Foundations for a Contractualist Theory of Global Justice

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By Jorge H. Sanchez-Perez (MSc)

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AUTHOR: Jorge H. Sanchez-Perez, LLB (Pontificia Universidad Catolica del Peru), MA (Universidad Nacional Mayor de San Marcos), MSc (University of Edinburgh)

SUPERVISOR: Professor Wilfrid Waluchow

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Abstract

1. Lay Abstract

This dissertation is the first step in a larger research project aimed at bridging the gap between Western philosophy and Indigenous thought. Here, I identify a useful methodological approach to the social contract by analyzing the tradition under an historical lens. I highlight that, along with the justificatory capacities of the social contract, comes a great deal of modelling involved in different versions of the social contract. This modelling comes in the form of four pre-contractual elements that different authors model in different ways. I show how different authors choose different structural problems or injustices that such theories want to address, as well as normative commitments that their theories are committed to, a standard of considerability of interests that identifies whose interests matter for those deliberating the terms of the contract, and a contractual device. Once that has been established, I am able to provide some foundational elements for establishing a framework for the development of a theory of global justice. I focus on the first three pre-contractual elements.

2. Abstract

This dissertation is the first step in a larger research project aimed at bridging the gap between Western philosophy and Indigenous thought. Here, I identify a methodological approach to the social contract by analyzing the tradition under an historical lens. I highlight that, along with the justificatory capacities of the social contract, comes a great deal of modelling involved in different versions of the social contract. This modelling comes in the form of four pre-contractual elements that different authors model in different ways. I show how different authors choose different structural problems or injustices that such theories want to address, as well as normative commitments that their theories are committed to, a standard of considerability of interests that identifies whose interests matter for those deliberating the terms of the contract, and a contractual device. I then go on to develop a framework for the development of a theory of global justice. I focus on the first three pre-contractual elements. For the sake of a global theory of justice, I identify four circumstances that need to be the focus of our concerns about global justice: Serious existential uncertainty due to climate change and massive animal extinction; the existence of a shared global institutional framework that forces us to think in terms beyond the state; the disproportionate distribution of the planet's scarce resources; and the pervasive racial, gender and disabled-bodied-targeted inequalities that are characteristic of today's world. I then move on to identify the "dignity of being" as a non-anthropocentric, core normative commitment that can be used as the basis for a theory of global justice. I conclude by developing a standard of considerability of interests that can adequately incorporate the interests of diverse beings into the social contract deliberations.

Dedication

To the memory of my grandfather Cesareo Perez Dioses, who taught me that most of the time, all you need to know to help a person is that a person needs help.

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For the last decade or so, I have been lucky enough to devote my life to engage in the study of philosophy. This is a luxury that I do not take for granted. This possibility came to be via the support and efforts of people who have helped me find my passion and have helped me achieved my dreams.

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doing the right thing. Her love and support kept me from falling more than she might know. She is the happiest person that I know, and that makes me happy.

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To sum this up, I will paraphrase Gustavo Cerati and I will say that no solo no hubiera sido nada sin ustedes, sino con toda la gente que estuvo a mi alrededor desde el comienzo; algunos siguen hasta hoy. ¡Gracias totales!

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Introduction

> *I came to philosophy seeking treatments of race, gender, and colonialism. I was misinformed.*
>
> — Charles Mills, CPA 2021

Despite living in a world where climate disaster, discrimination, inequality, and conflict dominates human life, I am an optimist about the possibility of humans eventually achieving justice on a global scale. This project is a personal and preliminary effort to conceptualize those problems in terms that could allow me to think of ways in which the Western philosophical tradition, the main philosophical view I was exposed to, can engage with the rest of the world in terms of equality and not of imposition. One of the most promising ways in which to conceptualize what justice would demand from members of a global society is the idea of a social contract. As Martha Nussbaum claims, "the idea of basic political principles as the result of a social contract is one of the major contributions of liberal political philosophy in the Western tradition" (2006, p. 10).

There is something genuinely appealing about the idea of coming together as a society and deciding how we ought to organize our lives to pursue harmonious relationships with other beings who live on the planet. To improve our shared existences by identifying those things we deeply care about as a group and reaching agreements to sort them out together, rather than imposing a single voice or view over others, makes the social contract a powerful tool for those seeking to talk about justice.

My concern, however, is that the Western philosophical tradition, dominated by certain groups, might have excluded the views and interests of large segments of the world from conversations about global justice. For example, I am a person of colour and an immigrant who grew up in the Global South under a dictatorship supported by many countries in the Global North. Also, I have experienced racism and discrimination in different parts of the world. Yet, I am not unique. I would dare to say that a large majority of the world shares in some form or another those struggles that resemble my own or who have experienced even worse ones. To request me, and them, to ignore issues such as colonialism, discrimination, or immigration as realities of the world would be to deny us a place at a global table where we, as people, deserve to be.

While a great deal of theorization about the social contract has been done in the Western world, much of it seems to demand that we not make the issues I mentioned before the primary concern of theorization. Problems like discrimination, colonialism, or the climate crisis tend not to be the point of departure for many of the most prominent social contract theories in existence. The idea that some authors seem to have in mind when engaging in debates about justice is that those aforementioned issues could be solved after other more pressing issues have been prioritized and dealt with. Justice regarding those things that people like me care about profoundly will eventually be the focus of their work if we are patient. But those issues are pressing, urgent, and sometimes matters of life and death. Patience is a luxury that those who require urgent solutions cannot always afford.

I do not deny the possibility that theories that exclude matters such as colonization or climate change could, eventually, provide solutions to those in need. But it is also

possible that other views that prioritize those problems in the realm of global justice can be developed – and that the solutions they provide will be better and more timely.

In this dissertation, I combine my appreciation and interest in the social contract way of theorization with my concern about making it helpful in sorting through the set of global problems that I view as in need of an urgent solution. To do that, I first engage in an analysis of the social contract itself. Although many authors have highlighted the social contract's capacity for justification, little attention has been paid to the modelling aspects of the social contract. Even if all the versions of the social contract share some features, such as a contractual device, more elements are at stake, and each author models each element differently based on different reasons.

The first chapter deals with a methodological analysis of the social contract by first differentiating the concepts of social contract theory, tradition, and methodology. Three claims make up the core of Chapter 1. The first claim I put forward is that we would do well in differentiating those three elements. The second claim is that, historically, the social contract way of theorizing has led to various differing theories. The third, which is interconnected with the second, is that, despite their differences, shared elements of social contract theories can be identified if we view those different theories through a methodological lens.

I understand *the social contract* to be a methodology that different authors have used to put forward their respective theories. At the same time, the historical group of theories, each of which has employed some version of the social contract, is what I call the

social contract tradition. The methodological approach consists mainly of four elements that I call pre-contractual. Each of these elements will be preliminarily explained in the first chapter, while subsequent chapters will address them individually, expanding on their nature and construction. The first element is the set of the world's facts relevant for theorization about justice. These circumstances usually identify certain human features and world events or facts in light of which issues of justice arise, and that should shape the entire process of theorization. By setting up the problems that justice must address, they help us reduce the level of abstraction at which we address what justice demands from those who can act in the world. Two possible examples of these facts are scarcity of resources and recurrent civil wars in a society. Following Hume, I call these *the circumstances of justice*. [1]

The second pre-contractual element is the normative commitment(s) of the theory. This commitment is the moral bedrock or central element that each theory wants to put forward or expand to the most extensive possible degree. A way to understand this is as the moral feature that the society in question wants to make the central point of their existence. Human dignity or freedom and equality could serve as examples of commitments of this kind. The third pre-contractual element is the set of interests relevant to the contractual parties' deliberations. As in, the determination of whose interests those deliberating would

[1] In section 1, part 2, of book III of the Treatise on Human Nature, Hume states "I have already hinted, that our sense of every kind of virtue is not natural; but that there are some virtues, that produce pleasure and approbation by means of an artifice or contrivance, which arises from the circumstances and necessities of mankind. Of this kind I assert justice to be; and shall endeavour to defend this opinion by a short, and, I hope, convincing argument, before I examine the nature of the artifice, from which the sense of that virtue is derived."

consider as central to the process. For example, some theories might include the interest of disabled people while others might not. Some theories might include the interests of all people regardless of skin colour or ethnic origin, while others might focus solely on the interests of certain people.

The final element is the contractual device — the pre-contractual element where the previous elements are considered together and articulated. From the use of this element, principles of justice emerge by considering the circumstances of justice, the normative commitment(s), and the set of interests considered as relevant for such deliberation. For example, some theories might have principles to regulate the distribution of a scarce resource as outcomes. In comparison, others might provide principles for the adoption of parliamentary democracy as the system of government. With this methodology in mind, the objective of Chapter 1 will be to outline, in very broad terms, a basic framework for generating a theory of global justice, one that focusses on the first three pre-contractual elements.

Chapter 2 is where I consider the first pre-contractual element I have singled out as part of a contractualist methodology, the circumstances of justice under which the need for a global theory of justice arises. These consist in a set of facts about the world that, given our interest in living in a state of global harmony and under conditions of justice, prompt the question of how exactly we are to realize such a state of affairs. I then engage with the debate over the appropriateness of pursuing ideal versus non-ideal theory, providing reasons to support the claim that an ideal theory of justice can be a valuable tool for dealing with issues of justice in the non-ideal, real world. I show how ideal theory can adequately

deal with issues beyond scarcity of resources, thus opening the way to introduce the reader to the list of four circumstances of justice that I think we have good reasons to pay close attention to when considering the construction of a theory of global justice.

The first circumstance of justice is serious existential uncertainty due to climate change and massive animal extinction. The second is the existence of a shared global institutional framework that forces us to think beyond the state from the very beginning of our theoretical reflections on the demands of global justice. It is a commonly accepted historical fact that Western countries colonized large parts of the world for centuries, often to the detriment of those colonized. It is also important to recognize that the impact of colonialism and imperialism is still part of our everyday lives. Furthermore, the 2008 global financial crisis and the interconnectivity of our globalized world force us to think on a much larger scale than that assumed by Locke, Rawls, and others within the social contract tradition. The third circumstance of justice is the disproportionate distribution of the planet's scarce resources. I agree with Hume and Rawls that resources are limited. But I do not, like them, essentially ignore the equally important fact that how these resources have historically been distributed at the global level is anything but unproblematic. The fourth and final circumstance of justice I identify is the pervasive racial, gender and disability-targeted inequalities characteristic of today's world. In connection with the third circumstance, the historical process that has led to such inequalities needs to be put at the forefront when considering what justice demands at the global level.

I consider it important to highlight the extent to which considering human history as, in effect, a *tabula rasa*, and organizing our thinking about how a just future might unfold

without first considering the past is a problematic way to develop a theory of global justice. It is equally important to realize that ideal theory does not require that we ignore history entirely, even if different authors seem to have done so and used ideal theory to avoid considering the aforementioned circumstances of justice.

Chapter 3 discusses the identification of a basic normative commitment that can reasonably be thought to be part of a suitable framework for the development of a theory of global justice. Following the methodological path I chart in Chapter 1, I aim to find a possible element that could be deemed a moral bedrock for theorizing about justice at the global level. In contrast with most theorists within the social contract tradition, I do not set out to establish a normative commitment to which I, personally, am committed and which I set out to defend. For reasons that will become evident in Chapter 3, my objective is more modest, less problematic theoretically speaking. It is to identify a normative commitment that could plausibly be attributed to the global political community in light of its laws and institutional practices. There are, I shall argue, two different ways of identifying the normative commitment around which a theory of justice might be developed. First, an individual author might rely on their own moral intuitions, perhaps providing reasons why the chosen intuition is sound and a reasonable basis for considering questions of justice. Alternatively, the author might rely on institutionally embodied moral intuitions, intuitions that reveal themselves in, e.g., foundational human rights documents, decisions of important global institutions whose concerns revolve around the demands of justice, and so on. I show that the first path leads us to a problem of adjudication among rival intuitions that may be too complex to solve. In comparison, the second one seems more promising.

In setting out to identify the basic normative commitment of the global community relevant to issues of justice, I rely on Wil Waluchow's idea of a Community's Constitutional Morality. As part of this exercise, I develop an account of political communities of which the global community is an example. I define political communities as *communities of practices among members where those practices are mediated by institutions that partake in the effort to implement some form of respect for social norms as a means of regulating relevant moral and political affairs*. With this in mind, I go on to argue that the basic normative commitment of the global political community, relevant to the development of a theory of global justice, is human dignity. I conclude this chapter by showing that human dignity, despite its crucial role in current thinking about issues of global justice, is not without its difficulties. I highlight how the predominant, anthropocentric nature of human dignity clashes with views concerning the demands of justice that arise from, e.g., Andean, Māori, and Inuit thought – Indigenous world views that emanate from three different and geographically separated parts of the world. These "cosmocentric" world views reject any view of human dignity that embraces the proposition that human beings are intrinsically superior to other beings in existence. As a consequence, they are inconsistent with any theory of global justice based on such an elitist view.

Building on the elements of the previous chapters in Chapter 4, I first proceed to construct a standard of considerability of interests based on Human Dignity. Adopting the social contract as a methodology, I seek to determine whose interest would matter for those employing the contractual device to settle on principles of global justice. Two possible

standards are considered. The first one is based on Human Dignity as a feature attributable to those beings who meet an *agency-based* threshold. This appears to be the standard adopted by Kant and Rawls. The second standard is based on Human Dignity as a feature attributable to those meeting a sentience-based threshold. This appears to be the standard adopted by Bentham and Singer. Each of these two standards is assessed in light of its capacity to plausibly account for the circumstances of justice discussed in Chapter 2. Although the sentience-based standard performs better than the agency-based one, both fall short of addressing those circumstances in a way that might result in a plausible theory of global justice. The restrictions imposed by the concept of Human Dignity clash with the growing wish to view nature, animals, and severely disabled people as intrinsically morally valuable beings. They result in large segments of the world's population being not truly a part of conversations concerning the demands of justice. They, therefore, result in standards of considerability ill-suited to the development of a plausible theory of global justice.

I close with some preliminary remarks about the possibilities of the social contract as a methodology. I engage with how the social contract as a methodology suitable for developing a theory of global justice can also be sensitive to Indigenous world views. This might lead us to consider that a plausible theory of global justice will have to do one of two things 1. Reject human dignity as the proper normative commitment on which to base a theory of global justice, perhaps substituting such concept with something like "the dignity of being." Or 2. Articulate a conception of human dignity that does not entail the intrinsic superiority of human beings. By broadening our debates to include recognition of the moral value of beings, both human and non-human, beyond those considered within the Western

paradigm, we might be able to begin the process of constructing a theory that promises to help us solve issues of justice as they arise at the global level among people of differing world views. This might, in turn, help to build a bridge between cultures and people from across the globe. If justice is to be truly global, it cannot be something imposed by the West on the rest of the world.

Chapter 1: A Theory of Pre-contractual Elements: A Methodological Approach to the Social Contract

Introduction

The social contract tradition is one of the most prominent political positions in Western philosophy. Yet, it would be naïve to deny that there is an enormous dissatisfaction with the theories developed by different social contract theorists among many and diverse groups due to the exclusion of, or lack of more profound engagement with, questions of race, gender, disabilities, animal rights, the environment, etc. within the overall project. Rawls, one of the most prominent contemporary social contract theorists of the XX century, justified some of these exclusions by asserting that the social contract model was not properly suited to deal with those issues (Rawls, 1999, p. 15). This kind of assertion "came to act as a constraint on what kind of theorizing could be done and what kind of politics could be imagined" (Forrester, 2019, p. 275) and, by extension, what we could demand from a social contract theory.

As I will show in this chapter, different possibilities, including dealing with the aforementioned problems of exclusion, open up for those working within the social contract tradition if we understand it as a methodology rather than a theory. That is, as a tool that can help us justify certain principles to rational beings once certain elements, called *pre-contractual* in this chapter, have been modelled or accepted by the authors of the theories.

Seeing the social contract as a methodology can offer options beyond the dominant questions of distribution and ownership that the distributive paradigm of justice[2] has enforced in the discipline. (Forrester, 2019, p. 274). I ground my methodological account on two important insights about the tradition. First, that the social contract makes explicit the fact that "[t]he social connections of civil society may exist without political institutions to govern them" (Young, 2011, p. 139); and second that the social contract can be conceived as intended to "simultaneously describe the nature of political societies, and to prescribe a new and more defensible form for such societies" (Hampton, 1993); based on those two elements, it becomes easier to understand why Charles Mills considers that "[t]he relation between the normative and descriptive aspects of the contract is thus necessarily more complicated" (Pateman & Mills, 2007, p. 90) than mainstream or classical contract theory makes it seem.

To adequately address this relationship, I think that it might be helpful to take a step back and consider what elements are at play when talking about a social contract theory. Traditionally, it has been commonly accepted -and noticed- that the social contract is a useful way to develop a rationally justifiable agreement among different parties that could lead to the hypothetical or explicit consent of the terms of the contract. Less attention has been paid to the fact that such justificatory capacity heavily relies on modelling certain contractually relevant elements. This chapter introduces the reader to the four methodological elements that are central in the social contract tradition. When taken

[2] Distributive justice in the Rawlsian tradition can be understood in a narrow or a broader sense, the former focusing on the redistribution of wealth and the latter focusing on the redistribution of liberties and rights. These two possible focuses towards distributive justice will be discussed in Chapter 2, section 4.

together, these elements help us model different normative projects that could be justified to rational beings. In other words, different social contract theories will look different based on how different authors fill each of these elements. I call these *pre-contractual elements,* and they vary from author to author. That is, each author fills each of these elements in a different way, even if the elements can be identified in many, if not most, of the theories within the tradition. Thus, providing us with different theories and different justificatory possibilities, depending on which elements an author chooses. That is why identifying these elements matters. These elements are the circumstances of justice, the normative commitment(s), the considerability of interests, and the contractual device.

This is a methodological chapter, where I aim to provide a taxonomy of some important elements that are recurrently used in the social contract tradition. My dissertation's ultimate goal is to establish a framework for the development of a theory of global justice. In other words, I wish to explore whether, in light of our pre-existing commitments and already present relationships, we have the right elements at hand to build a normative project that makes sense given a set of circumstances of justice relevant at a global scale. For that reason, exploring how a social contract can be shaped from the ground up is a fundamental part of my project. This chapter has six sections.

In the first section, I define the notion of a social contract. I then differentiate between the concepts of social contract theory (SCT), social contract as a Methodology (SCM), and social contract as a Tradition (SCTR). I elaborate on these distinctions by enumerating a framework of four pre-contractual elements that most if not all SCTs

comprise, where each theory in this social contract Tradition can be individuated in terms of its distinctive conception of these four elements.

In section two, I focus on the pre-contractual element referred to as *the circumstances of justice*. This element is fundamental to our understanding of any SCT. It is one among the set of four elements that shape the theory in question and, in turn, the questions of justice the theory is intended to address. In other words, if we accept Rawls' claim that "justice is the first virtue of social institutions" (1999, p. 513), then it follows that those institutions are there to answer to the circumstances of justice laid out or accepted as a precondition of the project and that trigger the necessity for duties of justice in the first place.

Section three deals with the second pre-contractual element: normative commitments. These constitute the fundamental moral bedrock that different theorists identify as the core of each of their theories. These commitments work in a teleological way within an SCT. A normative commitment is a foundational element for modelling a normative project and, at the same time, is what the project aims at protecting or develop. Examples of this element are dignity, freedom and equality, and self-preservation. Although independent from the other pre-contractual elements, the basic normative commitment(s) of a theory will shape and limit its capacity to answer to the circumstances of justice, which gave rise to the question of justice in the first place.

Section four expands upon a third precontractual element, *the set of relevant interests*. This element is a specification of the interests relevant to the negotiation of the

social contract. The interests within this set must be accommodated as a matter of justice, whereas the accommodation of interests outside this set is not a matter of justice, though it might be a matter of some other moral domain, such as charity. This element is instrumental in shaping the range of interests to be considered in any social contract when it comes to addressing the circumstances of justice that gave rise to the question of justice.

The fifth section of the chapter presents the most commonly identified pre-contractual element in any SCT, the contractual device. Within the contractual device, the previous elements are considered together and articulated. From there, principles of justice emerge by assessing the circumstances of justice that give rise to the questions of justice and the normative commitments that guide our process and the set of interests that matter for the SCT. In this way, different authors have shaped contractual devices to produce the principles that usually serve as the primary standard for institutions' moral evaluation.

Finally, in the sixth section, I present my conclusions to this chapter and elaborate on this project's overall goal – identifying the pre-contractual elements for developing a theory of global justice that relies on the SCM.

1.1. Social contract tradition or social contract theory?

As important as it is to engage with this project's arguments, it is necessary first to establish some conceptual clarifications regarding my use of the social contract concept. The social contract has many labels, an ideology (Gauthier, 1977), a social justice approach (Nussbaum, 2006, p. 20) (Ritchie, 1891, p. 656), or plainly a theory (Rawls, 1999, p. xviii).

Despite this lack of unity in denominations, it seems fair to claim that whatever the SCT is, it has a special place in Western philosophy's history.

But as shown in the previous list of denominations, the very idea of what amounts to a social contract Theory remains clouded by, many times, the words of the authors working within the scope of it. For example, Rawls claimed to be working within the same traditional theory as Locke, Rousseau, and Kant, but clearly, their projects remain different from each other in many relevant ways. These ways can be descriptive or prescriptive or even both, depending on the theory under consideration. In the case of Rousseau's theory, for example, the central place that equality holds in his project (1913, p. 19) could conflict with, or at least put pressure on, the commitments to life, liberty, and property that Locke's work seems to regard at a higher level (1960, p. 323). In the same vein, the work of Thomas Hobbes (1994), also commonly referred to as a member of the SCTR, presents a grim account of the violent circumstances of justice that give way to considerations of justice that, in no short measure, would if not oppose at least conflict with the circumstances considered by Rawls (1999, p. 109). That is, we have different authors engaging with different contents yet similar parameters.

If we think of a philosophical theory as the systematic integration of descriptive and/or normative statements or claims that are regarded as true for purposes of advancing a particular position, merely asserting, without further explanation, that the philosophical theories of justice proposed by Locke and Rousseau are the same as Rawls' would be puzzling, to say the least.

The previous challenge, considering the theories of Locke, Rousseau, Kant – and now Hobbes – as the same, can be extrapolated to assess Rawls' claim of working within the same traditional theory as his predecessors (1999A, p. xviii). For all the elements these projects have in common, their differences are relevant, substantial, and sometimes put those projects at odds with each other.

In Peter Laslett's view, these differences do not amount to a problem because he proposes a taxonomy of the social contract that would allow all of them to be examples of the same theory (1967, p. 91). For him, SCT is a "name given to a group of related and overlapping concepts and traditions in political theory" (1967, p. 465). In his account, what binds together all these different projects is sharing a straightforward conceptual model, in form and use, of an agreement between individuals to promote individual rights (Laslett, 1967, p. 466). For Laslett, projects like the ones developed by Rousseau or Hobbes, that are not necessarily focused on individual rights as commonly understood in the liberal tradition of Locke and Kant, were mostly departures from a classical inclination of the overall tradition rather than full members of the social contract theory itself (1967, p. 466).

In a more contemporary approach, a discussion of the more substantial differences among the various theories considered part of the social contract tradition (SCTR) seems to be put to the side to focus on the role or function that an SCT serves instead. For D'Agostino, Gaus, and Thrasher, an SCT ought to be understood as a model of rational justification translating the problem of justification (what reasons individuals have) into a problem of deliberation (what rules they will agree to) (2017). On this approach, the role

of SCT is to provide us with conceptual tools to proceed with the determination of whether a political regime is legitimate and therefore worthy of loyalty (1996, p. 23).

One possible objection to this approach is that it is a mistake to identify or reduce a thing's nature to its potential use. To conflate things in this way could serve to blur whatever methodological clarity the theory might be capable of providing. Another objection, one that also applies to Laslett's reading of the social contract, is that this kind of reading fails to adequately explain or characterize what the modern, medieval and ancient versions of the social contract Theory appear to have in common. After all, not every version of the social contract has dealt with individual rights, issues of legitimacy, or even deliberation. If D'Agostino wants to provide an account of what contemporary post-Rawlsian versions of the social contract theory aim at, then he might have a point. But the SCTR has existed before Rawls, and even now, different contemporary SCTs are available to us. Reducing the SCTR to one contemporary use or a particular pre-contractual element such as the contractual device seems to leave too many constitutive parts of any SCT behind.

As I previously stated, if one is to understand a philosophical theory as the systematic integration of descriptive and/or normative statements or claims that can be regarded as true in order to advance a certain position, then the existence of the fundamental and essential differences among the various SCTs mentioned in the previous paragraphs, as well as the different positions their authors sought to advance using their SCT, leads one to suspect that what we are dealing with is not just one theory but rather a large set of different theories. In turn, this leads to the suspicion that when addressing the SCTR, we

refer to a set of similar theories, each making claims that sometimes differ in meaningful ways from those made by other theories in the set.

This way of understanding the SCTR can allow for the integration of Thomas Hobbes' work into the same family as those of John Rawls or even medieval theorists such as Manegold, whose focus is on citizens' agreement with their kings (Poole, 1920, p. 203). But even if one accepts the claim that the SCTR amounts to a set of similar theories that one might consider contractual, this does not yet provide answers to which elements are usually present in most theories commonly considered as part of the SCTR. It is to this question that I now wish to turn.

1.1.1. Social Contract as a Methodology: A Different Approach

Talking about a contract in legal terms is different from talking about a social contract in a philosophical sense. The first one requires legal practitioners to consider issues such as the parties' will and how the clauses can be interpreted if a conflict erupts. While the latter usually refers to a device used by different authors to consider the implications of specific commitments that a group of agents might endorse given certain conditions. Another way of saying this is that the legal contract is usually studied as a manifestation of two or more individuals' will about how to interact with each other by means of setting up rules that each party must follow. In comparison, the philosophical one is usually studied as the proposal of an author who wants to provide a set of rules or regulations that a large group of agents would agree upon given certain conditions to organize social life within a political

community. In principle, the scopes of the legal and philosophical contracts are different, as are the number of parties involved.

But even if used differently, the idea of a contract in philosophical terms can still borrow some elements from the legal formulation that could help a philosophical approach. Here I want to reference what in legal scholarship is known as the doctrine of *culpa in contrahendo*, generally attributed to 19th-century German jurist Rudolph von Jhering. This doctrine states that there is a duty to negotiate contractual terms that allow the contract to be perfected or implemented. In other words, parties have a responsibility to act in good faith towards each other when engaging in contractual negotiations (Kessler & Fine, 1964, p. 404). The reasoning behind this is that these contractual negotiations lead to the identification of *pre-contractual* elements such as assumptions or implicit agreements that will later inform the contract. These elements are so relevant that they might determine whether the parties to a contract can implement them in practice or not. I want to highlight not the relevance of Jhering's thesis itself but the acknowledgment of pre-contractual elements as relevant parts for the analysis of a contract.

Although not called pre-contractual by any author so far, the existence and identification of certain problematic pre-contractual elements in different SCTs have led to the rise of what Ann Cudd and Seena Eftekhari have called "subversive contractarianism" (2018). For them, three books highlight the path leading to this trend within the social contract tradition. The first one is Carole Pateman's *The Sexual Contract* (1988), the second one is Charles Mills' *The Racial Contract* (1997), and their collaboration *Contract and Domination* (2007). Cudd and Eftekhari identify Mills and Pateman's core projects as an

effort to highlight specific "moral, political, and epistemological terms" (2018, p. 14) within the SCTR. These terms, the latter claim, are used to either justify or ignore the oppression of people of colour, women, and other minorities or vulnerable groups. An analysis of the full implications of both authors' theories, as posing a challenge to different SCTs within the SCTR, is beyond this section's point. I want instead to focus on the existence and significance of different, fundamental underlying elements in the formulation of various social contract theories.

A preliminary example of a fundamental underlying element can be found in the treatment of racial and gender issues by John Rawls in his theory of justice, as presented and updated in *Political Liberalism*. For him, there are three main kinds of issues that generate conflict among individuals: i) those deriving from irreconcilable comprehensive doctrines, ii) differences in status, class position, occupation, ethnicity, gender, or race, and iii) those deriving from the burdens of judgment (2005, p. 487). Rawls' theory aims to deal with the first kind of issues while considering that issues of the second kind, such as conflicts based on race or ethnicity, will not be a problem if society embraces public reason. While the final kind of conflict is left to be dealt with by his theory of justice as fairness or some other reasonable conception of justice (2005, p. 487).

Assessing whether Rawls was right in thinking that matters of race or gender could be deemed as a sort of non-problem would involve engaging in the question of whether it is justified to assume a society embracing public reason as a premise of the argument or about the limits of ideal theory. That is not my goal here, but it is something I will discuss in Chapter 2, section 1.1. For now, the issue I am concerned with is one of discretionality.

By this, I mean that when shaping a version of the SCT, some elements will be different from the elements on which other authors focus. Various authors will have multiple good reasons to select some elements over others and in a different hierarchy than others. In Rawls' case, he considered that one of the main thrusts of his project was to solve issues of conflicts from the opposition or interaction of irreconcilable comprehensive doctrines. This was a project aimed at proposing a model for a stable (through time) constitutional regime that could be endorsed by individuals with different comprehensive views (2005, p. xviii) under the scope of the particular political culture (2005, pp. 13-14) of an idealized version of the United States of America or some other liberal democracy. Differences in race, gender, and so on were considered to be non-problems in his view of what an idealized society would be like.

By applying his discretionality to selecting certain elements that would later be present in shaping the bargaining position, Rawls was not doing something different from others who have worked in the tradition. In that sense, and as was mentioned before, a way to analyze an SCT can be by identifying those fundamental elements that shape the normative project it sets out to address. From now on, I will only refer to them as *pre-contractual elements*. In the following sections of this chapter, I will show how different theorists within the SCTR have worked with some particularly relevant pre-contractual elements whose identification might be vital in shaping any future normative project.

For this work, I have identified four types of precontractual elements. The first one is the set of relevant *material conditions or circumstances* that give rise to the question of justice. The second one consists of the *normative commitments* that drive the parties'

reasoning in negotiating the contract towards justice. The third one is what I call the *standard of considerability of interests*. The final one is the *contractual device*, which authors employ to combine all the previous elements to produce the terms of the contract, otherwise known as the basic principles of justice.

I will discuss each of these pre-contractual elements in the following sections. While each of the first three elements will receive further elaboration in the coming chapters, their presentation here will highlight first the importance of the SCM, and second the range of possible ways to organize or construct a theory of justice that relies on this methodology. To show my approach's application, I will work with two authors in each section to convey how different authors have used these pre-contractual elements in the SCTR.

1.2. Material Conditions: Circumstances of Justice

The circumstances of justice are the conditions under which the very question of justice becomes relevant for normative consideration. David Hume famously claimed that justice is a virtue that "arises from the circumstances and necessities of mankind" (1981, p. 477). Identifying these conditions has effectively led to the variety of projects considered to be within the SCTR. And it is likely to do so in the future. In line with that, it is useful to consider perhaps one of the most appealing ideas in Aristotle's works on politics. The goal of formulating the best theory, although important, is not the only relevant aspect of the study of social organizations since one must not only study what is best but also what is possible (Aristotle, 1992, p. 102).

