



# BEYOND A CALL OF DUTY

A third way of theorizing  
distributive state obligations

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## Introduction

One of the central debates in international justice is about the scope of principles of distributive justice. Liberal statist endorse a relationist approach and claim that principles of justice<sup>1</sup> are only applicable in domestic settings while cosmopolitans argue for a broader nonrelationist applicability of these principles in the international sphere.<sup>2</sup> I will acknowledge that the state has normative peculiarity but also claim that there are other grounds of justice, both relational and nonrelational, that plea for more demanding general obligations of justice towards other peoples or states. These duties are based on principles of justice since they are more stringent and enforceable than current statist views on foreign policies. I will oppose the narrow statist view and argue instead for a broader application of principles of justice. Relying on *grounds* or *domains* of justice allows us to leave the unilateral discussion between relationists (statists) and nonrelationists (cosmopolitans) for both do not succeed in capturing an accurate, complete account of international justice. Distinguishing different grounds of justice will show how the exact nature of a relationship determines what principles of justice are applicable for which agents. I will also show how this alternative approach is helpful in the challenging debate of noncompliance and questions on who is to pick up the slack that is left by noncomplying agents. The main argument I will thus make is that liberal statist have reasons to endorse more demanding international duties of justice. My aim is twofold: first to show inconsistencies in statist theory and second to explain how statist approaches are compatible with endorsing other, more demanding duties of global justice. Central questions that I will go into are:

*How do statist justify partiality in obligations of justice and what are the substantive and methodological inconsistencies in their arguments?*

*What reasons are there to endorse stronger obligations towards noncompatriots?*

*What international duties of justice arise if we do not assume full compliance?*

There are some essential flaws and incoherencies in statist arguments that I will expose. I will look at three statist lines of argument. In part I, I will introduce national statism and its claims on why national bonds or relationships are relevant for the scope of principles of justice. I will challenge this view by pointing at the interaction between national and international relationships and explain why this interaction entails a more demanding account of justice. In part II, responding to these problems I will introduce statist like Blake and Nagel that point to the coercive structure of the state as determinant for the comprehensibility of obligations of justice – a stronger account. Here I will question the inference that state violation of autonomy necessarily leads to distributive principles and hereby also question the nature of international duties of justice. Moreover, there is a tension between its practice-dependence methodology and the aim to create principles that guide political action. In part III, I will present Rawls's realist utopia as an answer to these difficulties and show how the thought experiment of the second original position fails to explain what duties of international justice necessarily arise and again go into the difficulties within practice-dependence. Furthermore, I explore the nature of practices that statist methodological practice-dependence involves. Part IV consists of an alternative approach referred to as a third way

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<sup>1</sup> Regarding principles of justice one can distinguish the content of duties (*"the substance of the obligation the duty bearer owes to the duty's beneficiary"*) (Chatterjee, 2011: 278) and the scope (*"the agents whose normative relationship is defined by the duty"*) (Chatterjee, 2011: 278). The focus of this thesis is on the latter.

<sup>2</sup> Furthermore, key feature of statist theory is the disanalogy argument. The disanalogy argument is based on a property *P* that is present at domestic level while absent globally. *P* is necessary for comprehensive obligations of justice to apply while its absence implies only basic obligations. The aim of this line of argument is to justify the partiality in obligations domestically and globally. In this thesis I will construe this argumentative structure. I focus on the in the incoherencies and incongruences in statist conclusions instead of the empirical claims about the presence or absence of this property globally.

of theorizing global justice, introducing a pluralist account of grounds and principles of justice while part V analyses problems of noncompliance and responsibilities of justice. Here I will discuss the demandingness of obligations in nonideal circumstances and claim that a third way-approach on justice entails picking some of the so-called slack.

## Part I National Identity Statism

The first part of this thesis discusses national statist approaches and the justification for comprehensive obligations towards compatriots. The focus will be primarily on the internal coherence of their arguments for a limited scope of justice based on national identity and culture. David Miller is one of the prominent defenders of these arguments and shows why national identity justifies strong redistributive obligations towards co-nationals and basic obligations to foreigners. I will explain this line of argument and challenge its internal structure. I acknowledge the truth and value of the premises and take this as a starting point for challenging the argument.

### Cultural community-based accounts of obligations of justice

Proponents of accounts that ground their theories of justice in the nature of relationships need to explain what it is in this nature that leads to the conclusion that obligations to compatriots outweigh duties towards noncompatriots. National anti-cosmopolitans hold that there is a disanalogy between the national and global sphere that is due to the distinction between fundamental and peripheral relationships. Although there are certain differences between individual national statist their line of argument is generally as follows:

(1). People (a) can be made to fulfil strong redistributive obligations towards people with whom they share a national identity and (b) cannot be made to fulfil such obligations to people with whom they share a cosmopolitan identity.

(1.1) People can be made to fulfil redistributive obligations towards other with whom they share a fundamental relationship whereas they cannot be made to fulfil these obligations to others with whom they share a peripheral relationship.

**[normative]**

(1.2) National identities constitute fundamental relationships while cosmopolitan identities constitute peripheral relationships.

**[empirical]**

(2). If a people cannot be made to do something, then it is not a requirement of justice to do so.

(3). People cannot be made to fulfil strong redistributive obligations to people with whom they only share a cosmopolitan relationship.

(Axelsen, 2013)

David Miller embraces these assumptions by pointing to the intrinsic value of certain relationships. He shows how this value is present through national identities which make *intra*-state relationships fundamental (Miller, 2007). This involves extensive and comprehensive obligations, since these are necessary for the preservation of these relationships. This identity makes us who we are since it affects our life chances, furthers our cultural beliefs which provides steering and gives us a sense of belonging (Miller, 2007). I acknowledge the normative peculiarity of nations in the sense that they indeed provide moral direction and valuable identities for people. Cosmopolitan relationships are presumed to lack this intrinsic value and fundamentality and therefore also do not entail comprehensive obligation for its conservation. Miller advocates limited basic obligations towards noncompatriots whose rights of subsistence are at stake.<sup>3</sup>

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<sup>3</sup> Miller calls these obligations humanitarian duties.

## Criticisms

There have been several responses to this focus on national and cosmopolitan identities. For example, one could instead argue that sharing peripheral relationships can also entail stringent obligations of justice (1.1). Other theorists like Caney point to the failure of the international institutional structure that makes relationships with noncompatriots peripheral but that the bonds are in fact stronger (1.2) (Caney, 2005). Ypi states that the argument underestimates the role of global inequality and that it does not respect the notion of agency and political transformation (2) (Ypi, 2012). Lastly Cohen challenges premise (2) by stating that even if we cannot be expected to fulfil certain obligations there can still exist a requirement of justice to do so (Cohen, 2008).

Although these criticisms can be appealing, the challenge I want to pose is aimed at the internal structure of the national identity arguments. Axelsen provides a convincing challenge to the first premise which invalidates national statist conclusions. Axelsen states that even if we consider (1b) to be true there remains a question about the nature and persistence of this presumed relationship. National statist must choose between two potential understandings of (1b):

A. People cannot be made to fulfil comprehensive obligation to people with whom they share a cosmopolitan identity given the very nature of this relationship.

### **[Strong account]**

B. People cannot currently be made to fulfil comprehensive obligation to people with whom they share a cosmopolitan identity since this relationship is currently peripheral.

### **[Weak account]**

The different understandings of (1b) have obvious implications for the coherence of the argument. National statist appear to need a strong account (A) in order to maintain a coherent line of argument. If the peripheral cosmopolitan relationship with noncompatriots can be changed into a more fundamental relationship then, even if we accept (2), it does not necessarily lead to the conclusion (3). If we thus show why it is appealing to endorse a weaker account of (1b), the internal coherence seems to be at stake. Axelsen rightly points out that we thus need to reconsider the notions of supposedly fundamental and peripheral relationships. I want to make the weak understanding (B) of (1b) more appealing by showing the way fundamental national relationships are *currently* shaped.

