information, see: Ayelet Shachar, 'Unequal Access: Wealth as Barrier and Accelerator to Citizenship' (2021) 25(4) *Citizenship Studies* 543.

initially occurred organically or due to various misconduct. In this section, I will focus on citizenship as a border control mechanism and a contributing factor of inequality, even more directly than the right to movement or open borders discourse. I aim to demonstrate that political membership, or “citizenship” as a legal establishment, both 1) functions as the key element for securing individual access to basic rights and freedoms and 2) serves as a border control mechanism to the state and enables the preservation and accumulation of resources, hence indirectly functions as a guarantee for individual’s access to privilege and prosperity. I discuss the latter point as the individual security perspective has illustrated through the right to have rights in the previous sub-section.

### 1.2.1.Liberal Cosmopolitan Approach to Citizenship

One more time, I will start by locating my stance through its overlap with similar arguments, in order to express it in a nuanced way. I would not call my argument a cosmopolitan one because it is predicated on the political conception of justice, which refers to special relationships. Still, cosmopolitan points of view on citizenship and border control are the closest ones to my final position, so I will start there. In general, cosmopolitan arguments regarding citizenship revolve around open-closed borders discourse, which is quite expected considering the close causality I mentioned in the previous two paragraphs. The most prominent view is the proposal for open borders predicated on unethical aspects of borders. Because cosmopolitanism suggests that human beings, as the most basic moral unit, are of equal moral worth and that the social structure is a construct that is imposed by some on others, then any restrictions generated by that social structure must be justified.<sup>360</sup> According to most cosmopolitan philosophers, it fails to do so.

Joseph Carens, for one, firmly holds normative grounds for the open borders case. He argues that the practice of borders is unjust and that border control practices violate one’s autonomy because one is unable to exercise one's right to movement freely.<sup>361</sup> Considering that there is no supervision or accountability for states to accept or reject the request to enter, namely the visa application, it is not possible to justify the violation of such an inherent right, at least in a morally acceptable way. From the global justice perspective, if nothing else, border control crucially maintains the inequality between citizens of different states in exercising their right to movement through different policies applied on citizenship-based, not personal-merit-based. Furthermore, border control plays a role in sustaining the existing inequality by disabling access to resources and opportunities for aspiring immigrants.<sup>362</sup>

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<sup>360</sup> Joseph H Carens, *The Ethics of Immigration* (Oxford University Press 2013).

<sup>361</sup> Carens, p.238.

<sup>362</sup> Carens, p.235.

The most striking part of Carens' argument is the analogy he lays out. Acknowledging the impracticality of his proposition, he argues that the inequality that the rules and policies applied in border control caused are similar to those of feudalism, in which equal opportunity or freedom of movement, or any form of equality at all, did not take place as a concern. The similarities between the two systems are obvious: First, in both, the social circumstances of one's birth label him as a member of a specific group, either social class or legal entity of a state. Just as it was appointed at birth which class he would belong to at that time, it is not in one's control today to determine in which country he will be born.<sup>363</sup> Secondly, this particular quality that is bestowed upon the person at birth plays a major role in one's life trajectory in both cases. Opportunities and potentials vastly differ for those who are advantaged by the system at birth than those who are not, so much so that the inequality is internalised by both advantaged and disadvantaged groups. Third, the restrictions on mobility between groups, social class in feudalism, and citizenship in border control play crucial roles in sustaining the system.<sup>364</sup> Finally, the injustice within the system is normalised and deeply embedded in it, which results in the presumption of justification. This is the point where Carens challenges the critique of impracticability. What if our capability of comprehending the injustices within the feudal system results from its absence? If so, it is highly probable that we are surrounded by internalised injustices that would be obvious to an unbiased mind, and the system of closed borders is one of them.<sup>365</sup>

Ayelet Shachar illustrates a similar analogy to elaborate the same argument. She compares property theories to political membership in order to demonstrate the cumulative and restricting qualities of citizenship and border control. I find her analogy particularly well-fitting because it not only lays out the way border control and citizenship contribute to the growing global inequality but also draws attention to the financial aspect of political membership. The significance of this latter quality is concealed in some sort of a collateral argument for this paper. In the previous chapter, I mentioned there could be a correlation -and even causality- between the parties that benefit from injustices embedded in the world trade order and actors of economic exploitation without elaborating any further to stay on normative grounds. I believe Shachar's analogy is not only an illustration to explain her argument more easily, but it will also yield insights regarding the possibility of such a correlation.<sup>366</sup>

As Shachar points out, the parallelism between property theory and citizenship practices is based on two common characteristics: the exclusion of outsiders (gatekeeping) and ensuring the inclusion of members (opportunity-enhancing), which are basically the two sides of a coin.<sup>367</sup>

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<sup>363</sup> Carens, p.226.

<sup>364</sup> Carens, 228.

<sup>365</sup> Carens, p.229.

<sup>366</sup> Ch 2 p.9. The reason I repeat this crude idea here is, that even though it falls outside the domain of this dissertation, it contributes a nuanced and significant connection to the discussions around immigration in the bigger picture.

<sup>367</sup> Shachar, p.33.

Gatekeeping reflects an existing understanding of citizenship as “new property”, which refers to public law entitlements being used for individuals’ private law ends. It indicates the state’s guarantee of a minimum amount of “property” or “income” that it deems necessary to uphold the security and dignity of each citizen.<sup>368</sup> To ensure the availability of the basic minimum, states apply a strict control and access mechanism over citizenship and even borders, as it bears the potential of turning to citizenship. Shachar identifies this new property, which is the basic minimum, as membership in the community.<sup>369</sup> It makes sense *prima facie*; membership to a community generates rights and responsibilities that are exclusive to that particular community, or as we call them, associative rights. Then again, associative rights and responsibilities are stringently related to opportunities and resources that are available to the community, more precisely, those within the borders of the state. Thereupon, restriction over citizenship or membership cannot be considered distinct from amassment of resources. The connection between property and citizenship is more than an analogy here; it is the same relationship between the resources and the citizens as the owner. It confirms the notion that citizenship is a form of property.

The second characteristic that applies to both property theory and citizenship is the opportunity-enhancing function. It is a quality that is more visible in citizenship as it indicates the human element more than resources. Just as the way an owner has the most comprehensive set of rights, namely *usus, fructus, and abusus*, the holder of the citizenship status is entitled to benefit from a wide range of opportunities that are available to him. He has the right to actively participate in the governance of the community, either politically, legally, or administratively. This right not only ensures his access to various opportunities but also, even on a minimum level, gives him the power to control the availability of opportunities. In addition, as a member of the community, he is also at the receiving end of associative rights, that are ensured by the community’s standards of equality and dignity.<sup>370</sup> He is entitled to claim a share of the accumulated resources (through gatekeeping) by virtue of his citizenship.

This is where the two characteristics meet: The restriction and gate-keeping over resources and opportunities result in the accumulation of those resources and allow the proliferation of opportunities for the existing members. Because under the conditions of abundance, the standards of equality, and consecutively the basic minimum, within the community increase. Furthermore, when we identify the aforementioned "scarce resources" as associative rights and privileges that come with citizenship, it is also safe to suggest that part of the protection of members revolves around the primary goods which are subject to distributive justice, hence bringing a shadow of immorality over gatekeeping of resources. Because the abundance occurring within the borders is expected to be correlative to the scarcity on the outside. This provision does not apply to the other primary goods which are not subject to distributive

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<sup>368</sup> Shachar p.29.

<sup>369</sup> Shachar, p.33.

<sup>370</sup> Shachar, p.38.

justice; because they do not require a positive duty, the number of claimants does not affect their sustainability.

Shachar's overall argument is predicated on this connection between scarcity (or abundance) of resources and citizenship appointment at birth. The fact that citizenship one gets to be appointed at birth ascertains one's share of those resources becomes more and more stark as the gap of inequality among states grows. This level of entitlement juxtaposed with lack of it, all being determined by a factor that is (in most cases) determined at birth, transforms the notion of citizenship into an inherited property.<sup>371</sup> Admittedly, the nature of both "goods" is strikingly unlike. One's exercise of his rights over property is a different story than one's exercise of citizenship rights. However, the similarity between the acquisition process and the ability to define one's welfare prospects of both institutions conforms to this statement.

Nevertheless, one criticism suggests that citizenship is more fluid and less scarce in nature when compared to property, and therefore, such an approximation is not available to draw conclusions.<sup>372</sup> I understand that both fluidity and abundance of citizenship, as argued, are based on its nature as a construction of the legal system that it is attached to. Such criticism makes sense on the theoretical level; citizenship is indeed a legal title based on political membership in a society. Then again, the same applies to property ownership; it is a legal title that documents one's special relationship with the property in order to guarantee his rights over it. If the term "citizenship" refers to this legal entitlement, then it is unfair to criticise Shachar's analogy for being inaccurate. The common practice of most states is to adopt a solid set of criteria for citizenship and, considering the strict sets of immigration rules, even for organically occurring political membership.

The flexible and abundant version of citizenship is only possible in a coherent world, such as the one Carens suggests. Unlike radical cosmopolitanism, he recognises associative relationships as the grounds for political structure and allows special rights and responsibilities that are derivative of this structure. In his theory, citizenship is the legal recognition of social membership; if someone completes his social integration into the community, he is part of the association, and his associative rights and responsibilities must be recognised through legal citizenship.<sup>373</sup> Nevertheless, Carens explicitly states that his theory is not practical under the current circumstances. It is more of an ideal end to define the means that will hopefully open the course for more practical proposals. On the other hand, Shachar's theory is based on factual observations; indeed, citizenship can be a distinctly more fluid term than property, but, as a matter of fact, it is not. States may choose to be generous regarding naturalisation,

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<sup>371</sup> Shachar, p. 87- 96

<sup>372</sup> Duncan Ivison, 'Transcending National Citizenship Or Taming It?: Ayelet Shachar's Birthright Lottery' (2012) 7(2) *Les Ateliers de l'Éthique* 9.

<sup>373</sup> Sarah Song, 'Immigration and Democratic Principles: On Carens' Ethics of Immigration' (2016) 33(4) *Journal of Applied Philosophy* 450, p.452.

but, as a matter of fact, they are not. Therefore, birthright citizenship and border control remain as problems.