In this sense, the ideal principle of justice or the ideal constitution -understood as an organizational framework of political offices in a broad sense- might be impossible for many to conceive or achieve. For that reason, awareness of the circumstances under which either our theorizations will take place or that we will assume before theorizing about a political community[3] is necessary for a normative project with practical aims. Insofar as we focus our theorizations on the methodological tool called social contract, it is essential to reflect upon the conditions under which those who are to participate in the adoption of this contract will interact with each other. Expressed more directly, one could ask: what is the reality that the normative project wishes to maintain, change, or regulate? This section will present this element and show how it either constrains or shapes many of the contractual clauses. Issues such as the geographical conditions, the proximity of the individuals who will partake in the formation of the contract, historical inequalities, current economic inequalities, the number of resources that the community has access to, among others, are part of this list.

Before moving forward, I want to address an issue of conceptual clarification regarding the idea of circumstances of justice and that of the contractual device. The circumstances of justice are those conditions of the world that work as a pre-contractual element around which the particular SCT in question is developed. The circumstances of justice can be understood as the elements or conditions that are recurrent or relevant and that create problems for a society, and that must be addressed and that lead to the creation

[3] The term 'political community' will be further examined in Chapter 3. For now, it should be understood as a social group in which members interact in realms such as the moral, economic or social.

of duties or rights after as a product of the social contract. These conditions will be considered, along with the other pre-contractual elements, within the contractual device. What Rawls called *the original position* (1999, p. 11), what Gautier called *the bargaining position* (1977, p. 190), or what Hobbes or Locke called *the state of nature*, I will call *the contractual device.* I will address this element further in the fifth section of this chapter.

For now, it is essential to remember that not every author within the SCTR has chosen the same circumstances as relevant for theorization within their respective SCTs. As stated in section 1.2, there is discretionality in selecting certain material conditions as relevant for a normative project. Some material conditions X or Y could be downplayed and even ignored to shape the normative project at hand. In this sense, it is possible to argue that the material conditions or circumstances of justice selected by different authors represent a subset of the range of possibilities at their disposal. Various authors, having various purposes motivating their selection, will commonly choose a subset of them.

In this section, I will use two authors, as will be done throughout the chapter, to show the relevance that selecting a particular set of circumstances of justice as a pre-contractual element has in the overall design of an SCT. The first author is Jean Jacques Rousseau, whose work as part of the SCTR is well known. The second author, although not always connected with the SCTR, is Martha Nussbaum. As presented in Frontiers of Justice (2006), her version of the social contract contains an interesting set of circumstances of justice that set her apart from others within the SCTR. Those conditions help her ground important criticisms of previous theories within the SCTR while at the same time providing insights into possible ways to avoid those criticisms in her theory. Although I will not fully

engage with the whole apparatus provided by either of these two authors, my focus on their selection of particular circumstances of justice should shed light on the range of possibilities at hand.

1.2.1. Rousseau 's Decadent Modern World

Perhaps one of the most ominous sentences in the works of Rousseau appears as the first line of his book *Emile*, "Everything is good as it leaves the hands of the Author of things (God); everything degenerates in the hands of man" (1979, p. 37). This gloomy perspective on reality should serve as the basis to consider what informs his account of the circumstances of justice that shape his work. Rousseau was born, lived, and worked during the 18th century in France, and he was, without a doubt, an important figure of the historical episode known as the Enlightenment, also known as the Age of Reason. However, he did not consider this period to be the beacon of hope others did. This different assessment of his time probably became apparent to many when his essays "Discourse on the Moral Effects of the Arts and Sciences" and "Discourse on the Origin and Basis of Inequality Among Men*"* (1913) became public.

These works make plain Rousseau's understanding of the Enlightenment as a period, as Leo Strauss presents it, of despotism or absolute monarchy (1972). The timeframe under which Rousseau's political considerations occur is precisely one where the civil state has proven to be less than the idealization that some might have at the beginning of the European enlightenment. In that vein, his reading of this situation might

seem less optimistic than the one shared by many of his contemporaries. In his words, what the state of civil society brought to humanity was less than desirable:

> "Usurpations by the rich, robbery by the poor, and the unbridled passions of both, suppressed the cries of natural compassion and the still feeble voice of justice, and filled men with avarice, ambition and vice. Between the title of the strongest and that of the first occupier, there arose perpetual conflicts, which never ended but in battles and bloodshed. The new-born state of society thus gave rise to a horrible state of war; men thus harassed and depraved were no longer capable of retracing their steps or renouncing the fatal acquisitions they had made, but, laboring by the abuse of the faculties which do them honour, merely to their own confusion, brought themselves to the brink of ruin" (1913, pp. 203-204)

In this bleak description of his time, Rousseau makes straightforward his pessimistic view about the state of affairs around him. If we take the hypothetical construct of the state of nature as a point of reference from where to move towards a civil society where things could be better via the social contract, then the outcome of such contract does not seem to be appealing to Rosseau.

In Rousseau, for Pateman and Mills, we have an example within the western canon were identifying a problematic state of affairs as the product of a previously theoretically developed social contract provides the impetus or the opportunity for constructing a newer one (2007, p. 82). Furthermore, and very much in line with Aristotle and Hume's theories, Rousseau's project reveals how the social and material conditions under which one theorizes can significantly shape the normative project undertaken.

For Rousseau, it was clear that not all societies will face the same conditions. As Rousseau portrays them, different governmental apparatuses will require different amounts of resources and labour from its citizens to subsist (1913, p. 64). Yet, the conditions of the world he wants to address are those of a world where a large state like France has created

a large set of inequalities that bring about poor relationships among its citizens. In that sense, it is important to distinguish between two senses of the social contract in Rousseau. The first one is the way in which society, in his case France, was governed and the kinds of relationships established by convention among its members. This contract can be understood as a social fact insofar as we can see those relationships ongoing and regularly happening among the members of the society he was discussing. This social contract was, for Rousseau, clearly problematic since "[m]an is born free; and everywhere he is in chains" (1913, p. 3). The second one is the ideal social contract that might replace the previous one. This social contract, although ideal, would be sensitive to various circumstances of justice such as the levels of slavery, moral and material inequalities, among others accepted or even promoted by the existing Contract that Rousseau was targeting.

In this reading, it is possible to frame Rousseau's SCT as an attempt to provide a basis for addressing the vast inequality brought about by a problematic previous social contract within the framework of a nation-state in the 18th century (Pateman & Mills, 2007, p. 7). Rousseau's conclusions give preference to a middle-sized society ruled by those most qualified to do so (1913, pp. 57-58), which could highly contrast with my goal to discuss a theory of global justice. Nevertheless, I want to highlight that his project is responsive to specific conditions of the world that he considers to be particularly relevant to issues of justice.

1.2.2. Nussbaum's Larger Social World

Rousseau's account focuses on moral, status, wealth, authority, and other kinds of inequalities existing within a large nation-state of the kind predominant in Europe during his lifetime. These conditions continued to ground theories of justice into the 20th century, as evidenced by John Rawls's theory. He highlighted both the framework of the state and scarcity of resources as sources of inequality. These served as the principal circumstances of justice that framed his SCT (1999, p. 109). This choice of circumstances, Martha Nussbaum argues, fails to correctly grasp the full extent of the relevant material conditions of the world during the 20th and 21st centuries. In Nussbaum's view, projects that share this incomplete selection limit their capacity to adequately address the conditions that give rise to the problem of justice in the first place.

In *Frontiers of Justice* (2006), Nussbaum introduces her version of the SCT. She starts her analysis by identifying what she considers some of the most neglected issues in the SCTR. For the sake of space, I will focus here only on two[4]. The first one is the inclusion of people who do not fit a specific model of the agent whose role it is to participate in the formulation of the contract. In her words:

> "The classical theorists all assumed that their contracting agents were men who were roughly equal in capacity, and capable of productive economic activity. They thus omitted from the bargaining situation women (understood as non-"productive"), children, and elderly people—although the parties might represent their interests" (2006, p. 14)

Her account identifies, as an unfortunate yet crucial fact of the world, the neglect of participation of certain groups of humans in earlier SCTs. And this, she argues, is a cause

[4] In Chapter 4 I will engage with the issue of justice for non-human animals as part of precontractual conditions for a theory of global justice.

for serious concern. Two steps shape her reasoning. First, if we accept the claim that children and adults who have lost -or never have had- socially-expected body or mental functions are citizens; and second, if we also acknowledge that "any decent society must address their needs with respect to care, education, self-respect, activity, and friendship;" then it follows that we must consider these individuals as part of the group whose interests must be considered during the bargaining process leading up to the selection of the principles of justice as an outcome of the social contract (Nussbaum, 2006, p. 98).

At this point, I will briefly point to my disagreement with Nussbaum. Insofar as she seems to demand that those contracting not only have the interests of all members of society in mind but that these contractors must also be part of those groups whose interests are currently underrepresented in society. This presents a severe problem for people with severe disabilities or cognitive limitations. How would they participate in these deliberations? Although the claim that how we shape the agents in the contractual paradigm is worthy of consideration, how do infants or other people with limited cognitive and deliberative capacities could fit into the bargaining paradigm is a problem Nussbaum does not seem to properly explore. I focus on the distinction between bargainers or deliberators and those whose interests they ought to represent in Chapter 3.

Although highly connected to the construction of a standard of considerability of interests, which I will discuss later, I want to highlight how discretionality informs Nussbaum's project. For her, the continuous neglect of the participation of diverse groups of people by those working on theories of justice within the SCTR is a fact of the world

worthy of consideration. For the aforesaid reason, I consider it reasonable to view her SCT as at least partly undertaken to answer this particular circumstance.

The second consideration within Nussbaum's SCT is nationality or place of birth and how it influences people's lives. For Nussbaum, most projects within the SCTR have relied on the modelling of a "single society, which is imagined as self-sufficient and not interdependent with any other society" (2006, p. 18). Nussbaum calls this a problematic and thin approach to international relationships. For her, under this approach, the only relevant considerations were war and peace; and issues such as economic redistribution among nations or human rights protections were considered irrelevant or not as important (Nussbaum, 2006, p. 20).

Following this, it is possible to claim that the circumstances of justice that inform Nussbaum's normative project are different from those embraced by authors like Rousseau, Rawls, or other authors working within the SCTR in at least one meaningful way. For her, justice is an issue that involves discussions about the global redistribution of resources and human rights protections even outside the borders of a state. This is an excellent example of how different authors will identify different circumstances of justice as relevant for different versions of the SCT.

1.3. Normative commitment (s): The Driving Element(s) of the Contract

The second pre-contractual element that I will discuss is the normative commitment or commitments that one can identify in any SCT. This element motivates the existence of the contract and informs the principles obtained after employing the contractual device. In

other words, the normative commitment of an SCT should be understood as an action principle that performs a sort of teleological function in shaping the theory. An example of this element could be life, liberty and property as fundamental elements to be protected by the social contract in the Lockean model. Different authors present this normative commitment as either a product of our moral epistemology, a moral claim that needs to be understood as argumentative bedrock, or a fundamental idea of some sort. Such element, then, needs to be protected or maximized in the contract, or both.

In the next section, following the scheme of bringing two different theorists together to show the methodological approach in action, I will rely on Thomas Hobbes and David Gauthier's works. By analyzing their work, I will show how normative commitments play an essential role in different SCT versions.

1.3.1. The Beating Heart of Hobbes' *Leviathan*: The Force of Self-determination

Thomas Hobbes' work had an impressive range. From metaphysics to politics, his system is probably one of the most systematic in the early modern period. His book *Leviathan* (1994) begins with an analysis of the individual's epistemological capacities and concludes with a treatise of the dangers of a flawed reading of religious texts. This section will focus on his normative political project, notably on the element that seems to motivate the social contract's existence and informs its clauses.

In Hobbes' work, there is a level of hedonism that needs to be understood before engaging with his normative claims. For him, there is a human inclination towards increasing pleasure and reducing pain. This inclination leads to human action in different

areas of our existence, including the political sphere. For him, “whatsoever is the object of any man’s appetite or desire that is it which he for his part calleth good; and the object of his hate and aversion evil” (1994, p. 28). This has led some scholars to regard Hobbes's modelling of humans as psychological egotists, which means that “each human being is motivated only by his or her own self-interest” (Meyers, 2013, p. 272). This would, for Hobbes, eventually justify the creation of civil society and the acceptance of its rules. In his words:

> “This is the generation of that great Leviathan, or rather (to speak more reverently) of that mortal god, to which we owe under the immortal God, our peace, and defense. For by this authority, given him by every particular man in the commonwealth, he hath the use of so much power and strength conferred on him, that by terror thereof, he is enabled to form the wills of them all, to peace at home and mutual aid against their enemies abroad” (1994, p. 109)

A possible way to approach this claim is to identify an underlying normative claim that Hobbes seems to endorse as part of his normative project. It appears that self-interest -in the form of peace and self-preservation- is the reason and goal of society, and that of the social and political structures ought to be modelled in such a way that guarantees that peace and self-interest can be preserved or enhanced. For him, in a meaningful sense, even if not the only sense, human action’s drive is the satisfaction of self-interest (Hobbes, 1994, p. 79). Hobbes’ theory has several possible readings, and this has led to debates about the nature of the foundation for his overall political project -whether, for instance, it is moral or merely psychological. These debates have led some authors to claim that, for Hobbes, the foundational element is a moral inclination to avoid the *state of nature* due to the harsh circumstances of justice, such as war and violence prevalent in it. This, some claim, is

Hobbes' focus, not the empirically observed fundamental inclination we supposedly all have to act based on self-interest (Edwards, 2002).

But if one takes Hobbes at his word, he claims that he is constructing a theory that starts by identifying the regular behaviours of humans, i.e., their continual efforts to preserve their personal existence and well-being. This behaviour seems to be informed by what we can perceive using reason. For Hobbes, humans have the right of nature or *jus naturale*, which is the right to do whatever one deems necessary for their preservation or well-being. In other words, they possess the liberty to do whatever their reason tells them is necessary for self-preservation and enhancement of personal well-being (1994, p. 79).

This can be explained as the right of every individual to everything, even to another person's body (1994, p. 79). From the identification of self-preservation as a drive for human action, the laws of nature that shape individual and institutional behaviour are in turn derived. The Leviathan, as in the set of institutions shaped by the clauses of the contract, becomes a way in which self-interest can be deployed to its largest possible extent. All social and political institutions are designed to guarantee that this feature can be enjoyed by individuals. In Hobbes's account, humans in the state of nature are regarded as free to pursue their self-interest and the institutional setting in which human beings find themselves must guarantee this. For that reason, some restrictions will be placed on people, and some authorities will be appointed. The normative commitment to the right to liberty, then, is at the very heart of the Leviathan and gives it its purpose.

1.3.2. Gauthier's Commitment to Human Interest: Personal Utility as a Reality

Unlike authors such as Hobbes, Gauthier presents a theory that does not aim to describe or explain how a framework of morality -where human behaviour is but one part- works. Instead, he seeks to provide a justificatory framework for moral action (Gauthier, 1986, p. 2). In that sense, he uses the SCM in a robust normative way. As in the case of Rawls (1999, pp. pp. 28, 29, 109, 161), Gauthier's work is informed by an analysis of Hume's insights on the relationship between individual interest and morality. However, for Gauthier, Rawls' work falls short of clarifying a relationship that should be the basis of an understanding of the contract. For Rawls' "the theory of justice is a part, perhaps the most significant part, of the theory of rational choice" (1999, p. 15). Yet, claims Gauthier, this connection is not adequately developed in his work (1986, p. 4). At the core of Gauthier's project lies the crucial difference between reason and interest. Morality is connected to both, claims Gauthier. Still, our moral theorization needs to account for the link between practical reason, on the one hand, and interest or personal utility, on the other (1986, p. 4). Whether his assessment of Rawls' work is correct is beyond the point of this section. As with the other sections of this chapter, the focus is to make sense of the fundamental ideas or commitments that inform Gauthier's work.

For Gauthier, reason is not to be reduced to an instrument of human interests. In other words, and against Hume, reason is not the slave of passions (Gauthier, 1975, p. 431). Reason and, since we are talking about the practical issue of morality, practical reason needs to be understood beyond the Kantian model's scope that, according to Gauthier, informs not only projects such as Rawls but also that of the Utilitarians (1986, p. 6). In the

Kantian model, the element of impartiality in distribution is something that reason already incorporates into itself. Gauthier's model seems more limited in that sense. For him, impartiality is another moral dimension that needs to be the outcome of rational analysis (Gauthier, 1986, p. 6). Reason comes into action to provide constraints upon those non-moral premises of rational choice that individuals have. Among those constraints, one will find impartiality, which is nothing but a feature of morality. To choose these constraints is to choose morally, says Gauthier (1986, p. 4). His whole normative framework is an argument in favour of showing how an individual, reasoning from non-moral premises, would accept morality's constraint.

Morality, then, needs to be understood as a set of rational, impartial constraints on the pursuit of individual interest. We must realize that, in many situations, choosing rationally is choosing morally (Gauthier, 1986, p. 4). This idea is supported by a loaded sense of what human nature is from the perspective of the doctrine of the economic man or *homo economicus* (1975, p. 418). The idea of acting rationally as a way to constrain your desires which ultimately benefit oneself, is what Gauthier understands as morality (1991, p. 16). To properly analyze this doctrine's implications here would be short of impossible and take me further away from the section's scope.

Nevertheless, it is worth noticing that there are two elements here that need to be highlighted. The first one is that morality, for Gauthier, is an endeavour of social interaction, and the second one is that such an endeavour takes place among rational individuals. Although neither of these elements provides us with the identification of the

normative commitment that, based on the taxonomy that I am proposing, is a fundamental pre-contractual element of the theory, they explain how such a commitment is deployed.

At its core, Gauthier's project is about a maximizing conception of rationality. As part of this thesis, one must understand that the rational person seeks the greatest satisfaction of their interests. In other words, the self's interest, held by oneself as a subject, provides the basis for rational choice and action (1986, p. 8). As in Hobbes's case, Gauthier argues that self-determination is the element that needs to be deployed to its largest extent. However, liberty seems to be a manifestation of enlightened self-interest, therefore, its reason for maximization. Establishing a set of moral norms is the rational way to proceed to secure the goal of maximizing individual self-interest. Morality, then, becomes the set of norms or clauses that are a rational choice for those interested in maximizing their self-interest. The SCT provides the best way to refine and systematize the means for maximizing it.

As shown before, Hobbes' work starts with the normative commitment of self-interest, mostly in the form of self-preservation. Unlike him, Gauthier's point of departure or normative commitment goes a step back from the former. Gauthier's normative commitment can be framed as the right of each individual to maximize their own rational individual's self-interest and not focused solely or mostly on self-preservation. By focusing on how humans ought to pursue their self-interest over liberty, we are in the face of an SCT version that shapes its limits accordingly.

1.4. The Standard of Considerability of Interests: Identifying Whose Interests Matter

As my discussion of the previous pre-contractual elements has shown, every SCT is shaped in one way or another by their author's choices. One of these choices is whose interests will be considered within the negotiations that will be carried on within the contractual device framework. What seems to be a common choice among certain authors working within the SCTR is identifying certain cognitive features as the basis for the formulation of the standard of considerability of interests. In this section, I will rationally reconstruct two of those standards. The first author whose work I will consider is John Rawls, and then I will move on to engage with John Locke. Both of their projects limit the account of whose interest matters based on the construction of two different yet commonly accepted standards.

As a matter of clarification, I need to distinguish two things in this section 1) what are the criteria for being a qualified contractor?; and (2) whose interests must qualified contractors consider when they engage in their deliberations? The former question is something that is usually identified or discussed as part of the contractual device. In contrast, the latter is treated as a general discussion about the limits of the contract. Nussbaum frames these questions as *by whom are society's basic principles designed?* and f*or whom are society's basic principles designed?* (2006, p. 16). Both formulations point to the same issue: that we can clearly distinguish between those contracting and those whose interests will be part of the negotiation. To conflate contractors with those whose interests will be considered by those contractors needs to be avoided for clarity. In this

section, I deal only with the formulation of the standard of considerability of interests. While the latter will be discussed in the section that focuses on the contractual device.

1.4.1. Rawlsian Epistemic Demands of the Reasonable Person

A useful way to begin identifying whose interests matter in Rawls' SCT is to consider the methodology that he sets forth as a moral justification requirement. The methodology that tells us how a moral principle can be justified can illuminate how to understand whose interests will be considered in the Rawlsian project. For starters, there seems to be common agreement among different scholars that Rawls, given his use and defence of reflective equilibrium, was an ethical coherentist (Brink, 1987) (Daniels, 2018) (Tramel, 2018). That is, he endorsed the idea that a belief could be justified or held justifiably insofar as it could be said to be in coherence with other beliefs from the same set. Rawls' famously known reflective equilibrium (RE) methodology, developed utilizing analogous reasoning from the study of inductive logic to the study of ethics and moral justification, is the tool that can help us achieve this ultimate level of coherence (1951, p. 178).

Rawls claims that moral justification is "a matter of the mutual support of many considerations, of everything fitting together into one coherent view" (1999, p. 507). In this way, RE allows us to identify the best principles of justice within certain conditions, thus allowing us to set the standard of evaluation that informs the institutional design and political relations shared among citizens (2005, p. 103). Even if at first sight Rawls' principles of justice appear to refer to something objective, we should avoid this reading. For him, "moral objectivity is to be understood in terms of a suitably constructed social

point of view that *all can accept*[5] (…) [A]part from the procedure of constructing the principles of justice, there are no moral facts" (1980, p. 519). As one could expect in a contractualist theory, the appeal of principles resides in their universal compatibility with what we would want others to follow if the appropriate general point of view is assumed. In other words, "our moral principles and convictions are objective to the extent that they have been arrived at and tested by assuming this general standpoint and by assessing the arguments for them by the restrictions expressed by the conception of the original position" (1999, p. 453).

As important as this form of production of the fundamental principles of justice is for philosophical considerations, the process previously stated tells us something important about the nature of those whose interests will be relevant to the construction of the principles of justice selected by the contractors. It tells us that a principle must be accepted by those affected by it. So those normative claims -principles- made by the contractors must be somehow intelligible to those whose interests will be affected by them. This seemingly neutral claim has profound implications because it demands a level of cognitive capacities commonly found in certain -if not most- humans. It also becomes a vehicle for narrowing the list of whose interests are relevant for the SCT that Rawls is proposing.

An exegetical analysis of Rawls is beyond the scope of my work. However, some exegetical work on Rawls' ample legacy is required to make sense of his standard of considerability of interests. I want to show that there is reason to consider that Rawls' standard of considerability is grounded on something like agency, high levels of cognition,

[5] My highlight

and physical abilities. Three crucial quotes from Rawls' work back this kind of reading. First, when considering whether people with severe cognitive disabilities can be part of ethical considerations when discussing moral principles, he claims that "problems related to special health care or how to treat the mentally defective (…) [might] distract our moral perception by leading us to think of people distant from us whose fate arouses pity and anxiety" (1999B, p. 259). Second, when considering the limitations to his project he claims that even the widest version of his theory "would seem to include only our relations with other persons and to leave out of account how we are to conduct ourselves toward animals and the rest of nature" (1999, p. 15). Finally, when considering its grounding, he claims that his project is grounded in a conception of society as a "fair system of cooperation over time among citizens as free and equal persons" (1999, p. xv).

The previous textual evidence allows me to reconstruct the Rawlsian standard of considerability of interests in the following way: *In negotiating the principles of justice that answer to the expansion and protection of freedom and equality, the contractors will only consider as relevant the interests of those individuals who have cognitive capacities that would allow us to consider them capable of cooperating throughout a lifetime. The contractors must leave out of consideration the interests of human beings with severe mental or physical disabilities, animals, and nature.*[6]

A Rawlsian might say that those interests not included under this standard could be considered after society has been established and the institutional apparatus has been put in

[6] It is far from intuitively acceptable to claim that the mere existence of the capacities to access moral knowledge grants intrinsic moral value or special moral standing. However, this logical jump seems to be at the core of the SCTR and will be addressed in Chapter 4, section 4.

place. This, however, does not reject the claim that at the level of institutional design, the interests to be considered for the construction of principles were reduced in a meaningful way. His standard of considerability, it could be said, remained the same or relatively close to the original formulation I have provided in the previous lines throughout his career. This standard of considerability of interests is narrow in a relevant sense, and as such, it is a helpful example of this pre-contractual element.

1.4.2. The Natural Light of Reason and John Locke's Political Project

Perhaps one of the most well-known names within the SCTR is John Locke, whose project takes its most straightforward form in his *Two Treatises of Government*. Yet, it is essential to keep in mind his contributions to epistemology, particularly in the *Essay Concerning Human Understanding*. Although it is tempting to think that epistemology and political philosophy have little to do with one another, approaching this issue with that assumption would be a mistake. As I previously showed, in John Rawls' work that connection is more than informative. Much the same is true in the case of Locke, although with some relevant differences from Rawls, as is the case with paradigmatic historical authors. Read in conjunction, Locke's two works provide useful insights for identifying the necessary epistemic conditions that individuals must meet for their interests to be considered in his SCT.

To understand whose interests should be considered within the contractual negotiations process in Locke's SCT, a useful point of departure is identifying the

relationship between morality and the human mind. This relationship can be identified throughout the *Essay* but perhaps is more apparent in the following two passages:

> "but moral principles require reasoning and discourse, and some exercise of the mind, to discover the certainty of their truth. They lie not open as natural characters engraved on the mind; which, if any such were, they must needs be visible by themselves, and by their own light be certain and known to everybody. But this is no derogation to their truth and certainty, no more than it is to the truth or certainty of the three angles of a triangle being equal to two right ones: Because it is not so evident as "the whole is bigger than a part" nor so apt to be assented to at first hearing. It may suffice that these moral rules are capable of demonstration: And therefore, it is our own fault, if we come not to a certain knowledge of them". (1, 3, 1)

> "the idea of ourselves, as understanding rational creatures; being such as are clear in us, would, I suppose, if duly considered and pursued, afford such foundations of our duty and rules of action, as might place morality amongst the sciences capable of demonstration; wherein I doubt not but from self-evident propositions, by necessary consequences, as incontestable as those in mathematics, the measures of right and wrong might be made out to any one that will apply himself with the same indifferency and attention to the one, as he does to the other of these sciences." (4, 3, 18)

The critical feature that informs Locke's overall project is reason, and reason has a dual function; it increases our knowledge, and it regulates our assent (*Essay* 4, 17, 2). Reason is capable of showing us what is moral and why it is binding.

Although epistemologically important, reason also serves a political role in Locke's SCT. In his account, the right to life, the right to freedom, and the right to property are the normative commitments acknowledged and promoted by the social contract (1960, p. 170). But freedom, in Locke's account, seems to demand something like agency. In his words: "That so far as any one can, by the direction of choice of his mind preferring the existence of any action to the non-existence of that action, and vice versa, make it to exist or not exist, so far he is free" (1924, pp. 140-141).

In the Two Treatises, the connection between reason and freedom becomes clearer. Locke textually claims that although equality of rights is a natural state of affairs for humans, children are excluded from having it. Locke argues that they may gain it with the coming of age and reason (1960, p. 304). But if "through defects that may happen out of the ordinary course of nature" a child were not to achieve the level of reason demanded to be deemed free, then that individual will never be "capable of being a free man" (1960, pp. 308-309). These elements allow Clifford to call Locke's SCT a *Capacity Contract* where those with mental disabilities are excluded (2014). Martha Nussbaum claims that Locke does not explicitly discuss the issue of people with disabilities (2006, p. 42). That assertion is wrong since that discussion leads Locke to assert the parameters of whose interests are relevant for consideration in his SCT. And these are such as to exclude such individuals. This is not the only relevant exclusion worthy of consideration. In the First Treatise, Locke is clear in his understanding that, by accepting the Bible's words as true, one must accept that God gave humanity dominion over the "inferior creatures" (1960, p. 157). This acceptance allows for differential treatment between humans' interests and those of other beings, such as animals.

As in Rawls' case, a reconstruction of the standard of considerability of interests in the Lockean project is possible. Such standard could be phrased in the following way: *In negotiating the principles of justice that answer to the expansion and protection of natural rights, the contractors will only consider as relevant the interests of those individuals who have reached the level of the cognitive capacities that would grant them the status of*

equality with other humans. The contractors must leave out the interests of those with mental or physical disabilities and animals when developing those principles.

Both standards arguably lead to the neglect of certain crucial issues of justice, such as the treatment of individuals with disabilities, the treatment of non-human animals, and quite possibly the treatment of non-sentient beings found within nature. The last two are considered only instrumentally valuable. In other words, if their interests count, they count only insofar, and to the extent that, they bear on the interests of those with developed cognitive capacities. It is only the latter beings whose interests count in and of themselves. Whether these standards properly capture the relevant interests that a theory must capture is not the point of my argument here. I am still focused on showing how these different SCTs built their standards of considerability of interests following certain commitments and assumptions or ideas about what makes an interest relevant for the contractors to acknowledge. In the next and final section, I will engage with the last pre-contractual element, the contractual device.

1.5. The Contractual Device: Articulating the Precontractual Elements

Perhaps the best-known pre-contractual element of all is the contractual device, even if it is not referred to in this way by most authors. This element is a vital component of the process of justification commonly attached to any SCT. However, and as stated in the introduction of this chapter, although it is widely accepted that the notion of a social contract is a useful way to conceive of an agreement that can be rationally justified to different parties, it is important to stress that the possibilities of this mode of justification

heavily relies on the modelling of the pre-contractual elements themselves. As I mentioned in 1.1., some authors focus on this element to define the whole SCTR. As I have shown in the previous sections, that approach could limit our capacity to correctly see what is at stake in different theories within the SCTR.

A contractual device, whether Locke's "state of nature," Rawls' "original position," or Gauthier's "bargaining position," is the pre-contractual element where all the other elements are combined. The circumstances of justice that make those authors consider the question of justice in the first place, the fundamental ideas or normative commitments that inform the emergent theory, and the set of interests previously determined as relevant for the contractual negotiations are blended here. Combining all these, what emerges is an outcome, namely, the principles that ought to govern the community at large. Yet, as with the previously explained pre-contractual elements, the contractual device can and has been modelled in different ways by different authors.

In this section, I will focus on the contractual devices employed by Immanuel Kant and Charles Mills. The former is commonly referred to as part of the SCTR, while the latter - more often than not- is thought of as a critic of the SCTR. Both authors use or accept the possible use of contractual devices to conceptualize the best possible principles of justice, which, in turn, can be used to assess different aspects of the basic institutional elements or structure of a society.