Although states are indeed normative peculiar and contain a certain intrinsic value, there is an important element of states that needs to be acknowledged. Even most statist do agree that national communities are not something that exist 'out there' but ought to be seen as something that exist in human consciousness – which in itself does not undermine the value of national identities. The image and sense of someone's communion lives in the head of people, even though they could not know all the members that share the same image and sense of national identity. Axelsen thus explains how people sharing a national identity

*think of themselves as belonging to a national community. Furthermore, they think of others as belonging to this community. And finally, they think of others as thinking of themselves as belonging to the community.*

(Axelsen, 2013: 461)

When (1) and (1.1) thus speak of people sharing a relationship it should rather be understood as people *imagine* sharing a relationship of national or cosmopolitan identity – something David Miller affirms (Miller, 1995). This insight in itself does not invalidate national statist conclusion, but it raises the question why we continue to value our relationships with co-nationals as fundamental. The relationship of sharing a national identity is the product of an ongoing process of nation-building. This sharing has not always been seen as fundamental but rather been made important through state-policies, state-institutions and nation-building (Axelsen, 2013). It is not tied to the human condition per se and the fundamentality can be questioned if this contestation is necessary for creating

stronger cosmopolitan identities. Axelsen explains how societal institutions reproduce and maintain the nature and character of national identities through education in national history and culture; national holidays; nationwide ceremonies and other national biases contributes to the collective imagination and henceforth the fundamental character of national identity (Axelsen, 2013). It is suspicious to justify a concern for certain inequalities based on relationships that are institutionally imposed or created (Armstrong, 2011). Furthermore, imagining this shared sense of identity necessarily entails a *not engaging* in these practices by noncompatriots, making and constructing this relationship peripheral. He claims that these nation-building-policies, although perhaps valuable, thus can affect and influence the character of cosmopolitan relationships and hereby also intrude the ability of people to fulfil strong redistributive duties towards noncompatriots. In this sense the ground for being not duty-bound to foreigners is that we have created policies that make us not duty-bound (Axelsen, 2013). Considering nationality identity that is created *in spite of* the rest of the world [which is what nation-building by state institutions entails] does not respect the interconnectedness of modern societies. The peripheral relationship is thus the result of the creation of an imagined shared national identity. Furthermore, the demanding duties of justice that result from national relationships are in turn necessary for maintaining these relationships which seems like a form of circular reasoning. It is flawed to argue that valuable national identities involve demanding duties of justice which are in turn necessary to uphold these identities and relationships.

Again, the inability to meet comprehensive demands to noncompatriots because of a peripheral relationship is the result of policy and institutional choices. If it is only current nation-building practices by choice that prevents overcoming this inability, we can only *currently* not be brought to meet these comprehensive demands – implying the weak account of (1b). John Rawls seems to accept this weak notion since current relations and affinities can change as he claims that

*[w]hat encourages the statesman's work is that relations of affinity are not a fixed thing, but may continually grow stronger over time as peoples come to work together in cooperative institutions they have developed. (...) The relatively narrow circle of mutually caring peoples in the world today may expand over time and must never be viewed as fixed.*

(Rawls, 1999: 112-113)

Rawls thus emphatically claims that just because the common moral identity to comply with more cosmopolitan ideals is not fully realized *now* this possibility should not be ruled out. Our moral world cannot be considered to cease at impermeable national borders (Tan, 2004). If we then consider this it seems that even if (2) is true it does not lead us to the conclusion, since it is no longer true that we cannot be brought to do something as executing comprehensive obligations. We can reformulate premise 1 then as follows:

(1)\*. People (a) can be made to fulfil strong redistributive obligations towards people with whom they *imagine* sharing a national identity and (b) cannot *currently* be made to fulfil comprehensive obligation to people with whom they *imagine* sharing a cosmopolitan identity since this relationship is *currently* peripheral and *contingent* on the imagined shared national identity.

We can then also consider whether the current inability is normatively desirable or if people can or should be brought to fulfil other duties to noncompatriots (2). Again, this does not imply a denial or refusal of national statist premises and one may still question the desirability and feasibility of comprehensive obligations to noncompatriots. It does however weaken the internal argument and pose a challenge for statists to either respond to this criticism or find another property that justifies the statist disanalogy argument.

### Internal inconsistency liberal principles

One related critique of particularly national statism is its inconsistency in enhancing liberal principles while at the same time not acting accordingly. Tan attempts to bring together cosmopolitanism and statism and shows how this apparent incompatibility that is inherent in current nation-building policies is a concern for liberal national statists (Tan, 2004). The value of equal opportunity for all is common in liberal theory. At the same time one of the acceptable national-building policies is the regulation of immigration into liberal states. Tan explains that

immigration regulation “allows a liberal state the needed interval of time to sustain and protect the national unity so crucial for grounding its democratic institutions.” (Tan, 2004: 124). This regulation is in itself liberal nor illiberal (if not based on race or whatsoever) but conflicts with the liberal idea of transnational equal opportunity. Tan claims that immigration is mainly the result of inhabitants of poorer countries pursuing economic opportunities, while immigration regulation denies them access to these opportunities (Tan, 2004). The tension then is that

*On the one hand, it is in the interest of liberal nationalists (...) to regulate immigration in order to protect a certain shared national identity necessary for sustaining liberal democratic institutions; yet, on the other, doing so seems to quite clearly violate the liberal idea of equality.*

(Tan, 2004: 125)

To prevent arriving in this dilemma nationalist statisticians thus need to either abandon their regulation strategies that are inherent in nation-building policies or make sure that the motivation for immigration would be averted by promoting global equal opportunity in other ways. Without solving this dilemma of choosing between one of these (apparently far-reaching) choices, it is obvious that the so important nation-building policies and rights to regulate immigration need more justification if one also wants to defend the liberal principle of equal opportunity. If it is fair and right to protect one's national culture, it is also fair to acknowledge that this calls for more demanding duties to guarantee the satisfaction of liberal equal opportunity. Statisticians then should be more concerned with international justice than they currently are. Liberal nationalist Yael Tamir accurately describes this apparent incompatibility:

*Restricting immigration in order to retain the national character of a certain territory is only justified if all nations have an equal chance of establishing a national entity, in which its members will be given a fair chance of pursuing their personal and collective goals. The right to preserve cultural homogeneity is therefore contingent on the welfare of other nations. Liberal nationalism thus implies that it is justified for a nation to seek homogeneity by restricting immigration only if it has fulfilled its global obligation to assure equality among all nations.*

(Tamir, 1993: 161).

So far, I have shown how national statism is prone to criticism on its internal consistency. Besides the apparent liberal tensions in nation-building policies there is a flaw in their arguments based on the intrinsic value of relationships. As mentioned before, statisticians need to look at the nature of the property they base their disanalogy argument on. Their focus is currently too narrow and based on fixed properties that are in fact not so fixed and static in reality as they assume. If we leave more space for the interaction and dynamic of properties that ground disanalogy arguments we can consider other properties that statist approaches offer. One potential response has been given by another subversion of statism that points at the political state coercion as a ground for distributive duties. We can call this subversion political statism and look more into this approach in the following part of this thesis.



## Part II Political Coercion Statism

We have thus seen how the moral property of identities is not solid enough to justify the partiality of obligations of justice. The interaction between the different relations and inherent circular reasoning weakens the overall structure of the argument. What statisticians need to find is a moral property that does not contain this weakness. Some statist responses focused on another property that would be able to justify comprehensive obligations to compatriots and basic obligations to foreigners. They claim that the feature of political coercion is present domestically and absent globally and justify their principles based on this current empirical state of affairs. I will consider this approach as a response to the aforementioned criticisms and introduce their argument. After going into this political coercion account, I will challenge its practice-dependence methodology and the logic and structure of the premises.

### Coercion based accounts of obligations of justice

Theorists like Blake and Nagel focus on the political structure of states and explained how political coercion is a morally relevant property that serves as a grounding for principles of justice.<sup>4</sup> Political statisticians claim that the relevant property that justifies the different obligations can be found in coercive structures. Michael Blake for example argues that legal state coercion is necessary for a concern with relative deprivation (Blake, 2001). He explains how territorial states are the legitimate users of political coercion which broadly determines and constrains the life prospects and freedom of its citizens within this system. Consequently, states only owe a justification of this use of coercive power and policies to the citizens that are abided by these property and criminal laws. Respecting the least-off compatriots generates a requirement to address their disadvantages because state coercion is justified by showing how its coercive institutions are most adequate in making the least-off better off in opportunities (Blake, 2001). So, although coercion may be a threat to freedom in the sense that it is a constraining factor, it is at the same time a necessity for freedom, since only some system of coercive criminal or property law can enforce and protect individual freedom and autonomy (Valentini, 2011b). The concern with autonomy and freedom makes a justification of coercive power necessary and leads to a concern with relative deprivation among compatriots (Chatterjee, 2011).

Although arriving at the same conclusion, Thomas Nagel takes a slightly different approach to ground a limited scope of justice in the property political coercion. Nagel explains that addressing relative deprivation and arbitrary inequalities between members of a society bound by the same rules is not only required because of these coercive rules but also because the citizens that are subject to these rules are "*joint authors of the coercively imposed system*" (Nagel, 2005: 128). Members of a political society are engaged and involved in 'the general will' that is exercised by the authority (Chatterjee, 2011). The fact that the state exercises coercive power over and in the name of its citizens creates associative obligations of justice between co-citizens. Nagel claims that this is the only appropriate domain for claims of justice since the enabling conditions for just coercive institutions only exist on the domestic level (Nagel, 2005). Since global inequalities are not due to coercive international institutions and global inequalities are not unjust in the way domestic inequalities are, there is no reason to engage in global egalitarian distributive justice. There is and will be no unified sovereign global power or government that is required for more comprehensive obligations.