### 1.2.2. Citizen as the Subject of Democracy

Taking an alternative approach, Arash Abizadeh questions the political legitimacy of border control from the perspective of democratic theory. He suggests that border control (or limitations to entry) is a coercive practice by its very nature and, therefore, must be justified through liberal and democratic measures. This proposition requires everyone who is subject to the said coercive practice to be included in the justification process, both members and non-members. Border control, however, is applied by the state, which represents the subjects only on one side of the border. Non-members are not included in any step of the decision process despite the fact that their freedom of movement is coercively restricted. According to Abizadeh, this exclusion renders border control illegitimate from the perspective of democratic theory.<sup>374</sup>

This perspective makes Abizadeh's argument particularly significant because, by producing an argument based on democratic theory, it addresses/objects/circumvents the most common critiques of liberal cosmopolitan arguments. One approach invokes the principle of collective self-determination to justify the state's right to control borders.<sup>375</sup> Considering that 1) the right to movement is not an absolute right, and 2) the right to collective self-determination is also universally recognised as a fundamental right, this approach translates the matter into competing rights.<sup>376</sup> Another approach calls upon the freedom of association as the overpowering right against immigration. Because freedom of association involves the freedom to choose with whom to associate, border control can be understood as a negative exercise of freedom of association. Border control and restrictions over immigration are justified as a result of collective self-determination controlling the porosity of the existing association.<sup>377</sup>

Even though Abizadeh's argument does not directly address either approach, it perfectly lays out the insufficiency of democratic theory to justify border control. His argument points out a fundamental contradiction between the two concepts: The demos. The democratic theory presumes an existing, pre-political community that invokes it regarding matters that are inferential to the presence of this community. Border control, on the other hand, is a concern that belongs to an earlier step; it is

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<sup>374</sup> Arash Abizadeh, 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders' (2008) 36(1) *Political Theory* 37.

<sup>375</sup> Song, p.453.

<sup>376</sup> Song, p.454.

<sup>377</sup> Christopher H Wellman, 'Freedom of Movement and the Rights to Enter and Exit' in Sarah Fine and Lea Ypi (eds), *Migration in Political Theory: The Ethics of Movement and Membership* (Oxford University Press 2016).

about demarcation of the demos. Even if the legitimacy of the demos is maintained through democratic methods, it requires the inclusion of both members and non-members in the legitimisation process.<sup>378</sup> Besides, another problem with democratic theory's justification of border control is the value it is able to produce. A political authority that is justified through democratic theory is considered politically legitimate, but it does not qualify as morally just. Let me explain this way: When a gladiator gets killed by the thumbs down of the entire audience in the arena, his execution by his opponent would be legitimate. But this legitimacy does not change the immorality of his murder or the moral violation of the killing. The democratic theory may justify the action but would not overpower an individual's fundamental rights.

This brings another problem to light: What is the extent to which collective self-determination can be considered as a justification for the state's immigration policy or border control? Both for the collective self-determination argument and the freedom of association argument, the very same element that existing members are entitled to make decisions about is not theirs by merit or choice. It was either forced upon them or bestowed on them, depending on one's level of optimism. In other words, the current demos in most communities are born within the borders in which they, in technical terms, are depriving others who were just not as lucky. Maybe, back in the day, there were such members who were present during the pre-political formation of the community and demarcation of the borders. How can we argue today that government representation of demos regarding matters such as border control reflects the exercise of a democratic right more than the conservation of privileges? I am aware of the audacity of such a statement. Nevertheless, recent examples suggest a disconnection between government policies and public opinion regarding the matter in either direction.<sup>379</sup>

This brings us back to border control as a mechanism for preserving the resources or citizenship being a property itself. Recalling Shachar's analogy of citizenship as an inherited property, what are the implications of a person being born with a certain kind of citizenship for global justice? From the perspective of Rawlsian justice theory, an advantage being given at birth without considering any merit is a characteristic of natural goods, such as talent or intelligence.<sup>380</sup> Even though there are multiple determining systems to regulate the distribution of citizenship, such as the principle of territory or parentage, those factors are outside of the individual and function independent from his will. It concludes that the distribution of the membership stands arbitrary from the owner's point of view. On the other hand, the stakes are exceptionally high for a natural good. Citizenship, or certain types of

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<sup>378</sup> Abizadeh, p.45.

<sup>379</sup> ['Solidarity in an image': Glasgow protesters halt deportation of two members of their community \(thelondoneconomic.com\)](#) or [Mass tourism protesters squirt water at Barcelona tourists - BBC News](#) accessed 03.08.2024.

<sup>380</sup> John Rawls, *A Theory of Justice* (The Belknap Press of Harvard University Press 1971), p.72.

citizenship, grants access to a wider set of rights and privileges, inferring that it is not just a social good but also the key element for the accessibility of further goods and benefits.

On the other hand, certain characteristics of citizenship underline its nature as a social good. First, the consequent benefits that come with citizenship are exclusively social in nature. According to the theory I have been following in this paper, those benefits are the corresponding associative responsibility that one reciprocally has against other community members. Furthermore, both the consequent benefits and the citizenship itself are distributed by a social institution which is the representative of the community, confirming the basic structure of the community, a detail coherent and necessary for associative responsibilities. Then again, the fact that citizenship (maybe some of the consequent benefits as well, but certainly not all of them, but definitely citizenship) is distributed by the social institution (the state) itself and only itself is a distinctive characteristic of citizenship that renders it unique and hence irregular. In the next section, I will briefly discuss the implications of this irregularity for global justice.

### 1.2.3. The Global Justice Question

In this chapter, so far, I have argued two main points regarding citizenship: First, citizenship, or political membership, is strongly connected to one's exercise of his rights. In today's circumstances, with the advancement of supranational institutions and endorsement of human rights, it sounds pessimistic to argue that one only has rights when he is a member of a political community. But still, citizenship as a legal title plays a major role in fulfilling one's rights. Secondly, citizenship, with the help of general border control over immigration, functions as a facilitator for the conservation and the accumulation of resources and, consequently, serves to grow the inequality gap between countries. But what does it mean for individuals who are subject to this inequality and their rights claim?

From the perspective of Rawlsian justice theory, the first dilemma is the theory's application domain. As discussed earlier, Rawls explicitly stated that his theory of justice only applies to a self-contained community with a basic structure.<sup>381</sup> The prominent reading of this statement is to understand justice as a political conception and approach the "duty of justice" as an associative duty.<sup>382</sup> The first problem with applying this reading to border control (or citizenship, or immigration) would be the

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<sup>381</sup> Rawls, (1971) p.7-11.

<sup>382</sup> Nagel, p. 127.

intermediate nature of the matter. It is reasonable to an extent to exempt it from the domain of justice that applies to domestic matters. However, because it is a determinant of the scope to which domestic justice applies, it would be unreasonable to argue that there is no concern of justice that applies to border control. Secondly, in the earlier chapters, I attempted to circumvent this restriction by demonstrating that one or more transborder basic structures can be defined and arguing for concurrent associative relationships that generate respective associative responsibility. This presumption infers that transborder associative relationships create a duty of justice that is respectively comprehensive to the grounding conduct. In other words, there is a level of duty of justice that we owe to those who are not members of our society, even regarding matters other than border control.

Regarding the inequality that results from citizenship appointment at birth, two questions need to be asked: What is the extent of associative responsibility that corresponds to transborder associative relationships, and what are the duties of justice that associative responsibility requires? Various solutions have been proposed to address the problem of arbitrariness by demonstrating the unjust consequences. The most direct proposal, for starters, belongs to Carens, as he considers border control an unethical matter and an open borders policy a requirement of justice. Carens argues that open borders will alleviate economic inequality by enabling a flow of resources and admission of immigrants.<sup>383</sup>

Apparently, he is not alone. Carens's morally grounded argument aside, several authors argue that open borders will improve the economy on a global basis and reduce poverty. For example, one study exhibits empirical evidence that immigration has a positive impact on the prosperity of the receiving state by contributing to the improvement of institutional quality.<sup>384</sup> Another study of economics suggests that open borders may not result in increased economic efficacy, but increased border porosity would, by mobilising labour productivity. In contrast to the prominent belief, that restrictions on immigration based on economic inefficiency are unjustified because the current evidence favours relaxation of borders to enhance the benefits of immigration.<sup>385</sup> In another study, extensive data is provided to argue that an open borders policy would improve the global economy for the better by maximising labour benefits. An open border policy, as suggested, would allow labourers to find the most productive place and even increase economic output by decreasing costs.<sup>386</sup>

Shachar proposes a more direct solution predicated on her understanding of birthright citizenship as inherited property.<sup>387</sup> Similar to its application in the property theory, Shachar proposes

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<sup>383</sup> Carens, p. 252.

<sup>384</sup> J R Clark, R Lawson, A Nowrasteh et al, 'Does Immigration Impact Institutions?' (2015) 163 *Public Choice* 321.

<sup>385</sup> Michael A Clemens and Lant Pritchett, 'The New Economic Case for Migration Restrictions: An Assessment' (2019) 138 *Journal of Development Economics* 153.

<sup>386</sup> Michael A Clemens, 'Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?' (2011) 25(3) *Journal of Economic Perspectives* 83.

<sup>387</sup> Shachar p. 85.

the establishment of a special form of tax collected by those who have been in a privileged position by virtue of their citizenship. The notion in this proposal is pretty similar to those in Rawlsian justice theory. Those who have acquired a privileged kind of citizenship at birth would be considered to have an arbitrary advantage and would be required to make a payment named “citizenship levy” into a fund which will address the global distributive consequences of birthright citizenship.<sup>388</sup> This fund would be available to address the most urgent matters of global justice or to provide basic goods for vulnerable groups.

Shachar’s proposal is fairly parallel to Pogge’s Global Resources Dividend. Similar to birthright citizenship, the distribution of natural resources is also arbitrary from a moral point of view. To compensate for this (organic) inequality, Pogge proposes the establishment of a fund that would be imburshed by states in proportion to their resource use.<sup>389</sup> The merit of this proposal is that it envisages a tax based on consumption rather than income because the payment amount better reflects the culmination of the consuming party’s benefit and the harm that other parties had to endure.<sup>390</sup> Pogge is not alone in invoking global taxation either. For a similar one in particular, Steiner proposes a tax based on ownership of the resources instead of consumption and distributes the fund to all human beings equally instead of addressing the most vulnerable groups.<sup>391</sup> In both proposals, the grounding idea for this proposal is the ownership of the earth by all people. Still, Steiner’s main task is to distribute everyone’s shares in an egalitarian way, whereas Pogge’s ultimate goal is to provide means for implementing distributive justice.

One can envision many problems with these proposals. For instance, who will decide which urgent matter the fund will be used for? What mechanisms will be used for efficacy and anti-corruption measures? Many other examples can be added and could be answered just as easily, given the fact that most of them concern procedural preferences. In my view, the most substantial problem with all these global tax proposals is that they presuppose a global governing structure that is more established and comprehensive than the one that we have today. What is its difference from the ones we have today?

In all fairness, Pogge offers some distinctive qualities by addressing the root causes. In fact, he argues that the corresponding responsibility for his proposal is the violation of negative duties. States are involved in this particular scheme of distributive justice because they fail to refrain from imposing harmful global institutions.<sup>392</sup> Global Resources Dividend is part of a bigger criticism of the global institutional order, seeking a way to compensate for the harm of its failure while simultaneously arguing for a better-adjusted system. This is why I brought up Pogge’s proposal. I suggest Shachar’s argument

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<sup>388</sup> Shachar, p.96.