1.5.1. Kant's Original Contract as an Idea of Reason

For Immanuel Kant, society ought to be rationally understood as the product of an "original contract," which is an "idea of reason" (1991, p. 79). What this means is that a contract is a theoretical tool designed to provide us with a set of principles that citizens of society could "reasonably agree to" (Riley, 1982, p. 126). But the contractual device that Kant endorses is not one where different individuals are allowed to bargain for whatever outcome they see fit. The device is a lot more refined, and it is, as with most contractual devices, shaped to provide certain outcomes.

The device, and by extension its outcomes, are regulated by the pursuit or satisfaction of three basic principles or normative commitments 1) the freedom of every member of society as a human being; 2) the equality of each with all the others as a subject; and 3) the independence of each member of a commonwealth as a citizen (Kant, 1991, p. 74). Kant's contractual device is intended to produce a standard that can shape how every legislator frames the laws that they will develop. They must always consider that their laws have to meet the theoretical standard of being the possible outcome of a whole nation of citizens' wills. All this while always regarding each subject within such analysis (1991, p. 79).

Riley considers that Kant's main goal was to try to rescue the essential element of the SCTR, "the notion that all laws must be such that rational men could consent to them" (1982, p. 127). Although the contractual device is relatively simple, a theoretical setup where we can conceive what rational individuals might agree upon as the basis for their society given certain fundamental commitments, this formulation's consequences are essential for my exposition. Kant's careful framing of different elements within his

contractual device is an excellent example of how pre-contractual elements help construct a larger theory that combines moral elements with certain relevant aspects of the world to produce normative political principles.

As I will show when presenting Mills' version of the original position, other forms of the contractual device are possible. With more or fewer refinement levels, the main idea is that the contractual device connects the other pre-contractual elements in a meaningful way. For that reason, to continue focusing on this element alone while ignoring these other crucial elements is to take a problematic approach to the SCTR.

1.5.2. Charles Mills and the Non-ideal Reshaping of the Original Position

Charles Mills argues that "there is nothing that anybody, including those wishing to theorize gender and racial subordination, should find objectionable about contract theory" (2007, p. 86) if it is accepted that an SCT is an artificial way to structure social institutions, which are created by human action and shaped by normative reasoning. In that sense, though his comments might be deemed critical of the SCTR (Mills, 1997), we need not view him as having completely rejected the possibilities inherent in it. Mills recognizes, in much the same way as Susan Moller Okin and others - myself included - did, that one of the best contractual devices that western philosophy has ever produced is Rawls' original position. Okin argues that although Rawls' principles of justice, obtained using the device, are inconsistent with a gender-structured society and with traditional family roles (1987, p. 103), these outcomes might be the result of misuse and not a problem with the device itself.

For the sake of clarity, I will introduce Rawls' original position first and then move on to explain the modified version proposed by Mills. According to Rawls, the principles of justice that ought to regulate a society are to be understood as the product of an agreement in a hypothetical contractual situation known as the original position. Furthermore, these principles should be accepted by rational persons aiming at solving the problem of settling the basic terms of their association (1999, p. 102). As a caveat, though, no contractor in the original position is aware of the world's contingencies, including who they might represent, that will affect those represented by them – themselves included – once negotiations conclude. They are behind a veil of ignorance that forces them to evaluate principles in light of general considerations only, not based on their social position or personal interests or those of the individuals they represent.

In other words, each contractor does not know where they or those represented by them will end up once the veil is lifted. So, they, the contractors, are forced by the demands of prudence to choose carefully, in a way that will not end up seriously compromising their interests should they end up occupying one of society's less privileged roles (Mills, 2017, p. 164). Things such as race, gender, economic class, political influence, etc., of the contractors and those they represent are unknown at the time of negotiations.

For Mills, the problem with Rawls' formulation of the original position is that critical general facts about the world, such as gender or race, are ignored behind the veil of ignorance. Mills asserts that it is possible to incorporate certain general features or facts of the world, such as misogyny and patriarchy, within the set of issues that the SCT will address. Since these are general facts about the world, not particular facts about individual

contractors, admission of them into the set of facts known to contractors will in no way skew the impartiality the original position is designed to impose.

To support his modified version of the original position, Mills invokes the work of three feminist thinkers. From Jean Hampton, he takes the insight that society is created and shaped by human actions. He also takes her optimistic view that a Kantian approach within the contractual tradition can make society a better place. From Carole Pateman, he takes the acknowledgment that just like in the case of Rousseau, an SCT can consider and articulate within itself a set of problematic *facts* about the world. As in Rousseau's case, the existence of a poorly formulated and prevalent SCT in need of revision is the focus. Finally, from Susan Moller Okin, he takes an endorsement of the original position as a place where the previous insights can be incorporated. All these insights combined allow Mills to use the device to produce a new normative paradigm capable of generating principles for society's regulation that do not fall victim to the difficulties regarding race and gender commonly found in the SCTR.

One of Mills and Rawls's critical differences is the former's commitment to using non-ideal theory as the point of departure for the contract's conceptualization. Although I will address this distinction in chapter 2, it is crucial at this point to notice that Mills aims to bring problems beyond scarcity of resources into the fold of normative theorization, thus claiming that his work, unlike Rawls', is focused on non-ideal theory.[7]

[7] I consider Rawls' formulation of the original position to be problematic due to his mention of persons, particularly heads of households, as the contractors. It is clearly the case that they are contractual agents and that they ought to consider the interests of those beings previously determined as worthy of consideration for issues of justice in the first place. However, there is nothing that prevents us from

This section's main point was to show that alternative views to the contractual device are identifiable within historical and current debates in political philosophy. This can shed further light on the idea that different authors can and have chosen different elements to fill their pre-contractual elements during the modelling stage of their theories.

1.6. Pre-contractual Elements for a Theory of Global Justice

In this chapter, I aimed to provide an understanding of SCT that heavily relies on identifying what I have called pre-contractual elements. By doing so, I highlighted the fact that modelling is an essential feature of the SCTR. This modelling feature heavily relies on the author's choice of pre-contractual elements. Although analysis of the SCTR has usually focused on the justificatory possibilities that an SCT provides, this focus may have prevented a full appreciation of the significance of different underlying or implicit elements at work in various theories. By shifting our focus and approaching different projects through SCM's lens, we can more easily break away from former versions of the SCT, as in those answering to particular historical circumstances, and appreciate the range of further, perhaps more promising, possibilities within our reach.

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conceiving the original position as a set of, for example, computers programmed with the information of the circumstances of justice, the normative commitments, and the set of interests relevant for negotiations, who would then engage in the deliberations on behalf of the parties whose interests are deemed relevant. Thus, making it more abstract and creating a clearer distinction between the deliberators and those whose interests are part of the deliberation. It seems conceptually clearer to differentiate between those two groups which could or could not overlap. I do not think that Rawls or Rawlsians would have a problem with this formulation.

Having presented a taxonomy of elements that constitutes “the bones” of any SCT, I will now use this methodological tool to identify which set of pre-contractual elements is likely to generate a plausible theory of global justice. In the following chapters, I will outline each of the pre-contractual elements found in this set to establish the foundations for a contractualist theory of global justice. Each of the next three chapters will develop one of the pre-contractual elements previously introduced, except the contractual device, which will be considered in the final chapter, along with the conclusions and further considerations related to my project.

Chapter 2: Framing the Question of (Global) Justice

Introduction

Following the methodological framework established in Chapter 1, in this chapter, I focus on identifying the circumstances of justice for establishing a framework for the development of a theory of global justice. That is, this chapter deals with the first pre-contractual element presented in the previous chapter. By doing that, I hope to set up the problems or issues that could inform a theory of global justice that follows a contractualist methodology.

To address this pre-contractual element, it is useful to remember that David Hume claims that justice is a virtue that "arises from the circumstances and necessities of mankind" (1973, p. 477). A possible way to address this statement is to assert that our theorizations about justice will be framed under the terms of responding to certain situations that need to be considered by those thinking about justice. This idea, thinking about justice under a framework that considers specific or important facts of the world, resonated with John Rawls' efforts to bring about a theory of justice that could compete with other moral projects of his time. Following that, Rawls established that before talking about justice, one needs to recognize the existence of certain elements that frame our very discussions about the topic. Among those elements, one can consider the features of our everyday existence, the conditions of the world, or other issues that could create conflict or divisions among different parties in society.

For Rawls, the role of justice is to identify the principles "needed for choosing among the various social arrangements" given the goals of a society and "[t]he background conditions that give rise to these necessities [of justice] are the circumstances of justice" (1999, p. 109). Like other authors working within the Social Contract Tradition, Rawls also considers some facts about the world as important for theory building. Another way of considering these circumstances is to take them as the elements that "specify when a given feature or condition triggers a concern for justice" (Murphy, 2017, p. 38). In this chapter, I will follow this kind of reasoning and identify the conditions or circumstances of justice that can be said to be useful to properly establish a framework for the development of a theory of global justice. That is, a theory that addresses important concerns about the world and that can guide our actions to improve ourselves. By a theory of justice, I mean a normative standard against which we can measure things such as actions, the basic structure of a society, or the institutional arrangements that can help us find the best way to organize social life on a global scale. In that sense, a distinct kind of project than the one developed, at a more extensive length, by authors such as Locke, Kant, or Rawls.

I want the reader to keep in mind two important elements in this chapter. First, that the circumstances of justice that I have chosen for this chapter reflect a list of elements that have historically and to this day continue to create recurrent problems for the global community. In other words, the list that I will develop in this chapter would focus on those problems that I take to demand immediate theorization and action from any author or theory working on the topic of global justice. More circumstances that create problems for the global community could be incorporated into the list, but those chosen and presented in this

chapter seem apt to meet the goals of the project. That is, the goal of establishing a framework for the development of a theory of global justice. Second, that unlike other authors, I am dividing the circumstances of justice into associative and material. The former focuses on facts about humans and the latter on facts about the world, both relevant for the purpose of theorizing about global justice.

This chapter has six sections. In the first section, I focus on the methodological rationale behind identifying the circumstances of justice. Following Collen Murphy, I consider that one can theorize about justice in the abstract or by approaching "the question of what is just in a given case by identifying the problem of justice that is at issue in a set of circumstances" (2017, p. 41). Rawls claimed to be working to find "the limits of the realistically practicable" (2001, p. 13). In that sense, in this section, I put forward the idea that it would be beneficial to engage with diverse projects within the social contract tradition by understanding them as embracing some relevant facts of the world and not merely working from a vacuum or complete abstraction. I follow that by tackling the distinction between ideal and non-ideal theory. In this section, I provide an argument based on "explicitness" to support theoretical work under the framework of ideal theory.

In section two, I introduce the reader to my account of a *well-ordered and thoughtful society*. My account, I show, extends beyond the standard, problematic, and dominant conflation between full compliance, scarcity of resources, and possible conflicts of interest. I show how ideal theory can be conceived in such a way that it addresses the concerns of critics. Those critics have, rightly so, pointed at the inability of ideal theory to address real-world problems that affect most people's lives on the planet.

Section three is where I discuss the notion of circumstances of justice. In this section, I tackle some problematic yet predominant Rawlsian assumptions. Focusing mainly on Rawls' notion of society as a system of cooperation, I show how this notion's dependence on concepts such as cooperation and agency prevents it from adequately addressing alternative views about society. I instead define society as a system of interactions.

In section four, I articulate my account of associative circumstances of justice. Although with some changes to the common approach in Western philosophy, I argue for a list of human features similar to those identified by Hobbes, Rawls, and Hart as relevant for theorization. While in section five, I present my account of material circumstances of justice. I argue for a list of four of them as relevant facts about the world that can inform our theorizations about justice. The first is *serious existential uncertainty*. The second is the existence of a *shared global institutional framework*. The third is the *uneven distribution of the planet's scarce resources*. The fourth is *pervasive racial, gender, ethnic, and disability-targeted inequalities*.

In the sixth and final section of this chapter, I address the chapter's overall conclusions and discuss the possibility of two different accounts of distributive justice. Broadly speaking, there is a narrow sense and a broad sense of distributive justice, the former focusing on the redistribution of wealth and the latter focusing on the redistribution of liberties and rights. I argue that neither of those seems capable of encompassing the complexity of the circumstances of justice that inform my project. I conclude the chapter highlighting that the focus on distributive justice, and the demand to accommodate our

considerations of justice around it, might be detrimental to tackling problems of justice that could go beyond the scope of redistribution but that are no less important.

2.1. Humean Methodology, the Question of Justice, and the Value of Ideal Theory

In his analysis of what justice is, Hume first develops a list of human features that Rawls labels as circumstances of justice (1999, p. 110). Then, Rawls moves on to work out a set of objective circumstances of justice, which, under my reading, are the world's features that we need to consider to theorize about justice. Although interesting, I do not intend to perform an exegetical analysis of Hume's position in this section. Instead, my goal is to make sense of what Murphy calls "Hume's fundamental insight" that there are at least two possible ways to theorize about justice (2017, p. 40). The first one is to remain in a plane of abstraction that Plato (2017, p. 41) and others have occupied throughout the history of moral philosophy. In contrast, the second one is to raise the question of what justice *is* given a set of facts of the world deemed important for theorization.

Following this methodological insight, it becomes clear that Rawls, and many others working within the Social Contract Tradition, performed the exercise of identifying a relevant set of circumstances from a universe of possibilities. In so doing, they pursued the second option outlined by Murphy. After having selected a relevant set of facts, their next step was to develop a normative project that could address justice issues that arose from such circumstances. My project follows a similar path, and at this stage, I aim to

identify a set of features of the world under which it would make sense to theorize about global justice.

Based on the previously presented methodologies, two ways of considering the question of justice open up, an abstract and what I will *circumstance-based* way. For my dissertation's purposes, I will work within the latter framework, and within it, I will focus on the division between ideal and non-ideal theory. In subsection 2.1., I will introduce this division and will argue in favour of ideal theory as a better way of theorizing about justice.

2.1.1. Ideal and Non-ideal Theory: Challenging the Use of Ideal Theory

As stated above, circumstance-based theorization about justice can be subdivided between ideal theory and non-ideal theory. As with many other debates in contemporary philosophy, this binary was shaped by John Rawls' works. Based on his theoretical considerations, some characteristics of each extreme of the spectrum can be identified. On the side of ideal theory, those working in the field generally endorse two premises a) full compliance or respect of the principles of justice by the parties is assumed; b) conditions are favourable for the existence of a constitutional regime (Rawls, 2001, p. 13). On the other hand, those who pursue research in non-ideal theory do not assume such compliance and favourable conditions for a constitutional regime as working premises. Rawls fancied himself as working towards a realistically utopian theory, meaning that "it probes the limits of the realistically practicable, that is, how far in our world (given its laws and tendencies) a democratic regime can attain complete realization of its appropriate political values" (Rawls, 2001, p. 13).

In other words, although some ideal elements were present in his theory, the normative project under construction was not fact-neutral or detached from all features of the world. As Stemplowska and Swift have stated about Rawls' project, "the broad socioeconomic conditions do not preclude the possibility of a just (well-ordered) society" (2012, p. 373). Rawls' work aims at addressing specific problems or conditions of the world based on a methodological proposal that theorizes normative principles to guide or shape social practices or institutional design. The idea of conceptualizing justice in this manner, as Rawls acknowledges, can be traced back to Hume, for whom "the origins of justice explains that of property" (1973, p. 491). That is that things that we have acquired through "industry and good fortune" (1973, p. 487) need protection since the property of goods is unstable in the world due to the objective condition of "scarcity" (1973, p. 488).

At the core of a methodology focused on ideal theory lays a central consideration. After some elements of the world — circumstances of justice — have been identified, an abstraction exercise follows, and principles are developed to guide us to address those circumstances. This exercise gives us some abstract guiding ideals that we can then apply to real-world scenarios.

Against the merits of approaching reality from an ideal theory perspective, we have the views of Charles Mills, for whom "[w]hat distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual" (2005, p. 168). For him, ideal theory is characterized by six 'vices,' as I will call them. The first one is that it assumes a social ontology where the abstract and undifferentiated, equal atomic individuals of classical liberalism are not subjected to relations of structural domination, exploitation,

coercion, and oppression. The second one is that some unrealistic capacities are attributed to human agents who, as in the case of vulnerable minorities, might not have had the opportunity ever to develop them.

The third one is the silence on issues of oppression. Ideal theory, as a quick survey of the paradigm can show, says nothing about actual historical oppression, its legacy, or current ongoing oppression. At best, some authors working within ideal theory claim that "these [problems] may be gestured at in a vague or promissory way (as something to be dealt with later)." (Mills, 2005, p. 168)[8] The fourth one is that in ideal theory, social institutions are also idealized. This idealization leads theorists to ignore social institutions' current inner workings, such as family or government, that lead to exploitation and abuse of vulnerable groups. The fifth one is that under ideal theorization, the authors assume an idealized and problematic cognitive sphere. The advantages and disadvantages of some of the agents in society are not to be recognized. Agents who, for example, might have been excluded from proper critical thinking training, are assumed to be equally competent agents and pushed into contracting with other individuals who might have had better access to educational tools. In other words, cognitive obstacles that vulnerable groups could face are

[8] In complete fairness to Charles Mills, it is absolutely true in my experience that many of those working on Rawlsian ideal theory respond to the pressing questions derived from non-ideal considerations with a recurrent line of "the system does not preclude theorization of real problems that minorities face. I particularly do not work on those issues, but I am sure someone else could." Leaving the most pressing problems that some, if not most, humans face to be considered by other less "burdened by the constraints of academic theorization" individuals. This kind of detached attitude within professional academic philosophy in the mostly white dominated English-speaking academia can drive more than one person whose life depends on the solution of those pressing issues away from moral theorization due to its lack of engagement with real-world problems.

ignored by ideal theorists. The final one is the assumption of strict compliance. Everyone is presumed to act justly and do their part in upholding just institutions (2005, pp. 168-169).

After presenting the previous list, Mills asks his readers, "[h]ow in God's name could anybody think that this is the appropriate way to do ethics?" (2005, p. 169) Although I find it undeniable that Mills' concerns and description of ideal theory overall state the regular practice or portrayal of those engaging with it, I find that his claims do not adequately engage with what ideal theory is capable of offering. In the next section, I address this issue.

2.1.2. The "Explicitness" Case in Favor of Ideal Theory

For Rawls, again following Hume, the primary justification of why ideal theory is a good method for theorization is that it can tell us how a perfectly just society would be like if people were to follow the normative principles developed. In other words, it can enlighten how justice would look under ideal conditions, while non-ideal theory might tell us how to approach injustices in a real-world scenario (1999, p. 8). Or, as Samuel Freeman has stated, "[i]deal theory articulates what justice requires and identifies injustice. 'Non-ideal theory' tells us what to do to address and remedy injustice" (Freeman, 2020).

I am convinced that the previously introduced approach to theorizing about justice is appropriate and better suited for ethics in general. The reason is that ideal theory can provide us with an *explicit* normative standard for the evaluation of objects in theory and practice. It tells us what we should be aiming for and helps guide us in deciding how to reach that goal. In that sense, a charitable and closer reading of Rawls could be that even if

ideal theory is to be considered the first part of a theory of justice, this does not make it the only part of a theory of justice. Nor does it make it impervious to improvement when analyzed against empirical evidence or real-world issues. The best way to frame ideal theory and non-ideal theory is by presenting them as addressing two different yet interconnected questions. The first one is: *What is it that we want to achieve in moral terms?* The second one is: *How could we achieve what has been previously established as the desired moral goal?* This reading seems compatible with Rawls' work, and more generally, with the work of others working within his framework. (2000, p. 89).

Against this view, and in line with Charles Mills' previously outlined criticisms, we find Amartya Sen's claim that ideal theory seems to be framed as a way of normative theorization based on reason and neglectful of the critical role that emotions play in moral life. In his view, the main thrust of the criticism against ideal theory is that the complex and essential relationship between reason and emotions is not adequately considered (2009, p. 39). Furthermore, for Sen, ideal theories give us something like a baseline for comparison that is unnecessary for action-guiding purposes. To argue for this, he provides us with an interesting analogy:

> we may indeed be willing to accept, with great certainty, that Mount Everest is the tallest mountain in the world, completely unbeatable in terms of stature by any other peak, but that understanding is neither needed, nor particularly helpful, in comparing the peak heights of, say, Mount Kilimanjaro and Mount McKinley (2009, p. 102).

In other words, for Sen, knowing which is the tallest mountain in existence is not required for us to assess the relative heights of two smaller or lesser peaks.

Simmons responds to these criticisms of ideal theory by pointing out that Sen's analogy is potentially misleading since the question of which of two smaller "peaks" is the higher will be relevant "conclusively only if they are both on equally feasible paths to the highest peak of perfect justice" (2010, p. 35). As I stated before, following Murphy, I reject the reading that what is at stake in a problem responsive theory of justice is the achievement of "perfect justice" in the Platonic sense. Despite that, I consider that Simmons's criticism highlights something important. When comparing (x) and (y), regarding the feature F, some form of F is already established as a precondition of the evaluation. In other words, the practical comparative approach that Sen seems to endorse is subordinated to some pre-existing, yet not explicit, standards about what is worthy of being pursued in the first place.

For me, following Simmons' line of reasoning, the most problematic feature of trying to begin normative reasoning from non-ideal grounds is implicitness. Suppose one were to take the path of assessing injustices on the spot or based on some practical considerations developed on a case-by-case model. In that case, such evaluation relies on some standard that is neither explicit nor previously exposed to those considering issues of justice. When Sen claims that a "transcendental[9] identification is thus neither necessary nor sufficient for arriving at comparative judgments of justice," he presupposes that the best approach to a set of situations of injustice is to compare them among themselves and that "ranking situations according to how just they are is all that is necessary to improve our situation with respect to justice" (Meshelski, 2019). For example, let us imagine two individuals Abigail and Beatrice, trying to divide a piece of bread without previously

[9] Sen's use of transcendental should be understood as a synonym of ideal theory.

discussing their normative views. Given their circumstances and views, they might have different ways of distributing such a piece. If Abigail is intuitively committed to a view where needs determine distribution, and she feels that her hunger is larger than Beatrice's, then that could collide with the latter's view that absolute equality is the key factor in any distributive scenario.

Sen claims that ranking situations might be an incomplete approach yet not a failure as somebody working within the Rawlsian framework — or similar approaches to justice — might think (Sen, 2009, p. 103). But once again, if we are talking about justice, at least in the way in which I am talking about justice, we are talking about a standard against which we measure certain acts or institutions. Ideal theory provides us with a standard that can be — due to its explicitness — introduced to readers beforehand, and it does preclude the possibility of being modified if, when tested, it reveals the need to do so. In that sense, Rawlsian reflective equilibrium does provide us with the methodological grounds to engage with that effort. A standard of this kind, open to be scrutinized and modified, if necessary, would avoid the charge of being, as Sen calls it, a "totalist approach" (2009, p. 103).

Let me recapitulate the Humean insight that informs my project. When discussing issues of justice, the aim is not necessarily for a level of total or complete abstraction one might expect from authors such as Plato or Cohen, but to establish a theory of justice that is responsive to certain crucial facts about the real world and the beings who inhabit it. Although it is probably true that most Rawlsian formulations of ideal theory have failed to properly engage with issues that many advocates of non-ideal theory consider as crucial, it

does not follow from that fact that ideal theory cannot be adequately construed to engage with such issues.

Unlike Sen, whose project might provide us with an implicit standard, ideal theory provides us with the opportunity to be explicit from the beginning about where the goalpost for moral expectations resides. In 2.2., I move on to provide an alternative in the form of an approach that revolves around what I call a *well-ordered and thoughtful society*.

2.2. A Well-Ordered and Thoughtful Society

It is not my intention to argue that the first five features of ideal theory that Charles Mills identifies as part of the practice of ideal theory are not, in fact, features of that practice, or that they are not in fact 'vices.' I agree with Mills about the fact that every one of those features is a vice characteristic of how ideal theory is currently portrayed and conceptualized in academic circles. However, what he considers the last vice, full compliance, seems to me to be precisely the critical element to make ideal theory appealing or capable of responding to some or all of the problems he and others have correctly identified as relevant for considerations about justice (The Racial Contract, 1997) ("Ideal Theory" as Ideology, 2005) (Contract and Domination, 2007) (Black Rights/White Wrongs: The Critique of Racial Liberalism, 2017) (Nussbaum, 2006) (Pateman, The Sexual Contract, 1988).

I consider that a fundamental goal of ideal theory is searching for the best possible principles of justice for a society in which reasonable individuals live. How Rawls' project

finds those principles is by utilizing the original position,[10] a contractual device where those in charge of bargaining will choose the best possible principles without knowing the position in which they or those they represent will be in the society they aim to regulate. Two key features are fundamental for this endeavour. First, those living in that society "have a strong and normally effective desire to act as the principles of justice require" (Rawls, 1999, p. 398). And second, that those bargaining within the original position will be aware of some general facts about the world that plausibly give rise to the need to have some basis for assessments of justice and injustice. These are known as the circumstances of justice. Rawls focuses — he claims for simplicity — on the conditions of moderate scarcity of resources and possible conflict of interests among the members of society (1999, p. 110).

Here is the crucial part that the methodological approach that I developed in Chapter 1 allows us to highlight. The circumstances of justice that Rawls identifies as relevant[11] are not the only possible ones that could be considered by those deliberating on behalf of the members of a well-ordered society. Suppose it is accepted that a theory of justice that is responsive to certain world features — unlike the abstract ones — is a problem-responsive kind of theory. Those circumstances are precisely the issues that need to be considered in developing the principles upon which the bargainers within the contractual

[10] See Chapter 1 section 5.2.

[11] Although discussions of the construction of the contractual device are not the focus here, it is useful to remember that Rawls specifically claims that "As far as possible, then, the only particular facts which the parties know [behind the veil of ignorance] is that their society is subject to the circumstances of justice and whatever this implies. It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology." (1999, p. 119)

device will agree. Yet as we have seen in Chapter 1, there is no logical necessity that we reduce those issues only to, for example, scarcity of resources and the possibility of a conflict of interests arising from such scarcity.

Yes, contractors concerned with justice in a well-ordered society might well choose to focus on these particular features of their world. But the problems they choose to identify as relevant can very well be different. They could, for example, be interested in issues that could theoretically arise, that have actually risen in other societies, or that history shows have risen previously in their society but are no longer a problem in their comparatively idyllic situation. In other words, contractors seeking to establish principles to govern a well-ordered society needn't lack imagination regarding a range of other possible problems or conditions that their principles of justice might be designed to address.

If the previous is accepted, then there is no conceptual limitation for what problems a well-ordered society might consider relevant before sending its representatives to engage in contractual negotiations. Yes, indeed, a well-ordered society might not have to deal with issues such as environmental collapse, gender-based discrimination, or racism. Yet, there is nothing in place conceptually to prevent them from considering those issues as relevant or worthy considerations when looking for principles of justice that ought to apply to them as a group.

Rawls might have focused on scarcity of resources and possible conflicts of interest for simplicity's sake. Still, his selection of those circumstances of justice does not prevent us from considering others, even if that leads to further complexity. A complex theory of

justice is no less a theory of justice, and a *well-ordered and thoughtful* society is no less a well-ordered society.

Let us return to Mills' claim that full compliance is a vice of ideal theory because real societies hardly follow rules in a perfect manner. Yet, a theory that properly captures some, or all, of the problems that real societies face and therefore provides us with a standard to assess institutions or behaviours accordingly can hardly be called deficient or vicious. In that sense, the vice is not that of ideal theory but of those working with it and constructing conceptual schemes that can hardly grasp the realities that a theory of justice is supposed to do.

Following this thought, if a theory can address issues such as gender, ethnic, and racial discrimination as issues of justice, it would be hard to call it a vicious one. Nor would it seem, when those previous issues have been considered, that full compliance, in that regard, can be held as a vice that needs to be addressed. Instead, it can be framed as the best possible way to develop an explicit standard that can help address the problems that have historically affected humanity.

So far, I have established two critical things. First, that an essential step in constructing a theory of justice is identifying the circumstances of justice. Second, that there is no incompatibility between, on the one hand, recognizing a broad range of possible circumstances of justice to focus on, and the methodology of ideal theory, on the other. I am now in a position to note some important differences between the commonly accepted paradigm of Rawlsian circumstances of justice and those which feature in my account.

2.3. The Circumstances of Justice (Beyond the Current Assumptions)

As I have stated in the previous sections, the circumstances of justice shape the questions of justice based on contingent assumptions about the world. For example, it is not a conceptual necessity that humans are moderately altruistic. Nor is it a necessity that scarcity of resources is a reality of the world. These are contingent facts that we can assume to shape our questions of justice. However, those facts can be abstracted and identified as relevant circumstances of justice useful for normative theorization.

If the above ideas are sound, then it is possible that when we ask the question "what are the best principles of justice, bearing in mind that X, Y, and Z obtain?" then X, Y, and Z will be facts of the world chosen from a wide range of possibilities and different authors could choose, and indeed have chosen, different ones for different theoretical projects. If this is true, then when it comes to constructing an ideal theory aimed at obtaining the best principles of justice for a globalized world, the features chosen as the centre of focus — the relevant circumstances of justice — will presumably be ones that reflect the fact that this is a world struggling with complex environmental, animal, economic, racial, ethnic, gender, disability-targeted inequalities, and overall historical problems. My goal in this section is to identify which circumstances of justice could be incorporated within a normative project framework with global expectations.

However, before doing that, I consider it necessary to point out some assumptions that dominate a large part of the field of political philosophy. These assumptions, developed or promoted by Rawls, have limited the field of political philosophy's capacity to engage with non-Western audiences. That is, given that his project was answering to a particular set of

concerns and focused mostly, if not solely, on Western liberal democracies, many of his assumptions or views about those societies might not translate to others.

First of all, it is crucial to notice that Rawls' account of the circumstances of justice that inform his project is connected, if not subordinated, to his account of what a society is. For him, society ought to be viewed as "a system of cooperation designed to advance the good of its members" (1999, p. 155). Furthermore, this view is so central to Rawls' project that he calls it "the fundamental organizing idea of justice as fairness, within which the other basic ideas are systematically connected" (2005, p. 15). Influential authors in the field share this view from Andrea Sangiovanni (2007) to Samuel Freeman (2018). Connected to that conception of society, Rawls claims that primary goods are those things that "persons in their status as free and equal citizens, and as normal and fully cooperating members of a society over a complete life" (1999, p. xiii) want. Finally, he asserts that an indispensable condition of a society of cooperation is that "all shall have consideration for the others on the basis of mutually acceptable principles of reciprocity" (1999, p. 403).

Based on those claims, subjective circumstances of justice are "the relevant aspects of the subjects of cooperation, that is, of the persons working together" (1999, p. 110). At the same time, objective circumstances of justice are the world's conditions that "make human cooperation both possible and necessary" (1999, p. 109). Although systematically coherent, it is clear that at the basis of the Rawlsian project, we find assumptions about what a society is, i.e., a system of cooperation, and about the role played by humans living in that society, i.e., to cooperate to achieve their goals. Although, for many readers, those ideas could sound intuitively correct, they are not facts about the world. They are normatively loaded

assumptions and, for the sake of theorizing justice in truly global ways, it is necessary to consider them as possibilities within a more extensive set.