Consequently, political statisticians conclude that since coercive mechanisms are necessary for distributive justice and are absent in the global sphere, the concern with global justice should be constrained to absolute deprivation. The type of coercion within the state is necessary for a concern with relative deprivation within liberal political theory. Blake admits that the concern with absolute deprivation in terms of basic rights of subsistence

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<sup>4</sup> Blake defines coercion as "*an intentional action, designed to replace the chosen option with the choice of another. (...) Without some sort of state coercion, the very ability to pursue our projects and plans seems impossible.*" (Blake, 2001: 272).

and autonomy can still require certain international obligations (Blake, 2001). Noncompatriots are still entitled to the preconditions of autonomous functioning so when these are at stake there may arise some obligation (Blake, 2001). This nondistributive obligation is referred to as a basic rights or humanitarian obligation, since it originates from a violation of basic autonomy and subsistence rights.

Given political statist views on the required property or state of affairs ( $P$ ), the general line of argument is as follows:

- (1) (a) Legal use of coercive state institutions ( $P_p$ ) is necessary for comprehensive obligations to apply while  
(b) the lack of autonomy and not being able to satisfy basic needs ( $P_q$ ) is necessary for basic obligations to apply.

**[normative]**

- (2) Coercive state institutions ( $P_p$ ) are present domestically and absent globally, where only the lack of autonomy and inability to satisfy basic needs ( $P_q$ ) is present.

**[empirical]**

- (3) Given the global political order, justice requires comprehensive obligations towards compatriots and basic rights obligations towards the poor.

(Axelsen, 2014)

Formulating the argument this way there seems to be less interaction between  $P_p$  and  $P_q$  as there was within national statism, making the conclusion less contingent. We can consider  $P_p$  and  $P_q$  as more independent properties that do not interact as much as the property of cultural identities. In this sense  $P_p$  does not determine the nature of  $P_q$  as much as in the case of national statism with national and cosmopolitan relationships. We can thus also presuppose a strong account as explained in part I which acknowledges the inability of citizens to fulfil comprehensive obligation to foreigners due to the very *nature* of this property of coercion. In this sense the property coercion is less vulnerable to contingency or changeability arguments and needs another reply. In contrary to national statist, political statist endorse a property that is less fixed and static. We must then leave the criticisms aimed at the weak account of justice that national statism was prone to and focus on another reply.

## Criticisms

Again, there are several possible objections to the claim that coercion is the right property to justify certain obligations. Firstly, critics focused on the normative part and tried to question why  $P_p$  is necessary in the first place for comprehensive obligations, just as why  $P_q$  inherently leads to basic obligations. These philosophers questioned whether coercion is a relevant feature at all for principles of justice and claim that there could be more commonalities than is presumed under the circumstances of  $P_q$  (Caney, 2005). Another critique is concerned with the empirical claim in political statist arguments. Several philosophers have claimed that there is also some sort of appropriate and strong coercion in the global realm that thus necessitates more distributive global duties of justice (Wenar, 2008).

I want to point to other potential criticisms without refuting premises for empirical reasons. First, I will look at the logic and argumentative structure behind premise (1a) and show the valid criticism Sangiovanni provides. Secondly, there is a strong and more general reply on the realist methodology of political anti-cosmopolitans that I will affirm.

The normative assumption of premise (1a) stated that the legal use of coercive state institutions ( $P_p$ ) is necessary for comprehensive obligations to apply. Michael Blake argues in favour of this statement and pointed to the

character of state coercion as both a threat and a necessity for freedom and autonomy. The logic behind this argument has been summarized by Sangiovanni:

- (1) *Bending someone's will (...) is presumptively wrongful (...) because it violates our autonomy*
- (2) *Those whose will has been bent are therefore owed a special, more stringent justification for the bending.*
- (3) *Basic social and political institutions massively bend subjects' will by enforcing a vast array of legal rules that shape the full extent of their life and liberty, including how they may acquire, transfer, and so on, property.*
- (4) *Those forced to live by this pattern of rules are therefore owed a special, more stringent justification for the resulting distribution than those who are not.*
- (5) *This special, more stringent justification, to be successful, requires the pattern of rules to realize a more demanding set of socioeconomic standards (e.g., egalitarian standards) among those whose will has been bent.*

(Sangiovanni, 2012: 87)

Note that (1) and (2) contain normative premises, (3) contains an empirical statement of coercive structures and (4) contains a conclusion. Premise (5) tries to connect the coercion justification with forthcoming distributive obligations. Sangiovanni points to the ambiguity of (5) following from (4), since – even though it may sound intuitively appealing – it is not a necessary consequence that the justification in itself requires more demanding distributive obligations. Blake and other statist fail to explain why the stringent justification of coercive power would necessarily require or imply distributive standards. Although Blake and other statist do not explicitly answer these difficulties themselves there are two plausible replies.

Firstly, some claim that the requirement of distributive standards results as a *compensation* for the *pro tanto* wrong of violating autonomy through coercion (Sangiovanni, 2012). Distributive justice becomes in this sense a form of rectificatory justice for the wrong of coercion. However, compensation always implies that one is made worse-off by the wrong of in this case the coercive enforcement of private law. Is the exercise of political will-bending not in itself already an improvement relative to its alternative – an anarchic state of nature in which no protection of freedom, autonomy or whatsoever would be enforced? For what wrong or worse-off situation then is compensation required? After all, we consider this will-bending through political coercion to be justified so it is questionable why rectification is owed for a wrong that is *pro tanto* (Sangiovanni, 2012). Furthermore, even if we consider compensation to be necessary for the wrong of coercion, why then would we redress this wrong with comprehensive distributive principles? Why would this compensation be the correct way to rectify the wrongs?

A second response is that principles of distributive justice simply outweigh the wrong of autonomy violation. The importance of securing distributive justice then erases the wrong of coercion. Nevertheless, this way the wrong and the distributive standards are completely detached from each other which makes the inference even more ambiguous. The will-bending practices then play no role at all in why the state has the distributive obligations that it does (Sangiovanni, 2012). It does not explain why states would comply with distributive principles, let alone in determining its weight and content (MacKay, 2016).

Blake's account of political coercion and distributive principles cannot adequately tackle these problems which weakens the internal structure of his argument. Simply stated, it is unclear why (5) follows from (4) which in turn questions the normative premise (1a) about the property coercion.

## Practice-dependent political action guiding?

Another kind of response to political statism targets its use of nonideal practice-dependence methodology – something that is referred to as the *status quo-bias*. Statist approaches on principles of justice are generally practice-dependent in nature. Statism entails a methodology that treats certain social properties or characteristics of the world as facts which need no justification but should be conceded in thinking about what is morally justifiable. Philosophical political theory is aimed at creating normative principles and obligations that guide political action so philosophers should incorporate and assume the real-life circumstances and properties in global affairs, such as the presence or lack of coercion (Blake, 2001). Only then theory can be valuable in creating principles to guide political action in the real world. One common assumption among statist is that the current institutional set-up and state of affairs is authoritative when theorizing on principles of justice.<sup>5</sup> We can thus add one other political statist premise or condition to the second premise of their line of argument, containing a methodological component:

- (2.1) Conceding soft facts  $P_p$  and  $P_q$  is necessary to create principles and obligations of justice that guide political action.

For the sake of the argument I accept their practice-dependent notion of conceding real world circumstances regarding coercion and their emphasis on obligations that guide political action. There is however an incongruence between their practice-dependence methodology and the statist conclusions. Statists take absolute deprivation and violation of basic rights and autonomy as an object of political change since it can and should be eliminated, which is in line with explicit orientation towards guiding political change. We must however take the current circumstances of presence or absence of coercion as a given in theorizing on obligations that guide political action. Even if international institutions might change into more coercive powers its impact on just domestic institutions would be marginal so therefore we presume unchangeable states of affairs or soft facts (Blake, 2013). Blake states that the world was not made for our comfort and that “*we find ourselves stuck within this framework, and we cannot dream ourselves free from it*” (Blake, 2013: 131).

At the same time political statism is emphatically aimed towards guiding political action which entails internationally improving basic rights. Political statist are pronounced proponents of humanitarian duties towards those states or peoples where autonomy and freedom are at stake, which implies an obvious change of current circumstances. Axelsen provides a very plausible critique by explaining how the current lack of strong international institutions contributes to severe poverty and the violation of autonomy (Axelsen, 2014). After all, if compliance with meeting basic rights obligations is to be guaranteed some form of international coercion – which currently lacks ( $P_q$ ) – is necessary. This is still in line with statist line of argument. Nevertheless, practice-dependence takes this lack of institutional coercion as a pretheoretical fact which makes it impossible to guide political action into meeting basic rights obligations (Axelsen, 2014). If we then add this consideration into their argument, the overall structure of their second premise would be as follows:

- (2) Coercive state institutions ( $P_p$ ) are present domestically and absent globally, where only the lack of autonomy and inability to satisfy basic needs ( $P_q$ ) is present.

- (2.1) Conceding soft facts  $P_p$  and  $P_q$  is necessary to create principles and obligations of justice that guide political action.