<sup>389</sup> Thomas Pogge, *World Poverty and Human Rights* (Cambridge, Polity Press, 2008)

<sup>390</sup> Paula Casal, ‘Global Taxes on Natural Resources’ (2011) 8 *Journal of Moral Philosophy* 307, p.312.

<sup>391</sup> Hillel Steiner, *An Essay on Rights* (Oxford, Blackwell, 1994).

<sup>392</sup> Casal, p.310.

should be understood in the same comprehensive manner: Birthright citizenship levy is a particular scheme that will only be beneficial as long as it is paired with a more open-border policy.<sup>393</sup>

The compensation mechanism will only make sense as long as the continuation of harm is, even so slightly, in decline. Constant compensation does not make systemic inequality countervailable because it would be an abuse of justice as an institutional instrument. What basic moral standards (of distributive justice) require is the elimination of harmful consequences of border control and citizenship mechanisms. In fact, in the previous chapter, I argued that accumulating harm caused by systemic injustice creates the type of ongoing conduct which generates associative responsibility. In other words, the current border control and citizenship mechanisms, in the way they create or contribute to global injustice, are not only responsible for the harm that requires compensation but also indicate the association that creates the responsibility to fix it.

A quick recap might be useful to clarify, but this time, I will try to illustrate a chronological summary. So far, we have concluded that natural resources could be a contributing factor to inequality, but they cannot be the main reason. They might have caused a certain level of inequality at the original point but it could be or might have been countervailed by the disadvantaged states. When we researched the possibility of misconduct between the states, we determined that certain types of past misconduct (economic exploitation) created a deeper inequality, which rendered the sufferer party even more vulnerable and open to further misconduct. Furthermore, this vulnerability paved the way for ongoing recurring misconduct (world trade order), which is processed through harmful global institutions. Note that the resource of the inequality, whether it is a consequence of a past inequality or a natural contingency, is not the sole effective parameter after this point. In time, the equality gap between/among parties accumulates at an accentuating level, so much so that it justifies this vicious cycle.

Duty of assistance, Rawls' remedy for international inequality, is not sufficient for this exact reason. It was designed to work in a domain that is compliant with the Law of Peoples. However, the situation in our hands invokes a more comprehensive set of solutions, addressing both political developments in time and urgent matters at the moment. On another note, any duty of assistance or any similar international task offers a solution to ameliorate the overall situation of the nation. However, it is evident that this type of remedy requires a comprehensive structural change over a significant amount of time. In comparison, evaluating the matter through the individual rights perspective demands an immediate solution to this problem due to the fact that humans have a limited span. States, as moral units, may bear the element of continuity in one way or another, but human life is subject to an end.

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<sup>393</sup> As a matter of fact, Shachar proposes a new system for citizenship appointment which she calls Jus Nexi. Because the main task of this section is to demonstrate the contribution of border control and citizenship mechanisms, I preferred to leave it out of this paper. For more information, please see Shachar "Birthright Lottery" (2009).

More significantly, the quality of human life over time does not correspond to the conditions of a state during the same time period. Even if average well-being within a state improves over time before one's life ends, it does not necessarily raise the quality of one's life at the time because his capacity to enjoy is probably reduced. For example, in 1982, Turkey banned public officers from covering their heads inside public institutions. By the late 1990s, the headscarf ban was de facto including students and the common practice in almost all universities.<sup>394</sup> Imagine a young woman who turned eighteen in 1982 and refrained from pursuing higher education because of the ban. When the ban was permanently lifted in 2013, she would be 49 years old. She could still enjoy her right to higher education, but both her experience and its contributions to her life prospects would be significantly different.

State-level ameliorating and restorative solutions are undoubtedly necessary and urgent. I do not intend to discuss or reject the ways of improvement here. However, my next argument is predicated on the inefficacy of state-level restorations from the individual rights perspective. Therefore, I will argue for immigration as a corresponding duty for international responsibilities and ask: Is there an associative duty of admission?

## 2. Immigration as Ultima Ratio

What are the implications of political membership being a primary good in the context of distributive justice? From a Rawlsian point of view, I suppose the main parameter to discuss is the difference principle. Speaking in a general manner, the first principle, the principle of equal liberty, is universal by nature. It suggests “*Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.*”<sup>395</sup> It uses the common formulation that describes universal rights and freedoms, most of which overlap with the humanitarian threshold. It infers that the protection offered by the first principle de jure includes the prospective immigrants. Rawls also conforms to this appraisal: “*The fundamental liberties are always equal, ....The primary social goods that vary in their distribution are the powers and prerogatives of authority, and income and wealth.*”<sup>396</sup>

The second principle consists of the difference principle and the principle of fair equality of opportunity. The difference principle suggests that “*Social and economic inequalities are to be arranged*

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<sup>394</sup> [Headscarf controversy in Turkey - Wikipedia](#) and [Quiet end to Turkey's college headscarf ban - BBC News](#)

<sup>395</sup> John Rawls “A Theory of Justice”, (Original ed, Cambridge, Massachusetts, The Belknap Press of Harvard University Press, 1971).

<sup>396</sup> Rawls (1971), p.93.

*so that they are both to the greatest benefit of the least advantaged.*”<sup>397</sup> It translates into a rule that conditions any existing inequality -or a prospective inequality that is proposed- to create a difference in expectation that is in favour of the worse-off. As in, the elimination of an existing inequality would exacerbate their current situation.<sup>398</sup> In this light, does the arbitrary distribution of political membership trigger the difference principle? Rawls recognises the multiple interpretations of this principle and reads them under the lights of different political ideas. Would any of them recognise immigration as a remedy for inequality or inequality that benefits the least advantaged?

Regarding the principle of fair equality of opportunity, it is quite tricky to comprehend it in a transnational domain. The principle suggests that “*Social and economic inequalities are to be arranged so that they both ..... , and attached to positions and offices open to all.*”<sup>399</sup> Since Rawls’ theory concerns the basic structure, the principles address how these positions are allocated by the basic structure. In a closed-up country, the state functions as the central administrative, executive, and coercive institution; therefore, all concerns regarding the basic structure are directed to the state. In transnational associations, however, the allocation of the positions is the preliminary contingency that engenders the basic structure. Recalling my arguments in the second chapter, two major phenomena, the world trade order and economic exploitation, demonstrate that there is already a basic structure operating on a transnational basis. It is by virtue of inequality that is introduced by these positions that the principles of distributive justice are invoked.

Even if we build upon the presumption that these positions are capable of conforming to the principle of fair equality of opportunity and there would still be an underlying basic structure, the sustainable application of the principle would still be challenging. This statement does not suggest that the transnational basic structure is created by existing inequality and the elimination of inequality would render it void. Instead, the presence of inequality, especially to the extent that it is today, acquaints us with an operating basic structure. In the case that injustices are eliminated and the allocation of positions conforms to the principle, the basic structure would still be present. Only its recognition would not be such a critical matter. My concern with applying the principle of fair equality of opportunity is regarding the size and the complexion of the domain and the absence of a central administrative institution. This particular vision would require 1) a deep examination of the principle alongside the principle of equal liberty and the difference principle, 2) a wider set of data about transborder institutions and their activities, and 3) a nuanced analysis to draw a conclusion. Therefore, I will not deeply discuss its implications for citizenship as a primary good in the context of distributive justice.

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<sup>397</sup> Rawls (1971), p.302.

<sup>398</sup> Rawls (1971), p.78.

<sup>399</sup> Rawls (1971), p.60.

To make it clear once again, since Rawls's theory of justice is designed to apply in a closed-up society, it does not refer to immigration as a distributive mechanism. Many would look into *The Law of Peoples* to find an answer to this question, but the international theory defined in the book regulates the interaction of states, as they are the representatives of the people. In the case of *The Law of Peoples*, the basic moral unit is a collective of people, which are communities and respective states. In the case of immigration, the main relationship is between an individual and a state (as the representative institution of the receiving community). In the case of transborder distributive justice, the subjects of the discussion are individuals of the domain in which justice applies. Ergo, when we talk about the possibility of immigration as a measure of distributive justice, the parties are the individuals who are current members of the community (still represented by the state but individually considered as moral units) and the prospective immigrant(s).

### 2.1. Distributive Justice in a Transborder Domain

As discussed in the previous section, I have concluded that citizenship can indeed be considered a primary good, given its significant impact on one's rights and well-being. It would not create a difference in a closed-up society because the responsibility-generating association would be equal to the community, and everyone would automatically acquire citizenship. In the new domain, everyone still has citizenship (let us assume they do, in theory). Still, the particular ones each member has is not equal, which invokes the principles of distributive justice. Putting it differently, the source of inequality is not the lack of citizenship but the quality of it.

The significance of this particular inequality is that it has the power to define the majority of one's life prospects. As Rawls put it, describing the libertarian point of view, "*the particular efficient distribution which results in any period of time is determined by the initial distribution of assets, that is by the initial distribution of income and wealth, and of natural talents and abilities. With each distribution, a definite efficient outcome is arrived at.*"<sup>400</sup> In a system of natural liberty, the problem is the undisturbed processing of the initial distribution due to the fact that the initial distribution is arbitrary from a moral point of view. This arbitrariness is the primary culprit, as it is understood from Rawls' writing. He does not find it satisfactory if social contingencies and natural fortune are mitigated alone; he also requires the distribution of income and wealth, which are consequences of the natural distribution of abilities and talents, to be regulated. In other words, any system that results in the accumulation of income and wealth over time fails to exercise the difference principle in an optimum way.<sup>401</sup>

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<sup>400</sup> Rawls (1971), p.72.

<sup>401</sup> Rawls (1971), p.74.

From the perspective of an individual, we have concluded so far that citizenship is, in one aspect, similar to a natural asset. Even though it is regulated through certain rules, one's acquisition of it occurs contingently to his will. On the other hand, it is the most effective determinant of one's life prospects as it controls how one can utilise his other natural assets. For example, one needs to live in a country that exercises the principle of fair opportunity for him to find proper opportunities to develop and exercise his natural abilities. On the other hand, citizenship is also an effective determinant for other social attributions that are given at birth. Two people who were born into the same class in different countries may have distinctly unsimilar life prospects. This phenomenon, which would be more visible in worse-off classes, might be the result of the exercise of the principle of fair opportunity, the better position of that particular class, or all classes, in that particular country. Ironically, as the economic welfare of the class increases, its ability to circumvent the disadvantages of the respective citizenship also increases.