In light of the above, conceptualizing subjective and objective circumstances of justice as logically necessary and exclusive of all other possibilities would be a mistake. It seems far from a stretch to affirm that there are many different forms of social interaction globally and that many of them are relevant for humans. In that sense, there are societies that work as systems of domination, societies that work as systems of solidarity, etc. The previous reflections allow me to conclude that conceiving society, any society, as a system of cooperation using cooperation as the anchor that grounds most of the circumstances of justice seems open for questioning.

Criticisms of this kind of conceptualization have been raised within the Western paradigm. For example, Eva Feder Kittay considers this way of conceiving society and its members a problematic one (1999, p. 88). For her, the idea of citizens as capable of cooperation might leave important moral questions unanswered. Suppose one is to assume that cooperation is the central element of interaction among beings in society. What happens with those who suffer from severe conditions that would make them dependent and incapable of cooperation throughout their entire lives? In other words, the individual dependent on others for their very existence "cannot assume the burdens and responsibilities of social cooperation while in the state of dependency" (Kittay, 1999, p. 91). The result is that these individuals, for whom cooperation and the assumption of the duties of reciprocity are difficult, if not impossible, are vulnerable to being ignored by the contractors and left out of consideration when the terms of the contract are negotiated.

A Rawlsian might, and most probably would, attempt to circumvent this worry by relying on duties of charity, that is, optional altruistic ways of dealing with the situation of those unable to cooperate or appealing to the primacy of duties of charity over those of justice. But this is not, as the paradigm is set up, a solution that invokes the demands of justice *per se*. And presumably, we need a theory of justice that addresses the needs and aspirations of these disadvantaged individuals. So, if this manoeuvre will not work, what alternative might we pursue? In light of what we have seen thus far, the obvious move is to recognize the fact that it is not logically necessary to conceive society, even a well-ordered one, and the circumstances of justice in the way in which Rawls does. Other possibilities exist. And these might better address the concerns, needs and aspirations of those whose life conditions prevent them from full cooperation and reciprocity with others.

Although Kittay's questioning is enough to show some limitations in Rawls' account, a Rawlsian could answer that scarcity of resources is a fact of the world and thus making cooperation[12] a necessary element for our moral theorization. That kind of answer could be countered by considering H.L.A. Hart's important distinction between *causes or necessary conditions* and *reasons*. This distinction, I think, can further clarify the idea that circumstances of justice are not static or fixed in the sense that Rawls' project might make some think. A cause is a fact of the world such that its existence is a necessary condition

[12] I take cooperation in the Rawlsian sense to mean a kind of interaction which "makes possible a better life for all than any would have if each were to live solely by his own efforts" (1999, p. 4). Furthermore, another important element in the Rawlsian paradigm is reciprocity which according to him "is implicit in the notion of a well-ordered society" (1999, p. 13) By those terms, cooperation seems to require something like agency or the capacity to act in the world from those engaging in it.

for something else, B, to exist or occur. This means that there is a relationship of causal necessity between A and B.

However, a causal connection does not amount to a reason to do something. For example, one could say that a person who does not exercise enough and does not eat healthy food will most likely not be able to enjoy a healthy life overall. This kind of reasoning follows from the fact that exercise and diet are two things that could causally contribute to someone's being healthy. Yet those causes are not reasons to do something. A reason is a connection that mediates between "the existence of certain rules to the conscious aims or purpose of those whose rules they are" (Hart, 1994, p. 194). If that is the case, then the identification of achieving a healthy lifestyle as a goal, for example, would be a reason that a person has to engage in exercising and healthy eating habits.

With those things under consideration, it is fair to claim that the circumstances of justice, understood as features of the world that causally contribute to conflict, are not reasons *per se*. Instead, the most fundamental reason we have to consider those facts of the world as relevant is that humans want to live in a state of harmony or under conditions of justice with other beings. If circumstances of justice are relevant features of the world, it is because our drive for identifying what justice should look like makes them so. Insofar as they are contingent assumptions about the world and not reasons, they are not fixed or static. Therefore, a variety of them — some better than others — can be considered for our normative theorization.

If the previous statement holds, then it is possible to claim that conceiving society and human circumstances in terms of something like cooperation alone could lead us to

neglect other vital areas or relationships worthy of consideration. It seems possible to claim as a fact of the world that we humans interact with each other, and with other beings around us, not only in terms of cooperation but also in terms of affection, solidarity, domination, protection, etc. For example, a parent taking care of their severely disabled child is most likely not doing so under the terms of cooperation that society, in Rawlsian terms, demands from them. Cooperation demands, at least at one or another point in time, agency from the parts of the interaction. However, it would be a stretch, particularly in a globalized and open world, to assume as a given that agency is a necessary condition for having your interests consider in an SCT as if it were some kind of condition for moral value. That is not an intuitively acceptable idea, and Rawls and those who follow his line of reasoning need to provide us with reasons that support that claim. Although I will analyze this kind of view in Chapter 4, section 4, for now, I can say that to reduce society to a system of cooperation, even under terms of reciprocity, seems to narrow the human experience too much.

Connecting the previous ideas to the concept of a well-ordered and thoughtful society, I could say that even if in such society there are no disabled people, that is, people with some limitations at the time of participating in cooperation, it is possible for such a society to still consider the interests of disabled people as relevant for the construction of principles of justice. Therefore, allowing their conception of society to be more inclusive than one such as society as a system of cooperation. It is possible, and quite useful, to conceive of a well-ordered society grounded on relationships that extend beyond those premised on cooperation. To consider cooperation as the sole grounding concept for

theorization on justice issues is far too restrictive. It might also divert us from achieving what I have set out to achieve in this project, namely, the conceptualization of the basis of a theory of global justice that reflects the realities and pressing problems characteristic of the modern, globalized world.

As mentioned above, there is no logical limitation to conceive a well-ordered society as one where the relationships that are important for its members — in the sense of justice and not just charity[13] — could extend beyond those of cooperation among capable agents alone. Suppose we idealize rational beings living in full compliance and with a very well-developed sense of justice grounded, not only on cooperation among fully autonomous, rational agents but in, e.g., the perceived value of relationships grounded in care[14]. Might we — and they — see things differently? I think we would, a point I hope to establish below in section 2.4. But before doing that, I will first present my definition of the concept of associative circumstances of justice, an approach which could inform the modelling of the parties who partake in the deliberations leading up the adoption of principles of justice for their *well-ordered and thoughtful* society, which aims to provide standards for a global political community. In so doing, I will depart from traditional approaches to the circumstances of justice and outline a set of different circumstances that seem more appropriate and relevant to a theory of justice for the global context.

[13] The distinction between duties of justice and duties of charity will be the focus of Chapter 4 section 1.3.
[14] For example, agents might end up with the obligation to respect certain principles of justice that target specific obligations towards people with disabilities.

2.4. Associative Circumstances of Justice

I will begin this section by defining associative circumstances of justice, as those facts about human beings that inform their interaction with other human beings within a particular well-ordered society. These facts about humans, in turn, help establish the parameters within which the bargainers within the contractual device will proceed during their negotiations. These are negotiations in which they will engage either on their own behalf or as representatives of others who, for whatever reason, are unable themselves to engage fully in the requisite bargaining. My account will depart from accounts that talk about subjective circumstances as elements connected with human dispositions and motivational capacities of certain agents, therefore not considering them as facts about humans. Also, unlike some authors that might consider certain facts about humans as objective circumstances of justice, I will put all relevant facts or features about humans within this separate category that I call 'associative circumstances.' I do this for the sake of clarity and organization. The category of material circumstances is comprised, in my account, of facts about the world other than those that are true of human beings. I make this division based on the idea that the main receivers of the obligations that could come out of the social contract are humans. Therefore, making them and their capacities the focus of the debates among the deliberators. This, of course, does not mean that humans are the only beings whose interests could be considered by the deliberators. But it does mean that humans are probably the only beings who can hold moral obligations towards others.

With these preliminaries having been established and given my intention to rely on some form of ideal theory that is different from the one used by Rawls, I turn now to the

relevant qualities that humans living in a well-ordered society either have been or could be said to possess. Different authors have agreed that certain features of humanity are quite prevalent and therefore useful for normative theorization. Here I will address three authors' views that have identified the aforementioned features and whose accounts are strikingly similar in many aspects.

The first one is Thomas Hobbes, who, in broad terms, argued that humans' natural conditions are those of equality. For him, "[n]ature hath made men so equal in the faculties of the body and mind as that, though there be found one man sometimes manifestly stronger in body or quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable" (1994, p. 74). Given the fact that there is not a relevant difference between the physical and mental capacities of each individual, and that the weakest physical individual could kill the strongest either by "secret machination, or by confederacy with others" (1994, p. 74), natural differences between humans are not meaningful enough to highlight. Hobbes takes those characteristics, along with selfishness, and short-sightedness about an individual's own limitations (1994, p. 75), as useful generalizations about the capacities of those who will bargain the terms of his Social Contract, who, as it is the case with many Social Contract theorists, are the same individuals whose interests are at stake.

The second one is John Rawls, whose account of the features of the individuals whose interests are relevant for the contract also regards equality as a central point for consideration. It is worth remembering here that, unlike Hobbes and others, for Rawls, the contractors and those whose interests will be relevant for the contractors need not be the

same beings. Following from that, the contractors for Rawls would care for the interests of human beings whose "capacities are comparable in that no one among them can dominate the rest" (1999, p. 110). Another feature Rawls considered important is that each individual has "plans of life" or "conceptions of the good" (1999, p. 110). Thus, individuals develop different ends and purposes that could lead them to engage in conflict with one another. Finally, what Rawls considers relevant is that humans "suffer from various shortcomings of knowledge, thought, and judgment" (1999, p. 110).

The final author I want to consider is H.L.A. Hart, for whom "certain universally recognized principles of conduct" are based on "elementary truths concerning human beings, their natural environment, and aims" (1994, p. 193). According to him, certain human features are so obviously true that the term truism seems fitting. Such truisms, he explains, give us reasons to develop certain moral principles. The list of truths that Hart developed includes: the reality of *human vulnerability*, understood as accepting that we are susceptible to harm by others; and *approximate equality*, meaning that humans are not significantly different enough to dominate others by physical strength or mental capacity, at least not that easily. In different words, we are similar enough to cause harm to each other on even terms. Another element of the list is *Limited altruism;* as he puts it, "[m]en are not devils dominated by a wish to exterminate each other (...) neither are they angels" (1994, p. 196). For Hart, we cannot be classified in either extreme; therefore, we have the capacity and the need to adopt and follow a range of different rules that can regulate or control certain forms of unwanted social behaviour. The fourth and final human feature in Hart's account is *limited understanding and strength of will*. By this, Hart means that

individuals will sometimes lack a long-term perspective or the inclination to act regularly in other members of society's best interests.[15]

As I have shown, the three authors seem to regard some form of equality, vulnerability, and mental limitation as important human features. Each author can be viewed as recognizing that these associative facts provide us with good reasons to develop principles of justice. And except for Hobbes, who deems human selfishness as central, Hart talks about moderate selfishness or limited altruism as a feature of humans. While Rawls talks about it as a feature of his contractual device and not necessarily as a feature of those people whose interests the contractors will consider as relevant (1999, p. 127). From among the three authors presented, I consider Hart's list to be more descriptive about human features and thus more encompassing. I, therefore, propose to follow him and consider his four aforementioned features to be relevant associative circumstances of justice that both can, and should, inform a theory of global justice. To Hart's list, I will add one more. As Aristotle famously put it, the "human being is by nature a political animal" (1992, p. 4). This, of course, does not commit me to follow him in asserting that whichever human fails to belong to a political community is "either a poor specimen or a superhuman" (1992, p. 4). We can safely agree with Aristotle that human beings are "political animals" while at the same time asserting that none of us is a "poor specimen" or a "superhuman" being.

This idea is fundamental because, as previously mentioned with respect to associative circumstances, we are talking about a matter of fact that is turned into a feature shared by

[15] Hart includes scarcity of resources in his list, but this element will be considered in the area of material circumstances of justice.

members of a well-ordered society and not a logical necessity. Insofar as we can think of hermits, who do not live in any form of political community, this point should be clear. I want to highlight that humans, for the most part, will be part of a social organization in most cases. That being said, different forms of social organizations or societies are possible, and human beings have chosen or accepted different ones throughout history depending on the level of complexity that such societies face.

Although Hart called them truisms, the features presented above seem relevant enough to consider them significant, underlying elements in any theoretical construction that includes, as a fundamental part of the theory, agents capable of negotiations, either on their own behalf or on behalf of others whom they serve as representatives. In other words, even if Hart's truisms are not perfectly accurate facts, they work well as idealizations and limitations for the search of the best possible principles of justice for a well-ordered and thoughtful society.

In section 2.5., I will focus on the material circumstances of justice that can and perhaps should be included in a theory of justice, given the goal of identifying the best principles of justice for a global society if it is to constitute what I have termed a 'well-ordered and thoughtful society.' I will do so, considering the need to avoid the vices that Charles Mills properly attributes to ideal theory.

2.5. Material Circumstances of Global Justice

After establishing what I understand by associative circumstances, I can now proceed to engage with the next conceptual piece of my dissertation. I am talking about the material

circumstances of justice, which I define as a set of conditions, rooted in common or possible facts about the world we inhabit, that give the members of a well-ordered and thoughtful society reasons to regulate their lives and interactions with each other and other beings in the best possible way. As is the case with the associative circumstances of justice, different authors could choose different circumstances relevant to their considerations and theory-building efforts.

It is essential to mention that the most influential set of circumstances of justice used in current Western political philosophy paradigms is the one selected by John Rawls. As noted earlier, his theory focuses almost exclusively on the domestic, intra-state context, ignoring the wider global context. Since the publication of Rawls' book, *A Theory of Justice,* in 1971, a large part of academia has focused on discussing how Rawls' theory might be improved and perhaps expanded. But these efforts are made without explicit references to fundamental assumptions upon which his theory relies — many of which he uses as what I am calling material circumstances of justice and that shape his project. Before providing my own set of circumstances of justice, I will address four that, even if not explicitly stated all the time, shape the Rawlsian project: The primacy of domestic over global justice, the impossibility of leaving one's place of birth, the world as a liberal place with liberal institutions of global reach, and finally what I take to be the most problematic one of all the reduction of issues of justice to scarcity of resources.

A vital yet many times uncritically accepted circumstance of justice that informs Rawlsian scholarship is that of the primacy of domestic over global issues of justice. As he clearly states in *Justice as Fairness,* his conception of political justice is not a general

conception of justice. That is, it applies to issues of "local justice," and that questions of global justice require separate consideration on their merits (2001, p. 11). For Rawls, domestic principles of justice have methodological and regulative primacy over other principles of justice that could regulate global issues (Rawls, 2000, p. 26) (Rawls, 2005, p. 262) (Freeman, 2018, p. 230).

The consequence for that kind of reasoning is that only after domestic issues have been sorted out by identifying certain principles of justice via a contractual device where representatives bargain on behalf of citizens can another social contract take place (Rawls, 2000, p. 30). That is, two original positions are needed to achieve the principles of global justice in this kind of Rawlsian model. Furthermore, Rawls claims that "[a]ny hope we have of reaching a realistic Utopia rests on there being reasonable liberal constitutional (and decent) regimes sufficiently established and effective to yield a viable Society of Peoples" (2000, pp. 29-30). This second contract will be bargained among representatives of peoples, groups of individuals living within their respective social organization (Rawls, 2000, p. 27). This was Rawls' position in one of his latest works, *The Law of Peoples*.

There are at least three problems that need to be briefly addressed regarding this assumption that I am classifying as a circumstance of justice. The first one is how it is justified. For Samuel Freeman, avid reader, and promoter of Rawls's ideas, this hierarchy is justified because:

> "There is no global parallel to the complex system of basic social institutions in each society that enable the production and distribution of primary social goods that are the object of distributive justice—no global scheme of property, contract, sales, finance, corporation, bankruptcy, and other systems of laws that make up the basic institutions that mainly constitute the basic structure of a society" (2018, pp. 219-220).

Based on that, in the case of Freeman's reading of Rawls, the reason for the primacy of domestic over global justice can be seen as a theoretical move that assumes certain economic or distributive structures. Which, according to him, only exists at the domestic level. On closer inspection, this move is grounded on the identification of certain facts about the world that are not necessarily or logically true. In other words, the idea that we must focus on the domestic over the global is grounded on assuming that certain elements do not exist beyond the domestic. As I will show in 2.5.2., this is a misconception of how the world and its institutions operate in the current day and age.

The second problem is that reducing justice considerations to state-based analysis alone could prevent us from considering relevant counterfactual scenarios. For example, given this framework, the question of justice could look like this "what are the best principles of justice for a society where people are roughly equal in faculties, constrained by moderate scarcity, and under a closed and self-sufficient system?" In that scenario, it would be entirely possible for a theory of justice to be developed and provide the best possible principles for society A while causing significant harm to society B. To put names into this counterfactual scenario, imagine that following Rawls, the USA develops certain principles of justice without considering how they might affect Mexico. Given the reality of how interconnected those economies are in the real world, an increase in job security in the USA could easily manifest itself in the elimination of free trade agreements that guarantee resources to millions of Mexicans—condemning them to starvation in a short period of time. How would that be just?

The final problem with this local over global hierarchy is that it prevents us from properly addressing problems that are not about the distribution of internal obligations or resources but of a global nature. For example, given the global impact of climate change in the future of human mobility and displacement across countries, continents, or hemispheres (World Meteorological Organization, 2021, p. 34), focusing on solutions from a state or domestic-based perspective would limit our possibilities of addressing a problem that requires planning at a global scale. More about this issue will be presented in 2.5.1.; however, for now, this should show that prioritizing domestic approaches during a time of global crisis could lead us to short-sighted answers to complex problems.

Another problematic circumstance of justice that requires our attention is the one related to global mobility. Rawls claims that it is important to conceive of principles of justice for a society from which "we do not, and indeed cannot, enter or leave it [the society in which we are born] voluntarily" (1999, p. 40). In other words, issues such as voluntary or forced migration, economic, or climate-related migration events — insofar as they are related to issues arising from inter-state relations and connected to the previous problematic circumstance — are left off the table as possible circumstances of justice and instead removed to the role of secondary or alternative projects. Finally, humanity's history of forced migrations due to the slave trade could also create tensions. The reason is this: if a theory of justice is framed with the above innocent assumption in place, we might easily be prevented from adequately considering the current impact of those egregious practices.

The third circumstance of justice is that which assumes that a realistic Utopia is dependant on the existence of liberal constitutional regimes (Rawls, 2000, pp. 29-30).

Those who work on Rawlsian scholarship could try, and in some cases have tried, to work out theories of global justice that accommodate global concerns while retaining the same, similar, or modified versions of the circumstances of justice endorsed by Rawls (Pogge, 1994) (Pogge, 2001). However, those efforts would be seriously lacking if they rely on institutions such as those present in liberal democratic states as a precondition for global justice considerations. Even if a well-ordered society must have reasonably well-functioning institutions, these need not be liberal democratic in nature, as most Rawlsian-inspired attempts to extend his theory of justice to the global context assume.

A Rawlsian might say that in the Laws of People, Rawls aims at extending participation in the societies of people to non-liberal societies via toleration and as long as they "meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law for the Society of Peoples" these non-liberal people are called "decent peoples" (2000, pp. 59-60). Here the question would be, *why are the standards for belonging to a society of peoples set in relation to liberal societies' priorities or worldviews?* To say that a Society of Peoples is a mixture of liberal societies, mostly Western societies with a strong tradition of colonial enterprises, and those "decent" ones that the first ones tolerate reeks to imperialism and colonialism. Which I take to be a problematic point of departure for a theory of global justice. This way of presenting global justice can be translated to a clear attempt to set the liberal standards of Western societies above those of other societies. Given Rawls' misconceptions about international relations

and how colonialism has historically worked, this might be an understandable but not a useful point of departure for global justice considerations[16].

At this point, I want to highlight what is, for me, the most problematic aspects of the circumstances of justice in the Rawlsian tradition. The section on circumstances of justice in the revised version of *A Theory of Justice* is 1,346 words long. Out of those, in this section, there are no mentions of discrimination based on gender or race or historical inequalities. For simplicity, Rawls claims, his theory focuses on scarcity of resources as the principal circumstance that concerns those in a well-ordered society (1999, p. 110). As I mentioned in Chapter 1, section 1.2., Rawls' theory, at least in the formulation presented to us in *Political Liberalism*, aims to deal with conflicts derived from the coexistence of irreconcilable comprehensive doctrines. While considering that issues that could arise due to conflicts based on gender, race, or ethnicity will not be a problem if society embraces public reason. Due to the nature of a project related to global justice, and due to the fact that in practice, people around the world has and continues to engage with problems based

[16] In the introduction to *The Law of People*, Rawls claims that "often people are simply fleeing from starvation, as in the Irish famine of the 1840s. Yet famines are often themselves in large part caused by political failures and the absence of decent government" (The Law of Peoples, 2000, p. 9). Rawls neglects to mention how Ireland was an English colony where laws were imposed with the main goal of excluding Irish people from political and economic power. In his historical analysis of the famine, Gordon Bigelow points out that the market laws imposed by the English reflected the assumption that Irish people were not suited to engage in the economic system in place (2003, p. 112). Neglect to consider the effects of certain societies over others is by large a problematic starting point for any theory related to global justice. As Bigelow properly notices "Ireland's economy had been shaped by direct English control since the seventeenth century, when large areas of rural land were confiscated from a native aristocracy and awarded to a Protestant settler class. Though the Navigation Acts of 1671 forced all British overseas trade to pass through London, thus making Irish ports completely dependent on English [ports]" (2003, p. 113). One could make a similar point about the 1943 famine in India which could be characterized as another famine produced by conditions created by English colonization.

on gender, race, or ethnicity, I will reject the use of public reason as a way to avoid considering these problems in a direct way.

In my view, to focus solely or mostly on scarcity of resources is a choice that leads to one of the most significant limitations of contemporary political philosophy: its inability to talk to a world that is far from simple in terms of rights claims relating to race, ethnicity, gender, disabilities, animals and quite possibly nature. This choice has been accepted as a sort of methodological neutral element within ideal theory, and as I have shown in section 2.2., that is not logically necessary. Focusing exclusively, or primarily, on scarcity of resources is not the only possible, nor necessarily the most useful, approach to take in contemplating the nature and requirements of justice. Especially if, like myself, one is interested in establishing a framework for the development of a theory of global justice.

In the following subsections, I will introduce and defend four different circumstances of justice in terms of which it is reasonable to develop a normative theory of justice with global expectations while also tackling and incorporating issues commonly neglected by ideal theory. The first circumstance I will consider is serious existential uncertainty due to climate change and massive animal extinction. The second circumstance is the existence of a shared global institutional framework that forces us to think beyond the state. The third circumstance is the disproportionate distribution of the planet's scarce resources. The fourth and final circumstance of justice on which I will focus is the pervasive racial, ethnic, gender, and disability-targeted structural inequalities characteristic of today's world.

I want to clarify once more that the list I am providing reflects issues that have historically and to this day continue to create recurrent problems for the global community.

In other words, the list that I will develop in this chapter would focus on those problems that I take to demand immediate theorization and action from any author or theory working on the topic of global justice. Also, I want the reader to keep in mind that the circumstances I am proposing are not necessarily new or completely different from what many academics or activists might have articulated in recent decades. Concerns about the environment, animal rights, race, ethnicity, gender, disability, historical and contemporary inequalities, etc., have been the focus, not only of philosophical debates but of everyday debates among various non-philosophers. I am proposing a methodological approach where these concerns can be incorporated in an explicit, coherent, and technical way in our debates about justice from the perspective of ideal theory. As John Dunn correctly stated, "[a] theory of social justice is a fine thing, a good thought in a naughty world. But it is the naughty world which has to be dealt with" (1990, p. 24).

The circumstances of justice on which I propose to focus in order to deal with the "naughty world" have significance for a theory of global justice insofar as they track some of the most pressing elements of our current and historical reality. A normative theory built upon these foundations has a better chance of addressing the reality that matters for those parties for whom the theory might prove instructive as they engage questions of justice. In this case, the parties in question are all those who live on this planet.

2.5.1. Existential Uncertainty: The Threat of Climate Change and the 6th Massive Animal Extinction

H.L.A. Hart stated that "survival has…a special status in relation to human conduct and in our thought about it" (1994, p. 192). In this way, Hart could be said to summarize the

well-known Latin phrase *perseverare in esse suo*. It is a fact that of the world that most people would prefer humankind's continuous existence. If that is the case, then a theory of justice that helps people preserve their existence seems useful. Theories of justice that aim at regulating the relationships in, for example, liberal democracies have dismissed this circumstance due to the existence of a "clear political trajectory for a political community, one in which the basic institutional structure is maintained and continues to structure the community" (Murphy, 2015, p. 61). Based on current evidence regarding climate change and our vulnerability to global pandemics, it would be hard to assume such an optimistic scenario for the world at the beginning of the XXI century. In this subsection, I will argue that climate change and our current march towards the mass extinction of animals are serious dangers with which humanity is faced, thus making existential uncertainty a feature of the world on which we would be wise to focus when we set out to theorize about justice in a well-ordered and thoughtful global society.

In October of 2018, the United Nations Intergovernmental Panel on Climate Change (IPCC) released a report that stated that humanity had to prevent a global rise of temperature beyond 1.5°C in the next 12 years or "some impacts may be long-lasting or irreversible, such as the loss of some ecosystems" (2018, p. 7). Keeping temperatures from rising beyond 1.5°C would have, among others, two clear impacts. The first impact is to reduce the risk of adverse consequences for "disadvantaged and vulnerable populations, some indigenous peoples, and local communities dependent on agricultural or coastal livelihoods" (IPCC, 2018, p. 11). The places where the highest level of impact would be felt would be "arctic ecosystems, dryland regions, small island developing states, and Least

Developed Countries" (IPCC, 2018, p. 11). One of the adverse consequences for many of these populations would be increased exposure and susceptibility to poverty, which could affect several hundred million people by the year 2050 (IPCC, 2018, p. 11). The second impact would be to reduce the proportion of the population exposed to a climate-change-induced increase in water stress by up to 50% (IPCC, 2018, p. 11). The list of negative consequences of not preventing further temperature rises goes on and on, including rising sea levels and mass animal and plant extinction events.

The impact that climate change will have on all life on the planet cannot be overstated. A 2018 Report of the United Nations High Commissioner for Refugees states that "climate, environmental degradation, and natural disasters increasingly interact with the drivers of refugee movements" (2018, p. 2). In other words, while problematic for each person on the planet, climate change will increase the likelihood of human migrations due to weather conditions. Thus, if nothing is done to prevent climate change from making more challenging living conditions for people in areas affected the most, then migration will likely follow. The issue will probably become the largest humanitarian crisis in the history of our species, putting pressure on different governmental structures worldwide.

The impacts of human activity on the survival and welfare of other human beings are not the only element to regard as relevant when talking about existential uncertainty. It is necessary to account for the fact that human actions affect the livelihood of many other species and drive many into extinction. According to a recent study published in the Proceedings of the National Academy of Science of the United States, "the loss of biological diversity is one of the most severe human-caused global environmental

problems. […] From the perspective of geological time, Earth's richest biota ever is already well into a sixth mass extinction episode" (Ceballosa, Ehrlichb, & Dirzo, 2017, p. 6089). According to the authors, this massive extinction episode is destroying ecosystems necessary for human life as we know it. They conclude that we are in the midst of a "frightening assault on the foundations of human civilization" (Ceballosa, Ehrlichb, & Dirzo, 2017, p. 6095) because of how humans act towards other species and the environment.

All this is surely enough to warrant the claim that existential uncertainty should be considered a feature of the world included within the circumstances of justice underpinning a theory of global justice. In other words, we have good reasons, independently of whatever principles of justice our contractors end up choosing, to make sure the principles they select can sensibly and defensibly deal with a possible scenario in which humans and other beings on the planet are subject to existential uncertainty — that is, a scenario in which their continued existence is seriously threatened.

2.5.2. Global Institutional Framework: The Possible Reality of a Global Well-Ordered and Thoughtful Society

The 2008 USA house market crash left us with some important lessons. Perhaps one of the most important ones was that the economies of many countries within Europe, Asia, and Africa are highly linked to investments and policies made in the American continent. The global recession that followed the market crash led to the further realization that countries like China are dependent on the consumption of their products by Global North countries and that many of Asia's products, primarily those produced in China, use raw

material from Africa or Latin America. In light of these realities, it is clear that considering the parameters and effects of a state's economy only as a domestic issue becomes more and more problematic for a theory of justice with global aspirations.

In the following paragraphs, I will be using the term institutions on repeated occasions. For that reason, it is important to clarify two possible senses of the word. One sense in which it is possible to talk about institutions as rules and practices (i.e., the institution of marriage or the institution of contracts). Another sense, perhaps more colloquially, is to talk about institutions as the entities created by previously existing social rules and practices. To avoid confusion between those two senses, in the rest of the chapter, I will refer to the former as institutions and the latter as institutional entities.

With that distinction in mind, at the very least, it is hard to argue against the existence of a coherent set of rules and practices that guide the global market in economic terms. These rules and practices -understood as institutions- work as "the foundation of the global market, and the global market sustains the human population at its seven-billion size" (Wenar, 2016, p. 116). In other words, a set of institutions that allows for human exchanges, commercial and others, can be identified, and so can its effects in many of the interactions we have across the globe. Examples of institutional entities that exist in virtue of these rules and practices are the World Bank, the International Monetary Fund, and the World Trade Organization. These institutional economic entities are not the only institutional entities in existence globally, nor necessarily the most important. However, they are useful examples of institutional entities that deal with property and possession of goods across the globe,

and that have been in place for several decades, if not longer, and whose practices and activities give rise to what are commonly viewed as issues of justice.

Regarding other kinds of institutional entities, another and perhaps more important institution is that of human rights. Understood as the set of rules and practices that seek to promote human well-being, in the form of peace and justice, across the globe. These rules and practices can be said to have become prominent after World War II. Many of these rules and practices were deposited in documents such as the Universal Declaration of Human Rights, adopted in 1948 with the hope that it might help prevent the horrors previously caused by human actions. This declaration became the foundation of a complex system of what is now known as Human Rights Law. Furthermore, these rules allowed the creation of institutional entities in charge of administering and enforcing a system meant to protect those institutions. Among its many features, the system establishes states' responsibilities as another actor within an extensive range of international institutional entities.

Allen Buchanan has stated that "Human rights law, not any philosophical or 'folk' theory of moral human rights, is the authoritative lingua franca of modern human rights practice" (2013, p. vii). By this, he means that the practice of human rights, either in the form of protection or analysis of such rights, is not necessarily informed by abstract moral theorization but is anchored in the actual practice of international human rights law. In his book *The Heart of Human Rights*, Buchanan adopts a methodology that demands acceptance that "international human rights law is central to human rights practice" (Buchanan, 2013, p. 3). Therefore, it follows that any attempt to assess the "moral status of

human rights practice must acknowledge the importance of international human rights law in the practice" (Buchanan, 2013, p. 3).