- (2.2) Guiding political action changes soft facts as property  $P$ .

The point is that we base principles on the given situation of soft facts while at the same time these principles are aimed at altering the given situation. We thus need to change the soft facts that give our principles grounding. It is impossible to concede facts of the lack of coercion that render the basic rights obligation while at the same

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<sup>5</sup> Axelsen accurately refers to this state of empirical affairs as soft facts.

place these facts within the scope of normative principles that should guide political actions. Political statist principles and obligations of justice are then in need of some stronger form of justification and grounding. In short, there is an incongruence between the practice-dependence methodology and statist conclusion for political statisticians. I showed that even if we consider a justifying property P to be unchangeable – unlike national statism, part I – there is a problem regarding their consequent obligations of justice. Political statisticians are thus faced with the challenge or dilemma to choose either for the preservation of their practice-dependence (which puts the fulfilment of basic rights obligations beyond the normative scope) or their principles of justice (which denies the premise of conceding social facts). I showed how it is appealing to indeed assume a practice-dependence methodology which leaves the right amount of space for the current global facts and does not distance itself from reality too much. On the other hand, it is also appealing to endorse their principles of justice and stress the importance of political coercion. However, we cannot accept both aspects of political statism. If one does not want to give up both political statist premises there is some sort of argument necessary, that combines these two. It is paradoxical to aim for a transition towards more just political institutions while at the same time taking a fixed institutional structure as starting point. In other words, statist approaches need arguments that can overcome this *status quo-bias*. What is then required is an argument that is both practice-dependent and able to guide political action. It is here where Rawlsian theories of a *realist utopia* deserve our attention.

# Part III Realist Utopia Statism

Statism must deal with some serious methodological and substantive challenges. While the contingency and changeability of a justifying property can be problematic, it is also challenging when we consider properties to be pretheoretical givens. Also, the logic between coercion and distributive principles has been challenged. What statisticians need to do then is to unite practice-dependence with the ability to guide political action. In line with Rawlsian thinking we could think of a realist utopia that would make statist theory coherent and congruent again. We can consider Rawlsian statism as an answer to the aforementioned criticisms on political statism. I will present Rawlsian thought as an attempt to unite practice-dependence methodologies and statist conclusions. Realist utopia statism is not built upon practice-dependence methodology as such (as political statism is) but is still based on certain kinds of (basic and institutionalised) practices. I will introduce this line of thought and again concede its assumptions while challenging it with some important critiques.

## Rawls’s theories of justice

Rawls introduced in his influential work *A Theory of Justice* in 1971 an important account of domestic justice, aimed at providing moral guidance within states towards a just institutional order called the basic structure<sup>6</sup>. In 1999 he extended this approach with an account of international justice: *The Law of Peoples*. What is interesting here is not so much the disanalogy argument (based on the domestic structure) he provides but mainly the way he shows the implications for both the national and the international realm. He introduces a thought experiment concerning an original position which leads to distinct principles of justice that can guide political action. It is particularly interesting to look at his approach on international justice, since he arrives at some statist conclusions based on limited duties of assistance towards noncompatriots in contrast to more comprehensive domestic duties.

Domestic Theory	International Theory
Parties in the original position <i>who select</i>	Parties in the original position <i>who select</i>
A public criterion of social justice (Rawls’s two principles and two priority rules) <i>which selects</i>	A scheme of international rules (Rawls’s eight laws of peoples)
A basic-structure design for any specific empirical context	

Figure 1, (Pogge, 2004)

Whereas Rawls theory of domestic justice is concerned with questions about what principles we would choose to realise our ideals to be free and equal citizens and live up to a difference principle<sup>7</sup> that benefits the worst-off in a society, his approach on international justice takes a slightly more modest form (see also figure 1). Rawls

<sup>6</sup> Rawls defines the basic structure as these institutions that define the various social positions that determine one’s expectations in life (Rawls, 1971).

<sup>7</sup> I.e. Rawls’s principle that states that social and economic inequalities are just only if they maximize the benefit of the least advantaged members of a society.

introduces an original position where representatives of liberal or decent societies think of principles and rules that govern and guide our interaction with other peoples in the Society of Peoples.

Imagining this original position, what principles would be chosen to govern relations between societies in the global order? It is important to note that only representatives of well-ordered peoples with a liberal or decent institutional order that respects human rights participate in this original position. The veil of ignorance – ignorance of the features of those represented such as population size and resource richness – is thinner than the domestic veil in the sense that the representatives know that they represent a liberal or a decent people. They are emphatically charged with the task of agreeing on a set of rules of conduct that guides cooperation instead of the design or reform of a global institutional order. Following from this imaginative deliberative forum arises a Law of Peoples that the representatives agree on (see figure 2). Rawls furthermore emphasizes the realist utopian character of this Law, since it is

*“realistic” insofar as it reflects human morality and psychology as they typically express themselves, and it is “utopian” in that it envisions a global society not as it currently exists, but, rather, as it could be. (...) [A] realistic utopia is a political framework that extends what are generally perceived to be the practical limits of politics, but does so in a manner that is compatible with our existing “political and social condition.*

(Chatterjee, 2011: 930)

It is important to note that this approach explicitly tries to combine practice-dependence with guiding principles of international justice and therefore can be considered a response – although not explicitly – to the criticism showed in part II. Original position thinking relies on the point and purpose of existing social practice which provides a description and direction for those participants engaging in this social practice (Frøslee, 2013). So, we assume a basic structure and at the same time receive a form of moral instruction following from the original position about how to regulate it, which is independent from our current beliefs and standings. In this sense justice requires a basic structure as an instrumental means to realize justice’ demands (Abizadeh, 2007). If we make a distinction between two forms of practice-dependence we see more clearly how realist utopia statism is an improvement compared to political statism. Firstly, Rawlsian thought is genesis-practice-dependent in the sense that current practices are antecedent to the ideas and principles that are derived from practices in the basic structure. On the other hand, there is an application-practice-dependence presupposing moral ideas that form norms to assess current social practices (Frøslee, 2013). Rawlsian theory contains both forms of practice-dependence in the sense that it has both a practice-to-idea fit (genesis practice-dependence) and an idea-to-practice fit (application practice-dependence) (Frøslee, 2013).

FIGURE 2 LAW OF PEOPLES

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe the duty of nonintervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime

Rawls, Law of Peoples 1999: 37

Regarding the international obligations of justice that we are interested in it is particularly the duty of assistance (Law 8) that concerns us. Before going into this duty of assistance and the criticisms we can construct the Rawlsian argument as follows:

- (1) In an original position representatives of liberal peoples would agree on a duty of assistance to create a society of peoples.
- (2) The duty of assistance targets burdened societies but does not entail distributive duties.
- (3) Liberal peoples have a non-distributive duty only towards burdened societies.<sup>8</sup>

## Criticisms

Rawls's theories of justice are often considered to be cornerstones in theorizing on principles of justice and therefore it is obvious that his accounts of domestic and international justice led to lots of critiques. Basically, the criticisms focused on either the disanalogy Rawls assumes or its empirical premises. The disanalogy Rawls introduces is the presence of a basic structure – the arrangement of the major political and social institutions of a liberal society – domestically and its absence globally. Because of this basic structure he applies a distributive difference principle on *intra*-state level but denies its applicability on *inter*-state level. Just as with the national and political statist approach, several cosmopolitans claimed that this disanalogy should not be considered authoritative and therefore proposed a wider applicability of the difference principle. In this sense the international institutions are presumed to be analogous to domestic institutions and can thus justify the application of a global difference principle. The 'global basic structure' has the same profound and powerful effects as the domestic basic structure and therefore a global difference principle – although perhaps infeasible – needs to ensure a fair and just cooperation within this global realm (Caney, 2005) (Beitz, 1979).

Secondly the empirical component of Rawls's theories of justice is challenged by philosophers like Thomas Pogge. He attacked the Rawlsian premises of internal causes of wealth and poverty, that claim that

*causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members*

(Rawls, 1999: 108)

Pogge claims that causes of poverty are not only internal since even if bad decisions are made domestically, they are made within an unjust global context that disadvantages poor societies by for example unfair trade (Pogge, 2002). Wenar introduces the so-called resource curse which states that global injustices lead to the fact that resources have become an impediment rather than a guide to prosperity (Wenar, 2008). In other words, the national responsibility assumption that grounds the principle that we do not have global egalitarian duties has been widely contested.

## Existing practices versus statism

Now that I have shown what line of argument Rawls follows, on what grounds he derives his conclusions and some of the criticisms I will provide an alternative answer to his attempt to unite practice-dependence and statism. I want to provide a critique that focuses on the deductions and internal coherence of Rawlsian arguments and thought experiments such as the original position. We have seen what Rawlsian practice-dependence consists of and what role current practices play. If we look more into these social practices that are both the foundation and the object of principles of justice, there appear to be some flaws in practice-dependent statism, which is central to Rawls's original position-thinking.