This is where distributive justice fails in a way that it has never failed in a closed-up community. Let's assume two countries: One is a country where the principles of justice are satisfyingly exercised, and the fundamental rights and privileges of citizens are fulfilled in principle; this one is called the Fair Country (F). The other country does not need to be the exact opposite. Any country that is significantly short of what the first one offers; the basic institutions are not regulated through principles of justice, and the fulfilment of human rights is contingent on various arbitrary factors (race, class, religion, ideology), and let's call this one the Unfair Country (U). Now imagine one better-off (B) class and one worse-off (W) class in each country. Depending on the variants, members of the better-off class in the Fair Country (FB) presumably have better life prospects than members of the better-off class in the Unfair Country (UB). Similarly, members of the worse-off class in the Fair Country (FW) are expected to have better prospects than members of the worse-off class in the Unfair Country (UW).

To make a rough estimation, the welfare ranking of these classes is likely to be  $FB > UB > FW > UW$ . Naturally, this order is not absolute. Depending on the general welfare situations of each state, it would not be such a surprise that FB and UB are more or less the same or that UB is better off than FB. In a lesser possibility, one might find out that the welfare of UB might be similar to worse than FW. However, there is one predicament that never changes: UW is always the worst of all.

This is how the theory works. In reality, another parameter comes in and deepens the equality gap: the ability to exercise the right to movement. It was mentioned before that wealthier countries provide their citizens with more powerful passports that allow them to travel more freely. So, the difference between the exercise of the right to free movement and the secondary benefits that are

derivative of this privilege is not a surprise.<sup>402</sup> It suggests, in the context of principles of distributive justice, that the inequality in the passport powers is, let alone benefitting the worse-off, in favour of the (probable) better-off party, which are FB and FW in the above illustration. Should UB and UW have the same privilege, they would have a chance to circumvent their arbitrarily attributed citizenship by immigration. Furthermore, it is more striking to notice that the possibility of circumventing the disadvantages of citizenship is higher for UB than UW.<sup>403</sup> To make it crystal clear, it does not matter which class we imagine as UB; we should assume its members have a better chance of being admitted compared to those of UW. Even if not on a linear scale, it is evident that one's chance of admission increases as one gets better off.<sup>404</sup> An unskilled worker who is a high school graduate is less likely to immigrate than a skilled worker with an undergraduate degree. A skilled worker with a degree also has a lower chance than someone who has the same skill but better prospects due to his experience. And so on.

The transcription of this illustration is the opposite of what the difference principle proposes. First, comparing two citizenships, we figured out that the one with better prospects is more likely to have his freedom of movement fulfilled than the citizenship that does not offer as much prosperity. Secondly, between two classes with the same citizenship, the one with the better prospects has a better chance of overcoming their common disadvantage, which is the citizenship itself. These two phenomena conclude that the border control and immigration policies are designed in such a way that they function in reverse to the difference principle. They do not merely contribute to the international equality gap by being just another item of inequality; they also prevent the alleviation of it by creating an opposite stream. And how do we compare border control and the difference principle? Because, as repeatedly explained so far, two regulating mechanisms within the same domain, the former belonging to reality and the latter belonging to the principles of justice that are proposed to create a just system.

## 2.2. Distributive Justice in Domestic Affairs

Another detail to underline about applying distributive justice in a transborder domain is that it does not preclude the application of distributive justice principles within borders. As argued in the second chapter, associations exist in a complicated network, and one person can be (and more likely

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<sup>402</sup> Sujania Talavera-Soza, 'Citizenship: A Determining Factor in a Geoscientist's Career' (2023) 16 *Nature Geoscience* 550–551; H I Okagbue, P E Oguntunde, S A Bishop et al, 'Significant Predictors of Henley Passport Index' (2021) 22 *International Migration & Integration* 21.

<sup>403</sup> I U Freisleben, 'Passport Power – Citizenship by Investment Programmes Exploiting Spatiotemporal Hierarchies of Passports' (Dissertation, 2019) Available on: <https://urn.kb.se/resolve?urn=urn:nbn:se:liu:diva-158256>, (accessed 10/08/2024); Andrés Solimano, 'International Mobility of the Wealthy in an Age of Growing Inequality' (2019) 14(1) *Norteamérica Hoy: Temas Relevantes* 163. (available in English [MergedFile \(investmentmigration.org\)](https://investmentmigration.org), accessed 10/08/2024).

<sup>404</sup> Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* (Princeton, Princeton University Press, 2013) 91.

is) a member of multiple associations that generate rights and responsibilities. The extent of these rights and responsibilities is proportional to the intensity of the association. The presumption that an international association is strong and dense enough to trigger certain concerns of distributive justice does not eliminate its application in the most intense political association. So, what should the receiving country expect from immigration in the context of distributive justice?

In the first instance, it is important to ensure that the expansion of society through immigration does not constitute a threat to the overall well-being of current citizens, contrary to common belief. I even go one step further and suggest that in a community that follows the principles of distributive justice, the difference principle illustrates that introducing a new social class to the community does not necessarily lower the expectations of other economic classes. It may, however, prevent the further acquisition of the social class with higher expectations. Let me illustrate.

Imagine three random social classes in a community whose expectations are in the following order:  $A > B > C$ . So, the difference principle predicates that any inequality increasing the expectations of A or B must also benefit C. There are only two exceptions to this case. First, if expectations of C are already maximized, A or B are allowed to improve their expectations as long as it does not affect C. Second, should aversion to change in expectations of A and B exacerbate the expectations of C? This latter case, however, is an undesirable but still just situation.<sup>405</sup> In both cases, expectations of A and B can increase without any concerns regarding C. Then, a class of immigrants, X, was included in the society.<sup>406</sup> If we presume that X becomes the worst-off class with the lowest expectations in the community, the new rankings would be  $A > B > C > X$ . In this scenario, even if the expectations of C are maximised, any inequality in the expectations of A or B must benefit X. The merit of this condition is as follows: When a new worst-off class is introduced to the community, the difference principle reformulates the distribution and illegitimate the further advantages for better-off classes. It does not create a redistribution of resources from scratch, but it prevents the cumulation of existing inequality by challenging the existing distribution to satisfy a new condition.

There is one case in which the difference principle would reformulate into a restrictive condition for other classes is the possibility of an increase in C's expectations. As C was the worst-off until the inclusion of X, there were no constraints on an increase in its expectations. However, there is also a positive scenario that is worthy of mentioning here: Rawls suggests that combined with the other principle, there is a chain connection between classes in the application of the difference principle.<sup>407</sup>

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<sup>405</sup> Rawls, p.78-9.

<sup>406</sup> I acknowledge that it is unlikely that a group large enough to create a social class all shares the same welfare expectations. One might imagine this case as similar to post-war Germany signing labour recruitment agreements with multiple countries, such as Turkey, Greece, and Italy, to sustain its industrial take-off. Or one may disregard such concerns for the sake of theoretical discussion.

<sup>407</sup> Rawls (1971), p.82.

This does not mean that the difference principle requires the occurrence of a chain connection. On the contrary, Rawls explicitly recognises that the difference principle is not contingent upon the chain connection but is more likely to occur. So, including a lower class does not necessarily affect the current lowest class in a negative direction.

In other possible scenarios in which X is not the lowest class, the exercise of the difference principle does not significantly differentiate from the original status quo. As X relocated above each class towards the top, there would be one more class that possibly would benefit from the application of the principle over X. To give an example, if the order of expectations is rearranged as  $A > X > B > C$ , it means that C is required to benefit from inequalities that favour X, whilst B is also expected to benefit under the chain connection.

Thinking about the complexities that Rawls acknowledged, I think it is fair to say that the argument that “the inclusion of a class of immigrant to the community will not lower the overall expectations of existing members” remains valid in most scenarios. The critical detail to consider is that the subject of the principles of justice is the basic structure, and the aforementioned regulations project a structural arrangement, not a one-off intervention in social affairs. It means that consistency in applying principles of justice will eventually lead to a holistic improvement across all classes. To understand this, one must not ignore the function of the principle of fair opportunity as the complementary to the difference principle. Fair distribution of opportunities plays a major role in distributing benefits and re-arranging expectations because “*if some places were not open to on a basis fair to all, those kept out would be right in feeling unjustly treated even though they benefited from the greater efforts of those who were allowed to hold them.*”<sup>408</sup>

This brings me to the last issue I want to mention in this section. The holistic nature of the theory must not be ignored when discussing the inclusion of an immigrant class in the community. The application of the principle of equal liberty and fair equality of opportunity is of critical importance, especially in the case of immigration. The difference principle suggests overall welfare in social and economic matters. Still, it does not address the integration of an ethnic group, which is vital for the delivery of satisfactory results. If immigrants are not granted the same fundamental freedoms as locals, which would fail the principle of equal liberty, or if they are held back from certain positions and offices, failing the principle of fair equality of opportunity, then the maintenance of the difference principle would be disturbed. Unfortunately, this is the more common case.

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<sup>408</sup> Rawls (1971), p.84.

### 2.3. Immigration as a Remedy

Arguments regarding the effects of immigration in the receiving community might be useful for consequentialist arguments or counterarguments against immigration. However, it does not substantially contribute to the prospective immigrant's claim for admission and political membership. As stated at the beginning of the chapter, what distributive justice suggests for immigration is predicting the world without having the justice and equality concern that the principle offers to address. In the terminology used earlier, the application of border control provides unreciprocated advantages to certain groups, whereas the range of opportunities and benefits is wider for them without the condition of merit. The principles illustrate how the world would process without this particular inequality.<sup>409</sup> The function of the difference principle for said purpose is directly addressing the problem of arbitrary distribution and offering a scheme of solution to eliminate the objections.

What is the role of immigration here? Discussion over unfair advantages taken by one side of the story lets us understand the current mindset of both parties and delivers a clue about the motivation behind immigrating. In this case, it is clear that one party needs a remedy to eradicate the inequality he is subjected to or at least alleviate his situation. But to what extent can immigration function as a remedy on a larger scale? Would it be efficient, sustainable, and practical, or would it be mending one side of the problem and breaking the other side? To explain this with an example, less obviously than colonialism, the world economic order negatively affects the country as a community of individuals and the state as the legal entity. While this community cannot be expected and accepted to immigrate in its entirety, it is unfair to expect individuals to suffice with what the state gets as compensation or remedy. After all, the injustice has violated their individual rights by taking advantage of their subjection to an unjust system. Their expression of interest in immigration, in this context, can be understood as requesting restorative justice or demand for amelioration of their situation. This is not my argument, but this is an easier explanation for the same result.

The reparative argument for immigration may not constitute a solitary “right to be admitted”, but it definitely supports the individual right to movement against the state’s sovereign entitlement. If one’s living standards have been affected negatively due to another state’s action, he at least has the right to demand a better life from the unjustly enriched, culprit state. In this dissertation, I mentioned two significant misconducts that significantly affected individuals’ life standards. The first is the economic exploitation committed in the past. As argued, this is not only perceived as a transfer of goods and labour but also erecting obstacles on the exploited state’s path to welfare. Secondly, the poverty that is probably caused by this exploitation is sustained, even exacerbated by the world trade order.