Beyond the point of justification that Buchanan is trying to make, I want to highlight the practical insight that there is a global system of institutions and institutional entities in place when it comes to discussing duties of justice in the vein of human rights. This system includes or refers to important institutions that have allowed for the creation of institutional entities for its enforcement and protection. Examples of these institutional entities are the United Nations, the International Human Rights Courts, and NGOs operating globally. Given the existence of the system of institutions and institutional entities, it is clear that within such a system, different agents are in constant interaction with one another, and a particular language -that of human rights and associated normative ideas- is employed on a continual basis. It is here I suggest that we may gain insights crucial to the development of a theory of global justice.

Based on the previous points, the idea that one can conceptualize justice without understanding the reality of a globalized system of personal rights (human rights law) and a globalized system of property rights (trade laws) seems problematic. Even worse, it seems like an approach that is doomed by its incapacity to grasp the complexities of justice in the XXI century and thus something that a well-ordered and thoughtful society might reject. In that sense, it seems justified to accept a Global Institutional Framework as a reality that could produce the need to consider justice. The consequences of this are fundamental for our endeavours in political philosophy.

By accepting that the globalized institutional framework, and not the self-sufficient domestic version, is the necessary framework for conducting normative theorization at the global level, a project distinct from those working within the Rawlsian paradigm can be identified. For if one is to follow Rawls and accept the idea that the principles of justice that come out of a theory of justice are those that will help evaluate the "basic structure of the society" (2001, p. 4) then, accepting that the relevant society and set of circumstances of justice are of a global nature changes the scope of the questions of justice a theory ought to address. Questions of justice that a well-ordered and thoughtful society under the umbrella of a globalized institutional framework might ask its representatives to consider in the contractual device might look like this: *how ought we to regulate a global market in a way that will help ensure that justice is respected*? Or *what moral and political obligation of justice do people in the Global North have towards people in the Global South?* among others.

2.5.3. Scarcity of Resources: Not Just Limited but Unevenly Distributed

For H.L.A. Hart, "It is a merely contingent fact that human beings need food, clothes, and shelter; that these do not exist at hand in limitless abundance; but are scarce, have to be grown or won from nature, or have to be constructed by human toil" (1994, p. 196). Yet, even if contingent, this is a fact that, insofar as people want to survive and lead harmonious lives, creates the need for principles of property. Like Hume before him, Hart identifies this issue as a relevant one for our consideration when discussing our acceptance of fundamental moral and legal principles governing the distribution and possession of

property. A very similar take is proposed by Rawls, who understands moderate scarcity (1999, p. 110) as among the fundamental circumstances of justice for which he must account in shaping the debates undertaken by the representatives of the members of his well-ordered society when they find themselves behind the veil of ignorance in the original position.

There is no doubt that resources[17] are limited in the ways suggested by Hart, Hume, and Rawls. Furthermore, it is obvious that, whether in terms of land, gold, technology or other similar goods, limited resources have been a source of conflict for human beings throughout their history. But if these observations are to be useful in the deliberations of those representing the members of a well-ordered and thoughtful society concerned with establishing principles to resolve questions of justice at the global level, more needs to be said about such resources. In other words, one must account not only for the fact that resources are limited but also for the fact that that they are unevenly distributed among the world's population.

According to the World Inequality Report of 2018, inequality has increased in the world. Between 1980 and 2016, the top 10% of people in different parts of the world have seen their global economy shares increase substantially. In Europe, during that period, the increase went from around 35% up to 40%. In North America, China, India, and Russia, the rise went from around 35% up to 50% of the total economic resources available in those regions. In contrast, the top 10% in the Middle East, sub-Saharan Africa, and Latin America

[17] By resources I understand not only natural resources, but also technology, wealth, and income.

did not see a significant change. The main reason is that there were already high inequalities by any standard of measurement (Alvaredo, Chancel, Piketty, Saez, & Zucman, 2017).

Suppose we agree that scarcity of resources is a fact that gives rise to concerns about justice. In that case, the current trend of increasingly uneven distribution of those resources could also be considered an issue that further triggers issues of justice, especially if we consider this circumstance of justice in conjunction with the Global Institutional Framework. One of the concerns of justice could be how, in the abstract, one might properly distribute the limited resources available on a global scale. Another might be how a well-ordered and thoughtful society would tackle more concrete issues concerning how to re-distribute the current resources at that same global level. Once the existence of a globalized system for the acquisition and transfer of property has been acknowledged, principles of justice developed as a product of the theory could be applied to help identify the best possible way to prevent over-accumulation of the scarce resources and correct it if that were possible.

A fair point to raise here is that I am assuming that inequality, understood as uneven distribution of the world's resources, is wrong in principle. I do not deny the possibility that a case in favour of some form of unequal or uneven distribution could be justified. Rawls, for example, argued that some inequalities in distribution are acceptable and, as a result, incorporated his famous difference principle – that inequalities in distribution are acceptable if they are to the advantage of the least well off – into his theory. (1999, p. 65). What I, and a theory aimed at responding to today's globalized world complexities, would deem as problematic is the current way in which inequality manifests itself. The current

inequality levels, which have increased due to the covid19 pandemic and climate change crisis, have led to almost 10% of the world's population living under the poverty line[18]. In other words, by 2020, almost a tenth of the world population did not have access to the minimum economic resources to survive (World Bank Group, 2020, p. 5). Whether the solution to such a problem is to eliminate or control inequality, I am not sure at this point. That is a question to be addressed only when a complete theory of justice has been developed. But as noted in Chapter 1, the development of such a theory is not my goal here. I am only looking to highlight the factors that must shape our theorization about justice if it is to have any relevance and plausibility at the global level.

With the above caveats in mind, I offer two reasons to support the assessment that inequality at the current global level is problematic from the point of view of justice. The first one is that according to the Organization for Economic Co-operation and Development (OECD), higher economic inequality, as the world faces now, lowers the number of opportunities available to disadvantaged individuals (2015, p. 78). While the second one is that income inequality "has a sizeable and statistically significant negative impact on growth" (2015, p. 79); that is, inequality can affect the economy's overall growth. So, it is highly likely that significant global inequality prevents many people from properly accessing economic opportunities to which each would seem, prima facie, entitled as a matter of justice. While in the case of the world, inequality limits economic growth, making resources scarcer.

[18] Following the practices of the World Bank, I am using the $1.90-per-day international poverty line.

As I stated in 2.1., I accept Murphy's claim that principles of justice are problem responsive. That is, they ought to provide guidelines to solve the problems that are generally acknowledged to give rise to issues of justice in the first place (2017, p. 41). By understanding the current highly uneven distribution of limited resources in the world today as a circumstance of justice that a well-ordered and thoughtful society could consider relevant to their contractual deliberations, the principles of justice that would emerge from those deliberations might better address something like the reality of economic inequality that has taken hold in most of the world.

2.5.4. Pervasive Racial, Ethnic, Gender, and Disability-targeted Inequalities: The World as a Constant and not as a Tabula Rasa

The fourth and final circumstance of justice introduced in this chapter is pervasive racial, gender, ethnic, and disability-targeted inequalities. I argue that by acknowledging the possibility of a problematic historical background of general forms of oppression such as racism, misogyny, colonialism, and the possible practices of imperialistic economic domination by, for example, some sub-groups of a global community, we can properly develop a theory of justice that can help minimize or eliminate these phenomena from the world. One of the main concerns of non-ideal theorists, following the lead of Charles Mills, is that ideal theory has failed to account for existing inequalities and how to address them. That is, ideal theory has traditionally put forward projects that have limited capacity to

address adequately the world's history of deep and pervasive inequalities at the most abstract level of theorization[19].

A prime example of this shortcoming can be found in Rawls' explicit acknowledgment in *Justice as Fairness: A Restatement* that, in his account, racial and gender inequality are recognized as historical facts and inequalities, but they are not relevant for ideal theory. For Rawls, ideal theory and justice as fairness prompt us to wonder about two questions:

> first, what contingencies tend to generate troubling inequalities even in a well-ordered society and thus prompt us, along with other considerations, to take the basic structure as the primary subject of justice; and second, how within ideal theory should the least advantaged be specified? (Rawls, 2001, p. 64).

In other words, the first question refers to which facts of the world could trigger concerns of justice in a well-ordered society, to which he considers scarcity of resources as the main contingency of the world to focus. In sections 2.2. and 2.5. I have already explained how ideal theory need not be reduced to scarcity of resources. I highlighted the methodological nature of ideal theory and how other facts of the world can be part of any theory that relies on it. This problematic point, however, leaks into the second one of recognizing those worse off in a well-ordered society.

Since the main concern of justice as fairness is scarcity of resources and how to improve the conditions of the least well-off, the determination of who is worse-off becomes

[19] A Rawlsian might raise the issue that these kind of problems could be sorted out at the level of constitutional convention and if one were to follow public reason, these remain a non-problem. Given that my project's goal is to incorporate these issues at the level of ideal theory, the first and most abstract level of theorization about justice, I am clearly working on a different project with different goals.

poignant. Rawls uses "income and wealth to specify this group" (2001, p. 65). The consequence of this is that, for Rawls, inequalities and problematic historical events can, in a sense, be reduced to a problem of distribution of resources. Therefore, leaving questions of race, ethnicity, and gender as secondary concerns with regards to those of economic or distributive nature. For Charles Mills, we should be aware that Rawls "asserts explicitly that this exclusion is a *principled* (not merely contingent) one, arising out of the fact that the two principles are principles of ideal theory for a well-ordered society, while race and gender problems fall under the different category of non-ideal theory" (Mills, 2017, p. 169). In the sense that *Justice as Fairness* is Rawls' last attempt to assess his own project's possibilities, we have solid exegetical evidence showing that historical and contemporary problems beyond scarcity of resources are not the main focus of what his normative model aims at solving.

As I established before, ideal theory need not be constrained by the lack of imagination commonly seen in its proponents. If Rawls' well-ordered society is not mainly focussed, or capable due to the restrictions he put in place, in dealing with the possibility of historical facts such as slavery or misogyny, my well-ordered and thoughtful society, given the framework of a different kind of normative project, might be a better tool to address this situation. Following that, the well-ordered and thoughtful society could ask those bargaining in the contractual device to consider which principles would properly suit a society where issues of discrimination of any sort could be prevented from ever happening or which principles could be developed if the hypothetical situation of discrimination had

ever been part of their history or simply because they think pre-emptive principles of this sort are always a good idea to have.

If that exercise is performed, the deliberators in the contractual device might adequately consider developing principles of justice for a well-ordered society that wants to have available tools to deal with scenarios that include historically grounded, deep inequalities. In other words, information about historical inequalities could be part of the package of information to which the contractors have access and which would shape their deliberations concerning the principles of global justice that will govern their global society. These same circumstances would also shape a normative and theoretical project that aims at working out principles suitable for a global society of diverse beings with differing levels of advantage and disadvantage based on race, gender and so on.

As stated in Chapter 1, section 3, for Rawls, there are three main kinds of issues that generate conflict among individuals: those deriving from irreconcilable comprehensive doctrines; those deriving from differences in status, class position, or occupation, or differences in ethnicity, gender, or race; and those deriving from the burdens of judgment (Rawls, 2005, p. 487). His theory, he acknowledges, is meant to deal with the first kind of issues while leaving the other, such as conflicts based on race or ethnicity, to be dealt with by his theory or some other reasonable conception of justice[20]. The limitations that he

[20] Rawls' four stage project moves from less to more information to those making decisions. Starts with the original position, then moves on to the constitutional convention, a legislative stage follows from there, and it concludes at the administrative or adjudicatory stage. At the last stage all the information about the parties is available to those making decisions. A Rawlsian might say issues of race or gender are better dealt at a legislative stage. Since my project wants to make those issues relevant from the start, it is important to highlight that I am working under a different paradigm. Just like other authors relying on the SCM have done for a long time. Different perspectives give us different contracts.

attributes to ideal theory I have previously engaged with; however, at this point, it is necessary to improve his list if, once again, we are to extend our theoretical pursuit beyond the narrow confines of a well-ordered, liberal democratic society and consider justice at the global level. It is well past the time to accept that another issue that generates conflicts or is a cause for concern is discrimination based on disabilities.

I want to be absolutely clear in this section. It is not my goal to develop the groundwork for a competing theory of justice to the one developed by Rawls. My goal is to set up the basis for what a theory of global justice under a different set of pre-contractual elements could look like. To do that, different circumstances of justice than the ones considered by Rawls, who thought of justice as a mainly domestic issue, are required. In that sense, people working within the assumption that the Rawlsian framework provides us with enough conceptual tools to tackle issues of discrimination based on race, ethnicity, gender, or disabilities at the global level are trying to stretch a project that at its core is not designed to engage with those problems as the main issues of consideration, and when faced with them, those problems are categorized as issues of non-ideal theory. To consider some incompatibility between ideal theory and those problems is a problem of imagination rather than a limitation of the possibilities of ideal theory.

Charles Mills attributes this limitation on Rawls' part to the latter implicit acceptance of some "myth of an all-inclusive contract." A contract that has, for Rawls, according to Mills, already created a "socio-political order presided over by a neutral state equally responsive to all its colorless citizens" (Mills, 2017, p. 41). A fundamental problem with the Rawlsian approach, therefore making it less appealing for global justice projects, is that

it dismisses the historical process that has led to the current status quo as facts relevant for the construction of principles of justice at the ideal level. In this world, states have been used throughout the planet as tools to enforce racial, gender, and able-body privileges, among others. This makes the need for a different framework for global issues an even more pressing one.

2.6. Ideal Theory and an Encompassing Framework for Global Justice

As we have seen, a theory of justice working in the realm of the ideal can be problem responsive. The problems or conditions that the theory might aim to sort out are the circumstances of justice that trigger the concern for justice in the first place. This methodological characteristic makes selecting the circumstances of justice fundamental for later identifying the best principles of justice available to the contractors in the original position. As shown in this chapter, there are no conceptual limitations on the possible concerns that a well-ordered and thoughtful society could conceive as worthy of inclusion in their representatives' contractual negotiations.

My account of ideal theory is grounded on the benefits of having an explicit standard to assess the basic structure of society, rather than the implicit one that comes with endorsing starting with non-ideal theory. It is also grounded on the concept of a *well-ordered and thoughtful society*, which acknowledges problems beyond scarcity of resources as part of the concerns that will inform those bargaining in an original position. As per the methodological insight of reflective equilibrium, an explicit standard that

acknowledges some pressing problems of the world that could trigger concerns about justice is open to be revised and to be modified if needed.

After identifying some relevant features of our world that could challenge the harmony sought after by individuals living in a society, folding those features as elements worthy of consideration within the realm of the well-ordered and thoughtful society seems like a useful methodological tool to approach those problems; furthermore, when incorporated into an ideal way of theorizing, the circumstances of justice need to be understood as relevant facts.

An important lingering question that I want to address now is whether addressing the circumstances of justice that I have proposed might lead us to develop principles of justice that could go beyond the realm of distribution. I can answer that question in two ways. Preliminarily, it is essential to notice that one can understand distribution in a *thin* or *robust* way. A thin way is related to the distribution of only economic resources. In comparison, a robust way of understanding it is by considering distribution of rights, obligations, and resources.

Katrina Forrester claims that Rawls is engaging in a thin version of distributive justice (2019, p. 274). I, on the other hand, consider him working towards the latter. That is, I read him as not only interested in sorting out economic arrangements but economic arrangements and duties. However, Rawls' account of distributive justice, and by extension, those working in global justice using his framework, is still limited by the fundamentally important ways in which the focus of the project is the distribution of primary goods given the reality of scarcity of resources, as well as how cooperation and

agency define the question of distribution and who can access those goods to be distributed (Rawls, 2001, p. 50).

For that reason, the first answer is the circumstances of justice that I have chosen for my project do push beyond the realm of distribution in Rawlsian terms. Those circumstances incorporate concerns about the well-being of individuals who cannot cooperate as well as issues related to race, ethnicity, and gender, among others. Issues like these might lead us to the area of racial justice, which might trigger concerns for restorative justice in the sense of developing principles that would lead us to accept things such as monetary or historical reparations for diverse groups at the level of ideal theory. Thus, taking us beyond what theories of distributive justice from the Rawlsian tradition usually focus on.

The second answer is that even if my chosen circumstances do push beyond the dominant framework of distributive justice, this need not be considered a problem. To talk about a theory of justice is to talk about a standard against which the institutions that regulate the lives of different beings will be measured. But those institutions are complex and not simply focused on distribution, even in the robust sense. Sometimes, a theory of justice might need to answer to problems of a distributive nature, other times to problems of retributive, environmental, restorative, or even racial nature. The point here is that the focus on distributive justice, and the demand to accommodate our considerations of justice around it at the ideal level, might be detrimental to tackling problems of justice that could go beyond the scope of distribution but that are no less important. For far too long, issues of race, for example, have been neglected by authors working in the field of political

philosophy. To conceive a project that considers issues of race at the beginning or as a fundamental starting point seems to be an adequate answer to an academic landscape that has not only being dominated by racist views and conceptions but also by academic gatekeeping, forcing those interested in making those topics a priority to move to fields outside academic philosophy.

It is fundamental to realize that the circumstances of justice in my work, such as environmental concerns, animal rights, or issues regarding disabilities, have been either neglected or outright dismissed in the Social Contract tradition. These issues, for example, were not relevant as considerations about justice in the work of John Locke. For Kant, non-rational beings, which would include animals, were not the subject of justice. Justice is reserved for those who "through rank and dignity an entirely different being from things, such as irrational animals, with which one can do as one likes" (2006, p. 127). While Rawls believed we were justified in leaving people who suffer from disabilities out of the list of beings towards whom we have duties of justice because "problems related to special health care or how to treat the mentally defective (…) [might] distract our moral perception by leading us to think of people distant from us whose fate arouses pity and anxiety" (Rawls, 1999, p. 259).

The tradition of the Social Contract has neglected the circumstances of justice endorsed in this work. Yet, nothing prevents a theory working with the Social Contract Methodological paradigm from dealing with them appropriately. In the next chapter, I will identify the normative commitments that can help further my methodological investigation into a possible theory global of justice.

Chapter 3: The Global Political Community and its Basic Normative Commitment

Introduction

In this chapter, I focus on identifying a plausible normative commitment for establishing a framework for the development of a theory of global justice. That is, this chapter deals with the second pre-contractual element of the list presented in Chapter 1. By doing that, I hope to identify a global normative commitment that could inform a project that follows a contractualist methodology.

What should we, as rational beings, accept as the moral bedrock or foundational element of our social relations? Which fundamental idea should guide the modelling or conceptualization of our society? The purpose of questions like these is to identify possible grounding elements for moral and political theorization. These questions apply to the third pre-contractual element of those presented in Chapter 1: the normative commitment(s). This pre-contractual element fills a double role. It gives us the motivation to engage in contractual negotiations, and it allows for the ex-post evaluation of the principles that we have obtained after executing the contractual device. In this chapter, I identify a normative commitment, the fundamental moral bedrock, for the construction of a theory of global justice.

As a matter of clarity, it is helpful to remember that a normative commitment (NC) is not a moral principle but a more basic or foundational element that would inform an author in the process of building their theory. As I explained in Chapter 1, an NC can be conceptualized as a product of our moral epistemology, a moral claim that needs to be understood as argumentative bedrock, or as a fundamental idea of some sort. At this stage, I am concerned with identifying such an element for a Global Theory, nothing more.

In section 3.1., I engage with two possible approaches to identify such an NC. The first one is to rely on an author's moral intuitions, and the second one is to rationally reconstruct or to identify the fundamental moral beliefs of a political community. I will show that we have at least two kinds of reasons to reject moral intuitionism. The first one is the possibility of emotions or evolutionary features informing our intuitions, thus casting doubts about their objectivity. The second one is what I call *the problem of adjudication among different existing moral intuitions*, a problem that comes down to deciding whether one moral theory is necessarily superior to another and which of those theories should be chosen as the source of a foundational NC for a Global Theory.

To avoid both problems, I argue instead for a rational reconstruction of a political community's moral beliefs as a better point of departure for identifying an NC. I ground this in the claim that the existence of shared fundamental ideas implicit in the public political culture can provide us with a sensible point of departure for moral theorization. It is important to remember that such a point of departure does not necessarily guarantee the soundness or validity of such NC. I will discuss this point in the following section.

In section 3.2., I rely on Wil Waluchow's notion of a Community's Constitutional Morality (CCM) as a useful tool for rational reconstruction of a community's moral beliefs. I argue that even though CCM was initially conceived as a domestic tool, it also works on a global scale. The main reason for this is that, at its core, CCM identifies an essential connection between institutions that relate to justice and the morality they appeal to when acting within a community. I also point out, following Waluchow, that due to its descriptive nature, CCM does not necessarily help us assess the moral soundness of any NC. Instead, it helps us identify some elements within a public political culture that represent the moral beliefs of a community. I conclude this section by raising two questions a) Can we identify a global political community to whom some NC could be attributed? If so, how? 2) Does this global political community (GPC), in fact, have some NC or other? I answer the first question in section 3 and the second in section 4.

Section 3.3. frames my discussion about how to identify a political community, which I define as *communities of practices among members where those practices are mediated by institutions that partake in the effort to implement some form of respect of social norms to regulate relevant moral and political affairs*. I defend this definition by relying on Hart's account of social rules and acknowledging the role of institutions as mediators between the obligations of individuals within a community. Following that, I state that a political community (PC) can be identified by looking at the set of practices, commonly identified with its citizenry or those who belong to it, mediated by different institutions that regulate the group's relevant moral and political affairs.

In Section 3.4. of the chapter, I identify a global political community (GPC) and its current normative commitment while highlighting the descriptive nature of that analysis. I set out to identify three elements that allow us to talk about a GPC: 1) members, 2) social norms, and 3) institutions. I argue that, by applying Waluchow's view of overlapping consensus, we can, preliminarily, identify human dignity as the NC of the GPC. As was established in section 1, we can regard this NC as a fundamental idea implicit in the political community's public political culture.

With those elements at hand, in 3.5. I proceed with evaluating whether human dignity can plausibly be viewed as the fundamental commitment of the GPC to be used in the construction of a theory of global justice. I then show how human dignity, although it can be attributed to the GPC, seems to face tensions created by current practices from legal and political institutions across the GPC, which seem to be informed by particular worldviews that would endorse things beyond human dignity. For that reason and based on the existence of further evidence that shows that an NC reduced to human dignity is inconsistent with other more recent and fundamental commitments of the global political community. For that reason, I propose to move towards the notion of "the dignity of being" as the basis for a theory of global justice.

3.1. Personal Intuitions and Community Commitments

In his brief essay *When Philosophers Shoot From The Hip*, James Rachel claims that, when prompted to address current events, the following is true of philosophers:

> Sometimes they do what we might think philosophers ought to do: challenge the prevailing orthodoxy, calling into question the assumptions that people unthinkingly make. But just as often they function as orthodoxy's most sophisticated defenders, assuming that the existing social consensus must be right, and articulating its theoretical "justification." (1992, p. 801)

Rachels' assessment of the kind of answers provided by philosophers when faced with pressing issues serves as a good reminder that philosophers are people, too. They can articulate views that endorse or oppose the commonly held beliefs of other members of society. They are subject to the same prejudicial opinions as other members of the community.

Perhaps one of the clearest examples of a problematic social belief in the 1970s was the belief that killing was always worse than letting a patient die[21]. This position, upheld by the American Medical Association at the time, was challenged by Rachels in his essay *Active and Passive Euthanasia* (1975). He highlighted that letting a person die could lead to a slow and painful process, whereas helping somebody die could be quick and painless (1975, p. 78), thus putting tension on the idea that letting a person die was the obvious morally correct answer. Peter Singer adequately notes that in both of those essays, "Rachels rejected the idea that the role of moral philosophers is to take our common moral intuitions as data and seek to develop the theory that best fits those intuitions" (2005, p. 333). Singer, however, goes further in his critique of unquestioning reliance on intuitions. Based on a variety of answers in a *trolley problem* experiment, Singer raises doubts about the value of moral intuitions in moral reasoning. In the first scenario, person X can save five at the

[21] Although it is possible to claim that this is also an issue today in the cases of physician assisted suicide.

expense of one if X pulls a lever. In the second scenario, person X can save five at the expense of one, but here instead of pulling a lever, X must push a person from a bridge. Researchers discovered that subjects were more willing to pull the lever than they were to push the other person off the bridge (2005, pp. 337; 347-348).

Based on that evidence, something like the intuition that there is no moral difference between pulling a lever and pushing a person, at least for Singer, can be discarded. Furthermore, for him, this experiment highlights the fact that people are more reluctant to enact direct violence against an individual than to move a switch or a lever, even if the latter leads to similar or even worse consequences. Singer uses these cases to raise awareness about the possible connection between emotions, which could be linked to biological traits, and intuitions, thus making moral intuitions a problematic grounding for the construction of moral principles and theories. Singer concludes that this challenging (possible) relationship between emotions and intuitions puts theories that rely on intuitions on a shaky footing insofar as they lack rational grounds to support them.

The list of theories that rely on intuitions includes Rawls' theory of justice, which relies on the method of reflective equilibrium, which Singer claims "has always struck" him as dubious (2005, p. 345). For Singer, Rawls' project is grounded on the misconceived "analogy between the role of a normative moral theory and a scientific theory" (2005, p. 345). This, for Singer, is the case because the purpose of a scientific theory is to explain the existence of data in the world, while a normative ethical theory's purpose is to answer the question of *what we ought to do?* And a possible answer to this last question is to reject all ordinary moral judgments. This answer, however, is not even considered as a possibility

within the model of reflective equilibrium. Singer's point is that "the model of reflective equilibrium, at least as presented in A Theory of Justice, appears to rule out such an answer because it assumes that our moral intuitions are some kind of data from which we can learn what we ought to do" (2005, p. 346). Based on that, and even if we disagree with some of Singer's conclusions, it seems possible to accept that it is problematic to accept intuitions as hard facts of the world without the possibility of challenging them.

Although I think that Rawls' use of intuitions is not fairly described by Singer, it is not my goal to defend reflective equilibrium against Singer's attacks in this work. Instead, I want to engage with the more nuanced and real possibility that individual intuitions might present us with a challenge of adjudication. For the sake of clarity, I will accept Sandberg and Juth's distinction between *practical* and *theoretical* intuitions. The former can be, broadly, understood as "automatic or pre-reflective judgments about what is right and wrong in particular scenarios," while the latter are "intuitions about abstract moral principles or ideas, or about what makes actions moral or immoral generally and what morality is about" (2011, p. 213). Both types of intuitions, I claim, face the same challenge. An example of practical intuitions could be the famous preamble of the United States of America declaration of independence "We hold these truths to be *self-evident*[22], that all men are created equal." In contrast, an example of theoretical intuitions might be Kant's commonly known formula of the kingdom of ends, which states that one must "act

[22] The italics are mine.

according to the maxims of a member of a merely possible kingdom of ends legislating in it universally" (2005, p. 96).

When faced with the need to choose an NC for a theory of global justice, given its universal or global nature, the need for generalizable intuitions and not ad-hoc answers to concrete situations becomes more obvious. For that reason, theoretical intuitions become the clear choice. Three examples of theoretical intuitions used as NCs by authors working on theories of justice come to mind. The first one is Nussbaum's Social Contract account which is grounded on the "the intuitive idea of a life that is worthy of the dignity of the human being" (2006, p. 70); the second one is Rousseau's Social Contract model, where individuals must build societies around the intuitively true claim that freedom, or to be as "free as before" society existed (1913, p. 12), is to be guaranteed in any given social model. The final one is Gauthier, as mentioned in Chapter 1, for whom the *interest of the self* (1986, p. 8) is what drives any Social Contract. Which of these intuitions is better than the other one?

There is no shortage of defences of each NC that I have mentioned, nor are those the only possible options in front of us. Intuitions are something that philosophers never seem to run out of. And each of them could — and many have been — justified in different and philosophically relevant ways. However, despite those efforts of justification, there is no solution in sight for the problem of adjudication among intuitions. At least not one that could satisfy everyone. This challenge of adjudication poses difficult issues to which I will not here attempt to provide a solution. Wittgenstein said that "if a man could write a book on Ethics which really was a book on Ethics, this book would, with an explosion, destroy

all the other books in the world" (1965, p. 7). Although I do not share Wittgenstein's pessimism about the possibility of eventually developing a proper or correct ethical theory, I do think that we are nowhere near achieving that objective — i.e., identifying a moral theory that would *destroy all other moral theories*. So instead of pursuing this ambitious goal, I will instead attempt to identify a global NC by assessing the commitments revealed in the decisions and practices of global institutions. Instead of relying on my own personal intuitions, or those of other philosophers who have engaged with issues of global justice, I will attempt to establish a global NC by exploring what I will call *the institutionally embodied moral intuitions of global institutions.* It is important to note that it does not follow from the fact that one can identify these institutionally embodied moral intuitions in certain global institutions and their practices that such intuitions are sound or valid, morally speaking. However, their identification does provide us with an object largely accepted by members of the global political community.

By identifying an object accepted by members of the GPC, I am able to rely on a social fact instead of the intuitions of any one individual. An NC derived from global institutions' practices could provide us with a sensible starting point in developing a theory, the validity of which can be attributed to its capacity to provide us with what Rawls called a "public basis of justification." That is, something that large segments of a community could accept as some shared "fundamental ideas implicit in the public political culture in the hope of developing a political conception that can gain free and reasoned agreement in judgement" (2005, pp. 100-101). Thus, I can avoid the previously established challenge of adjudication in favour of a more promising challenge of identifying a global NC.

To correctly identify an NC at a Global Scale, I will conduct an exercise of rational reconstruction of the global political community's moral beliefs and practices. Once that community's morality is identified, I can take a step further and determine its most basic commitment. In 3.2., I use Wil Waluchow's idea of a Community's Constitutional Morality (CCM) to perform this exercise.

3.2. Waluchow's Community Constitutional Morality

One of the most important features of Waluchow's attempt to justify the practice of judicial review of legislation is the identification of two pairs of contrasting concepts. The first pair consists of personal morality versus community morality. By personal morality, Waluchow means the subjective moral views of individual agents or the things they are morally committed to and that they would prefer to see endorsed by their community and the legal system they are a part of (2007, p. 220). Against this, Waluchow contrasts the community's morality, which unlike the morality of a single individual agent, is attributable to the community as a whole (2007, p. 220). As Waluchow acknowledges, to talk about the community's morality, we first need to identify such a community. This task is not without its challenges, but I will discuss this topic in 3.3.

The second set of contrasting concepts that Waluchow presents are moral opinions versus true moral commitments (2007, p. 223). The former, and following Rawls, are described as "moral views that have not been critically examined so as to achieve reflective equilibrium," that is, as views wherein principles and judgments are not necessarily consistent with one another (Rawls, 1999, p. 18). On the other hand, the latter are those

moral views that a moral agent has truly committed themselves to follow. In calling these an agent's true moral commitments, one does not assert or imply that they are "true" in the sense of being objectively morally true, only that the agent is truly committed to them (Waluchow, 2007, p. 224). This is a point to which we will return in 3.5 below.