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<sup>8</sup> It is beyond the scope of this thesis to go into Rawls's different types of peoples. It suffices to know that Rawls famously distinguished liberal and decent people from burdened or outlaw societies, which led to lots of criticism.



Existing institutions and practices thus play a crucial role in the justification of conceptions and principles of justice. The content, scope, and justification of principles of justice depend on the structure and form of the practices that the conception is intended to govern (Sangiovanni, 2008). This way the functional role of the practice in the shared understandings of its participants determines the formulation and justification of moral principles. However, identifying social practices and institutions – such as those within the basic structure – is a complex interpretive enterprise. If social and institutional practices are crucial for designing principles of justice, what practices do we speak about? In other words, it is self-evident that any principle of justice has as a condition of its application the existence of some social practice that needs to be identified. James explains how Rawls is therefore engaged in a Dworkinian constructive interpretation where he identifies a practice [which he considers to be the basic structure – the major institutions of a modern constitutional democracy], identifies the purpose of that practice [the moralized description of the basic structure as a cooperative scheme for the sake of the relevant, specified goods] and finally sets requirements that must be fulfilled to achieve this goal (James, 2005). Whereas it is likely there would be general agreement on the uncontroversial description of a basic structure as an object of interpretation, the moral classification of this object as a ‘cooperative scheme subject to requirements of reciprocity and mutual recognition’ – that ground original position reasoning – would be more controversial (James, 2005).

*For instance, some may not see domestic institutions as having any distributive aim. In the international case, some may see the goal of international law as the promotion of distributive justice, and not merely, as Rawls would have it, the goals of keeping peace, respecting autonomy, and upholding only the most basic of human rights. Such disagreements call into question whether Rawls’s favored interpretations are ultimately defensible.*

(James, 2005: 302)

It is thus questionable whether Rawls’s moral assertions and interpretations are defensible. If existing social practices are necessary to apply and generate principles of justice, while it is at the same a precarious and complex exercise to identify, select, interpret and describe these practices, the resulting conception of justice is also ambiguous.

Besides this complexity in accurately identifying existing practices there are some difficulties in understanding the nature of these practices.<sup>9</sup> Rawls builds on existing – domestic – institutional practices as starting point for generating principles of justice. We can understand these practices as culturally varying phenomena that are human constructions dependent on natural and social circumstances. Human beings have a reflexive relationship with these activities that are prone to systemic instabilities and need constant human support. We can consider governmental institutions, market systems and international law as examples of these institutional practices (IP’s) (Frøslee, 2013). However, if we add another dimension of practices, it seems uncertain that only these institutional practices generate principles of justice. Frøslee introduces the concept of basic practices (BP’s), which are activities that are inherent in human nature and independent of time and cultural developments (Frøslee, 2013). He identifies

*cultural and transhistorical invariance as necessary conditions for calling a social practice a BP. Accordingly, BPs often pre-exist human awareness of their existence; they are objects of human self-discovery, rather than deliberate human constructions. (...) BPs are part of what makes us human.*

(Frøslee, 2013: 88)

Language is a primary example of these basic practices. According to Rawls’s definition of existing practices, basic practices too can be identified as a practice that we can derive principles of justice from. It is interesting to analyse the relationship between IP’s and BP’s and the unwarranted importance Rawls assigns to IP’s. BP’s are necessary conditions for IP’s to exist. Institutions such as political systems and international law are not possible

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<sup>9</sup> Existing practices being “any form of activity specified by a system of rules which defines [...] roles, moves, penalties, defences, and so on, and which gives the activity its structure.” (Rawls, 1955: 3)

without or independent from basic practices such as language. This causal priority suggests that we can only make sense of institutional practices in terms of basic practices (Frøslee, 2013). The difference between the cultural and historical invariance of BP's vis-à-vis the variance of contingent IP's that are limited to social and political circumstances also has its implications for the normative scope of derivable principles of justice. We can assume that

*the scope of a principle tracks the extent of the existing social practice and the embedded norms from which it is derived.*

(Frøslee, 2013: 90)

Then, if we consider IP's to be contingent on BP's – which is still in line with Rawls's practice-dependence – we cannot conclude that derived principles are necessarily statist in nature. We thus cannot overlook the interdependence between basic practices and institutional practices. If there are indeed other forms of practices that pre-exist or underpin institutional practices there are obvious consequences for the derivable principles of justice – such as those formulated by Rawls.

If we look beyond this distinction and again try to derive principles of justice based on existing practices it appears to be ambiguous how methodological, practice-based considerations can specify the conditions for a moral principle. Meckled-Garcia focuses on the process of deriving moral principles of justice and exposes how practice-based considerations as such do not deliver a moral rationale for certain principles:

*In fact, if practices do specify the way in which an abstract principle is applied, it is only to the extent allowed by the principle and its rationale. Practices may add detail, colour, specifics, but these are detail, colour and specifics in how an independently derived principle applies, given that it already applies. They are not independent considerations as to whether the principle should apply or not. That matter is already decided by the point of the principle, not the point of the practice to which it applies.*

(Meckled-Garcia, 2013: 109-110)

Again, existing practice in itself delivers little guidance in shaping and applying principles of justice. The methodology seems to lack adequate rational justification and can hardly be used as a way of arguing about scope restriction on principles of justice. Meckled-Garcia thus states that any given moral principle of justice for a given population must be justifiable “by reference to at least one moral value or independently derived moral principle” (Meckled-Garcia, 2013: 108). This seems impossible when making use of a practice-dependence methodology and only relying on existing practice. There must be some sort of external, universal factor to assess and apply principles of justice – something Rawls does not acknowledge.

Thus, if a principle applies to the world only insofar as an appropriate kind of social practice exists, that principle cannot itself be used to criticize either the existence or non-existence of the kind of practice that conditions its application. If we see Rawls's existing practices as moral enabling conditions for principles of justice – such as his two domestic and eight international principles of justice – they cannot at the same be used to assess these principles. Practices that condition the application of certain principles can at most be criticized as unjust in relation to requirements that apply to some other basic existing practices. It would make more sense to also allow external criticism by assessing existing practices with reference to norms that are for example embedded in basic practices (Frøslee, 2013). However, this is not how Rawls arrives at his conceptions of justice. This shows one of the flaws in Rawlsian theories of justice, in the sense that it is hard to combine practice-dependence and derived statist principles of justice. Realist utopia statism, denying to embrace more demanding international duties of justice that go beyond a mere duty of assistance, is then faced with a serious challenge.

## Part IV Multiple grounds of justice

So far, we have seen that liberal statist arguments of the demandingness and nature of obligations of justice do not have sufficient grounding to arrive at their conclusions. Regardless of the property each approach identifies to be a justification for certain obligations of justice, there are still inconsistencies that undermine these justifications. Liberal statism is not only prone to cosmopolitan critics but must also reply to methodological flaws that put its substantive implications at stake. I will show why statist approaches are still valuable with reference to a pluralist third way of theorizing global justice. I will discuss theorists like Risse, James and Valentini who provide good reasons to acknowledge the peculiarity of statism while at the same time adopt more demanding duties of international justice.

### Statist vantage point

I have shown that statist do indeed have good reasons to acknowledge the peculiarity of the state as the primary *locus* of distributive justice and that this brings about demanding obligations of justice towards compatriots. The question remains then what this implies for international duties of justice. There are good grounds to distinguish the demandingness in obligations of justice between several populations, but I will question the dichotomy between the domestic and the global sphere and the use of only one exclusive, determining property. The alternative approach I propose – that builds upon some key statist insights – could be settled within a third way of theorizing global justice, that takes stand beyond the traditional cosmopolitan-statism debate. I will refer to several authors to show how these approaches have several substantial benefits in capturing an accurate image of current existing global practices and what obligations they ask for. Besides disentangling conceptual and normative disagreements between cosmopolitans and statist, this third way provides a substantive and methodological sound alternative and helps to distinguish what duties of justice we can distract from what particular practices of the international order (Wollner, 2013). Lastly there is more attention for aforementioned problems of action-guidingness and aspiration to formulate non-utopian theories providing more guidance and motivation for real agents.