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<sup>409</sup> Carens, p.226.

Immigration might also be argued as a good form of reparative justice for the harms caused by the contemporary imbalanced system and past injustices' contribution to its maintenance. It still can be argued elsewhere as an alternative or complementary to my distributive justice argument. However, I think it fails to capture the comprehensiveness of the matter. The backbone of my argument in this dissertation is the accumulation of harm and benefit over time and how it perpetuates the current injustice. Both the actions that require reparation and their detrimental effects spread through time and extensively across different aspects of the community. Therefore, it does not seem plausible to formulate a proper reparation that includes both states and individuals that is better affected than associative implications of distributive justice.

Building upon this point, I argue that when a person whose situation needs amelioration wants to immigrate to a country where his overall well-being is (likely) substantially improved, then it is the receiving state's duty to admit due to its associative responsibility to exercise distributive justice. But I want to underline one detail about this argument: the merit that grants the immigrant the right to be admitted, which is the corresponding right to the state's duty, is his request for it. His demand is what shapes the ambiguous content of "associative duty to justice", which is not the case for the majority in the same situation. Perhaps, as silence can be understood in a particular manner, the absence of a similar request from others can be understood as their content with prospective structural change (if it ever happens).

Before moving on to the final arguments, let me clarify what it is by differentiating it from what it is not. First, I do argue for the right to immigrate, but it is not grounded in a cosmopolitan point of view, no matter how similar the prospected final outcome is. The reason the prospective immigrant has the right is not his equal share on the earth as a human being. Secondly, that reason is not the prospective immigrant's right to free movement either. While it is clear that free movement is not argued to be an absolute right, and even if it might be strong enough to overcome the state's right to control borders, this is still not the ground upon which I built my argument. Third, note that I do not argue for the invalidity of border control, which was already discussed above. Finally, my argument for the right to immigrate is grounded in the associative responsibility of justice, which applies to transborder to an extent. Admission of an aspiring immigrant should be considered a fulfilling duty for this responsibility.

So far in this paper, I have made my way up to immigration. In what follows, I will discuss immigration as an effective duty for the responsibility of justice.

### 2.3.1. Admitting Immigrants or Importing Poverty?

Discussing immigration as a method for the alleviation of the poverty problem is not exclusive to philosophers. Numerous economists have proposed labour immigration as a win-win solution for both states and prospective immigrants. Lant Pritchett, for one, recommends states lean towards immigration rather than seeking solutions in advanced technology. He is one of the fierce defenders of the argument that restrictions over immigration are more detrimental than beneficial.<sup>410</sup> Another one would be Michael Clemens, as briefly mentioned above, who demonstrates through extensive research that barriers to immigration have serious economic consequences for the United States.<sup>411</sup>

One noteworthy point would be the focus on correspondence with the required workforce and the general portrayal of prospective immigrants. Pritchett points out that immigration policies are inclined to accept workers with formal education that is based on cognitive skills rather than rudimentary work that requires little to no formal education. However, both groups' demand and prospected wages have increased simultaneously, and it is a mistake for governments to develop immigration policies that only address the former group. Pritchett criticises the notion that automation processes should replace unskilled labour (in a better expression, easier-to-learn-skilled labour), arguing that it is a vain use of energy and resources. “ *Barriers to migration encourage a terrible misdirection of resources. In the world's most productive economies, the capital and energies of business leaders (not to mention the time and talents of highly educated scientists and engineers) get sucked into developing technology that will minimize the use of one of the most abundant resources on the planet: labor. Raw labor power is the most important (and often the only) asset low-income people around the world have. The drive to make machines that perform roles that could easily be fulfilled by people not only wastes money but helps keep the poorest poor.*”<sup>412</sup>

It is not a challenge to agree with Pritchett, assuming the motivation behind the growing invasion of AI technologies is meeting needs. Even if it is not, technology is not as effective in replacing human labour as we may think. In some cases, automation of a process does not necessarily change the need for a worker; it changes the nature of the job that the person needs to do. Hence, the need for a labour force remains.<sup>413</sup> In others, even though the required human labour is reduced, the market is broader due to communication technologies. Remembering the argument about globalisation, farms in the UK might be using machines to milk cows instead of farmhands, but the brand buying and selling it needs all kinds of workforce for pasteurisation, bottling, distribution, marketing, selling and so on. Ironically, a disruption in any of these steps, regardless of how rudimentary the work is, may cause a

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<sup>410</sup> Lant Pritchett, 'People Over Robots: The Global Economy Needs Immigration Before Automation' (2023) 102(2) *Foreign Affairs* 53.

<sup>411</sup> Michael A Clemens and Lant Pritchett, 'The New Economic Case for Migration Restrictions: An Assessment' (2019) 138 *Journal of Development Economics* 153.

<sup>412</sup> Pritchett (2023).

<sup>413</sup> Pritchett, (2023)

setback in the entire system. The recent food and fuel shortage in the UK, which was caused by the decreasing number of lorry drivers, exhibited it clearly.<sup>414</sup>

Does this argument translate into a defence for immigrants stealing locals' jobs? What if the inflation of labourers causes a decrease in the value of the workforce and results in lower wages for locals? As argued, this is not necessarily the case. Research made on a past case demonstrates that border policy restrictions on immigrant labourers do not effectively result in wider job opportunities or higher wages for local labourers.<sup>415</sup> In this particular case, the employers gravitated towards products that are less labour-intensive and more adaptable to automated processing instead of employing locals with higher salaries.

Naturally, reaching absolute and conclusive data is impossible when there are so many determinants. All these economic considerations are relevant as long as they can be categorised by an ethical argument. In the case of this paper, the research's function is to disprove the arguments that immigration is a detrimental social factor for the current population. The duty to admit is grounded in responsibility to justice, but it does not exhaust the responsibility: for the immigrant, the responsibility transforms into a domestic responsibility for justice, if not right away, definitely over time. The welfare of the current citizens is a valid concern in this regard. One perfectly may argue that this concern would justify states turning to alternative corresponding duties instead of admission of immigrants, whatever they might be. After all, the act of immigration does not solely affect the immigrant's life; it also affects the receiving society.

### 2.3.2. Duty to Stay

The individual's decision to immigrate is not independent of the community he left, either. When considered within the larger picture, the number of immigrants (departing the country) may constitute a factor that is affecting the community of origin, positively or negatively. It is only fitting that the immigrant's decision to leave is majorly related to multiple factors that all belong to different aspects of the country. Whether it is political corruption, restriction of certain rights and freedoms, or economic challenges. Unsurprisingly, considering the main concern of the receiving country is always economic, the researchers only focus on the last one. Indeed, the number of philosophers proposing immigration as an alternative and immediate solution to poverty is not ignorable at all. As mentioned above, Carens argues for an open-border policy and considers poverty as a contributing factor to his

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<sup>414</sup> [Biggest fall in HGV drivers among the middle-aged - BBC News](#) [How serious is the shortage of lorry drivers? - BBC News](#)

<sup>415</sup> Michael A Clemens, Ethan G Lewis and Hannah M Postel, 'Immigration Restrictions as Active Labor Market Policy: Evidence from the Mexican Bracero Exclusion' (2018) 108 *The American Economic Review* 1468.

cosmopolitan standpoint.<sup>416</sup> Kieran Oberman displays a focused approach and suggests that more porous borders, accompanied by the correct support programs, have a chance of tackling global poverty.<sup>417</sup> Christian Barry, as another, puts full trust in the matter and advises that immigration is a better solution than it is thought by those who suspect it.<sup>418</sup>

However, many others approach the matter more cautiously; I categorise them into two main approaches. First would be the exclusionary: differently than those who would justify border control on a theoretical level, some authors prefer reading the empirical data as “the absence of benefits.” For example, one research suggests that “*immigrants are the only unequivocal beneficiaries of migration. There is no guarantee that anyone else will be, not even the sending countries from which the migrants come.*”<sup>419</sup> The authors argue that the possible benefit of immigration is so minimal that it is not reasonable for the government to take secondary risks, such as any possible risk of loss for the current citizens, future demographic change, the rise of nationalist discourse and so on. The research makes sense when considering Shachar’s gate-keeping argument, which is mentioned above. If the borders are indeed protecting accumulated but limited resources, it is only natural for an increase in population to cause a reduction in the shares. Nevertheless, since my approach is based on the fulfilment of the rights of the immigrant, this approach, and a couple of similar others, are ignorable.

The second group that displays a more tentative approach to immigration is the effort economisers or inefficiency critics. Primarily concerned about global justice, this group of philosophers mostly find immigration as not efficient enough to offer a solution for poverty or international inequality. The nature of the argument makes it more nuanced: there are several aspects of immigration projected as inefficient for different reasons, and I will try to discuss them briefly.

First, the numbers. Pogge strongly asserts that even though the number of immigrants being accepted to developed countries increases every year, it is still “ridiculously small”<sup>420</sup> in comparison to the number of people suffering through absolute poverty. People who have immigrated or will be able to immigrate as a result of a more welcoming open-border policy are, in the best scenario, one-tenth of the population that will be left behind. So, immigration may resolve the problem of poverty from the perspective of the immigrant, but it will not provide a significant contribution to the alleviation of the global justice problem. In addition, Pogge finds it problematic that those who can afford to immigrate are never the worst off. Clearly, one must have certain means to acquire the admission itself: either a

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<sup>416</sup> Carens (2013)

<sup>417</sup> Kieran Oberman, 'Poverty and Immigration Policy' (2015) 109 *The American Political Science Review* 239.

<sup>418</sup> Christian Barry, 'Immigration and Global Justice' (2011) 4 *Global Justice* 30.

<sup>419</sup> David Coleman and Robert Rowthorn, 'The Economic Effects of Immigration into the United Kingdom' (2004) 30 *Population and Development Review* 579.

<sup>420</sup> Thomas Pogge, 'Migration and Poverty' in Veit-Michael Bader (ed), *Citizenship and Exclusion* (Basingstoke, Macmillan Press, 1997).

certain degree of education or professional skills and if nothing else, one needs to be physically charming to convince the admission officers. If someone already has one of these qualities, they are probably not among those who are in absolute poverty and need urgent amelioration.<sup>421</sup> Therefore, immigration cannot be conclusively argued as a remedy for extreme poverty.