A final step in Waluchow's project is identifying a possible *place* where those community commitments can be found. This *place* is the realm of legal and political practices of a community. This realm includes, but is not necessarily limited to, charters[23], judicial decisions, legislative choices, and the practices of various political institutions as they adjudicate questions about law and morality in their political community.

Waluchow defines CCM as "the set of moral norms and considered judgments properly attributable to the community as a whole representing its true commitments, but with the following additional property: they are in some way tied to its constitutional law and practices" (2007, p. 227). It is plausible to view Waluchow as tangentially following the Dworkinian idea that there is something like a "political morality presupposed by the laws and institutions of the community" (Dworkin, 1978, p. 126). Unlike Dworkin, however, Waluchow does not assert that identifying moral principles or a political morality presupposed by a social system implies the endorsement of that political morality (Waluchow, 2007, p. 227) (Stoljar, 2009, p. 116). In other words, Dworkin's notion of

[23] Waluchow uses the term "Charter" to refer to "any written constitutional instrument, or part thereof, that specifies what appear to be moral rights against which government actions are to be measured in assessing their legal force, effect, or validity" (A Common Law Theory of Judicial Review, 2007, p. 10). I will follow his terminology in this chapter.

political morality involves the necessary connection of such political morality with the best possible justification from a moral point of view. Waluchow's does not.

Waluchow's view of political morality aims to describe or point at *something* within a society that can be said to inform certain existing legal and political practices carried out by institutions within that community. Thus, allowing for the possibility of identifying *something* relevant without assessing whether that *thing* is good or not. This process is in line with what Julie Dickson calls "indirectly evaluative" propositions. In her view, to call something a moral principle of a community or to identify a political morality within a community is to attribute "some evaluative property to that feature of the law" this does not "entail a directly evaluative proposition that the feature of the law is good (or bad)" (Dickinson, 2001, p. 53). It is crucial to keep in mind that I am presenting a procedure for identifying what could be an NC for a theory of global justice, not yet assessing the moral soundness of that NC.

Extending the framework of Waluchow's project so as to facilitate our search for an NC at the global level raises two crucial sets of questions: 1) Can we identify a global political community? If so, how?; and 2) Does this GPC have some NC or other? If so, where can we look for it? In answering these sets of questions, my goal is to identify a possible contender for a moral commitment that can shape a theory of global justice responsive to the global political community's current conditions — i.e., responsive to the circumstances of justice discussed in Chapter 2. In what follows, I will focus on answering each of these questions.

3.3. Identifying a Political Community

Chapter 2 discussed the existence of a global institutional framework as the reality of a globalized world. That is, we can identify a set of institutions that interact with each other and with individuals and that follow specific rules that regulate different areas of the lives of people worldwide. I argued, following Wenar, that we can talk about the harmonization of property rules on a global scale. So extensive is this harmonization worldwide that "only the deviations, like sanctions, need codifying" (Wenar, 2016, p. 116). Recognizing this state of affairs does not mean that those rules were necessarily imposed by some single institution or even that it is always clear from whom these rules originated in the first instance. Yet, there seems to be a standard set of rules and practices that large groups worldwide follow to allow for global trade to occur. For Wenar, this agreement is not like a treaty or other kind of explicit joint commitment. There was a sort of automatic synchronization on global trade issues due to international trade demands and the benefits they could provide to some individuals across the globe. Whether or not there is such a thing as a "global social reality" is a kind of philosophical question that he prefers to leave for another day (Wenar, 2016, pp. 116-117).

Since this is precisely a philosophical project, that is the kind of question that I am looking to answer. In this section, I define PC, broadly, as *communities of practices among members where those practices are mediated by institutions that partake in the effort to implement some form of respect of social norms to regulate relevant moral and political affairs*. I will defend this definition by relying on the two elements *social norms* and *institutions* but will deal with identifying relevant moral and political affairs in section 3.4.

For now, I start by adopting Hart's account of social rules, which will allow me to show the way in which social rules can bind a community of practices. Then, and answering Margaret Gilbert's individualistic challenge against Hart, I will address how various institutions are employed as tools of mediation between individual practices. My account of PCs is relational and focuses on the links between members of a group, social norms, and — perhaps more importantly — the institutions that mediate between those members so that those norms are applied properly.

A useful point of departure to discuss my definition of PC is a comparison with Fabra's definition. He defines PC as "relevant entities that have a prominent role in our theoretical and practical reasoning due to the pressing demands they impose on their subjects" (2019, p. 8) and "groups that exert intense forms of social pressure to effectively secure compliance with sets of rules that regulate important politico-moral domains" (2019, pp. 80-81). A key element on Fabra's account of PC is the focus on norm-compliance. Unlike Fabra, as stated before, I focus on institutions when defining PC.

It is essential to mention that my account resembles Fabra's since both of our projects are dependent on HLA Hart's work. Hart's account of social rules (what I will call from here onward social *norms*) is defined in opposition to habits. My first step will be to clarify this difference in his work (Hart, 1994). Although both involve patterns of behaviour, the former has three salient features that make it different from the latter.

First, unlike social norms, deviation from a habit does not draw criticism from oneself or from other group members. Social norms, on the other hand, carry with them

pressure for conformity via criticism, including self-criticism. Second, in the case of social norms, "deviation from the standard is generally accepted as a *good reason* for making" the criticism (1994, p. 55). Finally, unlike a habit, some group members "must look upon the behaviour in question as a general standard" (1994, p. 56) for the whole group. These differences leave us with two aspects to consider: a) the external aspect of group behaviour, which is a quality of both habits and social rules; and b) the internal aspect, which is a reflective critical attitude towards the rule that informs the criticisms towards the deviation from the standard which is characteristic of the social norms alone. (1994, pp. 55-57)

For Margaret Gilbert, Hart's account of social norms fails on the extreme of giving us an explanation of social interactions and obligations among members. Gilbert highlights three problems that, from her perspective, Hart's account cannot properly solve. 1) Is what she calls a *grounding problem* "what is it about a social rule that immediately grounds claims for performance and corresponding rights to exert punitive pressure - something that we believe our social rules do?" (1999, pp. 156-157). 2) This is the *issuing problem*, which acknowledges that Hart's account of social rules establishes that individuals endorse certain fiats or standards of actions for the group. Gilbert considers that such an endorsement "raises the question whether individual members of the group are conceived of, and conceive of themselves as, in effect, issuing the relevant fiat. If so, it seems reasonable to ask: by what right or authority or title do they take themselves to do so?" (1999, p. 157). 3) The final problem is what she calls the *bindingness problem* and starts by stating that if in a social context people say they feel bound to do X, then "[i]s there an appropriate basis for this feeling of being 'bound'? Or must this be written off as illusory or as reflecting

something other than genuinely being bound?" (1999, p. 158). I call these three problems Gilbert's *individualistic challenge* to Hart.

Gilbert claims that these are three issues that any account of social rules must properly answer (1999, p. 156). It seems that, for her, Hart's account can only provide us with an explanation of *wholly individual commitments,* which are a kind of personal decision. The key insight of these commitments is that "as far as the concept of a personal decision goes, I can come by such a commitment alone, without the intervention of any other party. I can revise my commitment or revoke it altogether without the involvement of anyone else" (1999, p. 160).

For Gilbert, the answer to the individualistic challenge is the recognition of a joint commitment. This commitment should be understood as an underlying reality of social norms. Before discussing the reality of individual commitments in a group setting, one must presuppose the existence of such joint commitment to make sense of a set of articulated obligations by different members of that group. For at least the last three decades, Gilbert has been defending this position as a better way to understand the reality of social bonds and obligations. According to her, a joint commitment account provides an opening to limit a single individual's possibilities to break or rescind such commitment unilaterally. Always keeping in mind that parties are to act as a body or group (1989) (2000) (2014) (2018).

To summarize, Gilbert claims that Hart's account of social norms cannot make sense of group commitments and social interactions because it is an account grounded on individualistic takes on obligations. In my view, her challenge fails to deliver the lethal

blow that Gilbert seems to think it does. Questions 1 and 3 are normative questions, not descriptive ones, and hence appear to deviate from the Hartian project. Hart's question is not what makes social norms true or correct; the question is, *under what conditions can they be said to exist?* And it is only Question 2 that addresses this issue. It is in answering that particular question in relation to the global context that institutions come to the forefront of consideration.

Hart does not seem to conceive social norms in a vacuum but as part of a social set of interactions. For him, the law is a social phenomenon — among many — that regulates human life in society (1994, p. v). We can contrast this with a contemporary of Hart, Hans Kelsen, for whom the law is better understood as a logical system of norms meant to regulate human behaviour (1967, p. 4). This comparison shows that for Hart, social norms do not affect single humans creating individually binding obligations as Gilbert seems to imply. Instead, they are part of the social fabric of relationships. Furthermore, many social norms are mediated by institutions that allow and inform the interactions that the individualistic challenge seems to deny as a possibility in a Hartian account.

Hart talks about institutions in several parts of *The Concept of Law* (pp. 167, 199, 214, and 240). It seems entirely possible to conceive social institutions as entities that bridge or mediate obligations between the different group members. I take them, for that reason, as the second building block of my account. Institutions can be conceived as the set of social entities that claim jurisdiction over certain groups, pointing the community members to the standards for action – i.e., social norms- of such PC. Furthermore, institutions tend to claim jurisdiction over individual members and communities on specific

relevant issues. Examples of institutions that fit this description are the judiciary or the parliament of any country. The judiciary seems to allow for systemic relationships in what we commonly call a legal system, while parliament would do the same in what we usually call a representative system of democracy. Institutions, in this sense, mediate between members and social norms.

By understanding institutions as the entities that mediate between individuals' obligations, we can overcome the need to presuppose some form of pre-existing joint commitment. Furthermore, institutions in this sense can be adequately described as entities that guide those members who look upon them to help conduct their lives. If we consider institutions this way, we are one step closer to adequately identifying a PC when looking for one. What comes after is determining the content of those social norms and what they are supposed to regulate. That is the relevant moral and political affairs of such a community.

Based on the previous points, I conceive a PC in terms of the relationships between members of a group, social norms, and the institutions that mediate between them. In this sense, the institutions point the members of the group in the direction of the standards for action when issues relevant for moral and political consideration arise and where those institutions could claim jurisdiction. I will use the example of the USA to show how this relationship-based approach to PC can work. It seems relatively intuitive to assert that the country currently known as the USA is a PC. But it seems complicated to argue that the USA's PC is only its legal system, or only its judiciary, or only its legislative branch, or only its executive branch, or only the sum of its citizens. Instead, it seems more likely that

the USA's PC is the group of individuals who engage in certain common social practices that are mediated by different institutions, some mentioned above, aimed at regulating relevant and moral political affairs of the group that we commonly identified with its citizenry. The relational definition of PC allows me to identify three elements — members, social norms, and institutions — when looking at different social phenomena.

As a point of clarification, my account of PC does not claim that social norms are always respected or that institutions are always capable of mediating between practices, members, or other institutions linked to the social system. It just points out that one can identify certain political communities by identifying the existence of certain institutions and the social norms they point at when addressing interactions among themselves and members of the PC. With that conceptual tool at hand, the next step will be to identify a political community at a global scale and identify the social norms that at the core regulate meaningful relationships among members of that community.

3.4. A Global Political Community and its Current Normative Commitments

As stated above, understanding a PC in the way I propose allows us to point at three different elements in constant interaction: members, norms, and institutions. Based on that, when thinking about the USA — or other similar countries — as a PC, one could think about how the judiciary or its parliament are institutions that serve the PC as a whole. These institutions claim to act on behalf — or in service — of the members of the PC in question more often than not. In that vein, in this section, I will defend the view that there is such a thing as a *global* political community that we can conceive in terms of institutions that

operate on behalf of its members while appealing to certain basic social norms.[24] Therefore, once an institution relevant to a GPC is identified, it is possible to determine which kind of moral norms or NCs they are appealing to when articulating specific claims among its members. In other words, it is possible to identify the political morality of the community and then the institutionally embodied moral intuitions that inform it.

In section 3.3. I claimed that three elements are relevant for identifying a PC 1) members, 2) social norms, and 3) institutions. Furthermore, I established that a PC is such because it focuses on *relevant moral and political affairs*. I will clarify the list of affairs I have in mind for the reader to get a better sense of what it is to be regulated by the institutions that help us identify or conceive a PC. The issues at stake for a PC are those about the organization of social life, such as sharing the burdens that come with sustaining society and the benefits that society produces. Within this category, issues such as labour, finances, basic entitlements by members within the group, and membership determination are considered part of a possibly much longer list. The GPC can be identified by paying attention to different institutions constantly at play in the world. I will briefly introduce, in the following paragraphs, three key institutions and show how they satisfy the conditions of articulating obligations derived from social norms among members of a global community.

The first one is the International Labour Organization (ILO), with its 187 member states. This organization's goal is to set the international standards for labour in a way that

[24] I must clarify here that, following Hart, I am considering moral norms as another kind of social norms (Hart, 1994, p. 176)

promotes opportunities "for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity" (International Labour Organization, 2019, p. 7). To pursue this goal, the organization can apply sanctions to those who violate the organization's standards. A relevant feature of the organization is article 33 of its constitution. This article establishes that if a member of the organization fails to comply with the recommendations made to them, the ILO can recommend actions towards securing compliance with its decisions. This institution satisfies the condition of serving to provide mediation between community members and their obligations. By engaging in the implementation of social norms in the form of labour standards, this institution provides a great example of the kind of institution regulating a relevant aspect of social life at a global scale that is inexorably linked to the production or sustaining of society.

The second institution to which I would like to draw attention is the International Monetary Fund (IMF), with a membership of 189 member states. Among other goals that it claims to pursue, it aims at reducing poverty around the world. Its norms allow it to adjudicate resource disputes among members states. For example, suppose the IMF's Executive Board determines that a member failed to meet its obligations towards other members, the IMF can refrain from providing the offending member with previously requested resources that it had agreed to provide (International Monetary Fund, 2019, p. 42). That is, we are in the face of an institution that can articulate and enforce obligations at a global scale to address economic issues relevant to the elimination of perverse conditions that affect large segments of the world's population. Not only is the institution global in scale, but its actions also bear directly on a relevant moral issue.

Both of the previously introduced institutions are contained within or structurally connected to the United Nations (UN), an institution created in the aftermath of World War II (WWII) to maintain international peace and security. Currently, almost every country and many international organizations are connected in one way or another to the UN.[25] This institution has its own set of rules and regulations that enable it to articulate obligations at a global scale to secure its goals. It can easily be considered the most comprehensive global institution in existence. Perhaps two of the institution's most important practices are the gathering of the general assembly and the meetings of the security council. In the first one, every member state can participate and discuss world peace and security issues, while in the second one, the security council members can participate and dictate measures to secure peace and security at the international level. One of the essential prerogatives possessed by the UN's security council is the faculty to authorize military forces against entities deemed to be violating the Charter of the United Nations. When it comes to obligations and sanctions across the world, it would be hard to identify a more heavily endowed institution.

With the previous elements in place, it seems fair to claim that these institutions (and others with similar global reach), the norms they appeal to when making decisions regarding their members, and their members form a GPC. Yet, even if I have shown that members (world population), their norms (international treaties and declarations), and institutions (ILO, IMF, UN, etc.) can be identified, I have taken only one step toward

[25] It is important to remember that WWII involved most countries on the planet, and the violence resulted in the death of up to 80 million people and the destruction of entire nations. One of the most critical features of WWII was the violence that certain states enacted against their citizens. It is therefore worth noting that the UN allows for individual citizens to complain about states' human rights violations. See Art. 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

realizing my goal. What remains is the task of identifying a fundamental moral bedrock that can be said to inform the practices and standards of this community. In 3.4.1, I will address this element, and in 3.5. I will proceed to show the plausibility of seeing this element as the NC of the GPC.

3.4.1. Kinds of Overlapping Consensus and the GPC's Commitment to Human Dignity

In Chapter 2, I discussed the idea of overlapping consensus. I introduced it as a Rawlsian methodological grounding point for the identification of relevant issues that reasonable people could accept as important enough to be incorporated within a list of circumstances of justice that would, in themselves, trigger the need for the development of a theory of justice. Here, I will discuss a modified version of this tool, as proposed by Waluchow. Overlapping consensus allows us to explain how similar political judgments can exist despite the existence of different conceptions of justice. It is based on a condition of reciprocity, meaning that both sides believe that, despite their differences, "their views support the same judgment in the situation at hand, and would do so even should their respective positions be interchanged" (Rawls, 1999, p. 340).

Waluchow correctly suggests that, although Rawls' framing of the idea of overlapping consensus seems to model a scenario where different parties "agree on particular conclusions but disagree about the general premises needed to yield them," there is no good reason to restrict the existence of an overlapping consensus to that kind of scenario alone (2007, p. 221). For Waluchow, this consensus can also occur at the level of

premises “with differences of opinion emerging as to what these shared premises require in the way of particular judgments or rules” (2007, p. 222).

Approaching overlapping consensus in this way allows Waluchow to suggest that “on many questions of political morality that arise in Charter challenges there is some measure of overlapping consensus within the relevant community on norms and/or judgments concerning justice, equality, and liberty that would emerge upon careful reflection” (2007, p. 222). By Charter challenges Waluchow means the claims made against certain laws based on pre-established parameters as set out in a charter. In other words, these are arguments raised "to demonstrate that pedigreed criteria for legal validity have not been satisfied, and that what seems to be valid law is, in fact, no law at all, or that a law must be understood or interpreted in such a way that it does not infringe upon a pedigreed moral right protected by the *Charter*” (1991, p. 185). There are indeed good arguments supporting the claim that when discussing institutional or even constitutional design, or the very basis of any social structure, we must face the fact that disagreement among reasonable people runs deep. So much that this disagreement can be exemplified by the many charter challenges that one can identify in any Western democracy on a daily basis. Indeed, it might run so deep as to warrant Jeremy Waldron’s claim that “it looks as though it is disagreement all the way down, so far as constitutional choice is concerned” (1999, p. 295).

This kind of challenge seems to be a product of what Rawls identifies as the existence of burdens of judgment. Burdens of judgment are “considerations intended to explain the persistence of reasonable disagreement, and to motivate parties to obey the constraints of public reason in the face of this disagreement” (Blake, 2014, p. 74). For

Rawls, it is important to remember that "many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion" (2005, p. 58). The list of potential burdens of judgment includes, but it is not limited to, the assessment of complex evidence; the weighing of similar considerations when opposed to another kind of considerations; the possibility of having many of our concepts tested by hard cases; the role of our personal experience in assessing evidence, and moral values; limited capacity to perceive different kinds of normative considerations in a debate; and the limited space within any system of social institutions to adopt moral and political values (2005, pp. 55-57).

Jacques Maritain shares similar worries to the ones introduced by Waldron and Rawls. For him, however, those differences or possible disagreements did not amount to a rejection of the possibility of agreement. Maritain considered that the complex reality that people faced after the Second World War made some more aware of the fact that even coming "from extremely different, or even basically opposed, theoretical conceptions," it was possible to arrive at "a number of *practical truths*[26] regarding their life in common upon which they can agree, but which are derived in the thoughts of each of them" (Maritain, 1966, p. 76). Maritain, who is said to have been involved in the process leading up to the drafting of the Universal Declaration of Human Rights (UDHR), shared this anecdote about the birth of the charter:

[26] My italics

> During one of the meetings of the French National Commission of UNESCO at which the Rights of Man were being discussed, someone was astonished that certain proponents of violently opposed ideologies had agreed on the draft of a list of rights. Yes, they replied, we agree on these rights, providing we are not asked why. With the "why," the dispute begins (1966, p. 77).

Maritain's explanation seems to work as an excellent example of the possibility of accepting certain basic moral premises without the need to agree on what are the necessary conclusions or interpretations connected to those premises.

These kinds of practical truths, accepted as a product of the type of overlapping consensus Waluchow and Maritain seem to have in mind, can usually be found in documents such as charters of rights, legislative decisions, and even judicial decisions, across the globe in the form of complex moral principles such as *every person has a freedom to religion,* or *every person has the right to vote.* However, as abstract as these moral principles seem to be, they are not the most basic elements of moral consideration that can be found in such documents. Many of these documents and decisions attempt to justify the principles they enshrine on even more fundamental notions or ideas. These express what I called institutionally embodied moral intuitions. In at least many instances, they serve as a basic NC of the document in question or the system in which it plays such a central role.

These NCs motivate or inform the more particular moral principles articulated in the document or set of decisions. The latter constitute the standards of action used to adjudicate among different parties within the political community and with which the decisions of relevant legislative bodies are expected to conform. The formulations of those

NCs vary from political community to political community. For example, India's charter claims that the purpose or primary goal of establishing the society is *the securing of justice, liberty, equality, and fraternity for its citizens*. At the same time, Germany's charter starts by acknowledging the existence of specific responsibilities before God and man, which are inspired by *the determination to promote world peace*. In that sense, Waluchow's suggestion that we should see "[c]harters as representing a mixture of only very modest pre-commitment combined with a considerable measure of humility about the limits of our moral knowledge" (2007, p. 127) seems fitting.

In many cases, there is indeed disagreement about how these NCs are developed into principles or how they are claimed as grounding elements in procedures of adjudication. That fact does not prevent us from recognizing the existence or reality of such NCs and the possibility of identifying them when analyzing certain documents and practices of a political community. These NCs are the product of an overlapping consensus regarding the foundational moral bedrock of a political community. By approaching NCs in this way, we can make sense of the reality that different actors might agree or accept particular moral views for various reasons.

At this stage, we have reason to accept the plausibility of the following two conclusions a) there is such a thing as a GPC, and b) it is possible to identify its NC based on an analysis of the documents and practices of that community. These conclusions lead to two more questions: 1) *What is the NC that informs the morality of the GPC?* and 2) *Are there reasons for thinking that the NC that informs the morality of the GPC is one that is worthy of endorsement for the construction of a theory of global justice?*

I can answer the first question by looking at foundational or relevant documents of the GPC. For example, the first line of the preamble of the United Nations Declaration of Human Rights (UNDHR) makes explicitly clear that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (United Nations, 1948). The Vienna Declaration and Programme of Action state the recognition and affirmation that "all human rights derive from the dignity and worth inherent in the human person" (United Nations, 1993). While both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights declare in their respective preambles that recognition of the "inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (United Nations, 1966).

In light of these declarations, in documents central to the practices of the GPC, it is fair to suggest that the moral bedrock or foundational element of the morality governing global social relations is *Human Dignity*. In some way or form, the acceptance of human dignity shapes the interactions between the different institutions and members that together make the GPC. Thus, it is possible to consider this a clear example of overlapping consensus at a fundamental or foundational level like the one Waluchow previously suggested was possible at the domestic level (2007, p. 222). Furthermore, it is important to note that it is completely possible to have a different CCM at the domestic and global levels. For example, Waluchow, in a discussion about the European Union's CCM, notices that this CCM is "a subset of the wider set of moral norms and judgments which enjoy some

(not insignificant) measure of reflective support within the EU community (or its constituent communities)" and that even if some members of the EU have their own set of rules of "positive morality governing non-political matters like friendship, gratitude, and charitable giving, these are not part of the EU's CCM" (2012, p. 205).

A possible challenge to my claim that human dignity is a possible NC endorsed in one way or another by the GPC is that even if some communities do claim to endorse it in theory, in practice, they reject it. Although it would be fair to claim that many societies violate their own commitments constantly, human dignity seems to be the grounding element to many of our most important notions of what is owed to humans on a global scale. For example, David Luban differentiates genocide from crimes against humanity by stating that the former "is a crime directed at groups viewed as collective entities, with a moral dignity of their own" while the latter "are assaults on civilian populations viewed not as unified metaphysical entities but simply as collections of individuals whose own human interests and dignity are at risk and whose vulnerability arises from their presence in the target population" (2004, p. 97). In both cases, as it can be seen, Human Dignity plays a key role in understanding what is at stake in the crime committed. At the global level, the International Criminal Court (ICC) has jurisdiction to adjudicate those kinds of crimes at a personal level and the International Court of Justice at the state level (ICJ) when state rights or obligations are violated.

In the relatively recent landmark case against Thomas Lubanga Dyilo, former leader of the Union of Congolese Patriots, the ICC was able to pass its first verdict ten years after it had been established via the Rome Statute. Lubanga was found guilty of the war

crimes of conscripting and enlisting children under the age of fifteen years into the Patriotic Forces for the Liberation of the Congo and using them to participate actively in hostilities (The Prosecutor v. Thomas Lubanga Dyilo, 2012). As Souris properly claims, "[b]eyond the tremendous risks to children's physical security that are created by children's chronic exposure to the violence of armed conflict, child soldiering also attacks the dignity of the child" (2021, p. 13). While historically, the ICJ has used the term "elementary considerations of humanity" to refer to the same concept (Le Moli, 2019). An important example of this historical use can be found in the 1949 Corfu Channel Case, where the ICJ had to adjudicate between the United Kingdom and Albania. There the court established that Albania, based on elementary considerations of humanity, had an obligation to notify any ship passing through its territory about the existence of a minefield (The Corfu Channel Case, 1949).

As Antonio Cassese, the first president of the International Criminal Tribunal for the former Yugoslavia and the first President of the Special Tribunal for Lebanon, points out, crimes against humanity are "particularly odious offences in that they constitute a serious attack on Human Dignity or a grave humiliation or degradation of one or more human beings" (Cassese, 2002, p. 360). Dignity, in this sense, is at the core of contemporary legal practices that aim at protecting humans across the globe.

Michael Perry properly characterizes the role of Human Dignity in the global political culture by stating that "the morality of human rights has become, in the period since the end of the Second World War, a global political morality – indeed, the first truly global political morality in human history" (2017, p. 27). This morality is grounded on *the*

dignity claim, a claim of status where "every human being has inherent dignity" and *the inviolability claim*, a normative claim that states because humans have dignity, "every human being is therefore inviolable: not-to-be-violated" (2017, pp. 31-32). Even if one disagrees with the various ways to justify Human Dignity, it seems hard to challenge the prominent role it has acquired in the political culture of the global political community in the past century.

Once that element has been established, and since up to this point, the methodological approach is non-evaluative but descriptive in nature, the question then that is left to answer is whether *Human Dignity can plausibly be viewed as the fundamental commitment of the GPC to be used in the construction of a theory of global justice?* I will answer that in the final section of this chapter and show that a change in normative commitments is upon the GPC, a change that could be understood as the commitment towards the *dignity of being*.

3.5. Human Dignity Plausible, and in Tension: Towards the Dignity of Being

Even if, up to this point, it has been accepted that human dignity is a plausible institutionally embodied moral intuition that could be identified as a global NC, this tells us nothing about the plausibility of human dignity as the basis for a theory of global justice. To assess its plausibility, I must first provide a preliminary definition of human dignity. Definitions of Human Dignity are plentiful in the literature and reveal widespread dispute about its nature. The first step towards that goal is to define what it is to have dignity, and then what it is to have it being Human Dignity. Towards the first part of the concept, it is

useful to consider Jeremy Waldron's framing of the issue. For him, the disagreement among those who propose various definitions of dignity can be organized by identifying two central and competing ideas guiding those who disagree in academic debates. For some theorists, he claims, dignity is *the* "ground of rights" (2012, p. 201). While for others, such as Christopher McCrudden, dignity is but a "context-specific" concept that seems to be used as a way of providing their discourses with some kind of gravitas which, according to McCrudden, does not reduce the merit of the concept (2008, p. 655).

Presenting himself in the first group, Waldron defines the concept in the following manner:

> Dignity is the status of a person predicated on the fact that she is recognised as having the ability to control and regulate her actions in accordance with her own apprehension of norms and reasons that apply to her; it assumes she is capable of giving and entitled to give an account of herself (and of the way in which she is regulating her actions and organising her life), an account that others are to pay attention to; and it means finally that she has the wherewithal to demand that her agency and her presence among us as a human being be taken seriously and accommodated in the lives of others, in others' attitudes and actions towards her, and in social life generally (2012, p. 202)

Waldron's definition of dignity seems to be in line with Cynthia Stark's definition of Human Dignity as a "special worth or status (…) which renders one violable" (2009, p. 366). Kant framed this view in a way that has become paradigmatic in western moral reasoning:

> Whatever has price can be replaced by something else which is equivalent; whatever, on the other hand, is above all price, and therefore admits of no equivalent, has a dignity (2005, p. 93)

What the previous views seem to have in common is that they make a reference to the individual and their capacities. That is, it is about having a quality that makes a certain being priceless. In that sense, broadly speaking, dignity can be defined as *a special valuation of a being*. This definition would define, in a very broad sense, what is dignity, leaving two important questions still unanswered: *which things actually possess dignity?* and *are humans the only beings that can possess dignity?*

Although important, the last two questions can be avoided by acknowledging that the institutionally embodied moral intuition previously established, *Human Dignity* narrows down the possibilities to *humans*. If that is the case, then what follows is to establish which humans are meant to receive the special valuation or what justifies it giving to some humans and not others. What or how can this particular valuation be justified and how it limits the considerations of the interests of the members of the PC will be the subject of a more in-depth discussion in Chapter 4 when the standard of consideration built around the NC is analyzed.

Preliminarily speaking, it should be useful to state that in general terms, the overall justification in classic social contract theories is the existence of certain features found in humans alone. In this line of thought, Kant's views become relevant once again:

> Beings whose existence depends not on our will but on nature's, have nevertheless, if they are nonrational beings, only a relative value as means, and are therefore called things; rational beings, on the contrary, are called persons, because their very nature restricts all choice (and is an object of respect). These, therefore, are not merely subjective ends whose existence has a worth for us as an effect of our action, but objective ends, that is, things whose existence is an end in itself—an end, moreover, for which no other can be substituted, to which they should serve merely as means, for

> otherwise nothing whatever would possess absolute worth; but if all worth were conditioned and therefore contingent, then there would be no supreme practical principle of reason whatever (2005, p. 87)

As Thomas K. Abbott claims in a commentary in the Groundwork for the Metaphysical of Morals, this passage clearly illustrates Kant's view "that nonrational animals lack the dignity that Kant attributes to persons, and thus cannot be owed respect or consequent duties" (Kant, 2005, p. 87).

The view that there is something morally valuable about human beings that is properly captured by appealing to the concept of dignity seems hard to dispute. In one way or another, human beings are moral beings who can engage in moral reasoning and who appear worthy of consideration of a particular kind. It is also reasonable to view the foundational documents of the GPC briefly examined above as giving expression to this fundamental sentiment. Recall the first line of the preamble of the UNDHR, which states that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (United Nations, 1948). Human dignity seems, then, to reflect or capture a key dimension of justice at the global level. This, however, still does not properly justify the plausibility of human dignity as the basis upon which to base a theory of global justice.