### Pluralist grounds, pluralist obligations

One important feature of this alternative approach is its pluralist nature. For example, Risse introduces the concept of a multiple grounds-of-justice approach. Grounds of justice “*are the reasons why claims [obligations] of justice apply to a certain population*” (Risse, 2012: 2). In statist-cosmopolitan terms this comes down to the reason or determining property that generates certain obligations of justice. Whereas the current debate is about disagreement to whom the grounds apply – domestically, universally or both – Risse adds another dimension to this division. If we consider grounds of justice to be pluralist and differing per context or population the debate on obligations of justice can be expanded. The most important ground of justice identified so far is the one of shared membership in a state.<sup>10</sup>

Risse calls statism a *nongraded* internationalism approach since it entails a single justice relationship and it tries to find a necessary condition for principles of justice to apply (Risse, 2012). However, if we consider obligations of justice to be gradual, we can identify principles of justice that depend on the associational context and relationships. It is too narrow to assume one exclusive property that is only present in one context. Risse shows how *graded* internationalism may be more appealing and provides a more accurate account of different duties of justice by distinguishing several grounds which apply in several gradations and in several contexts. It is tempting to include both relationist and nonrelationist grounds in one approach on global justice, instead of

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<sup>10</sup> Risse himself introduces a [non-exhaustive] set of salient grounds of justice, containing shared membership in a state, common humanity, collective ownership of the earth, membership in the global order and subjection to a global trading system.

trying to identify one foundation for comprehensive duties of justice. It does not deny the importance statisticians attach to properties on the domestic level. Rather, it captures more elements of a complex global order that can all generate duties of justice. Statisticians can still advocate more demanding duties towards compatriots but do not simply have to marginalize duties to noncompatriots as being exclusively humanitarian or 'basic'. Mandle too acknowledges this appeal and speaks of a moderate cosmopolitanism or weak statism which holds that international institutions could be strengthened without undermining national attachments and loyalties (Mandle, 2006). Risse explains how relationist grounds of justice such as Millers national statist approach does not exclude the possibility of another nonrelationist ground that justifies other more or less demanding principles for other populations (Risse, 2012). This approach transcends in this sense the division between relationism and nonrelationism.

This approach does not necessarily conflict with a Rawlsian realist utopia. Risse considers a realist utopia to be relative to a point in time or current state of affairs since what is now realistically utopian might change over time (Risse, 2006). Global problem solving requires state cooperation that in due course alters the realist utopia. Regarding the second original position Risse assumes that the representatives do not have the knowledge whether they represent burdened or well-ordered societies (Risse, 2005). If we assume such a second original position it becomes interesting to see how and on what grounds representatives would choose what principles. Not only would it be more compelling to adopt a duty of assistance for representatives not knowing about their represented state, they could also use other grounds to create other global principles. There are still grounds they can be aware of in the original position such as the ground that they are the common owner of the world and its resources.

In short, there are different grounds of justice, being both relational and nonrelational while a range of considerations would apply within the state and render demanding obligations of justice [hereby maintaining the state's peculiarity]. Nevertheless, weakened versions of these conditions or grounds can apply within other political arrangements and generate other still demanding principles of justice. Then we can leave the current distinction between either the presence or absence of intrinsically valuable relationships and consider the relationships to be more gradually. The demandingness of principles of justice can depend on the extent to which more aspects of the lives of those within its scope are affected. There is thus a variety of justice-relevant considerations present pre-eminently at the international level.

## Coercion and international trade as grounds

If we consider theorizing global justice to be a pluralist enterprise we can also better value the role of coercion – as we went into in Part II – as one ground of justice. To recall, political coercion statisticians claim that the relevant property that justifies the different obligations can be found in coercive structures. Valentini makes a valuable contribution to this debate. Valentini emphatically points to the function of justice as morally assessing practices of coercion (Valentini, 2011b). Nevertheless, we can extend our understanding of phenomena that we hitherto have been considering to be coercive. We can speak of coercion if we understand it as all constraints on individual freedom. This can occur both interactionally, where one agent places a non-trivial constraint on another agent's freedom, and systemically, where a dominant institutional system of rules constrains other agents' freedom (Valentini, 2011a). This way the concept of justice as assessing instances of coercion can be extended to the international arena. Different types of relationships of coercion generate different principles of international justice between different actors. Or, in other words, the content of duties of justice depends on how agents or states constrain each other freedoms in for example international trade or other social practices that generate some form of inequality between agents (Valentini, 2011a). Regardless of the extent to which an agent is involved in the constraining of another's freedom, sharing responsibility for international interactional and systemic coercion as member of the state and participant in practices as trade and finance makes him subject to different duties of global justice.

This way we do not have to abandon the importance statisticians attach to the concept of coercion but can instead use it as a ground for more demanding duties of justice. By stressing the importance and widening the concept

of coercion this third way better tells us when and why problems of justice arise internationally and what obligations they give rise to. Moreover, a wide understanding of coercion as a ground of justice captures more of the intuitively justice-relevant considerations for principles of justice. Even unintended constraints on freedom as the aggregate result of independent individual acts can count as (globally systemic) coercive and thus generate more demanding principles of justice (Wollner, 2013). Although justice may not exclusively be about morally assessing all instances of coercion, it is undeniable that coercion in all its different (systemic, interactional, domestic and international) appearances is one of multiple grounds that generate obligations of justice. Although the manifestation of coercion in different realms may differ, they do generate principles of justice (though differing in content) that govern them. The fact that statist emphasize the independence of states and deny an interdependent global order does not alter the conclusion that different types of coercion call for different principles of justice. In short,

*What makes a certain agent or entity an appropriate subject of justice, on this view, is not primarily its constitution (e.g. it being a state, it being a basic structure, etc.); rather, it is the way it affects persons' freedom. Even though different standards of justice apply to different forms of coercion, what brings them together is their aim: that of making coercion compatible with everyone's right to freedom.*

(Valentini, 2011a: 206)

In accordance with this third way-approach is the ground of international trading practices. There are some important practices that form the background for international trade:

*Those practices constitute well-organized coercive and cooperative international structures that could be arranged in multifarious ways. It is in light of these points that trade is a ground of justice*

(Risse & Wollner, 2014: 210)

If we thus acknowledge that there are social practices that enable trade, questions of fairness and how to arrange these practices to be acceptable to all participants arise (Wollner, 2013). After all, international trade generates winners and losers, together forming a population or ground beyond the statist scope of justice. And again, different subjects of justice require different principles of justice.

There is a useful conceptual matrix that can serve as a device to integrate and better appreciate the role of this third way-thinking in debates on obligations of justice. This matrix better accounts for the differences in circumstances and relationships between responsible agents. This matrix consists of the variables A-E where A is responsible to B for C through D based on E (Gilbert, 2012). In this matrix A refers to the agent, B to the subject, C to the goods involved, D to the principle of justice and E to the ground of justice. If we then identify a certain practice and derive the ground of justice, it helps us to answer this question: who (A) is responsible to whom (B) to do what (C) through what principle (D) that is derived from what ground (E)? Specifying these given variables A, B, C, D and E in different contexts provides a helpful framework in theorizing global justice. If we acknowledge that there are multiple grounds of justice (E) that provide different principles of justice (D) we also assume that the substance of the obligation (C) may be more demanding (depending on the ground) than statist hitherto have claimed.

In Rawlsian terms this implies that being part of a basic structure (E) gives rise to a difference principle (D) that requires a substantive redistributive obligation (C) for agent A towards its compatriots (B). However, we can also think of other grounds: resource-rich country A is responsible to resource-poor country B to make B able to satisfy its basic needs because of the right to subsistence (D) derived from the ground of common ownership of the earth (E).

This is obviously a very simplified image of theorizing obligations of justice and one can disagree with the conclusions and implications of a given ground (E). It also does not make the process of deriving principles of justice easier per se but it does more right to the complexity of current domestic or global relations. The debate is not about whether it is statist ground E (relational in nature) or cosmopolitan ground E (nonrelational in nature) that

is exclusive and decisive for obligations of justice. Rather, it is about what different grounds we can distinguish and consequentially, how these different grounds provide a more thorough grounding to domestic and international obligations, differing in demandingness. The debate is far from over and deserves further inquiry with regard to exploring grounds, deriving fair principles of justice from different grounds and dealing with competing grounds in cases of conflict.

In this part, I have shown how a third way of theorizing global justice is helpful and goes beyond traditional debates between statism and cosmopolitanism. By exploring multiple grounds or features that each apply to its own population of affected agents one could leave behind the dichotomy between either relational or nonrelational obligations of justice. What makes it appealing is that it does not deny the importance statisticians attach to properties on the domestic level. Instead, it captures more elements of a diffuse global order which all generate some sort of obligations. Statisticians can still secure more demanding duties towards compatriots. There thus seems little reason for either national, political or Rawlsian statisticians to refuse this third way based on grounds of justice since there is no apparent tension in the application of several grounds based on existing practices and statisticians' assumptions.

## Part V Noncompliance and the slack

The last part of this thesis is concerned with problems of noncompliance in the international sphere and duties of justice to pick up the so-called slack. Now that we have seen the different statist approaches, its derived principles and the third way of theorizing global justice it is interesting to look at the actual global state of affairs in which states operate. How should states deal with a global sphere in which not all agents take their fair share of responsibility? Given the answers to the questions of the scope of justice, I will discuss the demandingness of obligations in nonideal circumstances and claim that a third way-approach on justice entails picking some of the slack. This part will revolve around the questions when, why and who is taking up the slack.