More optimistic yet inclined towards the same direction, Gillian Brock points out the possible negative outcomes of immigration as well as the positive ones.<sup>422</sup> One major concern over possible outcomes of immigration is the so-called “brain drain” when there are appealing opportunities for skilled professionals, such as specifically designed immigration schemes and naturally higher salaries due to the overall economic welfare of the receiving country. If the flow of immigration continues over the years, eventually, it may cause their country of origin to linger in a constant need for qualified workers. The most striking example of this case is health workers, who are always in high demand but expensive to train. A recent report shows that 15% of healthcare professionals work outside of their country of origin.<sup>423</sup> More strikingly, the same report shows that the rate of foreign-trained doctors increased in 8 OECD countries in the last decade, while the number of countries with sub-par healthcare professionals reached 55.<sup>424</sup> On the other hand, the cost of education and training remains in the country of origin. The same phenomenon can organically turn into an accumulation of advancement or lack of it when it comes to research: when academics immigrate, it is not only the transfer of skill in exchange for better welfare, it is also the transfer of the potential, scientific prints, and future inventions.<sup>425</sup> In other words, a country's wealth not only provides a better life for the skilled person but also ensures the perpetuation of its wealth and advancement by bringing potential and advanced facilities together.

What is the alternative, then? In order to protect the rights of remaining citizens, should it be restricted for health workers to immigrate? Or, for a bright future of the country, should individuals with high qualifications be kept confined in the country? From one perspective, it is clear that the right to access healthcare is more important than the right to immigrate; it is practically one's right to live freely against one's right to live at all. Plus, one may argue that skilled workers have a moral duty to stay in order to make amends for their education and training costs. Is taking one's right to free movement as a ransom for one's education ethically possible?

Lea Ypi proposes an interesting case for this phenomenon. She argues that if a state is entitled to control immigration (aliens moving into the country), it is entitled to prevent emigration (citizens

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<sup>421</sup> Pogge (1997), p.4.

<sup>422</sup> Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford Scholarship Online 2009)

<sup>423</sup> [WHO Raises Alarm Over Increased Healthcare Worker Migration To Rich Countries Post Pandemic - Health Policy Watch \(healthpolicy-watch.news\)](https://www.healthpolicy-watch.news/who-raises-alarm-over-increased-healthcare-worker-migration-to-rich-countries-post-pandemic/)

<sup>424</sup> Ibid.

<sup>425</sup> Sultan Ayoub Meo and Tehreem Sultan, 'Brain Drain of Healthcare Professionals from Pakistan from 1971 to 2022: Evidence-Based Analysis: Brain Drain from Pakistan' (2023) 39(4) *Pakistan Journal of Medical Sciences* 921.

moving to another country), which is justified by specific considerations. She develops a principle stating that “restrictions to freedom of movement can be justified if and only if they take into equal account the claims of justice in immigration and the claims of justice in emigration.”<sup>426</sup> Her final argument concerns the impossibility of a just migration policy (pertaining to both immigration and emigration). It is unjust for prospective immigrants if they are denied admission, and it is unjust for the remaining citizens if highly skilled workers keep leaving because of open borders without reimbursing the country for what they take.<sup>427</sup>

I find Ypi’s argument normatively accurate in depth but overcomplicated when connecting theory and practice. The structural background for her argument is pretty much Rawlsian: that citizens are connected through a scheme of social cooperation and that everyone is entitled to benefit from it and bear the duty to contribute. However, this contribution is basically an assumption based on contract theories of a state. Even if it were not, leaving the cooperation would be a valid reason to stop contributing. What they have benefited so far was their right, and they are assumed to have paid it back simultaneously as they lived there. If they did not pay certain taxes, that is a legal debt. If they engage in a harmful activity or unjust enrichment, that is a matter of criminal justice. Any extended reading would be an overcomplication of the situation. From a democratic point of view, can we argue that one has to live in the country until the next election after voting in the last one?

One might argue that certain benefits funded by the state are subject to reimbursement through practice, such as medical education. If a person received a degree through the public education system, it is their duty to practice in the country as a contributing duty. However, is it acceptable to object to a personal decision such as immigrating based on “public good”? In my opinion, it would create more harm than good to yield restrictive conditions over one or two groups of professions. Even if better opportunities for immigration for skilled professionals will not create an extra educational incentive, as it is argued,<sup>428</sup> it is definitely discouraging for the aspiring younger population to choose the restricted profession as a career. Plus, the notion of additional restrictions of movement for highly skilled workers is ethically disconcerting. It is almost punishment for a situation that actually requires a reward; it is applying extra coercive measures to “be exercised with no cost to those benefiting from it and no benefit to those who are harmed by it.”<sup>429</sup> Frankly, it is politically unpromising to justify states restricting freedom of movement of high-skilled workers for public benefit. Governments indeed have another option than pouring money into education and watching the students leave the country, but more about this later.

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<sup>426</sup> Lea Ypi, 'Justice in Migration: A Closed Borders Utopia?' (2008) 16(4) *The Journal of Political Philosophy* 391, p. 403.

<sup>427</sup> Ypi (2008), p. 414.

<sup>428</sup> Oberman, p.243.

<sup>429</sup> Ypi (2008) p.402.

This is not the end of it, either. A number of scholars disagree that immigration might be detrimental to the country of origin. For example, Oberman suggests that even though moving to a new country is an available option only for the middle-lower class at the beginning of an immigration flow, instead of the desperately poor, this is due to the risk of uncertainty and high cost of travelling, and is the case for an only earlier time period. As there is a continuous immigration flow developing, more affordable ways are appearing, as well as a flow of information and a network of opportunities. Immigration to another country becomes more available for the lower classes as the character of immigration changes over time.<sup>430</sup>

Another controversial matter is the issue of remittance, the funds the individual immigrant sends back to his family in his home country. Pogge builds upon immigration not being available for lower classes and attributes only indirect benefits, a micro contribution to the macroeconomy, to remittances as they are being sent to not-so-poor families.<sup>431</sup> Brock joins the conversation with a more indirect concern: she points out the immigrant contributions to their host country, not the contributions to the family budget, but facilities that are meant to be used by the public. Immigrants, as individuals or a collective, concern themselves with those issues probably as a means to overcome the “survivor’s guilt”. But Brock worries that those contributions may postpone the necessary structural reforms by undertaking the government’s responsibility and covering the urgency for change.<sup>432</sup>

The prominent objection to the remittances argument is based on empirical evidence. Both Oberman and Barry list studies on the contributions of remittances to the prospects of the immigrant’s family and local economy.<sup>433</sup> However, my objection would be on normative grounds. First, I have to say that the objections raised by Pogge and Brock on different matters are somewhat controversial and trivial, and the counterarguments Oberman and Barry present do not always match the level of reality. For example, Brock considers it problematic that immigrants undertake the government’s duty and build facilities in their hometown<sup>434</sup> but does not refrain from putting the government’s responsibility of keeping the healthcare system sustainable over the shoulders of healthcare workers.<sup>435</sup> In reality, the latter is easier to resolve through a structural change; if professionals of a certain public sector keep leaving on a continuous basis, there must be problems to address regarding working conditions or salaries. In the former case, it is a balance of restrictions. When a person is not allowed to immigrate to pursue a better prospect, the blame is on the rejecting government for denying him the opportunity. When a person is allowed to immigrate but is expected to provide exceptional funding to public projects,

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<sup>430</sup> Oberman, p.242.

<sup>431</sup> Pogge (1997).

<sup>432</sup> Brock (2009) p.207.

<sup>433</sup> Oberman (2015), Barry (2011).

<sup>434</sup> Brock (2009), p. 207.

<sup>435</sup> Brock (2009), p.202.

then it is the government's shortcoming for inefficient use of funds or excess taxation of immigrants, depending on the case.

The main point of objection, which is the umbrella argument for all inefficiency critics, comes from building upon both claims. As Pogge and Brock argue, the benefit and cost ratios of immigration are quite low. A country may support many possible relief opportunities instead of adopting more porous borders. Plus, as long as the underlying reasons for immigration, whether it is poverty or other rights violations, remain effective, there will be upcoming populations to fall under the poverty line and need urgent help in the future. In this regard, both Pogge and Brock suggest allocating limited resources and political leverage to addressing the structural problems and organising/supporting more comprehensive aid campaigns.<sup>436</sup> This is where I make a short circle back and remind the very specific domain that this paper occupies: My argument for immigration is based on one's exercise of rights rather than offering a solution to global poverty or the equality gap. I argue that neither state-level assistance nor international aid can exhaust the associative responsibility to justice expediently enough to render immigration unnecessary. I propose two distinguishing reasons to support it: 1) the grounding responsibility for associative duty to admit is a responsibility to justice, not a duty to aid, and 2) the state-level amelioration processes are not efficient enough to improve one's life standards. Therefore, one's request for the fulfilment of their rights as their entitlement to justice necessarily concludes a duty for admission for the receiving state. Because what they request is not immigration as relocation, but a membership in a community in which their rights potentially may be fulfilled.

### 3.2.3. Final Remarks

As a final remark, it is essential to emphasise the detail that summarises my argument's immunity from immigration critics as follows: one's right to immigrate into a country is an extension of their membership in a transborder association and the duty of justice it generates. The duty of justice transforms into a duty of admission when they request to immigrate by virtue of their prevailing interest, which is the potential fulfilment of their basic rights and freedoms. Consequently, one's right to immigrate is predicated upon personal rights and freedoms, and the organic precedence of the rights would override any public interest or state sovereignty considerations. On the other hand, this statement overshadows the nuanced character of my argument. If such a duty is predicated on universally recognised rights and freedoms, can we say there is a universal right to immigrate?

As much as I believe in the coherence and the consistency of the argument that membership in a transborder association may entail (bears the potential to yield it as an outcome) a duty to admit immigrants upon application, assuming it as a universal right would weaken the relevance of the responsibility by extending the causal relationship too far. The decisive detail positively shifting the

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<sup>436</sup> Pogge (1997), Brock (2009)

plausibility of my argument is its circumstantiality. Frankly, I propose that if someone whose circumstances require improvement seeks to immigrate to a country where their overall well-being would likely be significantly better, the receiving state has a duty to admit them. In a theoretical framework, it is easy to overlook the restrictions around this statement, so I will break it down briefly.

First of all, this “duty to admit” is a derivative of the associative duty for justice, indicating that the act of admission must consequently improve the beneficiary’s life to a point that it will alleviate the level of injustice by significantly reducing the rights violations they endure. The alleviation here is not the change of circumstances but their inclusion into the domestic community, rendering the immigrants subject to domestic principles of justice. This statement presents a double restriction for the cases to which my argument may apply. First, it outlines specific conditions for countries that can bear such a duty. It implies a requirement for a basic structure in which the principles of justice are exercised to the extent that any member of the domestic community has access to public institutions and offices to demand protection of their rights. The availability of the legal protections and remedies constitutes the targeted alleviation here, rather than physical improvement in the immigrant’s condition.