What makes human dignity appealing as the basis of a theory of global justice is precisely its epistemic advantage over the moral intuitions of individuals. Beyond the fact that human dignity might capture something valid or important about justice, the possibility of pointing it out as a meaningful commitment that large parts of the GPC embrace, as by the evidence of the decisions and practices of its institutions, is a strong argument to

consider. Going back to the problem of adjudication among different existing moral intuitions, any possibility will have defenders and attackers. However, human dignity has the advantage of being an already accepted commitment that, in a meaningful way, can be connected to the collective reasoning of large segments of the GPC.

In a sense, this methodological move to ground a theory of justice is not too different from the one embraced by Rawls in *Political Liberalism*. The section on fundamental ideas begins by setting up the main question of his project "what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as ***free and equal***[27]and as fully cooperation members of society over a complete life, from one generation to the next?" (2005, p. 3). Later in the same section, he rephrases this and asks, "How might political philosophy find a shared basis for settling such a fundamental question as that of the most appropriate family of institutions to secure democratic ***liberty and equality***[28]? (2005, p. 8). If one were to question where Rawls got the concepts of liberty and equality, the normative commitments of his project, the answer is that he starts his project "by looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles" (2005, p. 8). Insofar as his project aims at developing a theory of justice for liberal societies where the cornerstone of those societies is *freedom and equality*, values commonly identifiable in their legal, political, and social practices, it is plausible to use those implicitly, and sometimes explicitly, accepted ideas as the basis for his theory of justice.

[27] My italics and underline
[28] My italics and underline

Human Dignity also has the support of large segments of the human population. It is a concept, even if vague at times, that has received a special place in the current world order. So much so that some people might consider it as the foundational element in the human rights system in place worldwide as well as being used as a way to ground the decisions that aim at preserving the peace among states after World War II. If there is a concept that is part of the political culture of the GPC, it is human dignity, and as such, we have good reasons to grant its plausibility as the basis for a theory of global justice.

However, an important set of practices within the GPC shows that human dignity might not be enough, by itself at least, to address the moral concerns of large segments of the human population. Other moral principles and notions might be required. However, this tension does not undermine the idea that human dignity is a fundamental NC that should be highlighted in constructing a theory of global justice. But it might raise the concern that it might not be wise to consider it the only NC that a theory of global justice should embrace or the main one. This is so even if the practices and documents of the GPC show that it is accepted as an NC and even if it is a plausible basis for a theory of global justice. I will address this tension in the following paragraphs.

To properly raise this point, it is essential to consider that even if it sounds tautological or self-evident based on the previous discussion, human dignity is grounded on certain views that — in one way or another — endorse the idea of human superiority over other beings in existence. This position has been labelled anthropocentrism, and it is roughly understood as a view where everything in the universe is arranged to produce and serve humans (Rolston, 1988, p. 197) or as "the unjustified privileging of human beings, as

such, at the expense of other forms of life" (Curry, 2018, p. 67). Against this anthropocentric view, different practices and documents within certain communities that are part of the GPC can be identified.

The first example of this is the indigenous Andean concept of Sumak Kawsay, which has become a "centerpiece of ascendant indigenous movements and endogenous development in the Andean countries and have encouraged a pan-Latin American Perspective" (Zimmerer, 2012, p. 601). This approach makes sense of a worldview where the fundamental moral commitment is not to humans' well-being but of humans' living-well. The key difference here is that although human value and status are recognized, this does not exclude the possibility of recognizing a similar value in other beings in existence. That is, for some cultures, dignity can be ascribed to non-human beings.

Sumak Kawsay made its way into chapter 7 of the Constitution of Ecuador as a regulative concept applying to all individual duties and rights and as a way of formally recognizing nature as a subject of rights. Although it is the first constitutional charter in the world to engage in this kind of challenge to an anthropocentric view, other countries have started to follow its example. On December 21 of 2010, the Bolivian government passed the law N° 71 under the title *Law of the Rights of Mother Earth*. This central piece of legislation recognizes nature's status as a subject of rights.

The second example of this kind of conceptual approach to moral value is the one identifiable in Māori philosophy. According to Tuari Stewart, this kind of Philosophy "is found in Māori discourses about the relationship between people, things, the environment

and the world" (2021, p. 2). These discourses are, in turn, grounded on three epistemological pillars 1) everything in existence is related; 2) all things are living; and 3) worlds regarded as "unseen" in Western terms can be mediated by the human (2000, p. 45). Under this *relational* framework lies the recognition, or basic normative commitment, that each creature in existence has a *mauri* (life force) that "joins all beings (…) into one interdependent whole, each part depending for its well-being upon the health of each other part and of the whole itself." (Patterson, 1998, p. 70).

Two essential bills that make sense of this approach were passed in recent years by New Zealand authorities. The first one is the Te Urewera Act of 2014, where the most forested area in the North of New Zealand known as Te Urewera was declared a legal entity. In article 11, the bill recognizes that Te Urewera is "a legal entity, and has all the rights, powers, duties, and liabilities of a legal person." The second one is the Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017, where in the same vein as in the previous decision, the New Zealand Parliament declared in article 12 that "Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements;" and in article 14 that "Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person."

A third and final example to consider comes from the jurisprudence of the United States of America where, in a 1972 dissenting opinion in the case *Sierra Club v Morton*, Justice William Douglas stated:

> So it should be [have standing] as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes-fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it (1972, p. 743)

These three examples show that in different parts of the world, certain charters, judicial decisions, legislative choices, and practices might favour what, in opposition to an *anthropocentric* approach, presupposed by the endorsement of human dignity, we could call a *cosmocentric* approach (Jarandilla Nuñez, 2019, p. 423).

The core feature of this approach, usually attributed to Indigenous peoples from different parts of the world, is that human existence is part of a more extensive system of interactions, where each action affects the whole system (Jarandilla Nuñez, 2019, p. 423). Based on that, humans "should not consider themselves as superior to other living beings in the world, who also have different ways of organizing and contributing to the systems of life on earth" (Jarandilla Nuñez, 2019, p. 424). The idea here is that humanity's intrinsic value can be seen as a way of justification of rule over the rest of beings in existence. Instead, the environment and everything in it has intrinsic value, and humans share that value. This line of reasoning leads many members of the GPC to conclude that considering the interests of the environment and its parts becomes an issue of justice due to its intrinsic value.

This approach has also seen global support via the Earth Charter, an international declaration of fundamental values and principles made public in 2000 and endorsed by The

United Nations Educational, Scientific and Cultural Organization (UNESCO). The first article of the charter recognizes that *all beings are interdependent, and every form of life has value regardless of its worth to human beings*. This kind of language indicates a paradigm change regarding notions of moral value in certain parts of the GPC. The cosmocentric approach, seems fair to claim, has the support of large segments of the human population inside and outside what is commonly known as the Western world (Pacheco Balanza, 2013, p. 52). Support that recent developments in theory and practice show to be increasing.

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, opened a path to recognize the necessary incorporation of indigenous thought into discussions about global justice. In the preamble of the UNDRIP, the General Assembly of the United Nations formally recognized that "respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment." While in article 29 of that same document, the General Assembly acknowledged that "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources."

Based on that, an NC that could capture these new developments and considerations could be framed as the "dignity of being." An NC that could encompass the view of large segments of the population who considers that there is intrinsic value in humans, but also in animals and nature in general. This NC could further reflect what seems to be a new development in moral reasoning and what the GPC is truly committed to in terms of

morality. To consider "the dignity of being" as a reflection of the real commitments of the GPC would seem to be perfectly compatible with Waluchow's CCM. To be absolutely clear, I am arguing for a modification of what seems to be a classically accepted NC, human dignity, for another one that seems to better capture the current views of the GPC, dignity of being. This would then become the basic NC for a possible theory of global justice.

The full extent of what this commitment would look like when we face the need to develop principles of justice for a GPC are still out of my reach. As established in the parameters of the dissertation, my goal is to set the framework for the development of a theory of global justice, not a global theory of justice. However, if what is at stake is the acknowledgement of the intrinsic value of not just humans but also of beings such as animals, mountains, or trees, then our considerations about justice might have to be radically reconsidered in the future.

Having concluded that the dignity of being can serve as the core NC for a theory of global justice, it is possible to proceed to a more in-depth analysis of what this commitment entails, even if I cannot yet fully develop it. As Killmister correctly notices, many times, dignity "appears a frustratingly nebulous concept" (2016, pp. 2063-2064). Chapter 4 will first engage in two possible ways of constructing the standard of considerability of interests based on two possible and dominant views about the grounding of dignity: *agency* and *sentience*. After developing those two possible standards, I will test them to see their capacity to engage with the circumstances of justice previously identified in Chapter 2. I conclude by proposing a standard of considerability of interests that expands the set of those

subject to and bound by duties of justice in accordance with what the dignity of being might, preliminary, demand.

4. Towards a Dignity of Being-Based Standard of Considerability of Interests

Introduction

In this chapter, following my overall goal of establishing the parameters or framework for a possible theory of global justice, I proceed to engage with the question of whose interests are relevant for the global social contract's deliberators to establish a suitable standard of considerability of interest. In other words, I aim at determining a standard of considerability of interests that can help determine whose interests are relevant for considerations of justice and whose are left with what I call duties of charity as an outcome of the contractual deliberations. This difference is fundamental for developing a potential theory of justice, either global or domestic. It provides us with a scope of interests that will, in turn, shape the principles of justice that will come out of the contractual deliberations. It also sets apart which beings are considered intrinsically valuable for the sake of a social contract and which are not. I conclude this chapter showing that given the set of circumstances of justice discussed in Chapter 2, and the commitment to the dignity of being identified in Chapter 3, standards of considerability of interests based on agency or sentience are insufficient for the task of further developing a social contract with truly global expectations. For that reason, I propose a standard of considerability of interest grounded on the notion of being.

In section 4.1., I introduce three sets of methodological distinctions to clarify the rest of my argument. I first present the difference between contractors/deliberators and

those whose interests the deliberators will consider as relevant for the negotiation. Then, I proceed to explain the difference between moral agents and moral patients. After that, I move on to present the distinction between duties of justice and duties of charity. I conclude this section by showing how these three sets of concepts come together to shape what is a standard of considerability of interests (CI) that helps shape the contractual obligations towards intrinsically valuable beings that emerge from the deliberators' deliberations—leaving those outside the terms of the contract with only the protection granted by optional duties, which reflects their instrumental value. Three distinct categories are presented as part of the social contract: *the deliberators*, those who are *subject and bound to the duties of justice*, and those who will be *the beneficiaries of duties of justice* placed on beings who have the kind of agency that allows them to assume moral duties.

Section 4.2. is where I consider further the previous chapter's conclusions regarding normative commitments. After having acknowledged that the fundamental normative commitment central to the global political community is to protect or expand the dignity of being and after having argued for its plausibility as the basis for a theory of global justice, I engage with the construction of the standard to determine *which beings are subject to and bound by duties of justice that emerge with the contract*. Although an intuitively appealing answer is that at least *all humans are entitled to the dignity of being and thus entitled to benefit from the imposition of duties of justice*, I show that this answer collides with the traditional theories found within the social contract tradition.

In section 4.3., I consider a CI revolving around the notion of agency, such as we see in authors like Kant and Rawls. I then show how this kind of standard significantly

narrows the set of beings, even humans, whose interests are deemed as intrinsically valuable for the social contract deliberators. In other words, the answer to the question of *who is entitled to benefit from the imposition of duties of justice?* can only be answered after identifying certain features deemed as relevant by specific authors. I begin by engaging with Kant's answer and then engage with the similar views espoused by Rawls. I conclude by showing how both accounts exclude large segments of beings from having their interests considered by the deliberators, including large amounts of humans.

In section 4.4., I show two problems that arise from adopting this kind of agency-based CI. The first one is the conflation of agency and intrinsic moral value. The second one is the inability to adequately address the circumstances of global justice previously addressed in Chapter 2, which involves the historical and present neglect of disabled people and the exclusion of certain worldviews from moral consideration in standard Western literature, arguably the current dominant cultural framework of the academic world.

Once the previous limitations of an agency-based CI have been established, in section 4.5., I proceed to construct a standard based on sentience. I tangentially rely on the work of Jeremy Bentham and Peter Singer to formulate this standard. Singer's work aims to expand the class of beings entitled to benefit from the imposition of duties of justice to include sentient beings who are not human. I will show how this standard addresses the circumstances of justice better than ones focused on agency. However, I point out that focusing on sentience — which entails the capacity to feel — limits our ability to address adequately the circumstances of justice outlined in Chapter 2 and the possibility of

engaging with the NC of the dignity of being because this CI includes the possibility of excluding beings like the environment and even some humans from consideration.

In section 4.6., I provide some final remarks about the construction of an adequate CI. My main concern is that, in light of the previously discussed circumstances of global justice and the NC of the dignity of being, a broad and different kind of CI needs to be constructed. I propose a formulation of a CI that could, eventually, help to articulate an adequate theory of global justice in the future.

4.1. Three sets of preliminary concepts: Deliberators/Interests, Moral Agents/Patients, and Duties of Charity/Justice

This section establishes three sets of concepts necessary to understand the CI and its role within a social contract theory (SCT). First, I consider it essential to differentiate between those who will contract/bargain the social contract from those whose interests will be considered by those deliberators. Although this is a distinction I already made in Chapter 1, I will expand on it here. One of the main reasons for this clarification is that it is possible to read authors working in the social contract tradition (SCTR) such as Hobbes, Locke, or Kant, as having conflated these two roles, thus assigning them to the same group of individuals. The conflation of these two groups leads to what Martha Nussbaum calls the problematic "idea that only those who can join a contract as rough equals can be primary, non-derivative subjects of a theory of justice" (2006, p. 326). But this needn't be the case. Consider Rawls, for example. He provides us with a more precise differentiation between those whose interests are to be considered by the deliberators and those who actually

bargain the terms of the contract. He called the later *parties*, while those whose interests are discussed in the original position are referred to as *persons* (1999, p. 120). I follow Rawls' lead in distinguishing between who deliberates and whose interests are to be considered in the deliberation and then proceed to differentiate between moral *agents* and moral *patients*. I then engage with the difference between duties of justice and duties of charity. I conclude this section by showing how these three sets of concepts interact to shape a CI and its role within an SCT.

4.1.1. Deliberators and Those Whose Interest Matter to Them

I consider it crucial to differentiate between two types of contractual interactions. The first is between those who can participate in the contractual deliberations as deliberators. The second is between contracting deliberators and those whose interests these contracting deliberators are required to consider when choosing or developing principles of justice to govern their community. The usefulness of distinguishing between these two forms of interaction relies on a further distinction between (a) the possibility of participating in the level of rational deliberation in which deliberators are expected to engage, and (b) being worthy of having one's interests regarded as intrinsically relevant to issues of justice by those engaged in those rational deliberations.

In order to appreciate the importance of this distinction, consider the following analogous example. It is quite possible to conceive a person, Tom, who, at some point in time, acquires a severe cognitive or physical disability that prevents him from communicating his interests to others. His condition, perhaps brought on by some accident,

prevents Tom from partaking in rational deliberations about the best way to proceed with his medical care. Yet, it does not follow that those whose responsibilities include tending to Tom are free not to consider his interests when coming to a decision about the desirability of a particular medical procedure that will affect him. Though he cannot himself deliberate, he is entitled to have his interests serve as the primary basis of decisions made by those who can. There may well be reasons to think that the same is true of some beings in a community vis à vis those whose conditions render them unable to meet the commonly accepted standard for rational deliberation but whose interests will be impacted by the terms of the contract. We could conceive reasons to assign these deliberators the responsibility of factoring in the interests of these other parties when they deliberate. As mentioned above, Rawls correctly captures this subtle yet fundamental distinction between deliberators and those whose interests count. We would do well to follow his lead in this instance.

4.1.2. Moral Agents and Moral Patients

The second set of concepts involves moral *agents* and moral *patients*. I follow Tom Reagan and understand moral agents as beings who "have a variety of sophisticated abilities, including in particular the ability to bring impartial moral principles to bear on the determination of what […] ought to be done and, […] freely choose to act as morality […] requires" (1984, p. 151). In other words, an agent is a being with cognitive capacities that allow them to be morally responsible for the fulfilment of certain duties. Parallel to this notion is the idea of a moral patient. Moral patients are beings who "lack the prerequisites that would enable them to control their own behavior in ways that would make them

morally accountable for what they do" (1984, p. 152). Those who settle on the terms of the social contract could be required to consider the interests of moral agents, moral patients, or both. The implications of their selection include the kind of duties assigned to those covered by the contractual deliberations.

4.1.3. Duties of Charity, Duties of Justice

It is fundamental for a theory of justice, particularly one based on the Social Contract as a Methodology (SCM), to determine the scope of interests that must be considered when deciding on the terms of the contract. That is, whose interests are intrinsically valuable for society. One way to do this is to decide upon an appropriate CI. Making such a decision allows the deliberators to determine whose interests, and hence well-being, are relevant for the Social Contract. Yet interests can matter in two meaningful and different ways, and it is essential to differentiate between them. I will provide a tentative differentiation for the sake of this project.

For the purposes of my analysis, the requirement to respect an interest could be regarded either as a duty of charity or as a duty of justice. Duties of charity are *optional duties* ascribable to moral agent X towards some subject Y. They only arise on certain occasions and are subject to the will of X. This agent, X, gets to choose whether to fulfill his duty to Φ by benefitting Y in some particular way, or instead doing so at a different time, or in relation to some other subject Z, or not at all. For instance, X gets to decide whether to fulfill his duty to help those in need by contributing, now or later or never, either

to charity C or to charity C*. If he chooses C, then X has fulfilled his duty and C* has no cause for complaint. But if X decides not to act, there is nothing that can be demanded from X. On the other hand, duties of justice are *non-optional duties* that imply that agent X always, disregarding their will, must act in some relevant way regarding Y[29]. For instance, X may have a duty not to assault Y, and this exists independently of X's choice. X does not get to choose whether to refrain from assaulting Y or refrain from assaulting another agent called Z. X must assault neither. Although the conceptual differentiation of non-optional and optional duties is susceptible to challenge (Buchanan, 1987), I consider it to be a useful conceptual delimitation for my project.

What I want to show is that social contract theories provide us with the tool to determine whose interests are deemed as worthy of full protection, in the form of duties of justice, and whose interests are deemed as worthy of no-protection beyond the charity of those who can act in the world under the terms of the social contract. Or whose interests matter intrinsically and whose only instrumentally for society. It is usually the case that disabled people, non-human animals, and the environment are deemed as non-worthy of protection via duties or justice and instead are left with duties of charity. Although this distinction is preliminary and it only sets up a basic difference regarding two kinds of interests in the social contract, I consider it a sufficiently plausible and helpful distinction to make and observe for the sake of accuracy, completeness, and clarity.

[29] My proposed difference between duties of justice and duties of charity can be seen as a parallel or similar to considerations between perfect and imperfect duties (O'Neill, 1986) (Goodin, 2017). My goal here is simply to highlight the possibility of distinguishing between duties that are optional and non-optional given the sometimes-implicit assumption that some beings are intrinsically valuable while others are only instrumentally valuable, and this affects what we owe to those beings within the terms of a social contract.

4.1.4. The CI and the Social Contract

With the above three distinctions having been drawn, we are now in a position to draw a clear picture of a CI's role within an SCT. Commonly, theories within the SCTR posit that the deliberators should only consider the interests of specific moral agents who meet a certain threshold, usually, a high cognitive threshold, thus reducing the sphere of those under the protection via duties of justice to this narrow group. This leaves moral patients to be considered only in terms of duties of charity by those whose interests have been considered as intrinsically valuable for the sake of the contract and thus, leaving their well-being to the will of those lucky enough to fit within the margins of a pre-established threshold. This threshold, then, is the CI that most theories within the SCTR employ. As I will show in 4.3., this threshold has been traditionally adopted by authors like Kant or Rawls, each of whom identifies specific capacities or features characteristic of certain human beings. If a being X meets that cognitive or physical threshold, their interests are regarded as relevant for those deliberating the terms of the contract. On the other hand, if a being X does not meet that threshold, their interests are not usually considered at all and are left within the realm of duties of charity. In other words, whoever meets the CI's threshold will be entitled to benefit from the imposition of duties of justice that result from the contractual deliberations. In contrast, those who do not meet that threshold can only be the beneficiaries of duties of charity, duties that lie beyond the basic terms of the social contract.

As noted above, my reading of duties of charity is that they are optional; this means that those who are left with them are excluded from the protections granted by duties of

justice. Traditionally these include large groups of beings such as people with disabilities, animals, and the environment. Based on the CI, the deliberators will determine whose interests are worthy of protecting via duties of justice and whose are not. Traditionally, only moral agents have been deemed capable of meeting the threshold of the CI common in the SCTR. Yet, as we have seen above, it seems far from logically necessary that deliberators be required to consider only the interests of moral agents and grant the protection afforded by duties of justice to them and them alone. It is not, however, far from logical to accept the fact that only moral agents can be the subjects of duties of justice. In that sense, a being must have the capacities to be bound to duties of justice in order to have moral obligations. That is, such a being must be a moral agent.

The previous analysis allows me to identify three distinct categories when discussing those related to or by the social contract. First, the deliberators of the social contract. That is, those who will engage in the deliberations regarding the terms of the contract. Second, those who are subject and bound to the duties of justice. Finally, those who will become the beneficiaries of duties of justice that are placed on beings who have the kind of agency that allows them to assume moral duties.

4.2. A Dignity of Being-Based Standard of Considerability of Interests

As I established in Chapter 1, four pre-contractual elements usually inform the modelling of an SCT: a set of circumstances of justice, a normative commitment, the standard of considerability of interests, and a contractual device. Each of those pre-contractual elements interacts and informs the others in the modelling process. For

example, the CI must adequately address the circumstances of justice, while the normative commitment informs how we construct the CI. At the same time, the contractual device must be able to process all of the previous elements. Given the global community's normative commitment to the dignity of being, identified previously in Chapter 3, it is reasonable to explore how dignity might serve to guide us in our choice of a CI appropriate for a social contract geared towards global justice.

A CI based on the preservation and enhancement of the dignity of being, provides us with a critical element to define the scope of interests that the deliberators will be required to consider. That is, it is likely to include, as worthy of protection for their own sake, the interests of animals, plants, or the environment. The focus will not be on the interests of *human beings* alone. In 4.3. and 4.4. I will construct two possible instances of a CI, each based on account of what it is about certain beings that provide them with the intrinsic moral value that requires that their interests be considered by the deliberators. As we shall see, for example, not all human beings satisfy the relevant criteria in either of the cases.

The first standard that I will present is inspired by the works of Kant and Rawls, both of whom use a threshold of agency or active capacities to determine whose interests are worthy of consideration in establishing who might benefit from the imposition of duties of justice on those who can act upon them. After introducing this CI, I will first show how it conflates two connected, though distinguishable, concepts: *moral agency* and *intrinsic moral value*. I will then show how this standard fails to adequately address the circumstances of justice previously outlined in Chapter 2, which involve the historical and present neglect of many disabled people, animals, and the environment.

4.3. Re-Constructing an Agency-Based CI: The Human Mind as the Center of Reflection

The first CI I will re-construct and analyze is one based on active faculties. By active faculties, I mean those faculties that allow an individual to act in the world and not be constrained by its own features to be solely or mostly a recipient of the actions of other beings. This CI is heavily dependent on the work of Kant. To properly conceptualize this standard, I first need to explain the focus on cognitive capacities at the center of the Kantian project. Once that has been established, I will explain how this kind of standard excludes even certain human beings from moral consideration. After that, I show how a Rawlsian CI follows in Kant's footsteps. Although it endorses a perceived need to distinguish certain cognitive features from other active faculties, the Rawlsian CI rejects certain racist views initially attached to them by Kant. From this point onward, I will use the term *agency* to refer to the ability to actively engage, mentally or physically, with others in the world.

4.3.1. The Copernican Revolution: Human Capacities and the Construction of a Kantian CI

To claim that Kant's work has been influential in philosophy would be close to stating a tautology. Hilary Putnam claimed that "almost all the problems of philosophy attain the form in which they are of real interest only with the work of Kant" (1990, p. 3). Perhaps the most well-known philosophical move attributed to Kant is the Copernican revolution with regard to metaphysics. In the preface to the second edition of the *Critique of Pure Reason*, Kant tries to follow Copernicus "who, when he did not make good progress in the explanation of the celestial motions if he assumed that the entire celestial host revolves

around the observer, tried to see if he might not have greater success if he made the observer revolve and left the stars at rest" (1998, p. 110). By applying this reasoning to metaphysics, he proposed that objects in the world conform to concepts in our mind "since experience itself is a kind of cognition requiring the understanding […] which rule is expressed in concepts a priori, to which all objects of experience must therefore necessarily conform, and with which they must agree" (1998, p. 111).

Among the multiple implications of the Kantian project, perhaps the most relevant is the central place that the human mind and its active faculties play in making sense of the world. This "making sense of the world" is a manifestation of certain capacities that only some humans possess. The subjective cognitive capacities that this particular subset of human beings have are fundamental to understanding his CI. In this context, those who have those capacities are moral agents and their, and *only their*, interests are to be considered by the deliberators when fashioning the terms of their social contract.

A critical factor in this Kantian CI is who counts as fully human. In 4.3.2. I engage with this question specifically in relation to the work of Kant himself. I highlight how Kant's idea of the relevant cognitive faculties that qualify a being for consideration was highly connected with a racist project aimed at the exclusion of certain human beings and their interests from full consideration within Kant's SCT.

4.3.1. Not All Beings and Not All Humans: The Limits of a Kantian CI

In his *Anthropology from a Pragmatic Point of View*, Kant states his views on the relationship between humans and animals. He claims that "[t]he fact that the human being

can have the "I" in his representations raises him infinitely above all other living beings on earth" (2006, p. 15). This quality, he claims, makes a human being a *person,* and by that, he means that humans are "through rank and dignity an entirely different being from things, such as irrational animals, with which one can do as one likes" (2006, p. 127). If one accepts this claim, then the interests of animals or the environment are hardly a point of philosophical relevance within Kant's SCT. If they count, they only do so indirectly, insofar as they affect the interests of human beings. And perhaps most importantly, only human beings can be subject to and beneficiaries of duties of justice because only they have the specific cognitive capacities associated with personhood. Humans having such capacities means that they are at the pinnacle of moral consideration, while other beings come in second — if at all. They count only insofar as they are of service to human beings.

The possession of cognitive capacities, then, can be identified as the baseline for a Kantian CI. In other words, only the interests of beings with rational, cognitive capacities count intrinsically when it comes to the deliberators' deliberations concerning the principles of justice. The possible implications of this feature of Kant's view are important to bear in mind. As I stated before, there are openly racist views in Kant's work that, when combined with his views on what makes human beings worthy of the special status he assigns them, lead to troubling results for his SCT. They justify deliberators to exclude the interests of non-white populations from consideration by the deliberators. Kant grounds this exclusion on the reduced or non-existence of the cognitive features previously mentioned. At this point, it is crucial to engage — even if briefly — with Kant's views on race.

Kant took it as evident that humanity could be divided into different races. Furthermore, he believed that there were some essential distinctions to be made between these "races." Comparing white and black people, he remarked that "[s]o essential is the difference between these two human kinds […] it seems to be just as great with regard to the capacities of mind as it is with respect to color" (2007, p. 59). This "evidence" allowed Kant to think he could outright reject certain moral views based on a person's race. For example, in the face of misogynistic advice given by a black carpenter about how to properly treat a wife, Kant did not reject the advice owing to its misdirectedness, but instead asserted that even if "there might be something here worth considering," such advice could not be considered of any value because "this scoundrel was completely black from head to foot, a distinct proof that what he said was stupid" (2007, p. 61). Similarly, while praising the truthfulness and honesty of indigenous people of North America, he maintained that "all of these savages have little feeling for the beautiful in the moral sense." At the same time, "the other natives of this part of the world [the American continent] show few traces of a character of mind which would be disposed to finer sentiments, and an exceptional lack of feeling constitutes the mark of these kinds of human beings" (2007, p. 60).

It is clear that Kant viewed certain races as seriously lacking in the cognitive capacities that elevate some human beings — i.e., Caucasians — to the special "rank and dignity" that renders them exclusively capable of assuming and benefitting from duties of justice. A quite plausible conclusion of this thought process is that some disabled people, members of the "inferior" races, animals, and the environment would not be capable of satisfying the conditions of being capable of having their interests considered as intrinsically valuable.

The impact of this way of approaching the question of *whose interests are relevant in the deliberations of the deliberators* cannot be overstated.

An example of a more recent philosopher engaging in a similar, though far less overtly elitist, kind of reasoning is John Rawls. Although he did not, most likely, share Kant's discriminatory views and conclusions, he did share the view that the deliberators in his social contract could exclude certain interests from consideration based on the existence, or lack thereof, of certain capacities. First, for Rawls, "problems related to special health care or how to treat the mentally defective […might] distract our moral perception by leading us to think of people distant from us whose fate arouses pity and anxiety" (Rawls, 1999, p. 259). This position seems to provide a possible justification to allow the moral reasoning of the deliberators to be focused firstly on those who meet certain criteria of "normalcy." Second, the primary goods that his version of the social contract is supposed to redistribute are those desired by persons who can be considered "normal and fully cooperating members of society over a complete life" (Rawls, 1999, p. xiii). Therefore, in Rawls' view, the deliberators would be justified, at the level of contractual deliberation, in leaving the interests of people who have severe health conditions and who cannot cooperate over a lifetime outside of those relevant for consideration. In other words, those who do not have *agency* could be excluded from consideration at the original contractual level[30].

[30] In *Political Liberalism* Rawls claims that he puts issues about disability aside from the first level of consideration (p. 18). This opens the possibility of dealing with those issues at the legislative level. Since I am interested in those issues as core foundational issues of justice, this move to set them aside as secondary issues of justice seems incompatible with my line of inquiry.

Reducing the set of interests to be considered by the deliberators to only those who meet specific cognitive (or physical) faculties has been a cause for concern. For example, Eva Feder Kittay notices that this way of proceeding puts "too much distance between the normal functioning individual and the person with special needs and disabilities" and may lead us to underplay or ignore the interests of the latter (1999, p. 88). Although Kittay's concerns are well worth further discussion, I want merely to highlight here that by relying on a CI based on identifying certain mental and physical faculties, possessed in some instances to lesser degrees —if at all—, we introduce a potentially problematic relationship between cognitive —and other— active capacities, on the one hand, and intrinsic moral value on the other. We risk marginalizing, if not outright ignoring, the interests of many different beings.