### Picking up the slack

Noncompliance and the emergence of a slack happens when there are several global agents like states that share a responsibility of avoiding or anticipating on a problem or potential harm (such as climate change, immigration or extreme poverty). Together they have obligations of justice and responsibilities can be fairly divided amongst them so each of them can take a fair share (Miller 2011). However, some state actors do comply while others do not. Noncompliers hereby unfairly shirk their responsibility, leaving others with a slack (Miller 2011). The main question that then arises is what we can and should expect of those who do take their share and comply. What does justice in this situation of noncompliance demand from the responsibility of compliants: take their fair share, pick up the slack or reduce their responsibility?

Firstly, there are theorists that argue in favour of extended responsibilities for complying agents who ought to take more than their fair share. Stemplowska defends the duty to take up the slack when fulfilling this slack is needed to aid to those in dire need (Stemplowska, 2016). She illustrates that slack taking is merely a problem for affluent states towards developing states. The underlying argument of her theory is as follows:

*If we are under an enforceable duty to help those in dire need at a reasonable cost to ourselves, we remain under such a duty even if helping involves slack taking. It is hard to believe that what gives rise to our duties to aid is not the dire need itself but the dire need in the absence of slacking.*

(Stemplowska, 2016: 593)

Accounts that advocate taking an extra share of responsibilities often focus on the reasonability of the costs for compliers in order to reach larger benefits. Especially in situations where a fair share is small in comparison to prospective large gains, it is a moral responsibility to take more than the fair share. In this sense it becomes a consequentialist matter of weighing the costs against the benefits (Stemplowska, 2016) (Miller, 2011).

It is not surprising that the statist perspective offers different views on the question of how we should deal with noncompliance. Being sceptical about responsibilities towards noncompatriots in the first place, these accounts generally reject the claim that noncompliance implies fulfilling more than their fair share. Miller starts his argument by saying that our intuition whether we ought to take up the slack differs per problem or case (Miller, 2011). The maxim is nevertheless that it is not a duty of justice to fulfil more than one's fair share. Murphy formulates his statist approach with a compliance condition, claiming that

*[a]n agent-neutral moral principle should not increase its demands on agents as expected compliance with the principle by other agents de-creates. Demands on an agent under partial compliance should not exceed what they would be (all other aspects of her situation remaining the same) under full compliance from now on.*

(Murphy, 2000: 77)

Hence, the costs or net level of sacrifice when picking up some slack should be the same as it would be under full compliance. Once one's responsibility or obligation has been discharged, the injustices that remain is only the responsibility of the noncompliers. Compliers are not required by principles of justice to correct these injustices, although there may be reasons to do so.<sup>11</sup> The fact that we *are able* to correct an injustice does not imply that we *ought* to do so by means of justice. Miller prefers to speak of a *humanitarian* obligation – since it is not an enforceable duty – when we talk about taking extra responsibility over one's fair share (Miller, 2011). Although consequentialism may provide reasons to take on some of the slack (based on beneficial outcomes), Miller claims that an agent cannot be forced to do so, based on his intuition (Miller, 2011). The demandingness of obligations of (international) justice is, according to statist, insensitive to the presence of noncompliance.

Furthermore, statist like Murphy and Miller point to the claim that a responsibility to take up a slack would imply that noncompliers are not treated as responsible moral agents. Stemplowska summarizes this argument as follows:

*Since accepting the duty to take up the slack entails not seeing the slackers as responsible moral agents, and since they are responsible moral agents, therefore, accepting the duty to take up the slack rests on a conceptual mistake.*

(Stemplowska, 2016: 601)

Miller also explains cases of noncompliance in which it is justified to take even less than one's fair share, what he calls *grouching*. Under special circumstances actors are taking as much responsibility as others on average in a situation of partial compliance (Miller, 2011). He states that substantial noncompliance changes the meaning of fair shares of responsibility and that grouching then assures horizontal equity within a group of actors. In these rare cases actors take less than their fair share and do not take more of the burden than others. Grouching thus applies to situations where the compliance of one actor given actual levels of noncompliance would achieve very little or where the harm of noncompliance does not contain injustice towards victims and the potential *groucher* has good reasons to reduce its burdensome responsibility.

## Grounds of responsibilities

Having introduced this debate on responsibilities in situations of noncompliance the question comes to mind why we should engage in this discussion and how this third way of theorizing global justice based on grounds is related to this debate at all. As we will see, the major benefit of applying this approach in debates on noncompliance is that it can be action-guiding in real-world, nonideal circumstances. If we bear in mind that duties of justice can indeed be more demanding than statist hitherto have assumed, the third way-approach can also help to better understand which agents or states bear the responsibilities to *fulfil* these duties. Under specific circumstances of noncompliance, it helps us to comprehend who has what obligation to whom. Global noncompliance undeniably brings about severe and acute global problems and injustices regarding for example climate change and immigration that are undesirable and somehow need to be resolved by collective action<sup>12</sup>. Since

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<sup>11</sup> Miller makes a threefold scale distinguishing between obligations of justice [*enforceable*], obligations of humanity [there are *reasons of justice* to act a certain way] and supererogation [which is more an act of *beneficence*] (Miller, 2011).

<sup>12</sup> There are multiple actual examples that show how noncompliance is a real-world problem. Without moral assessment, we can see how the United States left other countries with a slack by withdrawing from the Paris Agreements in 2017. By noncomplying, other states (such as Canada, China and India) were presumed to take up this slack by enhancing more ambitious climate agendas. Or before, the United States refused to ratify the Kyoto protocol in 2001 since developing nations such as China and India were not included. Without their participation there would arise a slack since the targets would only cover a small fraction of total global emissions. Another example is Hungary closing its border with Croatia in 2015, hereby stemming the flow of thousands of refugees entering its country. Other neighbouring countries quickly said they were prepared to take up the slack of extra refugees. Lastly there is discussion about who is to take up the slack that is left by some of the richest countries who do not comply with the international target to pledge 0.7 percent of its GDP



statism only provides the unsatisfying answer that in these situations it is left to the agents in question to decide what to do and that nobody is required by justice to take up the slack, we need to think of an alternative approach that fills this lacuna. I propose an alternative grounds-of-responsibilities approach – in accordance with the third way – that is uncommon in current debates and literature on noncompliance. I will argue that there *are* grounds to pick up some of the slack and explore these grounds.

Thinking of grounds of responsibilities and assigning responsibilities when not every responsible agent complies on the basis of various principles may be helpful in solving the slack. Miller rightfully explains that

*The issue is how to identify one particular agent, or group of agents, as having a particular responsibility to remedy the situation. For unless we can do this, there is a danger that the suffering or deprivation will continue unabated, even though everyone agrees that it is morally intolerable, because no one is willing to accept the responsibility to step in and relieve it.*

(Miller, 2001: 453)

Again, we can consider fair shares of responsibilities, like obligations of justice, in these situations as matters of degree. In this sense the alternative approach introduced in Part IV can indeed be helpful in situations of and debates on noncompliance. I will show how Miller provides the basics for such a pluralist approach (Miller, 2001) and how this approach, although in line with statist assumptions, gives rise to more demanding duties of justice in nonideal circumstances.

I start with exploring different grounds that bring along different responsibilities for agents. Miller (2001) distinguishes five grounds that he considers to be helpful in thinking about allocating responsibilities to remedy a certain problem – such as deprived and suffering peoples. First, he mentions *causal responsibility*, which means that an agent is responsible for anticipating on a certain problem because of the causal role this agent played in the genesis of this state of affairs. This is distinct from *moral responsibility* which involves more of an appraisal of someone's conduct. Having a moral responsibility means not only having caused a certain outcome or problem but also being liable to the moral blame for doing this. Thirdly an agent can also be responsible in the sense that one *benefited* from a certain outcome without being causally responsible for this beneficial situation. One of the shortcomings of these three sorts of responsibility is that they are very much backward-looking in allocating remedial responsibilities. It is in this sense more important to look at those who are responsible for a given situation than the question who is best able to solve it. Therefore, in order to be able to put bad situations right Miller speaks about a third form of responsibility, based on *capacity*. Then responsibility is allocated to that agent or those agents that are best capable of solving this problem. His fourth type of responsibility relates closely to his nationalist views and is called the *communitarian responsibility*. The rationale behind this type is that ties within whatever communities create a greater sense of special responsibility towards one another (Miller, 2001).<sup>13</sup>

Although Miller does not place this distinction in a context of noncompliance, I claim that this distinction can be helpful as a framework for agents that are faced with noncomplying agents and does right to the diversity of possible cases and problems. It is not one of these forms of responsibilities that is on its own decisive in every situation of allocating responsibilities but as a whole they can offer a thorough framework of considerations that can guide political action in cases of slack. I argue in favour of a pluralist framework based on different grounds that is in line with both statism and a grounds-of-justice approach.

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to foreign aid, leaving a slack for complying agents. So, problems of noncompliance and slacks are widespread, diverse and ubiquitous.

<sup>13</sup> This list of grounds is not exhaustive. Goodin for example speaks of a vulnerability principle, where protective responsibilities can be assigned on the ground of being vulnerable to a certain agent (Goodin, 1985). For another exploration of parameters or considerations for responsibilities see (Young, 2011), who speaks of power, privilege, interest and collective ability as grounds for (extra) responsibilities. So, these grounds deserve further inquiry.