The second restriction narrows down the profile of the prospective immigrant. Apart from the lack of access to formal or practical remedies to the lack of fulfilment of their rights, the absence of any alternative grounds for admission is also implied. As an example, a person who is politically targeted by their country of origin falls under the protection of the existing 1951 Refugee Convention<sup>437</sup>. Their request for admission is based on legal grounds and therefore their rights are exceptionally protected in the transborder domain. On the other hand, many countries have enacted immigration routes and visa schemes that are specifically designed for their needs and preferences. These schemes most famously target either foreign investment to expand domestic capital or high-skilled individuals to increase economic potential or meet local needs. As briefly discussed in the previous section, this selective border porosity is considered to have a detrimental effect on the social and economic conditions of their country of origin (indirectly amplifying the injustice). My argument not only excludes these groups that are admitted through their merits but also proposes a balancing insight for the negative effects of mass immigration.

Another point of attention is the theoretical grounds of the argument. The transborder associative responsibility generates a respective associative duty to justice that revokes the principles of distributive justice. As explained in Chapter 2, the associating factors play an aggregating role in the determination of the density of the association, which is intentionally left ambiguous. The association can be claimed to be stronger on the grounds of additional associating factors, such as climate change or any other phenomena that yielded global consequences. Nevertheless, the transborder responsibility,

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<sup>437</sup> *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189

regardless of the ambiguity in its strength, is indeed applicable on a global basis. Consequently, the respective associative duty to distributive justice is also global yet undetermined. This duty generates the right to immigration only when it is determined by the action of the benefitting party. For the cases in which there is no such determination, the global duty for distributive justice still applies.

This perspective largely limits the flexibility of the argument due to its two-step structure. To illustrate, the world trade order and colonialism confirm the presence of a transborder association (step one). The association generates the responsibility that enables the emergence of the right to be admitted (step two). At this point, appointing a designated group of beneficiaries, for instance, based on the past colonial practices of the recipient country, would render this structure into a one-step argument for immigration on the grounds of corrective justice.<sup>438</sup> Similarly, pledging the admission of an immigrant from a country that is heavily affected by global trade into a country whose affluence is heavily contributed to by trade would be better classified as restorative justice or tort liability. In contrast, the immigration clause of the main argument presented in this dissertation is designed as a non-exhaustive implementation of distributive justice.

It is beyond explanation that immigration is a complex topic that requires a nuanced assessment of the parties to reach a well-informed judgment. In this section, I attempted to draw a specific picture regarding one's overarching benefit for the fulfilment of their rights. The targeted correction with immigration is one's political inclusion in the community as a member (or lack thereof) and its impact on the fulfilment of their rights. Any further specification of the parties would risk transforming the argument into an addition to the rights of refugees that is based on the violation of certain rights, instead of arguing for transborder associative responsibility for distributive justice.

This step completes my argument, and a brief conclusion for the dissertation follows.

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<sup>438</sup> For example, Tendayi Achiume proposes that the history of colonialism suggests a theory of sovereignty that obligates former colonial powers to open their borders to former colonial subjects. E Tendayi Achiume, 'Migration as Decolonization' (2019) 71 *Stanford Law Review* 1509-1574. Similarly, Lea Ypi employs the theory of supersession to grant amnesty for irregular immigrants, which can be considered a form of reparative justice, see Lea Ypi, 'Irregular Migration, Historical Injustice and the Right to Exclude' (2022) 91 *Royal Institute of Philosophy Supplements* 169-183.

## CONCLUSION

I remember a story from my childhood about Moses and his people. Rumour has it that there was a rich man with no wife or child, so when he died, his secondary relatives would share the estate. The anticipation grows as the man gets older, but he does not seem to be dying soon. Then, one day, they find the man murdered without any signs of clue about his killer. For the community, it was clear that one of the heirs got impatient waiting for him to die and took the matter into his hands. It was crucial for all the relatives to find the killer - even though all of them were suspects - because the killer would be disinherited, and other heirs would receive even more than before since the inheritance would be given to one fewer person.

Determined to use every means, heirs call upon the Prophet Moses, hoping the matter would be resolved through revelation. When Moses tells them that they must sacrifice a cow, they find this inconveniently expensive solution hard to believe. After all, why would the Almighty God need a dead cow to reveal who the culprit was? They respond to Moses:

- 'Ask your Lord to clarify for us what type of cow it should be?' The answer comes:

- 'The cow should be neither old nor young but in between.'

- 'Ask your Lord to specify its colour.'

- 'It must be a fawn-coloured cow, pleasant for the eyes who look at it.'

With only two questions, the price of the cow would dramatically increase. Hoping to wear him out and dodging this unnecessary step, they ask again.

- 'Ask your Lord to make it clear to us, as all cows look the same to us. We need guidance to find the right one.'

- 'It should have been used neither to till the soil nor water the fields; wholesome and without blemish.'

They finally say:

- 'Now, you have told us the truth!'

The reason that heirs repeatedly ask for clarification is that they do not actually want to buy a cow and slaughter it, as cows were quite an expensive commodity at the time. However, with each clarification request, the price of a suitable cow increases and finding one that would fit the description gets harder.

After an extensive search, they find a cow that is fawn-coloured, neither too young nor too old, without any flaw or defect, with no missing parts (such as a tooth or tail), and that has not been used for any work. Naturally, the only reason such a perfect cow exists is that a highly attentive and caring owner has put special effort into it. As one anticipates, the owner was highly reluctant to sell his precious cattle. The only way to convince the owner was to increase the price to an irresistible amount. After paying the inflated price for it, they - still reluctantly- sacrifice the cow. Moses takes a particular bone from the cow's corpse and touches the deceased with it. The deceased sits up, points to his murderer and falls again.<sup>439</sup>

The moral of this story goes like this: The heirs were required to perform a duty that would bring them more than what it took. However, they did not expect an expense to receive the inheritance in the first place. They hesitated to fulfil this task and made excuses by repeatedly asking for clarifications. Ultimately, their plan of feigning incompetence backfired; they had to buy a cow much more expensive than a regular one, and their attempt to dodge this duty made it even more cumbersome to fulfil. Had they done it right away instead of challenging it with questions, it would have been easier and cheaper for them.

When I was writing the last section of the third chapter, which was the final part of the main argument for the admission of immigrants as a duty for justice, this story resurfaced from the depths of my memory; I felt exactly like Moses. All these struggles, deconstruction and reconstruction of theories, nuanced appropriations of multiple terms, detailed arguments on various topics... all of them were simply to posit that when someone in need comes to the border of your country wanting to live with you, under your law and regulations, you should take them in. The right to immigrate, as in the right to be admitted when attempting to immigrate- seemed trivial compared to all the effort that is put into sub-arguments I employed building up to it. Let me walk you through them one more time.

I started this project out of my admiration for John Rawls' "A Theory of Justice"<sup>440</sup> and the difference principle. However, the restriction of the theory to domestic affairs did not feel right. How can a justice theory be this egalitarian and meticulously designed but not address the bigger injustices happening at or outside borders? It was the first problem to address. The political conception of justice and the theory of associative responsibilities provided ideal frameworks for explaining the justification of partial responsibility in matters of justice.

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<sup>439</sup> The dialogue is based on the Quran verses (2:67-72), but there are various versions of the story. I wrote the version that is stuck with me.

<sup>440</sup> John Rawls, *A Theory of Justice* (The Belknap Press of Harvard University Press 1971).

First, the political conception of justice describes justice as a term that Rawls employs. When Rawls talks about justice, he does not refer to the moral value that is so often used in daily life or even idealised as the ultimate goal of the legal system. However, justice as the subject of law is different from justice as the first merit of political institutions. The former identifies the moral value within a case. The latter, whilst still aiming for the former as the ultimate goal, evaluates the system's ability so the cases in the legal system are the only obstacle in front of reaching justice. Let us draw an example: you work in logistics, and your job is loading crates of goods onto trucks to transfer. You receive a ration to eat at the end of the day, but your colleague steals some of your food. When you confront him, he says he does not receive as much food as you do because he can not load as many crates due to his less muscular structure. You raise the issue with authorities. They take all of his rations for the day and give it to you. Turns out you both were in a concentration camp. According to the legal system, justice is your friend being punished for stealing and you getting compensated for your troubles. Rawls' political conception of justice points out the inadequacy of feeding people according to their benefit and proposes a new system in which everyone is employed for their abilities. I find it odd that he does not address the problem that you are in a concentration camp.

As the second matter, the theory of associative responsibilities explains the logic behind Rawls' dismissal of this fact. The political conception of justice identifies the state institutions, while associative responsibility justifies their scope. In a liberal democracy, the state represents individuals; it acts, rules, and enforces on behalf of the community members. In theory, every right and benefit that a member receives from state institutions is given by the community/fellow members. Accordingly, every duty and enforcement he obliges from state institutions is also exercised by his fellow members. In return, he is accepted to have a share in every right and duty that his fellow members undergo. The theory of associative responsibilities suggests that this mutual interaction - that constantly gives and receives, entitles and obliges – constitutes an associative relationship and creates responsibility among

community members. These continuous interactions create the responsibility for justice, as in political justice, which is the merit of state institutions.

The problem with the conjunction of these two theories -the political conception of justice and the theory of associative responsibility- is that they restrict justice to only state institutions by assuming that there are no associations -for individuals- beyond the state institutions. If there are no human associations, then the subject of transborder associations is states. Therefore, they are subject to a different justice theory, "The Law of Peoples". To start my argument, I first explained that the Law of Peoples is not a justice theory but a theory of international political relations. Secondly, I argued

that there are transborder associations among individuals and, consequently, there is still a need for a transborder application of Rawls' theory of justice.

I started chapter two by defining the distinguishing characteristics of an association. Even though my account is based on Dworkin's and Nagel's accounts, I included a couple of additional parameters. First of all, I concur that membership in an association occurs independently of the individual's will, and it is possible for one person to be a member of multiple interwoven associations. Consequently, he would have different sets of associative rights and obligations. I argue that the intensity of the association defines the extent of the responsibility. As the individuals are closer and more connected, they have more comprehensive responsibility for each other, meaning they might have ended up bearing more associative duties. This statement includes the condition that duties arising from the associative responsibility must be pertinent to the association. An associative duty must be compliant with the association's nature and the level of connection it implies.

Another significant point for my account of associative responsibilities is associative conduct. Both Nagel and Rawls assume associative conduct is the grounding factor for associative responsibilities. Nagel states that state enforcement on behalf of the community creates the associative relationship on the grounds of coercion. Rawls suggests that communities run through a cooperative scheme called the basic structure, and this cooperation entails the associative relationship. I differ from them by arguing that the association's presence as a demarcated, permanent, and continuously interacting group of people is satisfactory for assuming that there is an association which generates associative rights and duties. It is important to note that I do not exclude coercion and cooperation as associative conduct, but I think their function is not constitutive but suggestive.