Were we to connect the concept of dignity of being with an explicitly Kantian CI, the outcome might well be something like this:

> *In negotiating principles of justice that answer to the expansion and protection of the dignity of being, the deliberators will only consider as relevant the interests of those individuals who have cognitive capacities that would allow us to consider them intrinsically valuable. The deliberators must leave out of consideration the interests of human beings with certain disabilities*[31]*, non-Caucasian humans, animals, and nature.*

Were we to connect the concept of dignity of being with a Rawlsian formulation of a CI, the outcome might well be something like this:

> *In negotiating the principles of justice that answer to the expansion and protection of the dignity of being, the deliberators will only consider as relevant the interests of those individuals who have cognitive and physical capacities that would allow us to consider them capable of cooperating*

[31] By this I mean individuals who, according to Kant, would lack capacity for rational thought.

throughout a lifetime. The deliberators must leave out of consideration the interests of human beings with certain disabilities[32]*, animals, and nature.*

Although different, these two outcomes are significantly similar in how they end up excluding large groups of beings. Both models would exclude many disabled people, animals, and the environment from having their interests considered by the deliberators for the purposes of duties of justice.

Rawls hints that excluding animals and other non-human beings is a potential problem for an SCT (1999, p. 15). But, as I noted earlier, there is no reason in principle not to use the SCM as a way to address the interests of those who might not qualify as agents and that I called beneficiaries of duties of justice. It is not the nature of social contract theory itself that excludes considering the interests of non-agents. It is the explicit or implicit CI that an author chooses that may or may not have this effect. In the case of Rawls, his implicit CI excludes large groups of beings from consideration by the deliberators. It would be unfair to the SCTR to claim that its methodological tool is to blame for such exclusions when it's a particular theorist's choice of a CI that determines whose interests count.

4.4. Two Central Problems for an Agency-Based CI

In section 4.3. I drew on the theories of Kant and Rawls to construct two possible cognitive-based CIs that regard dignity of being as the central normative commitment, but which seem unjustifiably to limit those whose interests count in developing an SCT. In this section, I focus on two further problems that such CIs face. First, I focus on the conflation

[32] By this I mean individuals who, according to Rawls, would be limited in their capacity to cooperate throughout a lifetime in society. This is connected with his idea that society ought to be conceived as a system of cooperation.

of agency with intrinsic moral value. I proceed to disentangle those two concepts and conclude that it is not true that one must have agency, particularly moral agency, in order to possess intrinsic moral value. I then further show how neither CI based on the works of Kant or Rawls can adequately respond to the circumstances of justice discussed in Chapter 2.

4.4.1. Agency and Intrinsic Moral Value: Not Two Sides of the Same Coin

The CIs of Kant and Rawls have in common the demand that individuals meet a certain threshold of agency before their interests can figure in the deliberator's deliberations. This threshold is one of *capacities*. For Kant, these capacities are purely cognitive, while for Rawls, they also seem to include a physical aspect. However, both of them seem to demand that those whose interests can be considered relevant for the Social Contract *must be able to act in the world*.

The previous consideration allows me to bring back the notion of moral agents that I took from Reagan. In his account, moral agents who, owing to their 'sophisticated abilities,' have the capacity to act in the world upon having determined what they ought to do based on the application of moral principles. Moral agency is a subtype, a more refined one if you wish, of agency. In respect of Kant and Rawls, they both seem to deem moral agency as a requirement of having your interests considered by the deliberators and, therefore, for being granted the benefits and protections afforded by the duties of justice upon which they agree.

In what follows, I will use the phrase 'having intrinsic moral value' to refer to the attribute of being someone (or something) whose interests must be considered by those whose deliberations result in the Social Contract. The question then becomes, *is it necessary to have moral agency in order to have intrinsic moral value?* In my view, the answer is no. To justify my answer, I will introduce a thought experiment. Let us consider the case of a person in a permanent vegetative state due to a car accident. If one believes, as Kant did, that intrinsic moral value is the product of moral agency, it would seem to follow that this person lacks the cognitive capacities that Kant's version of the CI demands they have if they are to be considered as having any moral value. Yet, even if her condition renders her significantly different, in morally relevant ways, from other fully rational and functional beings who partake in the world, it would seem a mistake to say that this person has no moral value whatsoever and that they can therefore be treated as "one likes."

Perhaps the solution to this conundrum is to say that the person in the vegetative state *once had* the cognitive capacities required for moral agency. Since she once qualified as an agent, she still counts as having intrinsic moral value. Her intrinsic moral value persists even if her agency is gone. Perhaps, but then the case of an anencephalic baby could be brought to the fore, putting further pressure on this line of thinking. Such babies lack essential parts of the brain and skull, which are necessary for rational thought. Therefore, they never had, nor will they ever have, the cognitive capacities required for moral (or any other kind of) agency. It seems to follow — again according to Kant's CI — that they lack moral value, while for Rawls, neither individual qualifies as a being whose interests are relevant to the deliberators' deliberations in matters of justice.

The case of the anencephalic baby, in particular, raises significant concerns about the connection between agency and intrinsic moral value. I want to highlight these concerns further by the real-life examples that motivated the US Congress to enact the Baby Doe Law of 1984. Before Congress enacted that law, some parents and physicians considered that they did not owe what can be considered duties of justice to newborn babies if they suffered from serious cognitive disabilities (Annas, 1984) (White, 2011). The result was that many newborns were deprived of the surgery they needed to survive. Some babies were even denied food and water by medical personnel. The possible reasoning (on the part of some parents and some physicians) behind these actions was that such newborns would not have the necessary cognitive capacities to act in the world. Therefore, they could be allowed to die without moral harm being done — without a loss of moral value in the world. In other words, because these babies lacked agency and the possibility of ever having it, they were not beings with respect to whom duties of justice attached or that could benefit from them being placed on beings with agency. This kind of reasoning was compatible with Kant's claim that, with regards to beings who lack certain cognitive capacities, one can act as "one likes." Yet, once adequately considered, the idea that only beings who have 'proper' cognitive capacities can be beneficiaries of duties of justice seems problematic, to say the least. The view that we can do with them 'as we like' is one we should hesitate to embrace. An important reason for this hesitancy is the ruling political morality of the GPC. Following a Kantian kind of reasoning regarding disabled people would be openly against article 1 of the United Nations Convention on the Rights of Persons with Disabilities, which states:

> The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by

> all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

By reducing intrinsic moral value to agency, certain types of beings stand the risk of being left out of moral consideration when the deliberators select their principles of justice. If we accept this reduction, we run the risk of keep accepting SCTs where, in light of their assumed limited agency, large groups of beings are denied the status that comes with having intrinsic moral value. Adopting this kind of reduction as an uncritical starting point of our moral considerations also puts us at risk of defining key concepts such as 'political society' in restrictive and problematic ways. Rawls, for example, defines a political society as a system of cooperation among equal persons (1999, p. 335). He thus leaves those who cannot cooperate, i.e., people with certain disabilities, animals, the environment, etc., out of the scope of duties of justice.

4.4.2. The Inability of the Agency Based-CI to Answer to the Circumstances of Justice

As I established in Chapter 2, it is possible to differentiate between different theories of justice based on the kind of problems they aim to solve. For example, Plato aimed at answering the question of *what is justice*? in an abstract way. At the same time, Rawls and Hume posed the question as a response to the problem of scarcity of resources. In Chapter 2, I also established the set of circumstances of justice that are relevant for my project of establishing a framework for the development of a theory of global justice. The first is serious existential uncertainty due to climate change and animal extinction. The second is

the existence of a shared global institutional framework. The third is the disproportionate distribution of the planet's scarce resources. The fourth is pervasive racial, gender, and disability-targeted inequalities.

Adopting a CI based on cognitive and physical abilities clearly fails to address the fourth circumstance of justice. Such a CI would exclude from consideration by the deliberators the interests of individuals with certain disabilities. Any theory based on such a CI would therefore fail to adequately answer at least some of the problems we set out to address in Chapter 2. But there would be other serious deficiencies as well. Consider the connection between pervasive racial inequalities and serious existential uncertainty, both of which were introduced in Chapter 2, among the circumstances of justice relevant to the development of a global SCT. For many Indigenous communities, such as the Andean, Māori, and Inuit, it is impossible to conceive human value without considering its necessary relationship to the rest of the world, by which is primarily meant nature itself. On these worldviews, everything in existence is connected or related to everything else (Depaz Toledo, 2015) (Smith, 2000, p. 45) (Nunavut Department of Education, 2007).

Peter van Inwagen would classify this approach to reality as a relational ontology (2011, p. 390). To put it more directly, "relational ontology assumes that what primarily exists is in relation, not entities like things and individual human beings" (Sidorkin, 2002, p. 91). In this view, it would be possible to claim that serious existential uncertainty due to climate change and animal extinction "is a symptom of a deeper, metaphysical crisis in human consciousness and an accompanying crisis of culture" (Mathews, 2005, p. 8). One of the main reasons behind this is the exclusion of the worldviews and bodies of knowledge

exemplified in the world's Indigenous communities. And one of the primary reasons for these exclusions is no doubt the pervasive racial inequalities that serve to bar certain people and their voices from debates about what is morally acceptable — and about whose interests should matter and why. A CI built around an uncritical acceptance of agency as the standard of intrinsic moral value prevents us from discussing alternatives to the anthropocentric view that currently dominates debates about justice. It leads to our reduction of intrinsic moral value to moral agency and all the problems that this brings about. For those reasons, we would do well to explore other possible CIs as a basis for constructing a theory of global justice that can answer the problems of justice it is meant to address.

4.5. Pushing Beyond Agency: A Sentience Threshold for Considerability of Interests

One of the main points I have established thus far is that views about moral value can significantly affect whose interests matter in the deliberations leading up to the choice of a social contract. As established in the previous section, intrinsic moral value has been linked to agency by some influential authors. In this view, only those who meet a certain agency threshold are worthy of having their interests considered by the deliberators. And as I have argued in the previous section, to build a CI where your interests only matter because you have agency raises a number of serious questions. The patient in a vegetative state and the anencephalic infant were meant to illustrate this — to illustrate the difficulties in considering the interests of those who exhibit agency as the only ones of intrinsic moral value. Do we really want to accept, along with Kant, that these individuals lack intrinsic moral worth? What makes the interest of a moral agent more important than that of a moral

patient*?* Do the interests of moral agents matter *intrinsically* — i.e., in and of themselves — while the interests of moral patients like our anencephalic baby and accident victim matter for other reasons, i.e., only *instrumentally* in relation to the interests of moral agents? Do we treat the accident victim with dignity only because of the effect of not doing so on his family and loved ones? If our answer to these questions is no, then we would do well to look for a CI that does not focus exclusively on agency.

So, the idea that having agency is what ultimately justifies considering some being's interests intrinsically valuable seems morally problematic. It is also not required, given our practices and inclinations. A strong critic of this position, as well as a critic of racism, was Jeremy Bentham, for whom it was evident that considering animals as beings subject only to duties of charity but not of justice could not be justified. His position on the matter is worthy of a lengthy quotation:

> The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing, as, in England for example, the inferior races of animals are still. The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognised that the number of the legs, the villosity of the skin, or the termination of the os sacrum are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? nor, Can they talk? but, Can they suffer? (Bentham, 1970, p. 311)

It does not seem far-fetched to claim that Bentham's position encompasses the idea that it is not rationality or agency that should matter for determining intrinsic moral value but sentience.

Perhaps the most relevant contemporary formulation of this line of argument can be found in the work of Peter Singer. For him, the equal moral value of two beings cannot rest on "the possession of intelligence, moral personality, rationality, or similar matters of fact" insofar as there is "no logical compelling reason for assuming that a difference in ability between two people justifies any difference in the amount of consideration we give to their interests" (1993, pp. 20-21). In other words, we cannot use any fact of the world to ground the intrinsic value of some being but the exclusion of some other. An ethical approach of this sort seems to be grounded on the consequentialist consideration that it is necessary to protect beings of all kinds and forms. This previous formulation is what Peter Singer calls the principle of equal consideration of interests. At its core, it aims to "give equal weight in our moral deliberations to the like interests of all those affected by our actions" (1993, p. 21).

This principle readily applies to animals in the same way as Bentham suggested over two centuries ago. For Singer, once it has been accepted that our concern for others should not depend on what they are like or what abilities they possess, then it follows that basic physical differences, including those in the brain, do not amount to a good reason for excluding non-human animals from the same moral consideration given to other beings. All that matters is whether our actions affect them (Singer, 1993, p. 56). Following Bentham, Singer readily accepts that what makes an interest relevant for moral

consideration is whether that interest comes from a being who can suffer based on interactions with others. To have the capacity to suffer requires sentience, that is, the possibility of feeling and -to a certain degree- awareness.

In what follows, I will construct a CI using sentience as the basis for the deliberations of the contractual deliberators. However, for reasons explored in Chapter 3, I will also use the notion of the dignity of being. This combination of concepts will reduce the scope of a sentience-based CI to include only those beings who can feel. This particular CI, at first glance, seems to be more promising than an agency-based one. The standard would look something like this:

> *In negotiating the principles of justice that answer to the expansion and protection of the dignity of being, the deliberators will only consider as relevant the interests of those beings who have sentience.*

A consequence of this CI, constricted by the commitment to the dignity of being, is that the deliberators must leave out the interests of different parts of nature such as trees and rivers, for example, when deliberating about the principles of justice that will form the basis of their social contract.

4.5.1. The limits of a Sentience Based Approach

A sentience-based CI pushes the threshold of an SCT from agency to sentience. Despite this initial optimism, I want to highlight how a sentience-based CI might be incompatible in further ways with Singer's view, particularly regarding disabled people. Owing to utilitarian moral commitments that I will not fully engage here, Singer claims that we might

have good reason to kill infants with disabilities because of the extent to which their existence might negatively affect their parents' lives. To make sense of this point, it is important to notice that for Singer, different beings have different interests, and yet all these interests "ought to be given equal consideration whether they are the interests of human or non-human animals, self-conscious or non-self-conscious animals" (1993, p. 74). This, according to Singer, does not prevent us from ranking "the value of different lives in some hierarchical ordering" (1993, p. 107). Yet an important distinction needs to be drawn between different beings. When it comes to humans, for example, Singer differentiates between a human being understood as a "member of the species Homo sapiens" (1993, p. 85) and a person which is a "rational and self-conscious being" (1993, p. 87).

Singer understands that a classic utilitarian such as himself "can defend a prohibition on killing persons on the indirect ground that it will increase the happiness of people who would otherwise worry that they might be killed" (1993, p. 91). However, "[i]f a being is incapable of conceiving of itself as existing over time, we need not take into account the possibility of it worrying about the prospect of its future existence being cut short. It can't worry about this, for it has no conception of its own future" (1993, pp. 91-92). Here is where the claim that we might have good reasons to kill an infant comes back to the intellectual process. If we are in the face of a disabled being like the anencephalic infant, given the fact that we can compare and value different levels of existence differently, and that even if that being is a member of the Homo sapiens family, it would not be a person, then their interests will be pondered against those of their parents and "when the infant is born with a serious disability [… they might] turn the normally joyful event of birth into a

threat to the happiness of the parents, and any other children they may have" (1993, p. 183). Following that, for Singer, if the parents deemed that the infant might be a burden to their existence, they might be justified in killing the infant. This allows him to conclude that "[w]hen the death of a disabled infant will lead to the birth of another infant with better prospects of a happy life, the total amount of happiness will be great if the disabled infant is killed" (1993, p. 184).

Moving beyond the ethical position that somebody like Peter Singer might endorse, it is clear that a sentience-based CI would incorporate a large portion of human beings and animals. The latter would face exclusion only if there were an accompanying commitment to the dignity of being that somehow privileged human beings over animals. But this would not be because of the sentience-based CI itself. However, if we once again consider the person in a vegetative state and the anencephalic infant, problems begin to appear. This is because in the case that neither of them can feel something, as it would probably be the case, neither would pass the threshold to have their interests considered as relevant by the deliberators. This would be so with or without an accompanying commitment to the dignity of being. In this situation, we would once again be faced with the prospect that they could only benefit from duties of charity ascribed to other sentient beings who come within the terms of the social contract. Their fates, and the fates of any being who does not feel, would be left to those who do have sentience to 'do as one likes.'

Despite its shortcomings, a sentience-based CI would still be an improvement over an agency-based one. By relying on sentience, the protection of duties of justice would benefit any human being who can feel as well as several animals. This threshold would allow

deliberators to consider a lot more than only the interests of agents. Yet, it would still seem to fall short when we consider disabled people whose vital interests will not be considered relevant to questions of justice. My argument on this particular point is based on the idea that the person in a vegetative state and the anencephalic baby are both disabled persons.

But even if we were able somehow to incorporate these human beings into the realm of intrinsic moral value — and hence justice in the terms I described — the resultant CI will still fall short in failing to answer concerns that arise when we consider the very different worldviews embraced by many Indigenous peoples. As I mentioned before, relational ontologies lie at the heart of the culture of large segments of the world's human population. In a traditionally Andean worldview, some consider that mountains and rivers to be full members of their communities, owing to the relational approach to reality they embrace (Depaz Toledo, 2015, p. 127). This is an approach that declares that everything in existence shares the same intrinsic moral value, leading to the conclusion that every being's interests are worthy of full moral consideration. However, since it is not necessarily the case that a mountain or a river can feel something like pain as a result of any injuries it suffers, or at all, the interests of these entities would not be considered relevant to deliberators who assume a CI based on a non-Indigenous worldview, even one that focusses on sentience without an accompanying commitment to the dignity of being.

4.6. The Prospect of a CI Based on the Dignity of Being

My aim, thus far, has been to highlight how adopting an agency or sentience-based CI leaves one unable to adequately address the circumstances of global justice introduced in

Chapter 2. So, even if one could accept that a sentience-based shows more promise than an agency-based one, we are still facing an inadequate CI. Thus, limiting our capacities to move forward. In other words, adopting either of these CIs would lead to excluding many beings and many worldviews from conversations about global justice, thus limiting the capacity of our current methodological tools to address the concerns of justice that give rise to the question in the first place. Agency and sentience-based CIs not only fail to incorporate nature, and in the case of the agency-based CI, animals, they also both fail adequately to incorporate the interests of many disabled people, such as our vegetative accident victim or our anencephalic infant. This is not to mention the instances where adoption of an agency-based CI may lead a theorist, as it seemingly did Kant, to exclude from full moral consideration non-white human beings.

For the previous considerations, a CI based on the dignity of being would have to be developed to accommodate beings such as all of the human population, animals, and the environment. A possible formulation of such a CI could look like this:

> *In negotiating the principles of justice for a global theory of justice that answers to the expansion and protection of the dignity of being, the deliberators will consider as relevant the interests of those beings who are and that would be affected by the terms of the contract in any possible way*.

This formulation would force the deliberators of the social contract to develop principles of justice that could dramatically change how moral agents would have to relate to other beings in existence. Questions about hierarchy, instrumentalization, relationships, etc., would be incorporated into the discussions about how moral agents bound by duties of

justice would have to relate to each other and to moral patients. A further possible consequence of this kind of CI could be the need to change how humans relate to other beings. For example, instead of assuming that without good reasons given to us, moral agents, we can act on moral patients —such as animals and the environment — in whatever way we would like, we would have to identify good reasons that could justify us, moral agents, acting in a way that could negatively affect those moral patients that are beneficiaries of duties of justice. Further work would have to be developed in order to properly identify how would these relationships and reasons could look like under this CI.

In the conclusion of the dissertation, I will tie the ideas developed in this and the previous chapters with my methodological approach and more fully set out the parameters within which we should seek to develop a theory of global justice. I will provide a tentative and preliminary view of how a global theory of justice, constructed under the framework I have developed in this dissertation, could broadly look like.

Conclusion: The Possibility of a Global and Inclusive Contract

1. The Social Contract as a Methodology for Global Justice

The goal of this dissertation was to establish a framework for the development of a theory of global justice. Following the social contract methodology, I have argued that, when given a set of relevant problems, in the form of circumstances of justice, and the existence of certain tensions among views about justice from the Global South, we have good reasons to reconsider some of our most basic commitments to justice. I have taken the concerns of Andean, Māori, and Inuit worldviews into consideration. These views have been consistently excluded from global justice debates, leading to considerations about justice that can hardly be called global. I approached the social contract as a methodological tool (Chapter 1), highlighting the modelling features used for theory-building purposes. I relied on different historical examples to show how four pre-contractual elements are prevalent in most of the theories within the social contract tradition: a set of circumstances of justice, normative commitment(s), a standard of considerability of interests and the contractual device.

With those elements in mind, I proceeded to establish a set of circumstances of justice (Chapter 2) that could be incorporated into our discussions about global justice as the driving elements of the theory. That is, the main situations that a theory of global justice ought to address. I established a set that points towards problems that affect our global

society in ways that demand immediate answers. The first is serious existential uncertainty. The second is the existence of a shared global institutional framework. The third is the uneven distribution of the planet's scarce resources. The fourth is pervasive racial, gender, ethnic, and disability-targeted inequalities.

I then established, following Waluchow's work on community's constitutional morality, the parameters for the identification of a global political community and identified, preliminarily, Human Dignity as a plausible normative commitment on which a theory of global justice could be built. However, I proceeded to highlight some tensions that this normative commitment faces in light of current legal, political, and conceptual developments in different parts of the Global Political Community. For example, the incorporation of Sumak Kawsay into chapter 7 of the Constitution of Ecuador, or the designation of Te Urewera as a legal entity, with all the rights, powers, duties, and liabilities of a legal person in New Zealand. In recent years, Indigenous movements in different parts of the world have made great gains in pushing for the acknowledgment of the intrinsic value of the environment (Chapter 3). And they have, in many instances, succeeded in doing so. We can see this in a variety of official events and decisions that were clearly influenced by Indigenous thought. As we have seen, this way of conceptualizing the world is, in many ways, quite different from the manner in which standard theories within the SCT view the world and entities within it. These events and decisions embrace a more cosmocentric approach, one that clashes with the anthropocentrism inherent in the notion of Human Dignity that seems has, for some time now, served as the core normative commitment of the global political community. They reveal that we may well be in the midst of a new, or

evolving, fundamental commitment on the part of the global political community to what, in a very broad and not fully developed way, I refer to as *"the dignity of being."*

I conclude the dissertation with the construction of a standard of considerability of interests based on "the dignity of being" (Chapter 4). That is, I construct a standard to determine *which beings are subject to and bound by duties of justice that emerge with the contract and who are the beneficiaries of the duties of justice placed on beings who have the kind of agency that allows them to assume moral duties*. I first constructed and evaluated two possible versions of the standard, one based on agency and one based on sentience. Both were shaped with an eye towards the evolving commitment to "the dignity of being." I show how neither an agency-based standard nor a sentience-based standard adequately addresses all the circumstances of justice as they were discussed in Chapter 2. I conclude Chapter 4 by showing that a broader standard of considerability of interests is required, with all the complications this might bring for those considering issues of justice. The adoption of some such standard is the best way to address the interests of beings who might or might not have agency. This tentative standard of considerability would look something like this:

> *In negotiating the principles of justice for a global theory of justice that answers to the expansion and protection of the dignity of being, the deliberators will consider as relevant the interests of those beings who are and that would be affected by the terms of the contract in any possible way.*

Although further work is necessary to realize the extent and nature of the obligations of justice that this kind of standard of considerability of interests would force the contractors

to acknowledge, it is important to realize that this step could lead us to reconceptualize how humans act on the world. Instead of assuming that they are permitted to act on moral patients —e.g., animals and the environment — in whatever way they see fit, moral agents would be forced to acknowledge moral patients as possible beneficiaries of duties of justice. They would be forced to realize that compelling reasons must be provided to justify a moral agent's acting in a way that negatively affects the interests of those moral patients. More research on these matters is, of course, necessary. But given the now identifiable pattern of decisions across the world, where legal and political entities are recognizing moral patients as having rights, this kind of research becomes more pressing.

2. Making Global Justice, Truly Global

As I discussed in Chapter 3, a plausible theory of global justice will have to address the fact that Human Dignity as the basis of theorization faces tensions. The sources of these tensions are the existence of different approaches to moral reasoning and to moral value from the Global South and some parts of the Global North, mostly coming from what might be called Indigenous philosophies and their impact on policy development. To address these tensions, those developing a theory of global justice could do one of two things: 1. Reject Human Dignity as the normative commitment on which to base a theory of global justice, substituting for it something like "the dignity of being"; or 2. Articulate a conception of Human Dignity that does not entail the intrinsic superiority of human beings and that works in tandem with other normative commitments that result from extending the parameters of debates about justice to include voices in addition to those that have

traditionally framed the SCTR. As I established in Chapter 4, my preliminary proposal is to pursue the first option, that is, look at something like the concept of *"the dignity of being."* This, I think, opens up room to engage with different conceptions of what is valuable in the world.

I want to be clear: it is not my intention to reject Human Dignity as a valuable normative commitment ascribable to the global political community. Rather, my aim is to show certain difficulties with which it is associated and to highlight the need for future work in assessing and developing a better version of the global political community's basic normative commitment. Based on Wil Waluchow's theory of Community's Constitutional Morality (2007), I was able to show what appears to be a tangible change in the nature of the normative commitments underlying the practices and decisions of the global political community. For example, the preamble of the *United Nations Declaration on the Rights of Indigenous People* states that "respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment." This declaration, in conjunction with other similar changes in the practices, fundamental documents and decisions of the global political community, give us reason to believe that indigenous views about the value of non-human beings are beginning to have an impact on legal and political decisions worldwide. And if my analysis of the unacceptable anthropomorphism inherent in the notion of human dignity has merit, this shift in commitment is something to be welcomed. As suggested by Waluchow, this exercise of revising our fundamental normative commitments, one that relies on the

Rawlsian method of reflective equilibrium, is not only welcome. It is to be expected. (2007, p. 224).

According to Scanlon, reflective equilibrium proceeds as a three-step process that begins with the identification of a set of considered judgments about justice. Then, the process allows us to formulate principles that would account for these judgments. The final step involves the decision of what to do if those judgments and the principles diverge. Possible options are to give up the principles, give up the considered judgments, give up both, modify the principles, change the considered judgments, and all other possible ways to address this divergence until a better fit can be achieved. (Scanlon, 2003, p. 141). As Scanlon further notes, "it is likely that some accommodation of both of these kinds may be required. One is then to continue in this way, working back and forth between principles and judgments, until one reaches a set of principles and a set of judgments between which there is no conflict. This state is what Rawls calls reflective equilibrium" (2003, p. 141). This process might not always be easy, and because of our capacity to identify different and new cases, we have to acknowledge that judgments and principles could change. For that reason, Rawls claims that "the struggle for reflective equilibrium continues indefinitely" (2005, p. 97).

As we have seen, tension appears to exist between the global community's previously accepted basic normative commitment to Human Dignity, on the one hand, and other emerging commitments deriving from certain non-Western views — Andean, Māori and Inuit, on the other. In this situation, any reflective equilibrium that might have been achieved before these developments seems to have dissipated. In this case, it is both

possible and perhaps necessary to evaluate whether the global political community should keep, revise, or even reject its commitment to Human Dignity as the fundamental basis on which it deals with issues of justice at the global level. As noted above, it may well be possible that human dignity can stay, but in a form that does not privilege human beings over other beings. That is, in a form that makes it part of a larger commitment to the dignity of being. This is a possible path forward, and here I am merely speculating about what might come next. The aim of my dissertation is to provide a methodological approach for dealing with these issues – one that uses one of the most important theoretical tools of Western philosophy, the social contract, but in a way that is sensitive to pressing global problems and the possibility of incorporating non-Western views in debates about justice. My aim, I again wish to stress, is not to provide a full theory of justice.

We have also seen that a different standard of considerability of interests from those traditionally accepted seems necessary if we are to embrace a commitment to the dignity of being – one where the interests of beings with features beyond those connected to agency or sentience are viewed as intrinsically worthy of protection and promotion in a theory of justice. This standard would require that these interests must be considered by those whose deliberations result in the social contract. This kind of approach could lead to a form of what we might call a "stewardship contract." That is, a contract with principles that make it a duty of justice to respect or treat animals and the environment in a way that is respectful of their intrinsic value and not merely as instrumentally valuable beings or entities that should be protected insofar as so doing benefits human beings. Principles of justice developed with these considerations in mind are likely to resonate with different Indigenous

groups across the globe who are currently presenting their view of nature and the world as one that ought to be considered in moral deliberation.

Globalization has created the conditions for more voices to be heard. Voices that are too often denied a place in our debates about justice. Assumptions such as the centrality of the state in understanding global affairs, that a theory of justice can be developed without considering how one state can affect the vital interests of other states, that the whole world ought to be subordinated to the morality of liberal Western democracies, or that issues such as racism and discrimination could be put on hold, to be dealt with at later stages of political deliberation, are not suitable for a theory of justice that seeks to encompass the concerns and interests of peoples from around the world. These assumptions continue to be made, despite, e.g., the reality of climate change and its effects upon beings around the globe and its disproportionate effect on vulnerable populations, many of whom do not share the morality of Western liberal democracies. These are not merely theoretical problems that we can afford to ignore as foundational circumstances of justice. To try to hold on to models developed specifically for Western liberal democracies and for their white majorities, as if they are the universal and objectively correct ones for the entire world, is no longer acceptable – if it ever was. For far too long, we have limited the voices in our contractual negotiations to those who looked or sounded a particular way. Global justice demands global voices.

3. Going Forward

To what extent are Indigenous philosophies compatible with Western views or methodologies? That is a question I am not completely ready to answer. My hope is that common ground can be found among humans sharing the same planet. Further work needs to be done regarding Indigenous philosophy. By that, I understand the thought of groups of individuals who share space with Western views but whose intellectual value has been underappreciated and, in some instances, denied. One possible impediment to research on these matters is the decidedly religious flavour that indigenous knowledge sometimes takes on. For example, the Huarochirí Manuscript, a 16th-century Andean document, is the only source of Andean thought of the time to survive efforts on the part of the Catholic church to eradicate all "idolatries" from the area. The document contains many developed ideas about the nature of time, space, and beings accepted by that culture. Perhaps owing to the fact that these ideas were entangled with decidedly religious views, no study of the Manuscript has, to the best of my knowledge, taken place in Western philosophical circles. In considering whether this should change and whether sources such as this might prove fruitful in addressing issues of global justice, we could consider that one of the most important philosophical works in the Western canon, Locke's *First Treatise of Civil Government*, is to some degree also entangled with decidedly religious views. The same is true when we turn to the writings of Kant. Locke begins his *Treatise* with an exploration of the Christian bible, while Kant's *Critique of Pure Reason* devotes an important part of its argumentation to explaining how God must be presupposed as a condition of morality. To view the existence of religious views in Indigenous thought as precluding it from containing

valuable philosophical insights limits our understanding of worldviews that need to be part of our conversations if our theories of global justice are to be truly global in orientation.

These are all speculative thoughts about how to move forward and about the challenges we face if we choose – as I think we should – to move forward in ways that escape the limitations imposed by theorists such as Locke, Kant, and Rawls. My methodological approach throughout this dissertation was meant to highlight the possibilities of the social contract. I am not convinced that one of the most important theoretical tools of the Western philosophical canon can only engage with Western philosophical views. I think that by approaching each of the different pre-contractual elements that together make a social contract with open and critical eyes, we can realize that non-traditional formulations stemming from that tradition are open to the incorporation of Indigenous views. I am convinced that we can do better, and we can bridge the gap between Western and non-Western philosophical approaches. At least, we can try.

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