I claim that in situations of noncompliance one can consider the different forms of responsibilities as grounds of responsibilities that can be weighed against one another – just as the third way approach uses grounds of justice to determine the strength of duties of justice. This way we have several grounds or features that determine the strength of the responsibility to take some of the slack that has emerged: having brought about the problem, the moral blameworthiness, having benefited, the capability of solving it and the nature of ties. Just as grounds of justice matter for the scope and demandingness of principles and obligations of justice, so do the grounds of responsibilities for the responsibilities of justice to take up a slack and solve problems. The strength of the features or grounds that determine states' responsibilities that are present helps to figure out what agent we can reasonably accept to take up what part of the slack. If we distinguish several grounds for responsibility, we can weigh or balance them against each other in different situations to get a sharper image of whom we assign how much responsibility. This way we can look at different situations and consider different grounds, since remedial responsibility can then be assigned in one case on grounds of moral blameworthiness while in other cases on the basis of communitarian relations. Whereas Miller applies his so-called connection model mainly to solve harms that are done towards one specific agent or state (P means patient), I propose an application for more general problems in situations of noncompliance (P as problem of noncompliance). The grounds still remain the same, so if we assume a given problem of noncompliance P with agents A and B, then we can be guided as follows:

*Thus, if A is weakly linked to P by virtue of moral responsibility, whereas B is strongly linked to P by virtue of capacity (B is in a far better position to remedy P's condition than any other agent), the theory instructs us to hold B remedially responsible. In some cases it may recommend dividing responsibility between two or more agents, where this makes practical sense, and the ties are of comparable strength.*

(Miller, 2001: 471)

I will consider some problems and show the usefulness of the different grounds of responsibility in considering who gets what responsibility for what reason. If we look at for example noncompliance in issues on dealing with climate change and reducing greenhouse gasses, we need to think of assigning responsibilities to anticipate on this slack. The different grounds can function as a helpful mechanism for an agent to determine its responsibility. Agents can weigh their amount of causal responsibility against other agents. Is agent A for a large part responsible for bringing about the CO<sub>2</sub> emissions (*The Polluter Pays Principle*)? Regarding climate problems there are also solid grounds to assume that although one agent did not excessively contribute to emissions, it still benefited a great deal (*The Beneficiary Pays Principle*). Looking at capacity responsibility one can consider whether agent A is to a larger extent capable of bearing the extra costs of tackling this problem than other agents (*The Ability to Pay Principle*). The ground of communal ties does not seem to play a large role in climate problems. The agent can weigh these grounds against each other and compare the relative strengths of these grounds with other agents and can then take either their fair share, more than their fair share or can divide the extra responsibility with other agents. Regarding problems of immigration (such as the aforementioned situation in Hungary) and agents not willing to take their fair share of refugees again agents can consider the different grounds of responsibility where perhaps communal ties or capacity play a more decisive role.<sup>14</sup> One of the major appeals of this approach to particular cases suffering from partial compliance is that there is always *some* agent that is assigned extra responsibility. One can use the grounds as a thorough guideline to determine which agent one can reasonably accept to take more than its fair share. By seeking connections between agents A and problems P it is easier to distribute responsibilities in a nonideal world where not all agents comply.

There are a few things that still need to be considered regarding this approach. It should be acknowledged that it provides more of a guideline to allocate responsibilities than a mechanical algorithm that gives fixed solutions to each global problem. Weighing grounds of responsibilities is – as it is for grounds of justice – a difficult enter-

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<sup>14</sup> For an interesting contribution that emphasizes capacity as a ground for taking the slack in refugee-crises, see Owen (2016).

prise. One still needs to think about what to do in situations where the different grounds do not provide a satisfying outcome or are hard to be weighed. Miller also acknowledges that in this weighing there is a strong “*appeal to shared moral intuitions about which is the stronger*” (Miller, 2001: 471). I claim that it is hard to lexically order or sequence grounds that we can apply since this does no justice to the complexity of cases and to the fact that responsibility is a matter of degree. It shows that there is still work to be done to identify grounds of responsibility and analyse its application. It is nevertheless a good foundation for how agents actually *can* be brought to take more than their fair share and on what grounds.

## Immoral agents?

One last concern for statist in slack-taking was the claim that it undermines the morality of agents. However, I claim that an agent’s morality is at no point at stake when taking more than its fair share. To explain this and thus show why statist can indeed endorse more demanding duties in partial compliance I will point to the distinction between *immediate* and *final* responsibility (Miller, 2001). If we consider cases where immediate harm needs to be relieved we look at the agents that are best placed to anticipate in the short term, whereas the costs of this action may be borne by other agents that carry the final responsibility (Miller, 2001). So, then we consider the grounds that justify assigning immediate responsibility to agent A, while agent B carries final responsibility and must compensate A for the resources that A needed to solve the immediate harm or problem. In this sense B is completely treated as a moral agent in that we consider B to still carry a responsibility while A picks up the immediate slack.

The grounds of capacity and to a less extent community are seemingly important to determine the immediate responsibility, since these grounds tell us what agent is best able to contribute to a solution for problem or patient P. Considering the final responsibility it is more plausible to look at the causal, moral and again community grounds. Goodin too distinguishes causal responsibility and the responsibility of capacity to do something about the harm now (Goodin, 1998). By distinguishing these different grounds, we do not assume noncompliant agents to be irresponsible or immoral but rather as agents that carry another form of responsibility. Stemplowska too acknowledges that “*we still recognize them [noncompliers] as responsible in the sense of having the capacity to act responsibly and fulfill their duties*” (Stemplowska, 2016: 602).

Given the more accurate answer to the scope question as we went into in section IV, we have reasons to say that there are multiple reasons and grounds to take some of the slack. I proposed an alternative approach as an answer to statist shortcomings and showed how this approach can usefully be applied in debates on noncompliance. The pluralist framework distinguishes several forms of responsibility so that agents are motivated to take more than their fair share and at the same time provides considerations that assign this responsibility to what agent. It thus shows why statist reluctance to advocate demanding duties, even in situations of partial compliance, has too little foundation. With this approach the morality of noncompliant agents is preserved while at the same time it provides good reasons to anticipate on immediate problems when it comes to slack-taking. It seems that agents actually can be assigned more responsibility than their fair shares which in turn shows how this third way of theorizing global justice provides statist reasons to endorse more demanding duties of justice.

## Conclusion

Throughout this thesis I showed why liberal statisticians have reasons to endorse more demanding international duties of justice. My two aims were to show statist inconsistencies and how statist approaches are compatible with endorsing other, more demanding duties of global justice. I explored several statist approaches that supplemented each other but at the same time did not provide a satisfying justification for their reluctance to adopt demanding duties of global justice.

I showed how national statism is prone to criticism on its internal consistency. I focused on the ambiguous role of current nation-building policies that shape the relationships national statisticians attach intrinsic value to. The property they identify forces us to entail the weak account I introduced and therefore cannot be adequately explained as a moral justification for their derived duties of justice.

Secondly, I showed how political statism can be seen as a response to national statism since the property they identify is quite different in nature. Although we can consider political coercion to be more unchangeable and decisive there is still a challenge to choose either for the preservation of practice-dependence (which puts the fulfilment of basic rights obligations beyond the normative scope) or their principles of justice (which denies the premise of conceding social facts). The realist methodology they endorse puts political statism in a tough position and forces statism to combine this practice-dependence with their aim to guide political action.

Thirdly, I focused on the Rawlsian approaches of statism that endorse a realist utopia. I concluded that a realist utopia is also not accurate enough to explain the exact reasons why liberal peoples would only choose a duty of international assistance. I went into the exact nature of practices Rawlsian thought assumes and claimed that this approach also does not succeed in providing statist principles of justice a solid grounding.

In part IV I introduced a third way of theorizing justice based on multiple grounds of justice that acknowledges the normative peculiarity of the state while at the same time leaves space for more and gradual duties of justice. There are several grounds to be identified that each result in duties of justice that can differ in demandingness, population and content. This approach is more compatible with the complexity of real-world circumstances and deserves further inquiry.

Lastly I showed how a grounds-of-responsibility approach provides multiple reasons and grounds to take some of the slack in situations of noncompliance. The pluralist framework distinguishes several forms of responsibility so that agents are motivated to take more than their fair share and at the same time provides considerations that assign this responsibility to what agent. It seems that agents can be assigned more responsibility than their fair shares which in turn shows how more demanding duties of international justice are compatible with statist views on the global sphere.

There is obviously much more to say about the scope of principles of justice and statist approaches. I conclude by saying that statism has substantive appeals that should not be disregarded but rather be supplemented with other grounds that give statist assumption more solid grounding. Further inquiry is therefore needed to explore several other grounds of justice and responsibilities and get a more accurate picture of duties of justice within a complex global realm.

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