If associative activity is not limited to coercion or cooperation, how can we identify an association? My next step in chapter two is to develop a set of parameters to ascertain whether a group of interacting subjects forms an association. The idea behind this is simple: When a social association is formed organically -without any planning in advance or established structural rules-, the individuals understand their part of the responsibility through a sense of reciprocity. When the parties fail to reciprocate, it does not disqualify the association but makes it unjust. In an organically formed political association, the subjects do not have the means to measure the levels of reciprocity. In domestic cases, it is challenging because the reciprocity is hypothetical and operates through institutions. In transborder cases, it is even more complicated because there are multiple institutions involved -states or companies- and the interactions consist of multiple steps that render them even more indirect.

In order to overcome this complication, I developed three criteria to argue that an untraceable intertwined set of interactions creates a responsibility-bearing association. The first one is the continuity of interactions. As I explained above, it is not the type of conduct but the permanence/repetition of it that transforms a set of interactions into an association. The second one is also related to this point: institutionalisation within the association. It implies the departure from the state of nature into an organised community that regularly circulates benefits and harms to subjects. Institutions are the main subject of justice as the distributive element, and if they do not comply with the principles of justice, the consequences will aggregate over time. The final condition is the impact: As the subject of transnational justice, the association must have a substantial impact on individuals' lives to make them the receiving end of the said benefit or harm.

After determining the qualifying characteristics of an association, I provide two examples that satisfy these conditions: The current world trade order and historical economic exploitation. By historical economic exploitation, I refer to the former imperial powers colonising foreign territories or peoples for the purpose of acquiring accelerated economic benefit, including natural resources and labour. Apart from meeting the necessary criteria, this phenomenon serves the bigger picture in two aspects regarding colonising powers and past colonies. It demonstrates that colonised people were not only stripped of their resources but also politically interrupted. It also explains the current wealth of former colonising countries, which is arguably disproportionate compared to their natural resources. Aggregation of the inequitably distributed harms and benefits leads us to the asymmetrical balance within the world trade order.

Even though I did not present these two phenomena in a causal relationship, I find it safe to suggest that the inequality created by colonisation affected the bargaining power of the countries in the contemporary world trade order. However, the reciprocity of interactions is much more complicated to track. In the case of colonisation, the parties are clear; there are colonising powers and colonies in a mutual relationship. In the case of global trade, various actors are involved in a chain of interactions. There are companies, which are legal entities acting as the primary actors of trade; states, which regulate international trade and receive an unignorable share of benefits; and individuals, behind every step, receive the most diverse outcomes. However, one must remember that even though companies and states are actors of the World Trade Order, the subject of transnational justice is still individuals. It is easy to assume that the interactions are mainly contractual because companies and states are involved. If everything were strictly governed by contracts, principles of distributive justice might seem irrelevant. However, this interpretation misunderstands the argument. While trade does operate on a contractual basis, the focus here is not on contractual rights and obligations. The

object of transborder responsibility is the associative relationship. The World Trade Order only underscores the existence of an ongoing association, highlighting the relational context beyond mere contracts.

With these two cases, I argue that there is a transborder association that creates responsibility for justice on a global basis. This step concludes the first part of my argument. The next step would be to determine how to fulfil this responsibility. Even though it is repeatedly mentioned that the subject of transborder responsibility is individuals, I discussed the possibility of fulfilment through states before moving on to the third chapter. Earlier, we have established that states act as representatives of individuals in the political conception of justice. As the last step of the second chapter, I discussed some ideas regarding the possible application of distributive justice on an international level.

The problem with exercising transborder responsibility on the state level is the ineffectiveness of any possible solutions. In my argument, I make a very clear distinction that I do not address the structural problems. My aim is not to propose a structural change in global order but to reduce the welfare gap by alleviating the injustice that individuals endure daily. I do not object to or concur with the structural proposals I mentioned, most of which are relevant and have the potential to achieve improvement in the long run. The problem is that people have a limited lifespan and need to have their rights fulfilled within that time. For any state-level solution, the impact on the individuals' lives is the last step to complete, which would take no less than a decade.

This concludes the second chapter and brings us to immigration as a remedy for global injustice. In the third chapter, I focused on political membership from two points of view: First, a swift solution for human rights violations, which is tantamount to the fulfilment of transborder responsibility. Political membership serves as the fundamental determinant of the rights and privileges accessible to an individual. It establishes the framework through which individuals are grounded with human rights, social and economic benefits, and other related protection mechanisms. To underscore this feature, I invoked "the right to have rights" as an umbrella term.

Coining the phrase, Hannah Arendt argued that there are no universal human rights except the right to have rights. She criticised the notion of universal rights due to ambiguity regarding the corresponding duty-bearer. If the fulfilment of human rights is contingent upon political membership in a community, they cannot be considered universal human rights but rather the rights of citizens. The right to have rights refers to access to a mechanism that will provide access to an institutional framework capable of supporting an individual's claims to his rights.

Although this pessimistic use of the term was perfectly justified at the time, international human rights have reached a certain level of globalisation since then, through the region or subject-specific conventions and institutions. Considering these facts, I believe it is safe to say that the meaning of the term has evolved over time. Like many others, I will use the "right to have rights" to address the tacit omission of human rights of individuals who have a state responsible for fulfilling their rights yet whose rights remain unfulfilled.

The second point of view is that political membership is an arbitrarily distributed asset in terms of providing access to human rights protection mechanisms and a diverse set of benefits. The nature of the asset (political membership) renders the suggestion of redistribution absurd, but the principles of justice necessitate the development of a system that ensures balance and fairness. Furthermore, arbitrary distribution, in this case, does not mean the random appointment of political membership but a predetermined allocation system that operates by including certain individuals and excluding others. This system uses two imperative instruments: citizenship and border control. The analysis of citizenship significantly overlaps with that of political membership except for one crucial detail: Citizenship refers to the legal status of the individual, whereas political membership indicates the individual's de facto involvement in the community. This feature renders citizenship more advantageous in terms of institutional recognition and harder to acquire if not granted through arbitrary allocation. Political membership, on the other hand, is acquired by occupying a place in the community, which brings us to border control as an instrument for the unjust distribution of political membership.

The argument in this section requires border control to be considered as an instrument for the arbitrary distribution of political membership. However, when examined closely, it is clear that border control serves a more comprehensive function in perpetuating global injustice. It not only excludes non-members and sustains the exclusivity of political membership; it also keeps the resources and opportunities inside and ensures their availability for members. As the resources are aggregated and the inclusion of new members is prevented, the privileges available to members accumulate. In this section, I underscore that border control significantly contributes to the welfare gap and global injustice. This statement both supports the argument on the necessity for a compensating mechanism with respect to distributive justice and highlights the suitability of immigration as an alternative solution by signalling the importance of more porous borders.

As promised, the culmination of my argument is the transborder duty to admit immigrants. In Chapters 1 and 2, I built up to the conclusion that general responsibility for justice applies to the transborder domain and concluded that states have responsibility for the welfare ( as in the fulfilment

of human rights) of an individual who is not a citizen. In Chapter 3, I argued so far that political membership is an effective determinant of one's welfare. As the final part of my argument, I posit that when an individual whose welfare would significantly improve by political membership in a given country requests to immigrate, the state has a duty to admit him due to its transborder associative responsibility for justice. As the last matter of concern, I discuss immigration as an effective solution to injustice.

The general discourse on immigration tends to centre on its advantages and disadvantages in addressing global injustice. In contrast, my approach places individual well-being at the forefront, examining immigration through the lens of human rights fulfilment. Recognising that associative responsibility for justice is owed by individuals to other individuals, it becomes evident that the prospective immigrant is a rightful beneficiary of this responsibility. His demands extend beyond mere freedom of movement or the right to travel; he seeks redress for the injustices he has indirectly endured and the narrowing of the welfare gap he has experienced as a citizen of an underdeveloped country.

The pinnacle of my argument about immigration is the comparison between the interest of the state (both receiving and sending) and the individual's interest. I argue that when there is a broad spectrum of human rights violations, the weight of the immigrant's claim far outweighs the broader socio-economic concerns of receiving states. I agree that immigration as a collective phenomenon is neither a complete nor a lasting solution to the complex problem of global injustice. One may even argue that it is not even an effective solution for the individual, considering the obstacles that he would face after immigrating. Nonetheless, immigration emerges as the most immediate and pragmatic solution for individuals to improve their conditions.

This research can be improved into more detailed works in multiple directions, offering a more comprehensive framework to analyse the dynamics of associations and the underlying conditions of their establishment. As my first attempt, this dissertation is admittedly limited from a couple of perspectives. For instance, even though it suggests a couple of interesting remarks on the theory of associative responsibility, such as adjusting responsibility according to the intensity of the association, it fails to provide a comprehensive account of it. Because it was included to support the main argument, I had to mention it only in a related context. It was also challenging to sustain a connection between Rawlsian theory of justice, Nagel's political conception of justice and the theory of associative responsibilities. I think a separate work to highlight the commonality of these three concepts would be much more promising than what I already managed to include in this dissertation.

One potential avenue involves a deeper examination of how associations are formed, focusing on the roles of cooperation and coercion as associating conducts. I reiterated that the constitutive element of association is the permanence and continuity of the relationship. However, the type of associative conduct is still an important factor to elaborate on. One question would be, “When does a permanent coercion transform into an association? Or how can we decide when contractual cooperations starts to generate associative responsibilities? This type of research would be challenging as it requires more substantial criteria development than I have already engaged in this dissertation, but it would also increase the strength of my argument. Another possibility to explore for a similar contribution would be focusing on the causal relationship between historical economic exploitation and the current world trade order, unveiling how historical inequities and systemic exploitation have perpetuated global inequalities. This inquiry would explore how trade agreements, supply chains, and financial systems often maximise profit for dominant economies while marginalising less powerful actors.

Elaboration in an alternative direction is also possible. The two supporting premises from chapter three, both suggest significant arguments with respect to their subject. I definitely think the right to have rights needs to be flexed towards a more contemporary meaning regarding the groups whose rights it protects. Instead of treating it as a part of political history, it is a more productive solution to argue that the content of the right has transformed from statelessness to address human rights violations. A similar point can be made about the discussion around border control. Instead of listing endless advantages or disadvantages to pursue politically altered arguments, it sounds more promising to argue for better border control mechanisms and point out the compensating factors for the receiving country, such as increased tourism profit or lower wages for unskilled labour.

Then again, as I stated on multiple occasions, states are not interested in the benefits or advantages of immigration. Whilst the true reason for their aversion is still a mystery, the states are willing to pay the inflated price to avoid any duty related to immigrants.<sup>441</sup> The argument presented in this dissertation serves as an over-elaborated appeal for a simple deed. In this regard, it is indeed similar to the story of Moses and the rich man's heirs; with a slight difference that my argument lacks revelation as support.

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<sup>441</sup> [True cost of UK sending migrants to Rwanda could be billions of pounds, says think-tank](#)